

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 9, 2023

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CONWAY PLANNING BOARD

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A meeting of the Conway Planning Board was held on Thursday, February 9, 2023 beginning at 7:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Deputy Town Manger and Town Engineer, Paul DegliAngeli, was in attendance. Alternates Ted Phillips and Steven Hartmann were in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of January 26, 2023 will be reviewed at the next Planning Board meeting.

AGENDA OUT-OF-ORDER

Mr. Hounsell made a motion, seconded by Ms. Byers, to take the agenda out-of-order to move Other Business/Issues for Consideration to the next agenda item. Motion carried unanimously.

OTHER BUSINESS

Issues for Consideration: Charlie McIntyre, Executive Director of the NH Lottery, and John Conforti, Chief Compliance Officer of the NH Lottery, appeared before the Board. Mr. McIntyre stated we were invited here as we understand you have some questions.

Mr. Hounsell stated the proliferation of charitable gaming is taking a different look to what we have traditionally seen since 1977 in that we are seeing commercial involvement with it in the proliferation of these establishments. Mr. Hounsell stated he thinks there is a lack of the State, of the Lottery Commission, of informing communities in a reasonable, responsible manner.

Mr. Hounsell stated there is confusion about this coming without voter approval, but keno and sports betting needs voter approval. Mr. Hounsell stated we find that there is a charitable gaming organization, or what he calls a casino, which raises a concern and he thinks the State has to be more forthcoming about exactly what is happening. Mr. Hounsell stated he does not think the State has done an adequate job of explaining that to the general public.

Mr. Hounsell stated he was lead to believe that the interest of the Lottery Commission as far as to coming into a community is that it is done in accordance with local planning and life safety, but he doesn't see any attention given to it by the Lottery Commission. Mr. Hounsell asked what steps they are taking to assure the both the applicant and the Town understand what is going on before it takes place.

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Mr. McIntyre stated fundamentally our concerns are within the building. Mr. McIntyre stated in this area we are not an operator; we are a regulator. Mr. McIntyre stated our authority begins and ends where the threshold begins and ends. Mr. McIntyre stated the applicant is on their own to notify the Town. Mr. Hounsell asked if there is something they could be doing or should be doing to tell people what you are doing. Mr. McIntyre stated we are not doing it.

Mr. Colbath stated we have had keno and sports gaming on the ballot several times and they haven't passed; we have people who are under the impression that this type of gambling is not permitted in Conway. Mr. Colbath stated we were not aware of this type of gaming because we feel the State Lottery oversees the type of gaming that is allowed in New Hampshire and then proposes it to the townships or lets the townships decide for themselves.

Mr. Colbath stated we now know what charitable gaming is because here it is in front of us, but no one knows about it until it is too late. Mr. Colbath stated our concern is that it is being pushed into the community. Mr. McIntyre stated we are not authorized to do anything without being authorized by the legislature. Mr. McIntyre stated sports betting contained a provision that a Town have the right to voter up or down, similarly keno; that provision was raised in committee during legislature and not approved. Mr. McIntyre stated so the ability to have a Town or City vote on it as existing as an entity, as an operation, went with that lack of approval. Mr. McIntyre stated we can't give it authority that we don't have.

Mr. Conforti stated the lottery has two distinct functions; one is as a sales organization, and keno and sports betting is a lottery product we are responsible for and we sell, in addition to that the lottery has a regulatory side, which is the side he manages. Mr. Conforti stated at that point our job as the lottery commission is strictly as a regulator, our job is to see if that organization meets those regulations. Mr. Conforti stated the legislator has decided that charitable gaming does not require a town vote in the same manner that sports betting does or keno does.

Mr. DegliAngeli asked the definition of charitable gaming and a casino. Mr. McIntyre stated charitable gaming has a definition, casino does not. Mr. Conforti stated charitable gaming is as defined in RSA 287; essentially it is a licensed gaming organization where there are certain games that can be operated either directly by a charity or by a game operator employer partnered with a charity.

Mr. DegliAngeli stated that Webster's Dictionary states that a casino is a public room or building where gambling games are played. Mr. Hounsell stated by definition when you have a place where people come together to gamble that makes it a casino. Mr. Hounsell asked if there is a way to have your commission sit down and discuss what type of rules should be put in place before going much further as far as informing communities of what exactly charitable gaming has become. Mr. McIntyre stated we have had a number of communities reach out to us and we have been available to speak to ones that have had issues; it is up to the community on if it is allowed and its location, it is a local control issue, and we would respect that.

Ms. Grant stated ultimately we have local zoning and planning over this site, and this should have gone through the Zoning Board of Adjustment and then go through the planning process. Ms. Grant stated she doesn't understand why it hasn't. Mr. DegliAngeli left at this time.

AGENDA OUT-OF-ORDER

Mr. Barbin made a motion, seconded by Ms. Grant, to take the Public Hearing – Zoning Amendments proposed by the Planning Board out-of-order. Motion carried with Mr. Hounsell not present for the vote.

PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD

§190-31. – Definition of Household – The purpose of this amendment is to add a definition of Household as follows: “To be living as a unit of one or more persons that intends to maintain a usual residence in the same dwelling place”.

Mr. Colbath asked for Board comment; Mr. Hounsell stated he thinks this is a good definition except for the word “intends”. Ms. Grant stated she’s not sure what the word “intends” adds to it; it could be removed. Ms. Byers stated this is the definition that has been submitted to the Supreme Court by the Town so it would be in alignment with that; that is where this came from.

Mr. Barbin asked what about the definition of “usual residence”; it seems to restrict an ownership of multiple residences. Ms. Byers stated the “usual residence” would have to do with the one or more persons that are in the dwelling place. Ms. Byers stated it is not the ownership of it, it is the individuals that reside inside of the dwelling place.

Mr. Barbin stated the concern that he has is that we may not intend to be, but we may be putting language in here that is so ambiguous that someone could say that we are trying to restrict short-term rental ownership, trying to stop you from owning multiple residences in one Town; the definition seems vague enough that it is open to a lot of interpretation. Mr. Barbin stated it may seem like it is a back way to restrict short-term rentals other than through the avenues we should be pursuing.

Ms. Grant stated we have not been exploring some potentially different or new avenues to deal with short-term rentals because we have been waiting on this case; the fact that it is ambiguous or has some issues being consistent now with that case will make it easier. Mr. Torres stated if the Board feels there is work to done, there will be another town vote; don’t feel like you need to rush, the Board could take their time.

Mr. Colbath opened the public hearing at 7:40 pm. Mr. Colbath asked for public comment; Austin Hale of Quint Street in Conway asked what does a usual residence mean; it seems like an ambiguous term. Mr. Hale stated it seems this language would eliminate the ability of somebody to own multiple residences in town.

Ms. Byers stated the US Census Bureau defines a usual residence as the place where the person lives and sleeps most of the time, this place is not necessarily the same as the persons voting residence or legal residence, non-citizens who are living in the United States are included regardless of immigration status.

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Mr. Hale asked what is the purpose of this language, what are you trying to clarify. Mr. Colbath stated we are trying to clarify a lot of things, we put them on a list and work on them as the time comes. Mr. Corbett stated some we don't even have definitions of and some are outdated.

Mr. Hale stated zoning laws are intended to regulate how a dwelling is being used and this language is targeting who is living in that dwelling. Ms. Grant stated this is just a definition, this is not a zoning rule. Mr. Hale asked what state statute allows Conway to regulate who is allowed to live in a dwelling unit. Ms. Grant stated this is not regulating anything. Mr. Torres stated definitions are in the ordinance for clarification.

Mr. Colbath closed public comment at 7:47 pm. **Mr. Barbin made a motion, seconded by Mr. Hounsell, to table the definition of Household. Motion carried with Ms. Byers and Ms. Grant voting in the negative.**

THE RESIDENCES ON THE SACO (FILE #CC23-01) – CONCEPTUAL REVIEW (PID 246-23)

Mark Lucy of the White Mountain Survey division of Horizons Engineering appeared before the Board. Mr. Lucy reviewed the proposed project, to construct up to 243 residential dwelling units, with the Board.

MCDONALDS CORP/MCDONALDS USA, LLC (FILE #FR23-02) – FULL SITE PLAN REVIEW CONTINUED (PID 235-11)

Daniel Allen of Bohler Engineering and Paul Mucci, Architect with SkyBourne Technologies, appeared before the Board. This is an application to redevelop the site by remodeling the interior and exterior of the building by demolishing the PlayPlace, constructing an addition to relocate the drive-thru cash window and reconfiguring the existing drive-thru to a dual order point layout with associated infrastructure at 1750 White Mountain Highway, North Conway.

Mr. Barbin made a motion, seconded by Mr. Corbett, to accept the application of McDonalds Corp/McDonalds USA, LLC for a full site plan review as complete with the staff report. Motion carried unanimously.

Mr. Allen reviewed the existing conditions and then reviewed the proposed project. Mr. Mucci reviewed the architectural elevations.

Mr. Colbath asked for Board comment; the Board had a lengthy discussion regarding the architectural elevations. Mr. Colbath asked if he has given consideration to reducing the driveway to 14-feet. Mr. Allen stated a truck needs the full 24-foot width to pull-in. The Board reviewed the lighting plan. Mr. Hounsell asked about connecting drives. Mr. Colbath stated the applicant has requested a waiver.

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

Mr. Allen read the waiver request for §110-20.C. Mr. Torres stated this waiver is not necessary. Mr. Allen withdrew the waiver request for §110-20.C.

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Mr. Allen read the waiver request for §110-20.G. **Mr. Hounsell made a motion, seconded by Mr. Barbin, to grant the waiver request for §110-20.G.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Allen read the waiver request for §110-26.D. **Ms. Grant made a motion, seconded by Mr. Colbath, to grant the waiver request for §110-26.D.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Allen read the waiver request for §110-29.A.(2). **Mr. Colbath made a motion, seconded by Ms. Grant, to grant the waiver request for §110-29.A.(2).** Mr. Colbath asked for Board comment; there was none. **Motion carried with Ms. Byers being present.**

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

Mr. Allen read the waiver request for §110-30.C.(1). **Mr. Hounsell made a motion, seconded by Ms. Byers, to grant the waiver request for §110-30.C.(1).** Mr. Colbath asked for Board comment; there was none. **Motion defeated with Mr. Hounsell, Ms. Byers and Mr. Colbath voting in the affirmative and Ms. Grant, Ms. Corbett and Mr. Barbin voting in negative.**

Mr. Allen read the waiver request for §110-30.C.(2). **Ms. Byers made a motion, seconded by Mr. Colbath, to grant the waiver request for §110-30.C.(2).** Mr. Colbath asked for Board comment; there was none. **Motion carried with Ms. Grant voting in the negative.**

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

After a brief discussion, **Mr. Barbin made a motion, seconded by Mr. Corbett, to revisit the waiver for §110-30.C.(1).** **Motion carried unanimously.**

Mr. Hounsell stated the applicant has done an outstanding job preparing for tonight and he doesn't want to put them through the expense and time to do a redesign because it is not necessary; it won't achieve that much. Mr. Allen stated they submitted a more contemporary building. Mr. Barbin stated he appreciates that, but it is a grey box McDonalds; we have a tiny window of opportunity to correct an old fashion restaurant. Mr. Barbin stated we want something unique, and this is not unique.

Ms. Grant stated this doesn't meet the ordinance; she doesn't think it is unfair to ask for a change if it doesn't meet the ordinance. Mr. Hounsell stated this is a vast improvement to what is currently there. **Mr. Hounsell made a motion, seconded by Mr. Colbath, to grant the waiver request for §110-30.C.(1).** **Motion defeated with Mr. Hounsell, Ms. Byers and Mr. Colbath voting in the affirmative and Mr. Corbett, Ms. Grant and Mr. Barbin voting in the negative.**

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Mr. Colbath made a motion, seconded by Mr. Hounsell, to continue the full site plan review for McDonalds Corp/McDonald USA, LLC until March 9, 2023 at 6:00 pm. Motion carried unanimously.

OTHER BUSINESS CONTINUED

Selectmen's Report: There was no Selectmen's report.

Media Questions: There were none.

Meeting adjourned at 9:36 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant

To: Chairman Colbath and Board Members

From: Tom Reed

Re: residential dwelling

We are almost one quarter of the way through the Twenty-First Century. It continues to evolve into a complicated world which requires complicated, and sophisticated, responses to present and future needs.

The drafting of legislation has become a similarly complicated venture. To do it properly requires a knowledge of pre-existing statutory and case law in order to properly serve the public interest. It is not the purview of lay people.

Statutes, including ordinances, often use what are known as terms of art. They have definitions that are influenced by interpretations of the courts and use by legislative bodies. An appreciation of this history colors the manner in which to draft a particular piece of legislation. Understanding that history is essential to drafting laws that reasonable people can understand and withstand legal challenges.

Household is a term of art. It has been interpreted by the NH Supreme Court and used by our Legislature. Your drafting of that term should be influenced by that history. What you have drafted, albeit in good faith, falls far short of what it needs to be. It is vague and uninformed. If it is your intent to not permit str's in the residential zone, then expressly say so by excluding them from the the definition of household. Otherwise, you will invite nothing more than confusion and litigation, and expense to the town.

You are encouraged to use the definition I previously provided. Otherwise, ask your attorney for his opinion or the N.H. Municipality Association for advice in drafting. But what you have come up with is inadequate.