

**CONWAY PLANNING BOARD**

**MINUTES**

**SEPTEMBER 22, 2022**

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## CONWAY PLANNING BOARD

### MINUTES

SEPTEMBER 22, 2022

A meeting of the Conway Planning Board was held on Thursday, September 22, 2022 beginning at 7:00 pm at the Conway Village Fire Station, 97 Main Street, 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. Jason Dennis, Town Attorney, of Hastings Law Firm was in attendance.

#### REVIEW AND ACCEPTANCE OF MINUTES

**Mr. Porter made a motion, seconded by Ms. Byers, to approve the minutes of September 8, 2022 – work session and September 8, 2022 – regular session 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 to hear Settlers R2, Inc. first. Motion carried unanimously.**

#### SETTLERS R2, INC. (FILE #FR22-09) – FULL SITE PLAN REVIEW (PID 235-89 & 89.002)

Mark Lucy, White Mountain Survey and Engineering division of Horizons Engineering; Rob Barsamian, partner in OVP Management, Inc., and Derek Lick, Attorney with Sulloway and Hollis, appeared before the Board. This is an application to change the use of Building G from retail to retail and restaurant/lounge. Mr. Barbin stepped down at this time. Mr. Colbath appointed Mr. Phillips as a voting member. Mr. Lucy reviewed the project. **Mr. Porter made a motion, seconded by Ms. Byers, to accept the application of Settlers R2, Inc. for a full site plan review as complete. Motion carried unanimously.**

Mr. Colbath asked that Mr. Lucy start with the parking alternative standard request. Mr. Lucy stated they are proposing a shared parking scheme including all three of the parcels; street side phase I, street side phase II, commonly known as Market Basket, and lot R2. Mr. Lucy stated there are 801 parking spaces within these three lots. Mr. Lucy stated service peak is the middle of the day, morning to mid-afternoon, retail stretches a little bit further beyond the demand of service, and dining has a bump around lunch time and peaks during the dinner hour.

Mr. Lucy stated the first parking analysis was first used back in the late 80's early 90's by the hotel; the hotel was planning an expansion and the planner at the time suggested looking into shared parking. Mr. Lucy stated at some point the Planning Board adopted the standard. Mr. Lucy stated here we are almost 30 years later practicing the same analysis.

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Mr. Colbath asked for Board comment; Mr. Hounsell asked the percentage of restaurant and retail in building G. Mr. Lucy answered indoor would be 11,571 square feet of dining which includes the kitchen, bar and prep areas, and 630 square feet of retail. Mr. Lucy stated there are two seasonal outdoor areas of 575 square feet each, for a total of 1,150 square feet.

Mr. Hounsell asked Mr. Lucy to explain how the shared parking works, and the easement talked about in a letter we received today. Mr. Lucy stated it was full review #18-05 that approved the Market Basket project. Mr. Lucy stated during that review, this Board approved the use of these three lots in the aggregate. Mr. Lucy stated as a matter of human nature, we tend to park as close as we can to where we are going. Mr. Lucy stated during the shopping trip, or visit to the center, you might park somewhere else other than in front of building G, end up going from building to building and ending up at building G for lunch.

Mr. Hounsell asked about the easement with the hotel. Mr. Lick stated these lots generally, the Settlers R1 lots, has an easement to park on the hotel parcel; it is a general easement, it is not for any particular space, but they have a right by deeded easement. Mr. Lick stated this site [Settlers R1] was built before the hotel. Mr. Lick stated when they came in with Market Basket, they purposely kept it contained on these lots so as not to affect these easements, or these easement rights.

Mr. Barsamian stated they have a number of these projects with shared parking, and the idea is to not have big parking lots; from day one, 30 plus years ago, we've integrated these smaller lots, and it works. Mr. Barsamian stated people come and go, and the idea is to keep them there with lots of activities so they are constantly moving around and then landing somewhere else. Mr. Barsamian stated we have shared parking today and it happens to work; we don't have a parking problem. Mr. Barsamian stated we wouldn't use the shared parking if we had a parking problem; we need to have tenants come to the shopping center, and we cannot have them complain about parking, and we don't have complaints regarding parking.

Mr. Colbath asked that they consider a crosswalk on Roger Road in front of building I. Mr. Barsamian agreed to a crossing between I and H. Ms. Grant asked if they have any sort of system for employee parking. Mr. Barsamian stated there is a \$100 fine for parking in front of the store. Mr. Hounsell stated Building G does not have deeded rights to park at the hotel parking. Mr. Barsamian stated that is correct.

Mr. Colbath asked for public comment; Roy Tilsley, Attorney with Bernstein Shur on behalf of Bellevue Properties Inc., referring to his letter dated September 22, 2022 [in file] stated they want to substitute a shared parking analysis for a restaurant use; the existing site plan regulations regarding restaurant use might understate the amount of parking that restaurants take up. Mr. Tilsley stated he questions whether it really meets the criteria of the site plan review regulations to adopt an alternate that further reduces the number of spaces associated with a restaurant use.

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Mr. Tilsley stated under the Town's regulations this retail space requires 55 parking spaces; the conversion to restaurant space requires 103 parking spaces. Mr. Tilsley stated the parking load for this change-of-use essentially doubles the amount of parking associated with the use. Mr. Tilsley stated the R2 lot has just over 200 parking spaces; the parking load under the Town's regulations for this change-of-use is 400 spaces. Mr. Tilsley stated this lot is about half of the parking that it should have.

Mr. Tilsley stated in our opinion the shared parking analysis should be based on where people will actually park, so that it is the parking lots that are sharing with other users. Mr. Tilsley stated our concern is some of the spaces that are supposed to be shared with the restaurant use in Building G are football fields away from that particular use and not places where tourists are likely to park in if trying to get to Building G.

Mr. Tilsley stated §110-21.D. requires off-site parking to be within 400-feet of the use. Mr. Tilsley stated the Market Basket lot and the WMH lot are more than 400-feet from this particular restaurant. Mr. Tilsley stated the natural inclination of people driving in and seeing this small lot full is going to be to park in Settlers R1 parking lot which will then increase pressure on hotel parking and the hotel lot, and that is our concern.

Mr. Torres stated the 400-foot reference is a different standard than the alternative standard. Mr. Tilsley stated if you are going to adopt a shared parking standard it must still comply with §110-21.D. so the parking spaces in the shared lots, which are technically other lots of record, are within 400-feet. Mr. Tilsley stated parking spaces that are going to be associated with a use should be reasonably close to that use, and that is not really what we have here.

Mr. Torres read §110-21.D. Mr. Colbath stated it is 400-feet from the lot, not the use. Mr. Tilsley stated there are definitely spaces that are more than 400-feet. Mr. Hounsell stated the concern is that the overflow will go to Settlers R1 which will then cause people to go to the hotel. Mr. Tilsley agreed. Mr. Tilsley stated we should look at where people are actually parking; the goal for this Board is protecting public safety to make sure there is adequate parking for this use. Mr. Tilsley stated if this is really what the shared parking is and you approve it that way, we think there should be some conditions that prevent or instruct people not to park in this area.

Mr. Hounsell stated he likes the idea of the shared parking especially as it pertains to this particular application. Mr. Tilsley stated if the parking is going to be shared here [235-99], then it should be a part of the analysis. Mr. Colbath asked why PID 235-99 was not included in the shared parking agreement. Mr. Lick stated we didn't want to initiate another suit by Bellevue. Mr. Lick stated this is the exact same site with the exact same parking that was already approved; the only thing that has changed is one building, less than 10%, is being changed from retail to restaurant.

Mr. Tilsley stated they would like signs with instructions on where they can and cannot park, to close off the access to the hotel and be for egress only so that not to become a temptation for people who want to access the restaurant, and provide signs for the hotel parking lot that indicate that it is for hotel parking only. Mr. Tilsley stated we would then ask the Board to review it after a year to put in any changes that need to be made.

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Ms. Grant asked has the hotel ever run out of parking because the parking lot behind the hotel is always empty. Mr. Tilsley stated he asked his client the same question and he said yes there are times when the lot is full. Ms. Byers asked how many parking spaces does the hotel have. Mr. Tilsley stated he does not know.

Mr. Lick stated we had a trial in a prior case, we actually undertook a Perkins study where we sent out an engineering firm for parking counts, at the peak time in July and the peak time in December, actually took photographs and took a count, and during those times there was a vast expanse of space during both of those peak times. Mr. Lick stated the jury ruled in Settlers Green favor that we were not over burdening the parking based on the study. Ms. Grant stated she doesn't want to see any more parking on this site unless we actually need spaces.

Mr. Porter stated he is concerned with the impact this restaurant will have on the front site; it will harvest some hardships with parking. Mr. Porter stated he thinks we are taxing this particular parcel with parking and there will be times when this parcel will be overburden. Mr. Barsamian stated they strategically put this on the site with the least busy parking lot. Mr. Barsamian stated they have the same concerns, they cleared out Building H by putting one tenant there because there is going to be a restaurant in Building G. Mr. Barsamian stated it is the last parking lot in the complex to fill ever.

Ms. Byers asked if determined that there is a need for more parking, where is there space. Mr. Barsamian stated our customers can park on our lots; it all kind of works itself out. Mr. Barsamian stated if it happens, we will adjust because we would lose a tenant.

Mr. Colbath asked if they would be willing to put up signs that state additional parking for Thirsty Moose in Market Basket parking lot. Mr. Corbett asked if the mitigation plan proposed by Mr. Tilsley is acceptable. Mr. Lick stated in regards to placing signage in the hotel parking lot, stated by deed all of the uses have the right to park there; so, it cannot say hotel parking only. Mr. Lick stated he is nervous about closing off the parking lot given there are tenants right there that rely on that access for their customers.

Mr. Torres stated he has a concern with bullet #2 of Mr. Tilsley's letter from a safety perspective; changing the traffic flow to egress only without any design change would concern him. Mr. Colbath asked if they would consider signage indicating that there is additional parking in selected lots. Mr. Barsamian stated if he could figure out a way without confusing people.

Mr. Lucy read a request for a parking alternative standard. **Mr. Hounsell made a motion, seconded by Ms. Grant, to accept the parking alternative standard.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Colbath asked if a waiver was submitted for the parking space size. Mr. Lucy answered in the negative and stated they are all 9'x18' and the ADA spaces are 9'x18' with an access aisle; the parking in this area has been corrected.

Mr. Colbath asked about lighting. Mr. Lucy stated this was reviewed and approved in 1996 by this Board; there was a photometric plan done and it met the code and there are no changes being proposed to site lighting under this proposal.

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Ms. Grant asked about plantings and trees. Mr. Lucy reviewed the landscaping plan. Mr. Lucy stated Building H had 40 tree credits lost, and they are being replaced now. Ms. Grant asked if everything that is dead or dying will be replaced. Mr. Lucy answered in the affirmative. Ms. Grant asked if there are landscaping areas based on the amount of parking. Mr. Lucy answered in the affirmative. Ms. Grant asked if the new requirement for landscaped areas calculated based on paved areas is met. Mr. Lucy stated the newly adopted regulations are exceeded in every instance.

Mr. Torres stated in regard to pending item #7 in the staff report, he is comfortable that they meet section F, the percentage of parking lot. Mr. Torres stated it is a part of the conditional approval just to ensure that they are.

Mr. Lucy read the waiver request for §110-30.C.(3). **Mr. Porter made a motion, seconded by Mr. Hounsell, to accept the waiver request for §110-30.C.(3).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Hounsell made a motion, seconded by Mr. Porter, to conditionally approve the full site plan for Settlers R2, Inc. conditionally upon Town Engineer approval; indicating specific parking aisle dimensions on the plans; providing specific parking space (traditional and ADA) dimensions on the plan; depicting specific areas on the plan where the calculated parking lot landscaping percentages were calculated in accordance with §110-22.F.; depicting specific locations for the proposed planters to be located within both of the proposed outdoor seating areas on the plan; adding an additional pedestrian crosswalk across Roger Road between Building O/I and H; revising waivers granted table [if 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 expires on September 28, 2023. Motion carried unanimously.**

Mr. Dennis left at this time.

**ALAN DOUCET (FILE #S22-04) – TWO-UNIT SUBDIVISION REVIEW (PID 231-125)**

Mr. Phillips stepped down at this time. Mr. Barbin rejoined the Board at this time. Seth Burnell of HEB Engineers appeared before the Board. This is an application to create two residential units. **Ms. Byers made a motion, seconded by Mr. Porter, to accept the application of Alan Doucet for a subdivision review as complete. Motion carried unanimously.**

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

Mr. Burnell read the waiver request for §130-36.A. **Mr. Porter made a motion, seconded by Mr. Barbin, to accept the waiver request for §130-36.A.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Burnell read a waiver request for §130-66.C.8.(b) & (h). **Mr. Porter made a motion, seconded by Mr. Corbett, to accept the waiver request for §130-66.C.8.(b) & (h).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Torres read a waiver request for §130-47.F. **Mr. Porter made a motion, seconded by Ms. Byers, to accept the waiver request for §130-47.F.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Torres read a waiver request for §130-66.C.8.(d). **Mr. Porter made a motion, seconded by Ms. Grant, to accept the waiver request for §130-66.C.8.(d).** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Ms. Grant, to conditionally approve the two unit subdivision for Alan Doucet conditionally upon Town Engineer approval; revising waivers granted table [if necessary]; submitting four copies of revised plans with original stamps and signatures; submitting a Mylar for recording; a performance guarantee for all on-site improvements [if necessary]; 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 expires on September 28, 2023. Motion carried unanimously.**

#### **JIVAN, LLC (FILE #FR22-10) – FULL SITE PLAN REVIEW (PID 230-1)**

Andrew Pike and Barry Stowe of Opechee Construction Corporation and David Sherborne, Architect, appeared before the Board. This is an application to construct a 90-room, 4-story hotel with associated infrastructure. Mr. Sherborne reviewed the project. **Mr. Porter made a motion, seconded by Mr. Corbett, to accept the application of Jivan, LLC for a full site plan review as complete. Motion carried unanimously.**

Mr. Colbath asked for Board comment; Mr. Colbath stated he thinks this building design is much more standing with our ordinance; he appreciates the redesign of the building. Mr. Hounsell asked for an explanation on why this does not qualify as a definition of a restaurant. Mr. Sherborne stated it is a restaurant as an amenity to the guests. Mr. Hounsell asked if they would deny someone off the street. Mr. Pike stated it is technically open to the public, but it is not marketed as a separate restaurant; it is part of the lobby hotel itself.

Mr. Pike stated they have provided more parking than under a strict hotel under the ordinance; the alternative method includes a hotel with a restaurant that is open to the public. Mr. Stowe stated ITE has a publication for parking generation based on studies of existing facilities, there are various hotels that can be selected from that publication and they selected a hotel that is inclusive of a full-service restaurant/cocktail lounge. Mr. Stowe stated that calculation shows during full occupancy on a Saturday we are required to have 106 parking spaces, which is seven more than what is required under the Town's design standards for a hotel; that is 1.1 parking spaces per room. Mr. Stowe stated they are proposing to construct 107 parking spaces; they will have eight parking spaces over the 1.1 for a hotel.

Mr. Torres stated we met with the applicants a few times, we disagreed at first, but we both compromised and got to a place where staff was comfortable. Mr. Torres stated he and Town Engineer, Paul DegliAngeli, are comfortable with what is proposed. Ms. Grant asked if staff is comfortable with providing some overlapping parking, and not providing the Town parking calculations for the separate uses. Mr. Torres answered in the affirmative; the alternative method and the additional spaces.

**Ms. Byers made a motion, seconded by Mr. Barbin, to accept the parking alternative standard.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Grant stated there is a lot of sloping with this lot, there will be changes to the grading, but there are areas that are too steep for any landscaping. Ms. Grant asked how is a buffer going to be accomplished and leave any trees on the sides. Mr. Stowe stated we will have a surveyor flag the clearing limits and that would ask as a condition of approval Mr. Torres would inspect that clearing line before we commence any cutting. Mr. Stowe stated then we would establish our perimeter control and direct our contractor to not go over that line. Mr. Torres stated we would work together so it does not get clear cut.

Mr. Porter asked if the NHDOT requires a traffic study. Mr. Stowe answered in the negative. Mr. Porter stated the driveway in that vicinity was a driveway of a house, and now it is proposed to be a 90-room hotel with an increase in traffic flow on a potentially problematic area of Route 16. Mr. Porter stated he thinks it would be beneficial to request a traffic study from the State. Mr. Torres stated he does have an email from the State addressed to Mr. Stowe not requiring a traffic study because the mitigation they would require is already in place.

**Mr. Porter made a motion, seconded by Mr. Hounsell, to recommend that this Board request a traffic study done on that particular location on Route 16.** Ms. Grant stated this piece of the strip is really bad right now. Mr. Barbin asked if a traffic study would give us any actionable information, anything we could act on. Mr. Torres stated he doesn't think NHDOT is going to change their mind. Mr. Barbin asked if a study were done, would that give use any information that would give us a statutory position. Mr. Torres stated this Board does not have a position; it is a state road.

Mr. Barbin asked what is the intent of the actual study, is it to slow them down. Mr. Porter answered in the negative and stated that particular location has customers coming out of those retail establishments getting very frustrated and just pulling out in front of people. Mr. Porter stated his reason for asking this is maybe the State needs to have a conversation with us.

Mr. Pike asked if the request is that we conduct a traffic study or that the Town does a traffic study between them and the State. Mr. Porter stated we should ask you to do a traffic study with the State of New Hampshire. Mr. Pike stated on advice from Counsel he does not believe this Board has jurisdiction of that road. Mr. Porter stated we have the purview to request. Mr. Porter stated this development impacts the people of the town, and as Selectmen for this Town he is answering for the people of this town; he is trying to mitigate impact.



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Mr. Hounsell stated there is a way to get a traffic study done; we keep seeing development and we are supposed to just say that the State gets to make the final decision regarding the safety of the people in the Town of Conway. Mr. Hounsell stated if the applicant does not want to do it, he would suggest that the Town do it.

Mr. Stowe stated the State's position took into consideration the use as a hotel and not being a high impact generator to the road; we did do a trip generation analysis where we analyzed the number of vehicle trips that enter and exit the site. Mr. Stowe stated so the State did have information to base their judgement on. Mr. Stowe stated there was an assessment done that assessed the amount of traffic this hotel was going to generate, and based on that assessment the State made the determination that the assessment did not trip that it needed a traffic study.

Mr. Porter stated he wants this Board to recommend that the Town of Conway do a traffic study on that particular site. Mr. Colbath asked for public comment; Ted Phillips, Planning Board alternate but speaking as a citizen, stated he believes the building proposed is much more aesthetically pleasing. Mr. Phillips stated he was parked across the street for 14-days with his ice cream truck, and the traffic in that location and the people trying to cross is a safety concern.

Mr. Torres stated he reached out to NHDOT to ask how to get more pedestrian amenities between Barnes Road and Artist Falls Road. Mr. Torres stated their response was that they would think about it, but the Town would need to pay for and maintain any new pedestrian amenities. Mr. Torres stated it may be beneficial for the Board of Selectmen to reach out to the State.

Mr. Phillips stated he is sure people from the hotel will to walk across the street to play miniature golf. Mr. Stowe stated many complimentary uses do occur on the same side of the road, the golf course being an exception to that; being out of the site and he has witnessed people from the Comfort Inn trying to cross the street to go to Seadog's. Mr. Stowe stated they have not proposed anything to the State for pedestrian crossing.

Mr. Hounsell stated it is not their responsibility to improve it, but he would support Selectmen Porter on making this an issue for the Town. Mr. Hounsell asked Mr. Porter if it would benefit him if this Board took a vote to write a letter to the Selectmen with our concerns so the Selectmen can go to the State. Mr. Porter agreed. Mr. Colbath suggested the Board discuss this issue under Issues for Consideration.

Ms. Grant stated the Planning Board has asked for traffic studies for hotels on Route 16 and that information has affected how that development proceeded. Ms. Grant stated she would like to know when was the last traffic study done for anything in this area, because maybe the baseline that is out there that we live every day is not the baseline they are looking at. **Motion carried with Mr. Barbin voting in the negative.**

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

**Mr. Barbin made a motion, seconded by Mr. Porter, to conditionally approve the full site plan for Jivan, LLC conditionally upon NHDOT driveway permit and indicating permit number on plan; 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; this conditional approval expires on September 28, 2023; and subsequent to final approval the applicant shall coordinate with Town Staff in regards to the trees proposed to be saved prior to the start of site clearing and construction. Motion carried unanimously.**

## **OTHER BUSINESS**

**CMR Properties, LLC (File #NA22-11):** Glenn Harmon, Vice President of Operations for Cranmore Mountain Resort, appeared before the Board. This is a request to allow a temporary structured tent along with a portable bathroom trailer and seasonal locker room for the upcoming ski season at 239 Skimobile Road, North Conway (PID 214-84.2).

Mr. Harmon stated they have run into an issue with the switch gears arriving on time. Mr. Harmon stated they had hoped to use first floor during this winter, but that won't be able to happen.

Mr. Colbath asked for Board comment; There was a brief discussion regarding a time frame, and it was determined that the paperwork submitted with the request indicates that the duration of use for all temporary structures and trailers will be from November 1<sup>st</sup> through April 1<sup>st</sup>

**Mr. Porter made a motion, seconded by Ms. Byers, that the Planning Board determined that based on the provisions of §110-4. A.(5), regarding applicability, that a temporary structured tent along with a portable bathroom trailer and seasonal locker room for the upcoming ski season 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. Mr. Colbath asked for Board comment; there was none. Motion carried unanimously.**

**Selectmen's Report:** Mr. Torres stated the Planning Board through Chairman Colbath provided a letter to the Board of Selectmen encouraging the use of Arbor Funds for the Master Plan update; that will be on their agenda on Tuesday, October 27<sup>th</sup>. Mr. Torres stated we have received six Master Plan applications; staff has reviewed them and there are three to be interviewed. Mr. Torres asked for two Planning Board members to be part of the interview.

**Mr. Hounsell made a motion, seconded by Mr. Barbin, for the Chair, Vice Chair and Board of Selectmen's representative to conduct the interviews. Motion carried unanimously.**

Mr. Torres suggested a work session on October 27<sup>th</sup> since the Board only meets once in November. **Mr. Barbin made a motion, seconded by Ms. Grant, to have a work session on October 27, 2022. Motion carried unanimously.**

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**Issues for consideration:** Mr. Hounsell stated at the Zoning Board of Adjustment meeting there was a very interesting discussion regarding the sign/mural at Leavitt's Bakery. Mr. Hounsell stated we need to look at the sign ordinance, and be current with the desire of the people; this is an issue we should be addressing.

**Mr. Hounsell made a motion, seconded by Mr. Barbin, to add media questions to the end of the agenda. Motion carried unanimously.**

Meeting adjourned at 8:55 pm.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant