

CONWAY PLANNING BOARD

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CONWAY PLANNING BOARD

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AUGUST 8, 2024

A meeting of the Conway Planning Board was held on Thursday, August 8, 2024, beginning at 6:01 p.m. at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Eliza Grant; Bill Barbin; Ted Phillips; Town Planner, Ryan O'Connor; and Assistant Planner, Holly Whitelaw.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Barbin made a motion, seconded by Mr. Corbett, to approve the minutes of July 25, 2024, as written. Motion carried unanimously.

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

This is an application to construct a 2,200 square foot single-family 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.

Ms. Byers made a motion, seconded by Ms. Grant, to accept the concurrent full site plan and 2-unit subdivision for Varahi North Conway Realty, LLC as complete with the staff report. Motion carried unanimously.

Josh McAllister of HEB Engineers appeared before the Board to present a proposal to add a single-family residential structure behind the existing convenience store/gas station, which is located in the highway commercial district. He described the proposed structure, which will include a walk-out basement as previously requested by the Board. The dumpster enclosure will be moved to the rear of the property outside the setback, which will eliminate encroachments. He reviewed other planned improvements, including drainage changes.

Chair Colbath asked for Board comment. Ms. Grant noted the proposed parking spaces are located next to the propane tanks and asked if the tanks would be protected. Mr. McAllister said the plans are being reviewed by the fire chief and bollards could be installed.

Chair Colbath asked for public comment.

Glenn Saunders expressed concern over the buffer zone setback. Mr. McAllister noted they are proposing a 45-foot setback and buffer.

Mr. McAllister read the waiver request for §110-20.F./§130-66.C.8.b. The existing driveway is wider than the Town requirements. The DOT has not commented on this. **Mr. Barbin made a motion, seconded by Ms. Byers, to grant the waiver for §110-20.F./§130-66.C.8.b.** Chair

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Colbath asked for Board comment; Mr. O'Connor suggested restriping the parking lot and Mr. McAllister agreed this could be a condition of approval. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-20.F./§130-66.C.8.e. This is an existing driveway and the grade cannot be changed. **Mr. Colbath made a motion, seconded by Ms. Byers, to grant the waiver for §110-20.F./§130-66.C.8.e.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-20.F./§130-66.C.8.f. There is a DOT-constructed sidewalk; they are not anticipating making any improvements to the driveway. **Mr. Barbin made a motion, seconded by Mr. Colbath, to grant the waiver for §110-20.F./§130-66.C.8.f.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-20.I. The existing curbing is concrete; they do not anticipate changing this. **Mr. Barbin made a motion, seconded by Mr. Corbett, to grant the waiver for §110-20.I.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-21.A. There are no changes being made to the commercial portion of the property, where the current number of spaces are adequate for the business. **Mr. Barbin made a motion, seconded by Ms. Grant, to grant the waiver for §110-21.A.** Chair Colbath asked for Board comment; Ms. Grant suggested adding no parking signs at the sides of the building to protect emergency services access and Mr. McAllister agreed. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-22.C. No improvements are proposed to the commercial portion of the development. The two parking spaces being added for the residential portion of the property will be striped to meet Town requirements. **Mr. Colbath made a motion, seconded by Mr. Corbett, to grant the waiver for §110-22.C.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-22.F. Landscape improvements are proposed along the perimeter of the parking area to meet the new requirements. **Ms. Grant made a motion, seconded by Mr. Phillips, to grant the waiver for §110-22.F.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. McAllister read the waiver request for §110-29.A. They have changed the encroachments by moving the dumpster enclosure and concrete pad; however, the existing retaining wall does impact the buffer. **Mr. Barbin made a motion, seconded by Mr. Colbath, to grant the waiver for §110-29.A.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Chair Colbath closed public comment.

Ms. Whitelaw reviewed the conditions of approval.

Ms. Byers made a motion, seconded by Mr. Colbath, to conditionally approve the concurrent full site and 2-unit subdivision conditionally upon Town Engineer approval; North Conway Fire Chief approval; North Conway Water Precinct water and sewer approval; NHDOT Driveway Permit and indicate permit number on plan; revising the plans as follows: removing existing dumpster; removing concrete pad on the southern property line (adjacent to 2025 White Mountain Highway); installing a new concrete pad and dumpster enclosure in approximately the same location as the pad [item 5.b.] that is removed to be fully outside of the buffer/setback; adding a “One Way” sign to the drive entrance to the south side of the convenience store; adding a “Do Not Enter” sign on the north side of the convenience store; adding a note that indicates that the residential structure shall be sprinkled and alarmed; adding a 45-foot easement buffer on the rear of the property along PID 230-118; restriping parking lot to include stop bar and lane separation at entrance; adding bollards between propane tanks and the parking spaces; adding “No Parking” signs to the side of the building; and updating Waivers granted table as 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 February 13, 2025; and conditions subsequent to final approval, the residential structure shall be sprinkled and alarmed (per North Conway Fire Chief). Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

NINA CLOSE (FILE #S24-06) – 2-LOT SUBDIVISION REVIEW (PID 288-19)

This is an application to subdivide 2.34 acres into two lots of record at 29 Deer Path Lane, Conway.

Mr. Barbin made a motion, seconded by Ms. Byers, to accept the application of Nina Close for a subdivision review as complete with the staff report. Motion carried unanimously.

Ron Briggs of Briggs Land Surveying appeared before the Board. The property was originally two lots that were merged, so this is a re-subdivision. Deer Path Lane will be upgraded under a larger subdivision on the property behind these lots. Access to this property is dependent on Deer Path Lane being upgraded to Town standards.

There were no waiver requests.

Chair Colbath asked for public comment.

Josh McAllister of HEB Engineering asked if the new lot will have driveway access onto Deer Path Lane. Mr. Briggs said it will. Mr. McAllister explained the road upgrade will occur this fall, so they will have to consider the driveway, as it is not currently included in the design plans for the larger subdivision. Mr. O’Connor said this could be addressed on the plans for the larger subdivision when it comes through; this subdivision will be conditioned on the larger subdivision being granted final approval. He added that bonding the road would be adequate.

Chair Colbath closed public comment.

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Chair Colbath asked for Board comment; there was none.

Ms. Whitelaw read the conditions of approval.

Ms. Grant made a motion, seconded by Mr. Corbett, to conditionally approve the 2-Lot subdivision for Nina Close conditionally upon Town Engineer approval; Conway Village Fire Chief approval; addressing deficiency memo dated July 18, 2024; final approval of Robert Nelson’s subdivision (File #S24-02); submitting four copies of revised plans; submitting a Mylar for recording; submitting a \$25 check made payable to the Carroll County Registry of Deeds for the LCHIP fee; submitting a cost estimate for monuments to be set to be approved by the Town; a performance guarantee for all site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on August 14, 2025. Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

**CONTINUUM AT NORTH CONWAY, LLC (FILE #FR24-03 & #S24-07) –
CONCURRENT SITE PLAN AND UNIT SUBDIVISION REVIEW (PID 252-62.6)**

This is an application to construct 20 age-restricted (55+) single-family residential dwelling units and create a 20-unit residential subdivision on Bonita’s Way, North Conway.

Kate Richardson of Bergeron Technical Services and Wayne Morrill of Jones & Beach Engineering appeared before the Board. Shawn Bergeron of Bergeron Technical Services was in attendance. Mr. Morrill explained the original approval was to construct two medical buildings. This is a request to construct 20 single-family dwelling units similar to what has already been approved on Lot 24-08. The driveway coming off the roundabout has been eliminated and a shared driveway will be used instead.

Ms. Grant made a motion, seconded by Ms. Byers, to accept the application of Continuum at North Conway, LLC as complete for a concurrent site plan and unit subdivision review with the staff report. Motion carried unanimously.

Ms. Richardson described the property and the proposed development.

Chair Colbath asked for Board comment.

Chair Colbath asked why the use was changed for the site. Mr. Morrill explained they want to move the uses to the correct locations on the lot and create more age-restricted housing.

Chair Colbath has received complaints about traffic being generated by this site. He asked if two lanes of travel could be allowed. Shawn Bergeron of Bergeron Technical Services said there were issues at the Walmart intersection that impacted traffic flow. He added that the median is required by NHDOT, which denied a request to shorten it. He reviewed the timeline involved in paving the associated roadways.

Ms. Byers asked about plans when school is in session. Ms. Richardson said they are not finishing Bonita’s Way to Eagles Way with the next phase. Mr. Bergeron said if they decide to extend

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Bonita's Way to Eagles Way, it would be barricaded so that traffic could not move through.

Chair Colbath asked for public comment.

Evan Lucy said he asked earlier who designed the North-South Road.

Chair Colbath noted there is only one way in and one way out of the development. He asked if the space between lots 6 and 7 could be widened to allow emergency access. Mr. Morrill said they could add a graveled area in this location.

Mr. O'Connor said many of the waivers were approved as part of the overall development. As this is a different use, they should be approved again. He noted this subdivision will be a condominium form of ownership.

Ms. Richardson read the waiver request for §110-26.A.4. The shared driveway crossed the buffer at close to 90 degrees, but runs through the side buffer. **Mr. Barbin made a motion, seconded by Ms. Grant, to grant the waiver for §110-26.A.4.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Richardson read the waiver request for §110-26.D. The lighting trespass occurs around the walkway going towards the roundabout. It is negligible and ensures the pathway is properly illuminated. It also occurs as a result of the shared driveway. **Ms. Grant made a motion, seconded by Mr. Phillips, to grant the waiver for §110-26.D.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Richardson read the waiver request for §110-29.D.1. The number of trees exceeds the requirements. The existing forest area will be preserved to the extent feasible. They would like to also use shrubs to meet the required number of trees. **Mr. Barbin made a motion, seconded by Mr. Corbett, to grant the waiver for §110-29.D.1.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Richardson read the waiver request for §110-29.D.4.11. They would like to inventory existing trees for site tree credit; new trees will be planted to meet the total site requirement. **Ms. Byers made a motion, seconded by Mr. Colbath, to grant the waiver for §110-29.D.4.11.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Richardson read the waiver request for §110-29.A.2. This has to do with the crossing of the driveway over the side buffer. **Mr. Colbath made a motion, seconded by Mr. Phillips, to grant the waiver for §110-29.A.2.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Ms. Richardson read the waiver request for §110-29.D.2. It is difficult to find 3-inch caliper trees. **Ms. Byers made a motion, seconded by Mr. Phillips, to grant the waiver for §110-29.D.2.** Chair Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. O'Connor stressed the need for an updated phasing plan and as-builts to have a snapshot of where the property stands today.

Ms. Whitelaw reviewed the conditions of approval.

Mr. Barbin made a motion, seconded by Ms. Grant, to conditionally approve the Concurrent Site Plan and Unit Subdivision for Continuum at North Conway, LLC conditionally upon Town Engineer approval; North Conway Fire Chief Approval; North Conway Water Precinct water and sewer approval; addressing applicable third-party stormwater review comments; including the amended Alteration of Terrain permit number on the plans; including the amended NHDOT driveway permit number on the plans; removing the existing conditions plan and revise sheet index as applicable; including a plan note on sheet C3.1 referencing Detention Pond #1 which states the prior Site Plan approval number (#FR21-10) of the stormwater infrastructure and the associated sheet and detail references; including a plan note on sheet C2.1 stating that this approval amends Site Plan #FR21-10 and the previously approved development associated with Lot 252-62.6 has been abandoned; including on the plans an emergency access between structures 6 and 7; submitting current as-builts for the Ridgeline development; submitting a revised phasing plan for the overall Ridgeline development to include remaining offsite improvements and stormwater infrastructure; 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; \$200 for Inspection Fees; providing a cost estimate for applicable on-site and off-site improvements; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval expires on February 13, 2025.

Mr. Bergeron said Town Engineer approval is always the first condition. The developer does not always receive the Town Engineer report at the same time they receive the Town Planner report and he requested that this be done. He explained that revisions are made to meet Mr. DegliAngeli's requirements after the Board has reviewed the application, so the Board does not see these revisions. He added that the Town subdivision and site plan review regulations do not require Town Engineer approval.

Chair Colbath closed public comment.

Chair Colbath asked for Board comment; there was none.

Motion carried unanimously.

**CONTINUUM AT NORTH CONWAY, LLC (FILE #FR24-04 & #S24-08) –
CONCURRENT SITE PLAN AND UNIT SUBDIVISION REVIEW (PID 252-62.7)**

This is an application to construct a 6,625 square foot district heating plant and a 12,000 square foot maintenance garage in addition to the approved multi-use building/assisted care/services building and create a 3-unit commercial subdivision on Bonita's Way, North Conway.

Kate Richardson of Bergeron Technical Services and Wayne Morrill of Jones & Beach Engineering appeared before the Board. Shawn Bergeron of Bergeron Technical Services was in

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attendance. Mr. Morrill explained this is the medical campus proposed earlier. This change involves the heat plant and a maintenance building. He described the changes involved with moving these structures to the proposed location.

Ms. Grant made a motion, seconded by Mr. Colbath, to accept the application of Continuum at North Conway, LLC as complete for a concurrent site plan and unit subdivision review with the staff report. Motion carried unanimously.

Ms. Richardson explained this is an amendment to the original approval for this lot and reviewed the changes.

Chair Colbath asked for Board comment.

Ms. Grant asked about the plan for the rec trail and Mr. Morrill said there should be no impact to the trail. Chair Colbath said a map that shows the trail passing through this area needs to be amended, as this has changed.

Mr. Bergeron addressed the effect the heat plant will have on abutters. He reviewed aspects of plant operation, including noise generation, discharge of solids/gases, and fuel (wood chip) delivery. The plant will comply with NHDES regulations. The stack should not be visible from Route 302.

Chair Colbath asked for public comment; there was none.

Mr. O'Connor noted the waivers were approved as part of the original development. This is a site amendment, so all waivers are still applicable. There are no changes to the waivers.

Ms. Richardson read the waiver requests for §110-20.C.; §110-21.A.2.C.; §110-26.D.; §110-29.A.2.; §110-26.A.4.; §110-29.D.1.; §110-29.D.2.; §110-29.D.8.; §110-29.D.4.11.; and §110-29.C.1. **Ms. Byers made a motion, seconded by Mr. Phillips, to grant the waivers for §110-20.C.; §110-21.A.2.C.; §110-26.D.; §110-29.A.2.; §110-26.A.4.; §110-29.D.1.; §110-29.D.2.; §110-29.D.8.; §110-29.D.4.11.; and §110-29.C.1.** Chair Colbath asked for Board comment; there was none.

Chair Colbath closed public comment.

Motion carried unanimously.

Mr. O'Connor stressed the need for an updated phasing plan and as-builts so as to have a snapshot of where the property stands today.

Ms. Whitelaw reviewed the conditions of approval.

Mr. Colbath made a motion, seconded by Mr. Barbin, to conditionally approve the Concurrent Site Plan and Unit Subdivision for Continuum at North Conway, LLC conditionally upon Town Engineer approval; North Conway Fire Chief Approval; North Conway Water Precinct water and sewer approval; addressing applicable third-party

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stormwater review comments; including the amended Alteration of Terrain permit number on the plans; including the amended NHDOT driveway permit number on the plans; including the complete existing subdivision plan and revise sheet index as applicable; revising the abutter labels on sheets C2.2 and C2.3 to state current site use; including a plan note on sheet C2.1 stating that this approval amends Site Plan #FR21-10 and supersedes previously approved development of Lot 252-62.7; submitting a revised lighting plan to include applicable fixtures on approved structures; submitting current as-builts for the Ridgeline development; submitting a revised phasing plan for the overall Ridgeline development to include remaining offsite improvements and stormwater infrastructure; 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; \$200 for Inspection Fees; providing a cost estimate for applicable on-site and off-site improvements; a performance guarantee for all on-site improvements; a performance guarantee for all off-site improvements; when the conditions have been met, the plans can be signed out-of-session; and this conditional approval will expire on February 13, 2025. Motion carried unanimously.

OTHER BUSINESS

Bear Hill Development, LLC/Vertex Tower Assets, LLC (PID 219-243.1) – Request to extend conditional approval (File #FR21-03 & #S21-04)

Francis Parisi of Parisi Law Associates PC appeared before the Board and reviewed the status of this proposal to construct a cell tower. They have not satisfied the conditions to pay the \$25 LCHIP fee and Mylar recording. He said these are not usually conditions for constructing a cell tower. Mr. O'Connor explained that a unit subdivision is associated with this project, so the Mylar needs to be recorded. Mr. Parisi requested a six-month extension to satisfy this and to pull a building permit.

Chair Colbath asked for public comment.

Kevin MacMillan, Artist Falls Road, reviewed court actions and his experience with this project. He expressed concern regarding health issues and said the company has been fraudulent in its actions by claiming a balloon test was conducted. He said tree cutting has occurred on the lot.

Chair Colbath closed public comment.

Regarding the balloon test, Mr. O'Connor explained this has gone through the legal process and the court has reaffirmed those decisions. That discussion was part of a ZBA decision, which is no longer appealable. The Planning Board purview is limited by these decisions.

Ms. Grant asked about the tree cutting. Ms. Whitelaw said there has been cutting for the rec path in this area. Mr. Parisi said they have done no tree cutting. Mr. O'Connor said the site will be inspected.

Mr. Parisi said the balloon test was done, even though it is not a Town zoning requirement.

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The Board discussed whether they have the option to deny this extension request. They also clarified with Mr. Parisi the reason for the request.

Ms. Byers made a motion, seconded by Mr. Colbath, to extend the conditional approval for Bear Hill Development, LLC/Vertex Tower Assets, LLC until February 13, 2025. Chair Colbath asked for Board comment. Mr. O'Connor explained that if tree cutting has occurred, the Town will determine whether the applicant is out of compliance. If they are, the Board would be notified and a resolution would be determined. Mr. Parisi said they are seeking an extension to resolve certain minor issues. If there are other issues, the Planning Staff can look into this; however, that would be independent of the reason the applicant is currently before the Board.

Ms. Byers amended the motion, seconded by Mr. Colbath, to extend the conditional approval to November 14, 2024. Motion carried, with Mr. Barbin voting in the negative.

Ms. Byers made a motion, seconded by Mr. Colbath, to extend the conditional approval to November 14, 2024. Motion carried, with Mr. Barbin voting in the negative.

Triple K Properties, LTD/Lloyd and Diane Drew (PID 202-120.01 & 123) – Request to extend conditional approval (File #S23-10)

Josh McAllister of HEB Engineers appeared before the Board to request an extension of conditional approval for a boundary line adjustment. Mr. O'Connor explained that part of the structure is in a setback. A waiver is needed, which is on the ZBA agenda for this month.

Ms. Byers made a motion, seconded by Mr. Barbin, to extend the conditional approval for Triple K Properties, LTD/Lloyd and Diane Drew until November 14, 2024. Motion carried unanimously.

Robert Nelson (PID 288-20) – Request to extend conditional approval (File #S24-02)

Josh McAllister of HEB Engineers appeared before the Board to request an extension of conditional approval for the Deer Path Lane project. Robert Nelson has decided to construct the road instead of bonding it; construction should begin this fall. The extension has been requested to include the next construction season, if it is not completed this fall.

Mr. Colbath made a motion, seconded by Ms. Grant, to extend the conditional approval for Robert Nelson until August 14, 2025. Motion carried unanimously.

Whitman Woods Associates Limited Partnership (PID 219-198) and Ricker Grove Housing Partnership (PID 219-199) – Request for a Concurrent Site Plan and Boundary Line Adjustment Review

Josh McAllister of HEB Engineers appeared before the Board to request a concurrent site plan and boundary line adjustment review.

Mr. Colbath made a motion, seconded by Ms. Grant, to allow a Concurrent Site Plan and Boundary Line Adjustment Review for Whitman Woods Associates Limited Partnership and Ricker Grove Housing Partnership. Motion carried unanimously.

Selectmen’s Report

There was no Selectmen’s Report.

Issues for Consideration

Chair Colbath asked Mr. O’Connor to provide clarity on the RSAs regarding cell towers and he agreed to do so.

The Board discussed the timing aspect of Town Engineer approval as part of the conditions of approval. Mr. Bergeron asked that this approval be part of the initial review. He added that if a third-party engineer is paid to review a project, no further engineering review should be required. Mr. McAllister agreed with this. Chair Colbath noted that when revisions are made after the Board has approved an application, it is not ideal that they cannot respond to questions about those revisions. Mr. Phillips added that the Board loses some of its process and what the members are elected to do by having things done after their review. Mr. McAllister said there are circumstances that make it difficult for the Town Engineer to grant approval, such as DES timelines.

A discussion followed regarding approvals, timelines, and the need for applicants to attend more than one meeting in the approval process. They discussed how the scope and size of a project affects approvals.

Mr. O’Connor said a solution could be to institute a technical review group, where plans are reviewed with Planning, Staff, and an engineer prior to being presented to the Board.

Ms. Whitelaw and Mr. O’Connor said this conversation should occur at the Staff level and Mr. DegliAngeli should be involved.

Media Questions

There were no questions from the media.

Meeting was adjourned at 8:44 p.m.

Respectfully submitted,
Beth Hanggeli