

CONWAY PLANNING BOARD

MINUTES

APRIL 13, 2023

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A meeting of the Conway Planning Board was held on Thursday, April 13, 2023 beginning at 6:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen’s Representative, John Colbath; 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

Ms. Byers made a motion, seconded by Ms. Grant, to approve the Minutes of March 23, 2023 – Master Plan Steering Committee and March 23, 2023 – Regular Session as written. Motion carried with Mr. John Colbath abstaining from voting.

AGENDA OUT-OF-ORDER

Ms. Byers made a motion, seconded by Mr. John Colbath, to take item #2 and Settlers R1, LLC out-of-order. Motion carried with Mr. Hounsell voting as present.

STEVEN B. AND ANITA S. CHENEY REVOCABLE TRUSTS (FILE #FR23-01 & #S23-01) CONCURRENT FULL SITE PLAN AND UNIT SUBDIVISION REVIEW CONTINUED (PID 216-13)

This is an application to construct a 4,200 square foot multi-unit storage building and create a commercial unit subdivision at 77 Old West Side Road, North Conway. Mr. Fisher submitted photometric plans. This application was accepted as complete on January 26, 2023.

Ms. Grant made a motion, seconded by Mr. Ben Colbath, to continue the application for Steven B. and Anita S. Cheney Revocable Trusts until May 11, 2023 at 6:00 pm. Motion carried unanimously.

OTHER BUSINESS

Settlers R1, LLC/BOBA BEACH Bubble Tea (File #NA23-06): Michael Mitchrone, Settlers Green General Manager, appeared before the Board. This is a request to operate a temporary food trailer located in the courtyard of Settlers Green at 2 Common Court, North Conway (PID 235-99). Mr. Mitchrone stated the trailer would be located inside the court yard, and it would be hooked to the existing power and an existing domestic waterline.

Mr. Ben Colbath asked for Board comment; Mr. Corbett asked the length of lease. Mr. Mitchrone stated 6 ½ months. Mr. Ben Colbath asked for public comment; there was none.

Mr. Hounsell 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 food trailer 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. Ben Colbath asked for Board comment; there was none. Motion carried unanimously.

AGENDA OUT-OF-ORDER

Ms. Grant made a motion, seconded by Ms. Byers, to take item #3 out-of-order. Motion carried unanimously.

PUBLIC HEARING – PROPOSED AMENDMENT TO THE SITE PLAN REVIEW REGULATIONS

§110-29.B. – Greenspace: The purpose of this amendment is to increase the percentage of greenspace required from 25% to 30% of the total lot area.

Mr. Ben Colbath asked for Board comment; there was a question of procedure, and it was determined that only one public hearing is required. Mr. Ben Colbath opened public comment at 6:08 pm. Mr. Ben Colbath asked for public comment; Josh McAllister of HEB Engineers stated we will now have a bunch of non-conforming developments. Mr. Torres stated there will be more updates in the future to the site plan review regulators with the Master Plan update; this could change again.

Wes Smith of Horizons Engineering stated we have projects started with the anticipation of 25% greenspace required; when will that go into effect for applications after this date. Ms. Torres stated pending applications this would not apply; anything that has not been submitted the 30% rule would apply. Mr. Ben Colbath closed public comment at 6:18 pm.

Ms. Grant made a motion, seconded by Ms. Byers, to amend the site plan review regulations regarding §110-29.B., Greenspace, as proposed. Motion carried unanimously.

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. This application was accepted as complete on February 9, 2023.

Mr. Mucci reviewed the changes to the building. Mr. Ben Colbath asked for Board comment; Mr. Hounsell stated we need to keep in mind the safety of the worker who has to work on equipment located on the roof. Mr. Barbin stated the McDonalds in Bridgeton, Maine has a pitched roof, and he couldn't see any of the HVAC equipment; Alton New Hampshire also has a pitched roof.

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Mr. Barbin stated this doesn't seem like an impossibility too keep the workers safe and out of the weather; however, they should be up in the crawl space taking care to protect the equipment. Mr. Barbin stated we should have the pitched roof that the ordinance requires. Ms. Grant stated we worked on tightening these restrictions very recently, as well as tightening up other things, and the voters have strongly supported us in those tightening ups.

Mr. Hounsell stated this is an existing structure; it may have been easier if they were building a new structure. Mr. Ben Colbath stated the building and the site are becoming more conforming with this change; there is a net gain.

Mr. Hounsell stated this building is consistent with all the other buildings on the strip. Mr. Ben Colbath asked why not use a gable roof like other McDonalds. Mr. Mucci stated efficiency of the mechanicals is important; the equipment on the roof cannot be seen from three-sides. Mr. Mucci stated a lot of effort went into making this aesthetically pleasing.

Mr. Barbin stated this is an opportunity to have a flagship store. Mr. Mucci stated not all McDonald facilities are the same. Mr. Mucci stated there is a difference in compacity and service; this one is pretty big and busy. Mr. Ben Colbath asked for public comment; there was none.

Mr. Allen read the waiver request for §110-30.C.(1). **Mr. Hounsell made a motion, seconded by Mr. Ben Colbath, to grant the waiver request for §110-30.C.(1).** Mr. Ben Colbath asked for Board comment; Mr. Hounsell stated he doesn't think this is an unreasonable request; not sure what they can do without removing it and starting over. Mr. Ben Colbath asked for public comment; there was none. **Motion carried with Mr. Hounsell, Ms. Byers, Mr. John Colbath and Mr. Ben Colbath voting in the affirmative and Mr. Corbett, Ms. Grant and Mr. Barbin voting in the negative.**

It was determined that 15.5% of the parking lot is landscaped, therefore, Mr. Allen withdrew the waiver request for §110-22.F.

Ms. Grant asked if arborvitaes are allowed to be considered in the tree count. Josh McAllister of HEB Engineers stated they have used arborvitaes before; it depends on the species. Shawn Bergeron of Bergeron Technical Services stated many species of trees are often not even sold by caliber, but sold by height.

Mr. Hounsell made a motion, seconded by Mr. Ben Colbath, to conditionally approve the full site plan for McDonalds Corp/McDonalds USA, LLC conditionally upon North Conway Fire Chief approval; North Conway Water Precinct approval; Conway Police Chief approval; NHDOT driveway permit and indicating permit number on plan; coordinating with Town Staff in regards to the required trees on the site meeting the caliper requirement set forth in §110-29.D.(2); 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 will expire on April 11, 2024. Motion carried unanimously.

OTHER BUSINESS CONTINUED

Conway Poker Room & Casino, LLC (File #NA23-05): Dick Anagnost of Conway Poker Room & Casino, LLC and Josh McAllister of HEB Engineers appeared before the Board. This is a request to renovate an 11,700 square foot space within the existing building (previous supermarket) to a restaurant/charitable gaming center at 234 White Mountain Highway, Conway (PID 265-147).

Mr. Anagnost stated it has come to his attention that there has been quite a bit of controversy with our use; and he would like to explain exactly what it is they do. Mr. Anagnost stated a casino and a charitable fundraising organization are completely separate from one another. Mr. Anagnost stated our facility is a restaurant and bar and a facility approved to allow charities to run Monte Carlo nights, and do fundraising. Mr. Anagnost stated they also act as a fundraising consultant.

Mr. Anagnost stated a casino is against the law in the State of New Hampshire. Mr. Anagnost stated casinos typically hold a gaming license, and we don't hold a gaming license. Mr. Anagnost stated the charity itself pursues the fundraising; we are a facility which is approved by lottery and we receive a facility's license to allow the charity to operate within that facility. Mr. Anagnost stated they also receive a game operator's employee license which allows them to operate it for the charity. Mr. Anagnost stated charities used to run these type of games on their own, and now we run them.

Mr. Anagnost stated casinos don't share proceeds; whatever our proceeds 10% goes to the State, 35% to the charity and the remainder to us. Mr. Anagnost stated we have 153 seats which is the bar, the charitable gaming and the restaurant. Mr. Anagnost stated we are a concept restaurant, no one under 18 years old is allowed. Mr. Anagnost stated we operate 4 other locations; Manchester, Keene, Lebanon and Rollinsford/Dover. Mr. Anagnost stated we help local charities; our goal and intent is to help charities and that money goes back to those charities.

Mr. McAllister reviewed site improvements, and reviewed the five criteria under §110-4.A.(4) [see letter dated March 21, 2023 in file]. Mr. Ben Colbath asked for Board comment; Ms. Grant stated she thinks this requires site plan review if you need do that much of a plan. Ms. Grant stated we won't have bonding so what recourse would the Town have. Mr. Hounsell stated he believes it should have a site plan review. Mr. Barbin stated he thinks it requires a full site plan review.

Mr. Ben Colbath asked for public comment; Shawn Bergeron of Bergeron Technical Services representing Rebecca Mulkern stated the elephant in the room is the use, and what is being proposed is not in the table of permitted uses. Mr. Bergeron stated we have to get over the use hurdle first before going to the Planning Board.

John Cronin Attorney from Manchester stated he thinks there is no doubt that this use is allowed; and there is a letter in the record from one of your representatives that this use is allowed. Mr. Cronin stated generally the first person with discretion in this instance that decides whether the use is allowed is your building official, and that building official has made that determination twice in issuing building permits.

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Ms. Grant stated the use issue is an issue, and the use is typically resolved before it gets to us. After a brief discussion, it was agreed that the applicant would submit a zoning permit to the Town in regards to the use.

Mr. Ben Colbath asked for public comment; Julie Bufford, an abutter, read the Conway Charter. Ms. Bufford stated one of her issues on East Side Road in addition to looks and trash, is security. Ms. Bufford stated she knows he has done some stuff at other locations, our law enforcement is already stretched very thin, there is litter everywhere, there is noise, and traffic is a huge issue.

Linda Burns stated she is not an abutter but wanted to remind people that several days ago we did have a vote regarding keno, and it was overwhelmingly voted down for the fourth time.

Ms. Byers made a motion, seconded by Ms. Grant, to continue Conway Poker Room & Casino, LLC to May 11, 2023 at 6:00 pm. Motion carried unanimously.

Leszek and Ewa Gielata (File #FR22-02): Wes Smith of Horizons Engineering appeared before the Board. This is a request to extend the conditional approval. **Mr. Ben Colbath made a motion, seconded by Ms. Byers, to extend the conditional approval for Leszek and Ewa Gielata until October 10, 2023. Motion carried unanimously.**

Selectmen's Report: Mr. John Colbath stated he was covering for Steve Porter this evening. Mr. John Colbath gave an update that the Charter Commission was voted in, and that there likely will be a special election on June 13th, but it needs a final vote from the Board of Selectmen.

Issues for Consideration: Ms. Whitelaw will look into Ecode and how to update the content on the web sooner.

Media Questions: Tom Eastman of the Conway Daily Sun asked if the Board about the moratorium. Mr. Ben Colbath stated he was not surprised it passed.

Meeting adjourned at 8:48 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant