

**CONWAY PLANNING BOARD**

**MINUTES**

**OCTOBER 13, 2022**

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## CONWAY PLANNING BOARD

### MINUTES

OCTOBER 13, 2022

A meeting of the Conway Planning Board was held on Thursday, October 13, 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; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Jason Dennis, Town Counsel, of Hastings Law Firm was in attendance.

#### REVIEW AND ACCEPTANCE OF MINUTES

**Mr. Hounsell made a motion, seconded by Mr. Barbin, to approve the minutes of September 22, 2022 as written. Motion carried unanimously.**

#### W. MICHAEL LYNCH AND ELIZABETH ESTEY (FILE #S22-03) – TWO-UNIT SUBDIVISION REVIEW (PID 214-42.01)

Andy Fisher of Ammonoosuc Survey Company and Mike Lynch appeared before the Board. This is an application to create two residential units. Mr. Fisher reviewed the project. **Mr. Porter made a motion, seconded by Mr. Hounsell, to accept the application of W. Michael Lynch and Elizabeth Estey for a two-unit subdivision review as complete with the staff report dated 10/06/22. Motion carried unanimously.** Mr. Fisher gave an overview of the application. Mr. Fisher stated this lot has been owned by the same family since the late 1950's, and the plan is to continue the ownership within the family.

Mr. Colbath asked for Board comment; Mr. Porter asked how will the proposed house be accessed. Mr. Lynch stated they would continue with the driveway. Mr. Colbath asked if the proposed house site, Unit 1, would be used as long-term residential, and not a short-term rental. Mr. Fisher answered in the affirmative. Mr. Porter asked if they would be willing to deed restrict against short-term rentals. Mr. Lynch answered in the affirmative.

Mr. Fisher stated this is a mixed-use property; it is in the residential agricultural district and there is and has been a commercial use on the property. Mr. Fisher stated the Lynch family has operated a business on and out of this property since 1954. Mr. Lynch stated it started more as farming and when his father built the house in 1959, he at some point morphed into excavation as well as animals. Mr. Fisher stated it shifted over the years; there has been a Lynch Family outdoor sort of business operating out of this parcel since 1954.

Mr. Fisher stated Michael's dad started the business, it is the house Michael grew up in; he took over the business and he still operates the business. Mr. Colbath asked when did you take over the property. Mr. Lynch answered 1982. Mr. Colbath asked when did Conway adopted zoning. Mr. Torres answered 1980. Mr. Fisher stated the use would not allowed currently. Mr. Colbath stated it is existing. Mr. Porter stated it was in operation prior to zoning.

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**Mr. Porter made a motion, seconded by Mr. Hounsell, to accept the existing commercial business as a grandfathered legal non-conforming business. Motion carried unanimously.**

Mr. Colbath asked for public comment; John Dirubbo of 515 Intervale Crossroads stated they cleared the vegetation right to the line, and asked if they would replant some vegetation along the property lines to buffer the sound and the site.

Lynn Lyman, Commissioner of the Kearsarge Lighting Precinct, stated they recognized the business as a nonconforming business; however, the issue they have in Kearsarge is in order to have a second living unit they need 250-feet of road frontage for each unit. Ms. Lyman stated they don't have 500-feet of road frontage, and a driveway is not considered road frontage. Ms. Lyman stated in our opinion, Kearsarge Lighting Precinct would allow it if the driveway was brought up to town standards to give them the 500-feet of frontage they need.

Ms. Lyman stated the other issue they have is in Kearsarge we have limited employees; you are allowed to have your family, but only allowed two other hired employees. Ms. Lyman stated there should be no subcontractors coming; it is a limited commercial property. Mr. Hounsell stated that does not seem to be our issue, and asked if this applicant would have to go before the KLP. Ms. Lyman stated they would need to obtain a building permit. Mr. Hounsell asked if that is where this issue would be addressed. Ms. Lyman answered in the affirmative, and stated she just felt it needed to be pointed out.

Mr. Colbath stated that seems pretty restrictive; there is no way for them to meet the frontage. Ms. Lyman stated the driveway could become a road. Mr. Colbath stated that is almost limiting the ability to develop the lot cause of the cost. Ms. Lyman stated we had zoning back in 1957. Mr. Colbath stated it would be a shame to not see this project go through with something we desperately need. Mr. Colbath stated this is a KLP issue concern, and they meet our standards with the exception of the two waiver requests.

Mr. Porter asked if we are only required to follow the Town of Conway standards. Mr. Torres answered in the affirmative. Mr. Hounsell stated he appreciates the community concern, but he doesn't think this is the forum to address Ms. Lyman's concerns.

Harry Oiler, an adjacent property owner, asked if this is a PUD. Mr. Fisher answered in the affirmative. Mr. Oiler asked if it meets the regulations because it was pre-zoning. Mr. Torres stated the use is the pre-zoning non-conforming part, but the two units on the lot meet current regulations. Mr. Oiler stated the decision of approval today doesn't mean he couldn't subdivide further in the future. Mr. Torres stated that is correct, but they would have to come back to the Planning Board.

Mr. Torres read the waiver request for §130-23.G. **Mr. Porter made a motion, seconded by Mr. Barbin, to accept the waiver request for §130-23.G.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Torres 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; Mr. Colbath stated we did have an abutter ask for some buffering, and asked in the spirit of the

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ordinance would they be willing to plant a few arborvitaes along buffer line. After a brief discussion, the applicant and the neighbor agreed that they could work out a buffer. **Motion carried unanimously.**

**Mr. Porter made a motion, seconded by Mr. Barbin, to conditionally approve the two-unit subdivision for W. Michael Lynch and Elizabeth Estey conditionally upon Town Engineer approval; submitting a revised density calculation as noted in Staff Report dated 10/06/22; submitting four copies of revised plans with original stamps and signatures; submitting a Mylar for recording; submitting a \$25 check made payable to the Carroll County Registry of Deeds for the LCHIP fee; 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 will expire on October 12, 2023; and (conditions subsequent to final approval) submitting copies of all recorded easements with CCRD book and page number. Motion carried unanimously.**

Mr. Dennis left at this time.

**NELSON-BERGMAN GROUP, INC. (FILE #S21-15) – 27-LOT SUBDIVISION REVIEW CONTINUED (PID 258-68)**

Steve Harding of Sebago Technics and Jay Nelson of Bergman-Nelson Group, Inc. appeared before the Board. This is an application to subdivide ±280 acres into 27-lots. Mr. Harding stated they were here in February, but the Board was not comfortable with accepting the application as complete as there was material on the property that needed to be cleaned up. Mr. Harding stated that Mr. Nelson has worked with David Pandora, the Building Inspector, and Mr. Pandora has provided a letter dated 09/13/22 that he was satisfied with the cleanup of the materials.

Mr. Harding stated there are some materials still there; a pile of rocks, a pile of gravel and reclaimed material, a dozen or so jersey barriers, and a concrete tank that they would like to use for the fire cistern. Mr. Harding stated in Mr. Pandora's letter he indicated that those materials would have to be approved by the Planning Board through this approval process. **Mr. Porter made a motion, seconded by Mr. Corbett, to accept the application of Nelson-Bergman Group, Inc. for a subdivision review as complete with the staff report dated 10/06/22. Motion carried unanimously.**

It was determined that the remaining land would be lot #67. Mr. Harding gave an overview of the project. Mr. Harding asked that the Homeowner documentation be part of the conditional approval. Mr. Harding stated there are no waivers being requested.

Mr. Colbath asked for Board comment; Ms. Grant asked about the letter from Mr. Pandora. Mr. Torres read the letter from David Pandora dated 09/13/22 [in file]. Mr. Torres stated he spoke with the Town Engineer, Paul DegliAngeli, and he is concerned with the large piles of tailings on the site, and asked if he would be using a crusher to utilize those materials. Mr. Nelson stated it would depend on who he hired to build the road. Mr. Torres asked if we made it a condition of approval would he be okay with that. Mr. Nelson stated that would be fine.

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Mr. Torres asked if the concrete drainage and jersey barriers were going to be used. Mr. Nelson answered in the affirmative and stated the jersey barriers would be used to block of access while constructing the road and the concrete tank is the fire cistern. Mr. Torres asked if the Fire Chief has reviewed and approved the cistern that is on the site right now. Mr. Nelson stated he doesn't think he has looked at it. Mr. Torres stated we would suggest a condition of approval that the Fire Chief inspect the cistern to make sure it is up to their standards, and if not, then it needs to be removed from the site. Mr. Nelson stated that is fine.

Mr. Porter asked how has the communication been with the applicant. Mr. Torres stated the communication has been much better. Mr. Porter stated he hopes after an approval is granted communication doesn't fall by the wayside. Mr. Nelson stated he will make sure it doesn't. Mr. Colbath stated assuming the materials were left on the lot because they were seen as valuable or usable moving forward, he does not want to see one of these new lots become the dumping ground for the next set of materials; he would like some reassurances that you are not going to use any of the new lots for a new storage area. Mr. Nelson stated he will make sure it doesn't happen.

Mr. Colbath asked for public comment; Shawn Bergeron of Bergeron Technical Services representing the Saco River Run Homeowner's Association stated we are happy and content that what Mr. Pandora has said has been addressed has been addressed. Mr. Bergeron read his letter dated October 11, 2022 letter [in file].

Mr. Bergeron stated if phase II is going to get constructed it is important to the Homeowner's Association that they have assurance that phase I is complete and can petition the voters to take over this road. Mr. Bergeron stated if phase 2 gets approved and the conditions of approval are met, then we have no protection or assurance that phase I was complete. Mr. Bergeron stated they are asking that a condition of approval for phase II be to assure us that phase I is ready to go to the voters of the Town.

Mr. Nelson stated all of these items were completed; there was a town inspector during construction, and they paid the Town for an inspector. Mr. Nelson stated it has all been done with Town approval. Mr. Bergeron suggested that a condition of approval be that Town Engineer and Planning Director provide written approval and consensus that all items required for potential road acceptance per §130-67.E. & I. (1) & (3) have been completed and fully addressed.

Mr. Harding stated in regard to the 85%, he doesn't know what that percentage is now, but he doesn't want Mr. Nelson to be in a position where he has to wait for homes to be built for this to be resolved. After a brief discussion, the Board decided to continue the hearing to allow staff to gather more information. **Mr. Porter made a motion, seconded by Mr. Hounsell, to continue until October 27, 2022 at 7:00 pm. Motion carried with Mr. Barbin and Mr. Colbath voting in the negative.**

**PUBLIC HEARING – PROPOSED AMENDMENTS TO THE SITE PLAN REVIEW REGULATIONS**

**§110-5. – Minor Review:** The purpose of this amendment is for housekeeping purposes; minor reviews were eliminated in 2019, but not all language pertaining to minor reviews was eliminated from the ordinance.

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Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened public comment at 8:28 pm. Mr. Colbath asked for public comment; there was no public in attendance. Mr. Colbath closed public comment at 8:28 pm.

**Mr. Porter made a motion, seconded by Ms. Grant, to amend the site plan review regulations regarding §110-5. as proposed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**PUBLIC HEARING – PROPOSED AMENDMENTS TO THE SUBDIVISION REVIEW REGULATIONS**

**§130-45. – Highway Signs and Bounds:** The purpose of this amendment is to require the developer to install all roadway signs associated with their project.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened public comment at 8:29 pm. Mr. Colbath asked for public comment; there was no public in attendance. Mr. Colbath closed public comment at 8:29 pm.

**Mr. Porter made a motion, seconded by Ms. Grant, to amend the site plan review regulations regarding §130-45. as proposed.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**OTHER BUSINESS**

**2023 Planning Board Dates and Submittal Dates:** Mr. Colbath made a motion, seconded by Ms. Grant, to accept the 2023 Planning Board Dates and Submittal Deadlines. **Motion carried unanimously.**

**Selectmen’s Report:** There was no report.

**Issues for consideration:** Mr. Torres gave an update on the Master Plan and stated they hope to have someone in place by the end of October.

**Media Questions:** There was no media in attendance.

Meeting adjourned at 8:34 pm.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant