

**CONWAY PLANNING BOARD**

**MINUTES**

**NOVEMBER 16, 2023**

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CONWAY PLANNING BOARD

MINUTES

NOVEMBER 16, 2023

A meeting of the Conway Planning Board was held on Thursday, November 16, 2023, beginning at 7:38 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steve Porter; Secretary, Erik Corbett; Eliza Grant; Ailie Byers; Bill Barbin; Mark Hounsell; and Town Planner, Ryan O'Connor.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Porter made a motion, seconded by Ms. Grant, to approve the minutes of October 26, 2023, as written.** Chair Colbath asked for Board comment; there was none. **Motion carried 6-0-1, with Ms. Byers abstaining.**

**VARAHI NORTH CONWAY REALTY, LLC (FILE #FR23-10 & #S23-14) – CONCURRENT FULL SITE PLAN AND 2-UNIT SUBDIVISION REVIEW (PID 230-119)**

This is an application to construct a 2,200 square foot residential dwelling unit on a commercial site with associated infrastructure and create one commercial unit and one residential unit at 2039 White Mountain Highway, North Conway (PID 230-119).

The applicant has requested a continuance to January 25, 2024, as it was originally a unit subdivision; however, a full site plan review is needed.

**Mr. Porter made a motion, seconded by Ms. Grant, to continue this application until January 25, 2024.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**CHRISTOPHER STROUT AND TRACY ROBERGE-STROUT (FILE #S23-18) – 6-LOT SUBDIVISION (PID 216-73.1)**

Ms. Grant recused herself from the Board. Chair Colbath appointed Mr. Phillips as a voting member.

Mr. O'Connor read a waiver request to create a gravel road rather than a paved road, which is supported by the Town engineer. Portions of the project are in the Wetland and Watershed Overlay District.

There is a waiver request for stormwater regulations, to allow 0.2 cubic feet per second of stormwater to leave the site during a 25-year storm. The Town engineer felt there were possibilities to contain all stormwater on site, so he is not in favor of this waiver and would prefer the plans be amended. There is also a waiver request for granite curbing at the entrance of the site, which is supported by the Town engineer.

Mr. O'Connor stated the application is considered complete.

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**Mr. Porter made a motion, seconded by Mr. Hounsell, to accept the application and Staff report as written.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ron Briggs and Burr Phillips appeared before the Board. Mr. Briggs presented the application to subdivide 35.6-acres into 6 lots and create a new roadway on West Side Road, North Conway (PID 216-73.1).

Chair Colbath asked for Board input; there was none.

Chair Colbath asked for public comment.

Matthew Yosca asked Mr. O'Connor to repeat the waiver requests, which was done.

Ms. Dormeyer (sp) asked about the setback. Mr. Briggs said at the closest point, the road will be 130 feet from the property line.

**Mr. Porter made a motion, seconded by Ms. Byers, to review the waiver requests individually.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Briggs read a waiver request for §130-66. Due to the proximity of the proposed road to Lucy Brook and Cathedral Ledge, they felt a gravel road would be preferable to a paved one. They would prefer to retain this as a private road, which will be accessing family homes.

Mr. Colbath asked if the fire chief has provided feedback on this request. Mr. Phillips said the chief was okay with the proposal when there were four lots proposed. They have not spoken with him since two additional lots were added.

**Mr. Hounsell made a motion, seconded by Mr. Colbath, to accept the waiver request.** Chair Colbath asked for Board comment.

Mr. Hounsell said it is important to recognize that this family has been in town for many years. He feels this is a good opportunity for the Board to support their belief that there is too much pavement in Town. Mr. Porter agreed with Mr. Hounsell and asked if Town Staff supported the waiver. Mr. O'Connor said specific conditions would be proposed to cover maintenance of the gravel road.

Mr. Barbin asked why a comparable road needed to be built to Town standards and this one does not, due to the profile of the applicant. Mr. O'Connor said stormwater management standards differ for paved and non-paved roads. This road will be built to the standards required for gravel roads. Dirt and paved roads are similar, from a stormwater perspective. There will be a performance bond for the construction of the road as designed.

Mr. Hounsell expressed his belief that weight should be applied in specific cases that show uniqueness. He supported the opportunity for a family to be able to keep their family members living in town with this subdivision.

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**Motion carried unanimously.**

Mr. O'Connor read a waiver request for §130-66.B.1, drainage existing watercourse must be maintained. Mr. Phillips described the drainage situation of this area and while a dry well could be created, he does not believe it is necessary. Mr. O'Connor explained that the Town engineer felt there are opportunities to make this correction without significant changes to the plans.

**Mr. Porter made a motion, seconded by Mr. Barbin, to grant the waiver as presented.** Chair Colbath asked for Board comment.

The Board discussed the drainage included in the original plans and the purpose of regulations maintaining existing waterways.

Matthew Yosca asked for a frame of reference regarding this specific stormwater situation.

Ryan Gene (sp) of North Conway asked if there was any consideration of erosion with Lot 6, due to the 75-foot setback for Lucy Brook. Mr. Phillips said the flow runs away from the brook, and they do not model erosion issues. He noted the back of this lot is about 100 feet from the edge of the brook.

Chris Strout said there is erosion on that side of the brook, as there is no riprap. He said their side of the brook has been left in its natural state. The lot near the brook will remain undeveloped. He asked about the magnitude of a recent flood and the Board agreed there have been 100-year, 50-year, and 25-year floods in the last ten years.

**Motion failed 3-3-1.**

Mr. Riggs read a waiver request for §130-66.C.2.a, driveway entrance not curbed. He noted there is no curbing on the connecting road and that adding curbing would obstruct the flow to the roadside ditch and create a snowplowing obstacle.

**Chair Colbath made a motion, seconded by Mr. Porter, to grant the waiver request as presented.** Chair Colbath asked for Board comment.

Terri Bichardo (sp) of North Conway asked if there will be street lights on the road. It was clarified there will be no lights on the street.

**Motion carried unanimously.**

Mr. O'Connor reviewed the conditions of approval. Plans can be signed out of session, with an expiration date of May 16, 2024.

**Mr. Porter made a motion, seconded by Mr. Corbett, to accept the conditions as read.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Grant returned to the Board.

**OTHER BUSINESS**

**Conway Poker Room & Casino, LLC continued (File #NA23-05) – 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. O'Connor said the applicant requested a continuance until a application could be submitted to the Planning Board.. If the applicant were to come forward again, they would need to submit a site plan to the Planning Board; the use of the facility would be a restaurant with accessory charitable gaming events.

**Mr. Porter made a motion, seconded by Mr. Corbett, to deny the request for the proposal to be reviewed as a non-applicable application.** Chair Colbath asked for Board comment; there was none. **Motion carried 6-0-1, with Mr. Hounsell present.**

**North Conway Country Club, Inc. (File #NA23-13) – to allow a temporary wireless communication facility at 76 Norcross Circle, North Conway (PID 218-32).**

Chip from Verizon appeared before the Board via Zoom. He presented the request to temporarily locate a cell tower on a trailer (Cell on Wheels, or COW) screened by fencing in the North Conway Country Club parking lot. This is intended to address the communication demands of North Conway during the winter season. It will be removed at the end of March 2024.

Chair Colbath asked for Board input.

Mr. Corbett said summer is busier than winter and asked why a permanent tower is not needed. Chip said there is a permanent solution in the works, but it will not be ready to deploy in the next couple of weeks. Mr. Hounsell noted he has a number of objections and will not vote for this.

Chair Colbath expressed concerns over health and safety issues, considering the proximity to businesses and the number of people impacted. Chip said there are no health risks; the temporary towers are subject to the same standards as permanent cell sites. He shared information on cell tower emissions. He noted the FCC has stipulated that towns cannot have the effect of prohibiting service or make a decision based on the effects. The Board expressed concern over the accuracy of the information regarding the effects.

The Board discussed the fact that the COW exceeds the structure height limit. They also expressed concern over the visibility of the tower and locating cabling on Town property.

Chair Colbath asked for public comment.

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Phil Ouellette, Executive Director of the North Conway Community Center, clarified that part of the wiring is on Community Center property and not Town property. He expressed concern about running cable on the ground, creating a trip hazard, and asked how it would be secured. Chip said it would be in conduit.

Ms. Byers asked if other locations for the COW were considered. Chip said the goal is to be as close to the Common as possible, with specific requirements.

Ted Phillips express concern that the Board is encouraging temporary patches to an existing problem by allowing placement of this COW, and this could be an annual occurrence. Chip said he will find out what the long-term plans are; however, they are trying to avoid deploying a COW each year.

Chair Colbath recused himself from the vote.

**Ms. Byers made a motion, seconded by Mr. Porter, to grant this temporary structure, with conditions.** Chair Colbath asked for Board comment.

Ms. Grant asked how the Community Center feels about having the COW in this location. Chair Colbath said the Community Center Board is concerned regarding the health aspects. There was conversation about an easement to cross the Center property and potentially negotiating a lease.

**A roll call vote was taken. Hounsell – no, Corbett – no, Byers – yes, Porter – no, Barbin – no, Grant – yes. Motion failed 2-4-1.**

Chair Colbath returned to the Board.

The Board recommended researching other sites for the COW. Chip reiterated the options for deploying the COW are limited and welcomed suggestions for alternative locations. Mr. O'Connor suggested he could discuss alternative locations and the safety aspects of cell towers with Chip.

**Black Bear Village Cooperative, Inc. – Lot Merger to combine PID 262-83.006 & 83.007 into one unit on Lamplighter Drive, Conway (PID 262-83.006 & 83.007)**

Mr. O'Connor said Staff has no concerns with this request.

**Black Bear Village Cooperative, Inc. – Lot Merger to combine PID 262-83.071 & 83.072 into one unit on Lamplighter Drive, Conway (PID 262-83.071 & 83.072)**

Mr. O'Connor said Staff has no concerns with this request.

**Chair Colbath a motion, seconded by Mr. Corbett, to take these two agenda items as one vote and approve the lot mergers as requested.** Chair Colbath asked for Board comment; there

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was none. **Motion carried unanimously.**

**Outdoor Dining Discussion**

Mr. O'Connor reviewed the process for applying for outdoor dining on private and public property, the definition of outdoor dining, and the proposed language.

**Mr. Porter made a motion, seconded by Mr. Barbin, to move this to public hearing on January 25, 2024.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**Murals Discussion**

Mr. O'Connor explained this expands from murals to include other forms of public art and described the application process. He highlighted how the ordinance addresses façades and sculptures.

**Ms. Byers made a motion, seconded by Mr. Porter, to move this to a public hearing on January 25, 2024.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**ACLU Committee Update**

Mr. Hounsell reported the Appropriate Casino Land Use subcommittee has not met, as there has been no reason to meet.

**Parkway Committee Update**

Ms. Grant said the committee has a definition and an overlay district ordinance they are pleased with. This will be presented to the Board in December 2023. There will be one more meeting, where New Hampshire Housing will appear. She asked how the committee should proceed, if the Board wants to have ongoing conversations about issues that are parkway adjacent. Chair Colbath suggested discussing this at the next committee meeting. Mr. Barbin asked if the North-South Road will be designated a parkway. Chair Colbath clarified this question will be moved to public hearing and appear on the warrant for the voters to consider.

**Infrastructure Review Ad-Hoc Committee Update**

Mr. Corbett reported the committee is reviewing proposed scenarios regarding moving students and closing one school. On December 6, Mr. O'Connor will meet with the committee to update them on housing and how that could affect school populations. Chair Colbath asked if there is a

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plan to put something on the warrant for the voters to decide. Mr. Corbett said he believes this will go to the School Board, but he will ask.

**Selectmen's Report**

Mr. Porter reported the power company removed approximately 30 trees along Route 16. He expressed concern that the Town was unaware of this occurring and said this will be discussed at the next Select Board meeting. Mr. O'Connor has been in contact with the power company and said the proper permits were not in place. They are working on a reclamation plan as well as ensuring trees in new developments will not present a problem in the future. The Board discussed the possibility of running power underground.

**Issues for Consideration**

Mr. Hounsell said Chief Mattei and the Police Department have been very transparent during discussions regarding the police department. He would like the Chief to present information on this issue to the Board.

Chair Colbath asked if, at a future work session, the Board would like someone to speak regarding the tax rates in town and the tax assessment, especially the commercial tax assessment. The Board agreed.

Mr. Hounsell commended the people of Lower Bartlett, who voted for a \$20 million bond for the water precinct. He noted this is in line with what Conway wants to see regarding protection of the river, drinking water, and aquifer. He also commended Gary Chandler, the superintendent of the Lower Bartlett Water Precinct.

Mr. O'Connor reviewed the topics to be discussed at the next Board meeting.

Mr. O'Connor said he is scheduling the New Hampshire Municipal Association to meet with the ZBA to discuss process in February 2024 and asked if the Planning Board would like to be involved. They agreed one meeting would be scheduled and both Boards invited to attend.

**Media Questions**

Daymond Steer from the Conway Daily Sun asked where the trees had been cut.

He asked for an update on the casino issue. Mr. O'Connor verified they will be submitting an application for a site plan review. He clarified the zoning permit stated the uses they need to apply for for the site plan. It does not approve the facility.



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Regarding the master plan, Mr. Steer asked about creating different zones in the land use map. Mr. O'Connor clarified these are only suggestions and reviewed how they would be approved. The goal is to have the final version of the master plan prepared by the end of February.

Chair Colbath adjourned the meeting at 10:00 p.m.

Respectfully submitted,  
Beth Haggeli



# TOWN OF CONWAY

23 MAIN STREET + P.O. BOX 2680 + CONWAY, NEW HAMPSHIRE 03818

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## Memo

To: Planning Board  
From: Planning Staff  
Date: November 6, 2023  
Re: Proposed Outdoor Dining Ordinance

The following provides revised language to address Outdoor Dining based on our discussion at the October 26, 2023 Planning Board meeting. The proposed language would amend the requirements specified within Commercial districts as specified in our Zoning Ordinance. The standards for the specific use would address Outdoor Dining on private property; an updated permit would be proposed to the Selectboard for operations on public property.

Applications would generally be reviewed as a Small Undertaking unless the proposal reduces parcel greenspace to less than 30%, involves a reduction of greenspace greater than 2,000 square feet, or increases structural floor area by greater than 25% or 1,000 square feet, whichever is more restrictive.

### **Proposed Definition:**

#### **Outdoor Dining Establishment**

An area on private property, a public sidewalk, or public way where patrons may consume food and/or beverages provided by a licensed restaurant. Such restaurants may either provide table service in the outdoor dining areas or sell take-out items to be consumed within the outdoor dining area.

### **Proposed Ordinance Language:**

The proposal would amend the following Commercial sections of Conway Zoning Ordinance, Chapter 190.

- 190-17(O) – Center Conway Village Commercial District
- 190-18(O) – Conway Village Commercial District
- 190-19(O) – North Conway Village Commercial District
- 190-20(O) – Highway Commercial
- 190-22(M) – Industrial One
- 190-23(M) – Industrial Two

(O,M). Outdoor Dining Establishments are permitted in the zoning district as an accessory to any approved Restaurant use.

- (1) An Outdoor Dining Establishment application shall be accompanied by a plot plan, drawn to scale and dimensioned to include seating arrangements and immediately adjacent physical features such as fire hydrants, trees, structures, sidewalks, and pedestrian or vehicular travel ways. The plan shall be reviewed by the fire chief to ensure unimpeded pedestrian access. Outdoor Dining areas shall be designed to maintain compliance with requirements of the American Disabilities Act (ADA).
- (2) Establishments serving alcohol shall hold a valid liquor license from the State Liquor Commission prior to occupancy of the space. The license shall explicitly identify the Outdoor Dining area. Any permission granted by the Town of Conway will be subject to requirements of the State Liquor Commission.
- (3) Outdoor dining areas must be maintained. A minimum of one trash receptacle shall be provided and identified on the plot plan. Plantings, barriers, and outdoor furniture shall be maintained and suitable for the intended purpose.
- (4) Outdoor dining areas shall be separated from vehicular and pedestrian traffic. The separation must be adequate to ensure public safety; the minimum height of the barrier shall be 36 inches and the maximum height shall be 48 inches. Where no curbing or adequate vehicular separation exists, concrete or similar barriers shall be installed to prevent vehicular passage.
- (5) Outdoor entertainment associated with the dining area must not be considered a nuisance as defined in Site Plan Regulations 110-39 and shall adhere to 97-6.A, Noise Restrictions.
- (6) Occupancy limits shall be established by the Fire Chief. Applications must indicate that adequate parking can be provided as per Site Plan Regulations §110-21.
- (7) Dining areas and associated equipment are subject to all applicable setbacks.
- (8) Restroom facilities shall be readily accessible.
- (9) Outdoor Dining applications may be reviewed as a Small Undertaking as per Site Plan Regulations § 110-4. Site Plan review is required for any proposal which reduces total site greenspace to less than 30%, proposes a reduction of greenspace of greater than 2,000 square feet, or increases structural floor area by greater than 25% or 1,000 square feet, whichever is more restrictive.



# TOWN OF CONWAY

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## Memo

To: Planning Board  
From: Planning Staff  
Date: November 8, 2023  
Re: Proposed Public Art Ordinance

Following our discussion at the August 24, 2023 Planning Board meeting, the below language reflects our discussion regarding the proposed Public Art Ordinance.

The ordinance addresses the installation of murals and also permits other art visible to the public on commercial and public property such as sculptures, street art, or other types of permanent art work. The ordinance would require proposals to submit a Zoning Permit for staff to review of the criteria outlined below, applications would then be referred to the Planning Board for a public hearing and final approval.

During the last discussion, a square footage requirement was not determined for the total area of a mural on a structure. The updated language would allow for a mural to cover 25% of the front façade and would not be required to be contiguous. The Board was mixed on the total area for other sides of a structure. The proposal would require murals located on the side or rear of a structure to be appropriate in scale and be suited for the character of the neighborhood as determined by the Planning Board but does not specify limitations in square footage.

If adopted, a Public Art chapter of our Ordinance would be created.

### **Chapter 196 Public Art**

#### § 196-1 Purpose and Intent:

Regulations for Public Art were formulated to maintain a quality visual aesthetic while allowing for creative expression in appropriate locations. The established review criteria provide guidance concerning the compatibility and appropriateness of theme, location, design, placement, massing, scale, and materials of publicly displayed art with no intrusion into the artistic expression or the content of work.

#### § 196-2 Applicability:

This chapter shall apply to any proposed, altered, or amended Public Art installation on commercial or public property in all Zoning Districts. Public art is encouraged in the Commercial and Industrial zones.

§ 196-3 Definitions:

**MURAL** Any permitted art painted or applied directly on a building, structure, fence, or object within the public view that is located on public or private property.

**SIGN** Any device, fixture, placard, structure or attachment thereto that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any person or entity, or to communicate information of any kind to the public, whether commercial or noncommercial. Any portion of any awning, either freestanding or attached to a structure, decorated with any sign element, either attached or part thereof, shall be considered a wall sign.

**VANDALISM** Any unpermitted writings, drawings, or other material posted on a public or private property. Typically, this is unlawfully placed on property not owned by the person posting the material.

**PUBLIC ART** Any original work of art which is sited in a manner accessible and visible to the public regardless if the installation is temporary or permanent.

§ 196-4 Plan Submittal and Approval:

A Zoning Permit shall be submitted to the Zoning Officer for any proposed Public Art on commercial or public property for review of the criteria below. The Planning Board shall consider applications at a Public Hearing. Public Art proposals on public property shall be referred to the Selectboard.

A. Any application for proposed or altered Public Art shall include:

- (a) The proposed design of the mural or artwork, in full color, drawn to scale. Designs should be representative of the community and the natural beauty of the Mount Washington Valley.
- (b) Artist Qualifications. The artist must demonstrate appropriate experience and provide examples of past similar work. The use of local artist, historians, or other community resources is highly encouraged in the design and installation.
- (c) A list of the proposed materials and the method of their application.
- (d) A document indicating the property owner's liability for maintenance and removal of vandalism. A schedule of maintenance must be provided. If the Public Art installation is not maintained, the Town of Conway reserves the right to demand removal at the expense of the property owner.

B. Public Art installations are prohibited of the following:

- (a) Placement in a manner which interferes with the identification or recognition of an exit, fire escape, stairway, window, any form of egress, or ADA access.

- (b) Identification of prices, products, or services for any commercial use.
- (c) Include any advertisement or be commercial in nature. Public art must not contain lettering, symbols or references directly to the promotion of any product, business, brand, organization, or service. The name, logo, or other indicator of the sponsor of the mural or the mural artist shall be discreetly displayed and shall not exceed 2% of the overall design.
- (d) Contain false statements, obscene language or images, or create a clear and present danger to the general public.

§ 196-5 Design Standards:

- A. Architecture. The proposal complements the architectural design of the building on which the Public Art is proposed.
- B. Structural Integrity. The location and materials of Public Art must have the structural integrity to support proposed materials.
- C. Historic Nature. If the site is a designated landmark, a structure of merit, or a point of historical interest, the Planning Board may require a review be provided by the New Hampshire Division of Historical Resources indicating the proposal will not adversely affect the historic nature.
- D. Appropriateness. The proposal does not detract from the character of the surrounding area or neighborhood as determined by the Planning Board.
- E. Limitations. The proposal does not conflict with any prohibitions of § 110-39, Nuisances.
- F. Materials are of superior quality and intended for exterior use. Permanent installations must have a weatherproof and vandalism-resistant coating.
- G. Murals placed on a structure. Murals located on a front facade shall not exceed more than 25% of the area of which the mural is located. Murals located on the side or rear of a structure must be appropriate in scale and be suited for the character of the neighborhood, as determined by the Planning Board. Area requirements are cumulative and are not required to be contiguous.
- H. Murals placed on an object or surface not considered a structure to include murals on pavement, hardscaped areas, and objects such as light post or guardrails shall be appropriate in scale and be suited for the character of the neighborhood, as determined by the Planning Board.

- I. Total sculpture footprint area shall not exceed 250 square feet per acre. Square footage requirements are cumulative and are not required to be contiguous.
- J. Public Art shall not be placed within any setback or restrict pedestrian or vehicular travel. This does not apply to murals placed within a setback if the location is a legally existing nonconforming use.
- K. Public Art must be properly maintained to ensure that material failure, such as peeling paint, is corrected and vandalism is removed promptly. Removal of vandalism is the responsibility of the property owner and shall be removed within seven (7) days.