

CONWAY PLANNING BOARD

MINUTES

JANUARY 24, 2019

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CONWAY PLANNING BOARD

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A meeting of the Conway Planning Board was held on Thursday, January 24, 2019 beginning at 7:00 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Steven Hartmann; Selectmen's Representative, Steven Porter; Secretary, Sarah Verney; Raymond Shakir; Steven Steiner; Benjamin Colbath; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve. Peter Malia, Town Counsel, was in attendance.

REVIEW AND ACCEPTANCE OF MINUTES

Mr. Porter made a motion, seconded by Mr. Steiner, to approve the Minutes of December 13, 2018 as written. Motion carried unanimously.

PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD

§190-13.B.(4)(b), §190-14.B.(4)(b), §190-15.B.(4)(b), §190-16.B.(4)(b), §190-17.C.(5)(b), §190-18.B.(5)(b), §190-19.B.(5)(b), §190-20.B(5), and §190-24.B.(4)(b) – This is a proposed amendment to clarify and reinforce the current language and intent of the provision for accessory apartments to preclude their use as Short Term Rentals. It also includes amending the definition of an “Accessory Apartment” to “Accessory Dwelling Unit”.

Mr. Irving stated these amendments are to clarify the existing regulation and not make a new regulation or provisions other than to make the definition of accessory apartment to accessory dwelling unit to make it common with the other regulations throughout the State.

Mr. Irving stated with respect to the other amendments regarding the special exception for the accessory dwelling unit, currently accessory apartment, is to use that language and clarify that the owner shall be the occupant of either the primary single-family home or the accessory dwelling unit. Mr. Irving stated this has always been implied, this would clarify that and maintain the owner occupancy as well as clarify that the owner could occupy either the primary dwelling or the accessory dwelling.

Mr. Irving stated the third item is to clarify the language where the intent was for year-round rental housing as opposed to short-term housing. Mr. Irving stated both the primary and the single-family dwelling and the accessory dwelling shall be used for long-term residency and short-term transient occupancy of either dwelling unit is prohibited. Mr. Irving stated these amendments are to clarify the language and make it consistent with the accessory dwelling statutes that are out there now.

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Mr. Hartmann opened the public hearing at 7:05 pm. Mr. Hartmann asked for public comment; Parker Fairfield, owner of the Hitching Post and two other properties in the Town of Conway, stated for a point of clarity the suggestion is to change the law to make it so only transient or owner-occupied would be possible. Mr. Irving answered in the negative and stated it is only clarifying the existing regulation that one of the dwelling units has to be owner-occupied, which could be either one, and that transient accommodations or short-term rentals of either unit are not permitted.

Mr. Fairfield asked what is the zoning district that is being discussed. Mr. Irving stated this applies to every zoning district where accessory dwelling units are permitted. Mr. Fairfield stated as opposed to the Hitching Post. Mr. Irving stated that property is located in the residential agricultural district and that zoning district has the provision for accessory dwelling units currently and will still have it.

Mr. Fairfield asked the zoning district two doors down from the Conway Town Hall across from the Center Conway Fire Department. Mr. Irving stated Center Conway Village has the provision for accessory dwelling units also. Mr. Irving stated he believes the only districts where it is not applicable are the industrial districts.

Greydon Turner asked for the definition of transient. Mr. Irving answered short-term. Mr. Turner asked the definition of short-term. Mr. Irving answered not long-term. Mr. Turner asked how this would apply to a worker who is here to work 3- to 6-months. Mr. Turner stated the short-term that is being referred to is probably a vacation rental, but he is more curious what that transient is. Mr. Irving stated for seasonal rentals he would expect that this would still be applicable.

Mr. Turner asked would you consider a worker who comes here for 3-months seasonal. Mr. Irving stated he would. Mr. Turner asked if the rest of the Board agrees with that. Mr. Porter stated he would agree with that. Mr. Hartmann stated he has no problem with that. Mr. Porter stated three months is not long term. Mr. Turner agreed, but if you are coming over here to work to fill some of the positions that we have had employers say that they cannot fill he is wondering if the ADU provision that is being discussed will not allow people to rent those type of accommodations.

Mr. Irving stated these amendments would not preclude that and they are not making it more restrictive on that. Mr. Irving stated it would be a different warrant article or different amendment to have a definition of short-term and long-term. Mr. Irving stated he would have preferred that the legislature already tell us that, but currently what the legislature has is a number, for most intensive purposes is ridiculous, of 185 days, which is what they are considering as short-term rentals that would be subject to the room and meals tax. Mr. Irving stated we don't use that particular number here, other than for the rooms and meals tax.

Mr. Fairfield asked is there a purpose if we are not going to stipulate a definition of short-term or transient as far as a number of days, is there a purpose to then tightening by linguistically changing the existing law or rule. Mr. Irving answered in the affirmative and stated the purpose is clarify the existing rule.

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Mr. Fairfield stated meaning there was some lack of clarity in the past, there has been some challenge to a discussion and now we are trying to clarify it more without a number of days. Mr. Irving stated it has not been challenged.

Mr. Fairfield stated we are clarifying because we found something that people think is not clear, but there has not been any challenge to it. Mr. Irving stated that is correct. Mr. Fairfield stated by clarifying it more without a number of days would that not create more likelihood that there would be challenges. Mr. Irving answered in the negative, not in his opinion but he is not an attorney.

Mr. Fairfield asked if we should be using a number as opposed to a term. Mr. Irving agreed that we should be, but this is not the amendment to do that. Mr. Fairfield asked if this amendment could be modified to have the number of days. Mr. Irving stated it would not be possible with this warrant article; that would be a new warrant article to change the definition of transient accommodations and that is not what is being proposed tonight.

Mr. Fairfield stated what is being proposed is not a numeric definition it is just another word in English that might have another meaning. Mr. Irving stated the only new definition that they are proposing is to change accessory apartment to accessory dwelling unit. Mr. Fairfield stated that would allow him as the owner to either live in the small unit or the larger unit on the same lot. Mr. Irving stated the other amendment is clarifying that you could live in either one and that is how it has always been interpreted. Mr. Hartmann closed the public hearing at 7:11 pm.

Mr. Hartmann asked for Board comment; Mr. Shakir stated he had a problem with not defining transient, but that is not the purview of this. Mr. Irving stated the Board could propose a definition, but with the time lines and noticing requirements it is not possible this cycle. Mr. Shakir stated right know it is arbitrary. Mr. Irving stated if it is challenged it would have to be arbitrated at the Zoning Board of Adjustment.

Mr. Steiner stated his problem with it is that it is not defined on the number of days, and he would need to have days to support. Mr. Porter stated the difference between short-term and long-term when you're looking at the rental market, or the way that it was presented years ago, long-term is by the year or 6-months and short-term is anything below that. Mr. Porter stated anything longer than 6-months is a long-term rental, which actually strengthens the workforce housing. Mr. Shakir stated that is your opinion, it is arbitrary and when you make things arbitrary, he personally has a problem with it.

Mr. Porter made a motion, seconded by Ms. Verney, to recommend the proposed amendment to §190-13.B.(4)(b), §190-14.B.(4)(b), §190-15.B.(4)(b), §190-16.B.(4)(b), §190-17.C.(5)(b), §190-18.B.(5)(b), §190-19.B.(5)(b), §190-20.B(5), and §190-24.B.(4)(b) to the warrant as written. Motion carried with Mr. Steiner and Mr. Shakir voting in the negative (3-2-0).

Mr. Porter made a motion, seconded by Mr. Steiner, to amend the definition of accessory apartment to accessory dwelling unit. Motion carried unanimously (5-0-0).

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§190-17.G.(2)(f)[1] & [2], §190-17.G.(3)(c)[1] & [2], §190-18.F.(2)(f)[1] & [2], §190-18.F.(3)(c)[1] & [2], §190-19.F.(2)(f)[1] & [2], §190-19.F.(3)(c)[1] & [2], §190-20.F.(2)(f)[1] & [2], §190-20.F.(3)(c)[1] & [2], §190-22.F.(2)(f)[1] & [2], §190-22.F.(3)(c)[1] & [2], §190-23.F.(2)(f)[1] & [2], and §190-23.F.(3)(c)[1] & [2] – This is a proposed amendment to save applicants from having to appeal to the Zoning Board of Adjustment of a Special Exception for the subject additional signage.

Mr. Irving stated this amendment takes the provisions for additional signage by special exception that requires application to the Zoning Board of Adjustment to simply make them an administrative approval that if the conditions with what would have been the special exception conditions are satisfied then it can be approved administratively by staff which would require just a sign permit rather than a sign permit and an appeal to the Zoning Board of Adjustment.

Mr. Hartmann opened the public hearing 7:15 pm. Mr. Hartmann asked for public comment; there was none. Mr. Hartmann closed the public hearing at 7:15 pm.

Mr. Hartmann asked for Board comment; Mr. Steiner asked for it to be explained again. Mr. Irving read the special exception to the Board. Mr. Irving stated the only thing that is being changed is instead of it saying the Zoning Board of Adjustment may grant the following special exception it is now going to read the Zoning Officer may approve the following.

Mr. Porter made a motion, seconded by Mr. Steiner, to recommend the proposed amendment to §190-17.G.(2)(f)[1] & [2], §190-17.G.(3)(c)[1] & [2], §190-18.F.(2)(f)[1] & [2], §190-18.F.(3)(c)[1] & [2], §190-19.F.(2)(f)[1] & [2], §190-19.F.(3)(c)[1] & [2], §190-20.F.(2)(f)[1] & [2], §190-20.F.(3)(c)[1] & [2], §190-22.F.(2)(f)[1] & [2], §190-22.F.(3)(c)[1] & [2], §190-23.F.(2)(f)[1] & [2], and §190-23.F.(3)(c)[1] & [2] to the warrant as written. Motion carried unanimously (5-0-0).

PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY PETITION

§190-17.C.(5)(a), §190-18.B.(5)(a) and §190-19.B.(5)(a) – Shawn Bergeron of Bergeron Technical Services appeared before the Board. This is a proposed amendment to increase the residential density permitted by this special exception in the Center Conway Village Commercial, Conway Village Commercial and the North Conway Village Commercial Districts.

Mr. Bergeron stated he has put together three proposed zoning amendments, and all of them relate to the village commercial districts; the Center Conway village commercial district, the Conway Village commercial district and the North Conway village commercial district. Mr. Bergeron stated if the Board is okay, he would just assume go through all three of them together since essentially, they are the same the only difference is the zoning district. The Board agreed.

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Mr. Bergeron read item (a) that indicates a conforming lot. Mr. Bergeron stated the proposed amendment has struck the word conforming and the reason for that is that many of the lots in the village commercial districts are not conforming. Mr. Bergeron stated Center Conway is not serviced by municipal water and sewer and would require 1-acre to be conforming. Mr. Bergeron stated Conway Village and North Conway Village are serviced by municipal water and sewer and would require ½-acre.

Mr. Bergeron stated he has not done an extensive study, but he would say that 50% of the parcels in both the Conway Village commercial and North Conway Village commercial districts, despite the fact that they are serviced by municipal water and sewer, still don't meet that conforming definition of ½-acre for the first unit and 10,000 square feet for each additional unit. Mr. Bergeron stated they would like to see the requirement for a conforming lot be removed.

Mr. Bergeron stated the next requirement is that substantially all of the structure was constructed prior to 1930. Mr. Bergeron stated what this proposal is looking towards is something that is already a provision within zoning ordinance. Mr. Bergeron stated we are looking to find better uses for some of the large, older single-family homes that make up the village districts. Mr. Bergeron stated in our village districts, and many of the villages throughout New Hampshire and throughout New England, a lot of these single-family older homes are falling into the earth because either most people don't want them or cannot afford to maintain them.

Mr. Bergeron stated when these homes were built prior to 1930 it wasn't uncommon to have a very large family; that doesn't occur today. Mr. Bergeron stated most don't need structures of that size and, therefore, are not being put to use and most are becoming dilapidated. Mr. Bergeron stated this will provide an alternative or an opportunity for the owner to convert these to housing to use for our workforce. Mr. Bergeron stated that would be our intent for this.

Mr. Bergeron read item (a)[2] and stated in his opinion we don't want to take a lot of these older homes and divide them into one room, ten-unit apartments. Mr. Bergeron stated that is not the point of this amendment. Mr. Bergeron stated we are looking to make reasonably good, nice units that maybe a couple could live in or maybe a small family could live in. Mr. Bergeron stated if you put too many units in you are going to be putting a burden on neighborhood and we don't want to do that.

Mr. Bergeron read item (a)[3] and stated that goes back to the conforming lot versus the non-conforming lot. Mr. Bergeron stated it is important that we don't overbuild any parcel of land and that we don't overbuild any neighborhood. Mr. Bergeron stated with permission of the land owner he put together a possible scenario [attached] at 237 West Main Street in the Conway Village commercial district.

Mr. Bergeron stated with the size of this structure it could easily be converted to three nicely sized residential units and not really know that there are three residential units there. Mr. Bergeron stated the intent of the proposed amendment is to bring our villages back to what they used to be, villages are where people used to live. Mr. Bergeron stated if you didn't live on a farm you lived in a village.

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Mr. Bergeron stated a lot of that has gone away with how zoning has evolved. Mr. Bergeron stated he is not being critical of Conway zoning, it is happening everywhere. Mr. Bergeron stated this is starting down a path to create some better living opportunities.

Mr. Bergeron read item (a)[5] and stated on a commercial property we don't allow much within the buffer, but leave it as greenspace and vegetated areas. Mr. Bergeron stated the intent here is to do the same thing. Mr. Bergeron stated he doesn't think that we should allow these parcels to be built out such that the parking spaces have to go against the property line.

Mr. Bergeron read item (a)[6] and stated Conway village and the North Conway village are serviced by municipal water and sewer, and Center Conway village does not have municipal water and sewer. Mr. Bergeron stated an approved septic system based on the number of bedrooms would have to be obtained.

Mr. Bergeron read item (a)[7] and stated a special exception can only be granted by the Zoning Board of Adjustment, it cannot be granted by staff or the Board of Selectmen. Mr. Bergeron stated the abutters have to be notified via certified mail. Mr. Bergeron stated the applicant would have to demonstrate to the Zoning Board of Adjustment that they meet all of these criteria. Mr. Bergeron stated if they don't meet any one of them then it fails the test and a special exception cannot be granted.

Mr. Bergeron stated there are reasonable restrictions in place with this proposal to protect the Town, to protect the neighborhoods, to protect abutters yet allow for reasonable growth in terms of developing some smaller residential in what already exists in some really nice buildings, but are deteriorating, in our village districts. Mr. Bergeron stated that is what this proposal is trying to accomplish.

Mr. Hartmann opened the public hearing 7:28 pm. Mr. Hartmann asked for public comment; Bayard Kennett stated he has been a lifelong resident of Conway Village, and he believes the same situations apply in Center Conway and North Conway and that is that we have some very adequate and attractive in-town village homes that are under-utilized under the current zoning ordinance.

Mr. Kennett stated he strongly supports this proposal in its effort in trying to utilize these homes, but also increase the values because of the cash flow that could come out of the additional rental spaces and, hopefully, the upkeep of these homes. Mr. Kennett stated there is also a need for affordable housing units. *Mr. Colbath joined the meeting at this time.* Mr. Kennett stated this will enhance the vitality of our villages and guarantee that structures will be maintained and fully utilized.

Jessica DiPietro stated she lives in Conway and she is the owner of 237 West Main Street. Ms. DiPietro stated she and her boyfriend realized how fortunate they were to be able to purchase this property. Ms. DiPietro stated they have seen firsthand the need for affordable housing, and this house is way too big for them. Ms. DiPietro stated we bought it with the intent of upkeeping and bringing back the charm of an old home, but also to give opportunity to our work force to live locally and to come back to the valley.

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Ms. DiPietro stated we have a lot of friends who would like to come back to the valley, but they are having a difficult time finding a place to live, and it's not just the cost its actually finding a place. Ms. DiPietro stated we support this amendment. Ms. DiPietro stated they meet the criteria for the current special exception, but then they came across cost barriers. Ms. DiPietro stated we spoke with Mr. Bergeron and we hope this amendment goes through; not just for us, but the Town because there is a dire need for it.

Brenda Leavitt stated she is in the real estate business, and we have a major problem with housing. Ms. Leavitt stated in Carroll County at the moment there are zero properties percentage wise available for long-term rentals. Ms. Leavitt stated that is a major problem. Ms. Leavitt stated statistics will tell you the aging population can no longer afford the big houses they wanted to be in years ago when they established their life, they are now selling their properties.

Ms. Leavitt stated the newer generation, the millennials, don't want those old homes, and that population is now starting to outnumber our aging population. Ms. Leavitt stated when they are looking to buy property it is the small homes that they are looking for because they would rather spend time on vacations and doing things that our parents' generation didn't necessarily want to do. Ms. Leavitt stated we are seeing in the real estate industry older homes are not nearly as desirable, people are not able to maintain them and there is a need for affordability and homes in our community.

Ms. Leavitt stated this would be a great thing to add year-round housing. Ms. Leavitt stated in the real estate world short-term is considered 186 days or less by the fact that they have to pay rooms and meals tax. Ms. Leavitt stated long-term would be anything over the 186 days. Ms. Leavitt stated she hopes the Town of Conway will be one of the first to go forward with a proposal such as this. Mr. Hartmann closed the public hearing at 7:36 pm.

Mr. Hartmann asked for Board comment; Mr. Shakir asked if there were any provisions or requirements for off-street parking. Mr. Bergeron stated requirement #5 requires adequate parking outside of the setbacks and buffer areas, there is no intent to have on-street parking. Mr. Bergeron stated adequate on-site parking would be required.

Ms. Verney asked if there is a component in here that requires long-term rental and not short-term rental. Mr. Bergeron answered in the negative and stated the intent is for them to not be for short-term rentals. Mr. Bergeron stated if you are looking for a short-term rental then you probably would be looking to be in the North Conway or Kearsarge areas; it is highly unlikely someone is going to be successful in marketing a short-term rental in Center Conway Village or Conway Village.

Mr. Bergeron stated it is not built in, but from the real estate industry that is how it functions. Ms. Verney asked why it was not put into the amendment. Mr. Bergeron stated because the guy who authored it didn't think of it.

Mr. Porter stated this is not guaranteeing any future long-term rentals for the workforce, just creating another avenue for more rental businesses in the Mt. Washington Valley. Mr. Bergeron stated that is your opinion, and he doesn't necessarily agree with it or disagree.

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Mr. Porter stated you are not creating a firm workforce housing avenue, you are using it as a selling point. Mr. Bergeron stated if you remember the previous conversation for one of the other zoning amendments, we are not going to define transient.

Mr. Bergeron stated it is an unfortunate situation within the zoning ordinance that transient is not defined, yet the building and fire codes both say that transient is less than 30 days. Mr. Porter stated but you are asking us to endorse something that does not enforce long-term workforce housing.

Ms. Verney asked if we have time to add a component like that. Mr. Irving answered in the negative and stated with petition articles you cannot make any subsistent change like adding that requirement. Ms. Verney stated she 100% supports this idea, but the risk of having more people build that ends up short-term rentals is troubling.

Mr. Bergeron stated the situation that many of us are finding are municipalities are not providing for adequate long-term housing and that did not happen overnight. Mr. Bergeron stated if this proposal is approved by the voters of Conway it is not going to create a plethora of rentals in 2019 or 2020 because there are other things that are going to have to happen.

Mr. Bergeron stated this is only the first step and opens the door. Mr. Bergeron stated we are going to be dealing with this and tweaking it as well as other portions of the ordinance, such as site plan regulations, the building regulations, and the fire code regulations. Mr. Bergeron stated they are going to have to deal with a multitude of facets to make this thing work.

Mr. Bergeron stated if this is approved, they would have to come back to the Town of Conway to go before the Zoning Board of Adjustment to obtain the special exception. Mr. Bergeron stated then it would have to go to the Planning Board for site plan review. Mr. Bergeron stated after the Planning Board process and once we hit multi-family it will require a commercial sprinkler system. Mr. Bergeron stated there are so many steps we have to take and this is only the first one.

Mr. Steiner stated he is a realtor and property rights are important to him. Mr. Steiner stated he thinks this is good, it has to go to the Zoning Board of Adjustment and if there is anything crazy it can be stopped there. Mr. Steiner stated he is going to support this. Mr. Steiner stated he would not support anything that takes away property rights.

Mr. Shakir stated this puts a property owner who wants to rent portions of their home in direct competition with legitimate businesses. Mr. Shakir stated if you are renting short-term from a house that can afford the space you are putting yourself in competition with someone like Mr. Fairfield who has to follow all kinds of regulations and stipulations. Mr. Shakir asked if he is understanding it correctly or incorrectly. Mr. Bergeron answered incorrectly, and stated the person here would be going through the same steps as if they were building a hotel.

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Ms. Verney asked if this proposal passes what is stopping people from renting these units seasonally. Mr. Bergeron stated there is nothing stopping them, there is nothing now and nothing then. Mr. Colbath asked why wouldn't you put in there the differential of short-term and long-term rental, because that is a hot issue right now.

Mr. Colbath stated he disagrees that the millennials do not want to buy these big old houses, he would love to buy a big house like that, but cannot afford them as they are too expensive. Mr. Colbath stated lots of millennials have families, he has a family; he was raised here and he would love an old house like that. Mr. Colbath stated we don't buy those houses because we cannot afford them.

Mr. Colbath stated you thought about this so he is surprised you wouldn't put in here about short-term rentals. Mr. Bergeron stated what he has learned through this whole process is the topic of short-term versus long-term throughout New England is a real ugly topic. Mr. Bergeron stated would it have been a benefit to include it, probably, but he didn't put it in. Mr. Colbath stated he would like to pass this and what Ms. DiPietro wants to do is great. Mr. Colbath stated more people who can provide housing for people who are going to work here and strive to raise a family here is fantastic. Mr. Colbath stated that is what this should be written towards.

Mr. Bergeron stated remember this is a modification of a section that already exists within the zoning ordinance. Mr. Bergeron stated because of the process this is not going to make significant changes in 2019 or 2020. Mr. Bergeron stated he thinks where were going to find ourselves a year from tonight is right back here with more amendments and addressing short-term versus long-term. Mr. Bergeron stated but we need to move down a path that we haven't moved down at all.

Mr. Irving asked where it says not to exceed four units, you've changed it to say does not create more than four units, but if there is one existing can they go to five because they are creating four more units. Mr. Bergeron stated the point has logic to it, but it is limited by the 5,000 square feet. Mr. Irving stated he realizes that there is a backstop, but this would not preclude them from creating five units if they had sufficient land area. Mr. Bergeron agreed if they had sufficient land area, the 5,000 square feet per unit is the backstop.

Mr. Irving asked what if they apply for this special exception multiple times, is this intended to be a one-time deal. Mr. Irving asked if they could come in to create four units this year and come back down the road if they have sufficient land to create another four units. Mr. Bergeron stated if they had sufficient land area, then yes.

Mr. Irving stated this is essentially creating a density of 8.7 units per acre. Mr. Bergeron stated it is eight units per acre when it is serviced by municipal water and sewer. Mr. Irving stated we are almost doubling the density. Mr. Bergeron agreed. Mr. Irving stated if the lot is large enough the real limitation to the number of units is the square footage requirement. Mr. Bergeron agreed.

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Mr. Irving stated there is no preclusion in here for them to applying for these multiple times to get up to that density. Mr. Bergeron stated that is correct. Mr. Irving referenced item 3 and stated that the maximum density would work out to about 8.7 units per acre; so, if there were a 10-acre parcel you might get 86 or 87 units. Mr. Bergeron asked is there a 10-acre parcel in the village commercial districts. Mr. Irving stated we might not have one that large, but we have some fairly large parcels. Mr. Bergeron stated there also has to be an existing structure that is older than 1930. Mr. Irving agreed.

Mr. Bergeron stated what drives this is there needs to be a very old home and then a parcel of a given size. Mr. Bergeron stated we don't have a lot of opportunity for a home that meets that criteria or structures that meet that criteria with an excessively large lot size that he can think of. Mr. Irving stated we also have provisions where accessory structures could be utilized, so there could be an old barn that could accommodate quite a few units. Mr. Bergeron stated at 5,000 square feet per unit. Mr. Bergeron stated the density is eight units per acre.

Mr. Irving stated you are precluding any parking from being within the buffer areas. Mr. Bergeron agreed. Mr. Irving stated if you are only allowed two units there is no buffer standard set for that because buffers are established within the site plan review and two-unit developments are not subject to site plan review. Mr. Bergeron stated it says buffer or setback.

Mr. Irving asked the requirement for the sewerage disposal is that not already addressed under our building requirement. Mr. Bergeron answered in the affirmative. Mr. Irving stated so we might not even need that provision. Mr. Bergeron agreed. Mr. Irving stated in this actual language it says approved in-ground sewerage disposal system, the intent of that is one that is already approved for that many units. Mr. Bergeron answered correct, and stated septic systems are sized based on the number of bedrooms. Mr. Bergeron stated this would be for the Center Conway Village commercial district.

Mr. Bergeron stated if you presently have a home that has five bedrooms and are converting that to two-units with a total of seven bedrooms and the existing septic system is only acceptable for five-bedrooms then a new system would have to be designed and approved for the additional bedrooms. Mr. Irving stated he wanted to make sure that just because there was an existing approved system it doesn't matter if it didn't meet that capacity. Mr. Bergeron stated that is correct; it is all about the number of bedrooms and capacity.

Mr. Irving stated with respect to the architectural plans, it doesn't need to be the same materials as long as it looks the same. Mr. Bergeron stated that is correct. Mr. Irving stated the way the existing special exception is set up is four is the limit and you cannot have any more. Mr. Irving stated this is basically going to be as long as you don't exceed that one unit per 5,000 square feet.

Mr. Irving stated there will be substantially more in there, but it is not necessarily a bad thing to have higher density. Mr. Irving stated we do have a provision in our ordinance in the commercial district as well as the village commercial districts for up to 12 units per acre. Mr. Irving stated in this particular district it is up to eight units per acre, so that particular density is already not unheard of.

**Adopted: February 14, 2019 – As Written
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Mr. Irving stated there has been a lot of discussion about the definition of what is short-term and what is long-term. Mr. Irving stated where a term is not explicitly defined within an ordinance we then defer to common definition of the term where we could, if all else fails, use the building code definition. Mr. Irving stated the fact that neither of these amendments that the Board has seen this evening redefine what is a short-term rental or redefines what a transient accommodation is not all is lost.

Mr. Porter made a motion, seconded by Mr. Shakir, to recommend the proposed amendment to §190-17.C.(5)(a) to the warrant as written. Motion defeated with Mr. Steiner and Mr. Shakir voting in the affirmative, Mr. Porter and Mr. Hartmann voting in the negative and Ms. Verney and Mr. Colbath abstaining from voting (2-2-2).

Mr. Shakir made a motion, seconded by Mr. Hartmann, to recommend the proposed amendment to §190-18.B.(5)(a) to the warrant as written. Motion defeated with Mr. Steiner and Mr. Shakir voting in the affirmative, Mr. Porter and Mr. Hartmann voting in the negative and Ms. Verney and Mr. Colbath abstaining from voting (2-2-2).

Mr. Porter made a motion, seconded by Mr. Steiner, to recommend the proposed amendment to §190-19.B.(5)(a) to the warrant as written. Motion defeated with Mr. Steiner and Mr. Shakir voting in the affirmative, Mr. Porter and Mr. Hartmann voting in the negative and Ms. Verney and Mr. Colbath abstaining from voting (2-2-2).

BELLEVUE PROPERTIES, INC. – FULL SITE PLAN REVIEW (PID 235-98) FILE #FR19-01

David Fenstermacher of VHB appeared before the Board. Ray Tilsley of Bernstein, Shur, Sawyer and Nelson was in attendance. This is an application to construct a 3-story, 33-room addition; to construct a 10,260 square foot enclosed pool addition; and to construct a 2,560 square foot lobby and new porte cochere with associated infrastructure. Mr. Fenstermacher gave an overview of the project. **Mr. Steiner made a motion, seconded by Mr. Colbath, to accept the application of Bellevue Properties, Inc. for a Full Site Plan review as substantially complete. Motion carried unanimously.**

Mr. Hartmann asked for public comment; Derek Lick stated he is here tonight on behalf of many of the abutters, basically the Settlers' Green development. Mr. Lick stated that he has a letter to submit to the Board tonight and the letter addresses three concerns. Mr. Lick stated the first concern is that the property around the hotel lot is subject to easements for his client. Mr. Lick stated the hotel lot that you see as a single lot used to be two separate lots. Mr. Lick stated the area with the parking was essentially lot one and the lot with the hotel was lot 2.

Mr. Lick stated all of the parking for the Settlers' Green development was on lot 1, and with the exception of about 15 or 16 parking spaces, his client has rights to park in all of that area. Mr. Lick stated his client under those documents has the right to control construction, maintenance, the oversight, lighting and the landscaping; all is under his client's right and obligation. Mr. Lick stated they were not contacted prior to this to obtain approval for the changes being proposed to the parking. Mr. Lick stated and for that reason they object to the proposal going forward.

Adopted: February 14, 2019 – As Written
CONWAY PLANNING BOARD – JANUARY 24, 2019

Mr. Lick stated the second issue which is similar, but slightly different, is the hotel property when it has been before the Board before in 2006 and the Settlers' Green lot were considered together when it comes to parking. Mr. Lick stated both lots have been approved under a shared parking formula, not under the straight town code.

Mr. Lick stated looking at the two uses together you see under the formula that the hotel uses the parking primarily at night and the retail uses the parking primarily during the day. Mr. Lick stated because of that they are able to share parking.

Mr. Lick stated his client's property, not all of it, was approved under the shared parking formula as was the hotel approved under the shared parking formula and tonight the hotel is breaking free of that shared parking formula and no longer utilizing that. Mr. Lick stated that is fine with one exception, his client also relies on the shared parking formula. Mr. Lick stated that is important as it determines how many parking spaces are required for each of them. Mr. Lick stated with both properties being approved under the shared parking formula you cannot break one out of that formula without breaking the other.

Mr. Lick stated because his client is not before the Board tonight, they cannot use the scheme that they used and we ask if they are going to be approved that they either continue to use the shared parking formula or the Board requires them to set aside parking spaces for us to meet the Town code which we would be required to do if the parking setup is abandoned.

Mr. Lick stated the third concern is that they indicate that the realignment of the driveway is for the realignment of McMillan Lane, which is known as the Barnes Road Extension. Mr. Lick stated as of today there are two lawsuits pending by the hotel challenging the moving of that roadway; they are challenging the town's discontinuance of McMillan Lane. Mr. Lick stated if the Board is going to consider approving this, we ask that the Board make any approval conditional upon the Town prevailing in the two lawsuits brought by the hotel. Mr. Lick submitted a letter dated January 24, 2019 to the Board [in the file].

Mr. Hartmann asked for any other public comment; there was none. Mr. Irving stated he would recommend that the Board suspend the public comment for the meantime in the event that the Board may want to reopen it. Mr. Hartmann suspended public comment for the meantime.

Mr. Irving asked if the applicant would like to respond to public comment at this time. Mr. Tilsley stated the road issue has been designed to accommodate either scenario. Mr. Tilsley stated the driveway that we are proposing is pretty much in the location of the existing driveway.

Mr. Tilsley stated should we prevail and McMillan Lane remains the access point we will still want to make these changes at this location of the existing driveway and we think they work with McMillan Lane as the access point. Mr. Tilsley stated one of the things he discovered during the Market Basket hearings is that that existing entrance wasn't working really well and there was a lot of confusion of whether it was a one-way or a two-way. Mr. Tilsley stated we need to clean it up either way. Mr. Tilsley stated the proposal for this entrance is to work under either scenario.

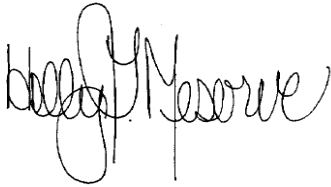
**Adopted: February 14, 2019 – As Written
CONWAY PLANNING BOARD – JANUARY 24, 2019**

Mr. Irving asked if they have any comments regarding the parking easements and control represented by Mr. Lick. Mr. Tilsley stated we are in the process of providing additional information to the Town regarding shared parking and we will have more information on that at the next meeting.

Mr. Porter made a motion, seconded by Ms. Verney, to continue the public hearing and further consideration of the application to the meeting March 14, 2019 with the requirement that all new material be submitted no later than 4:00 pm on Friday March 1, 2019. Motion carried unanimously.

Meeting adjourned at 8:27 pm.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Holly L. Meserve". The signature is written in a cursive style with a large initial "H" and "M".

Holly L. Meserve
Planning Assistant

The purpose of these amendments is to clarify and reinforce the current language and intent of the provision for accessory apartments to preclude their use as Short Term Rentals. It also includes amending the definition of an "Accessory Apartment" to "Accessory Dwelling Unit". The amendment to the definition of an "Accessory Apartment" is:

~~ACCESSORY APARTMENT~~ **DWELLING UNIT (ADU)** An ~~apartment~~ A dwelling unit accessory to a single-family dwelling, either attached or detached. Such accessory ~~apartments~~ **dwelling units** shall be not less than 300 square feet and no greater than 800 square feet.

This example is relative to the Residential/Agricultural District.

§190-13 B. (4) (b) In order to help provide year-round rental housing, the Zoning Board of Adjustment may grant a special exception for one accessory apartment **dwelling unit** as an accessory use to an ~~owner-~~occupied ~~a~~ single-family dwelling on any size lot, subject to the following conditions:

[1] The accessory apartment **dwelling unit** is designed to ensure architectural compatibility with the neighborhood.

[2] Sufficient parking is located on site.

[3] The owner shall be the full-time occupant of either the primary single-family dwelling or the accessory dwelling unit.

[4] Both the primary single-family dwelling and the accessory dwelling unit shall be used for long term residency and short term transient occupancy of either dwelling unit is prohibited.

These amendments also apply to the following Zoning Districts/sections:

Center Conway Village Residential District	190-14 B. (4) (b)
Conway Village Residential District	190-15 B. (4) (b)
North Conway Village Residential District	190-16 B. (4) (b)
Center Conway Village Commercial District	190-17 C. (5) (b)
Conway Village Commercial District	190-18 B. (5) (b)
North Conway Village Commercial District	190-19 B. (5) (b)
Highway Commercial District	190-20 B. (5) (b)
Recreational Resort District	190-24 B. (4) (b)

The purpose of these amendments is to save applicants from having to appeal to the Zoning Board of Adjustment of a Special Exception for the subject additional signage. This example is relative to the Center Conway Village Commercial District.

§190-17 G. (2) (f) The Zoning ~~Board of Adjustment~~ **Officer** may approve grant the following special exceptions:

[1] For two or more businesses located in a single building or within attached buildings and where the businesses share a common pedestrian entrance, an additional freestanding sign may be permitted for use as a directory sign, provided that the following conditions are met:

- [a] The sign shall be used only to identify and locate businesses within;
- [b] The message area shall not exceed 12 square feet;
- [c] The height of the message area shall not exceed 20 feet above the undisturbed ground;
- [d] The sign shall meet all setbacks; and
- [e] The additional wall sign permitted by special exception under Subsection G(3)(c)[2] is not used.

[2] Where existing buildings are set back from the right-of-way less than the setback required for freestanding signs in Subsection G(2), the right-of-way setback of the freestanding sign may be reduced from 25 feet to any lesser amount down to five feet, provided that the following conditions are met:

- [a] The message area shall be reduced to not more than 20 square feet;
- [b] The sign shall not obstruct vehicular or pedestrian traffic;
- [c] The sign shall not obstruct the line-of-sight for traffic entering or exiting the site; and
- [d] The sign shall not unduly obstruct the visibility of other signs or property in the area.

§190-17 G. (3) (c) The Zoning ~~Board of Adjustment~~ **Officer** may approve grant the following special exceptions:

[1] For a major business in a shopping center or mall that does not have wall frontage facing its primary parking lot, one additional wall sign may be permitted, provided that the following conditions are met:

- [a] The size of the message area shall not exceed 40 square feet;
- [b] The sign shall be located on a wall facing the primary parking lot;
- [c] Total wall sign area on the wall shall not exceed 10%; and
- [d] All relevant height restrictions specified in Subsection F(2) apply.


[2] For two or more businesses located in a single building or within attached buildings and where the businesses share a common pedestrian entrance, an additional wall sign may be permitted, subject to the following:

- [a] The sign shall be used only to identify and locate the businesses within;
- [b] The message area shall not exceed 12 square feet;
- [c] The sign shall be located immediately adjacent to the common entrance; and
- [d] The additional freestanding sign permitted by special exception under Subsection G(2)(f)[1] is not used.

These amendments also apply to the following Zoning Districts/sections:

Conway Village Commercial District	190-18 F. (2) (f) [1] [2]	190-18 F. (3) (c) [1] [2]
North Conway Village Commercial District	190-19 F. (2) (f) [1] [2]	190-19 F. (3) (c) [1] [2]
Highway Commercial District	190-20 F. (2) (f) [1] [2]	190-20 F. (3) (c) [1] [2]
Industrial-1 District	190-22 F. (2) (f) [1] [2]	190-22 F. (3) (c) [1] [2]
Industrial-2 District	190-23 F. (2) (f) [1] [2]	190-23 F. (3) (c) [1] [2]

MEMO

TO: Planning Board
FROM: Tom Irving, Planning Director 
CC: File
DATE: 01/16/19
RE: Petitioned Zoning Amendments 2019

Message:

Petitioned zoning amendments. Please find the attached petitioned zoning amendments. The same amendments are proposed for the Conway, Center Conway and North Conway Village Commercial districts. Accordingly, these comments are relevant to all three petitions.

The first change removes the requirement that the subject lot be a conforming lot. Under the current regulations if the subject lot fails to meet the minimum lot size, frontage, or other zoning requirement then the special exception is not applicable. However, as proposed, zoning nonconformity is not required to qualify for the Special Exception.

The second change potentially increases the total number dwelling units that could be contained within a structure. With the current regulation the total number of dwelling units in a structure is not to exceed four (4). With the proposed language not more than four units can be created. This could be interpreted as in addition to the existing units. As such if the structure already has one or more units without the special exception could be interpreted as providing for the creation of up to four (4) more. With this amendment the total number of units could exceed four (4). Moreover, what would preclude multiple applications of this Special Exception to this property?

The third change establishes an area requirement per existing and proposed units. At 5,000 square feet per unit. This provides for a density of 8.7 units per acre. More than doubling the potential density in the Conway and North Conway Village Commercial Districts and more than 8 times that density typically permitted in the Center Conway Village Commercial District.

The fourth change eliminates reference to "architectural heritage" which could include materials. However, with the proposed change, it is only required that historical appearance be maintained.

The fifth change precludes parking in setbacks and buffers. Currently parking is permitted in setbacks and could be permitted in buffers by means of a Waiver from the Planning Board. This eliminates that Planning Board's authority to grant such waivers.

The sixth change establishes a requirement for septic and or sewerage system. This is already addressed in other regulations.

The seventh change states that the purpose for submission of the architectural design plans and site sketch.

PETITION TO AMEND
TOWN OF CONWAY ZONING ORDINANCE

RECEIVED
JAN 15 2018
TOWN OF CONWAY NH

The undersigned, being twenty-five or more registered voters in the Town of Conway, New Hampshire, hereby petition pursuant to provisions of RSA 675:4 that the following amendment to the Town of Conway Zoning Ordinance (Chapter 190) to allow for increased residential density in the Conway Village Commercial District by way of Special Exception from the Zoning Board of Adjustment be submitted to the voters of the Town of Conway (new or revised language is represented as bold underlined text. Existing language to be removed is represented by a strikethrough line)

190-18.B.(5)(a)

(5) Special exceptions.

(a) In order to preserve and safeguard Conway's older homes, but also allow for their conversion to multifamily dwellings, the Zoning Board of Adjustment may grant special exceptions for residential structures and accessory structures on the same ~~conforming~~ lot, provided that:

[1] Substantially all of the structure was constructed prior to 1930. [Amended 4-10-2018 ATM by Art. 2]

[2] Modification ~~of~~ to the interior does not ~~exceed~~ create more than four units.

[3] No less than 5,000 square feet of land area must be provided on the parcel for each unit that exists or is to be constructed thereon.

[4] No significant changes to the exterior lines of the building or exterior architectural detail are made which would diminish the historical ~~or architectural heritage~~ appearance of the structure.

[5] Adequate area is available for parking outside of the setback and buffer areas. ~~and sewage disposal.~~

[6] A compliant State of New Hampshire and Town of Conway approved in-ground sewerage disposal system already exists or will be constructed as a condition of this approval or; the property is connected to municipal sewerage.

[7] Architectural design plans and a to-scale site sketch must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with [1] through [7] within this section.

~~[8]~~ [8] Accessory structures must have at least 300 square feet of living space per unit suitable for conversion to a dwelling unit and not conflict with the purpose and intent of this section.

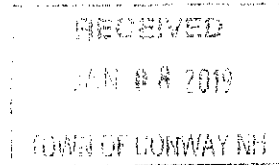
SIGNATURE

Gregg Turner
Jennifer McPherson
Ken McPherson
Caleb McPherson
Earl Sires
Kevin O'Brien

PRINTED NAME

Gregg Turner
Jennifer McPherson
Ken McPherson
Caleb McPherson
Earl Sires
Kevin O'Brien

PETITION TO AMEND
TOWN OF CONWAY ZONING ORDINANCE



The undersigned, being twenty-five or more registered voters in the Town of Conway, New Hampshire, hereby petition pursuant to provisions of RSA 675:4 that the following amendment to the Town of Conway Zoning Ordinance (Chapter 190) to allow for increased residential density in the **North Conway Village Commercial District** by way of Special Exception from the Zoning Board of Adjustment be submitted to the voters of the Town of Conway (new or revised language is represented as bold underlined text. Existing language to be removed is represented by a strikethrough line)

190-19.B.(5)(a)

(5) Special exceptions.

(a) In order to preserve and safeguard Conway's older homes, but also allow for their conversion to multifamily dwellings, the Zoning Board of Adjustment may grant special exceptions for residential structures and accessory structures on the same ~~conforming~~ lot, provided that:

- [1] Substantially all of the structure was constructed prior to 1930. **[Amended 4-10-2018 ATM by Art. 2]**
- [2] Modification ~~of to~~ the interior does not ~~exceed~~ **create more than** four units.
- [3] **No less than 5,000 square feet of land area must be provided on the parcel for each unit that exists or is to be constructed thereon.**
- [4] No significant changes to the exterior lines ~~of the building~~ or exterior architectural detail are made which would diminish the historical ~~or architectural heritage~~ **appearance** of the structure.
- [5] Adequate area is available for parking ~~outside of the setback and buffer areas. and sewage disposal.~~
- [6] A compliant State of New Hampshire and Town of Conway approved in-ground sewerage disposal system already exists or will be constructed as a condition of this approval or; the property is connected to municipal sewerage.
- [7] Architectural design plans and a to-scale site sketch must be submitted to the Zoning Board of Adjustment at the time of application to ensure compliance with [1] through [7] within this section.
- [8] Accessory structures must have at least 300 square feet of living space per unit suitable for conversion to a dwelling unit and not conflict with the purpose and intent of this section.

SIGNATURE
Jennifer McPherson
Ken McPherson
Caleb McPherson
Earl Sires
Kevin O'Brien

PRINTED NAME
Jennifer McPherson
Ken McPherson
Caleb McPherson
Earl Sires
Kevin O'Brien

BERGERON

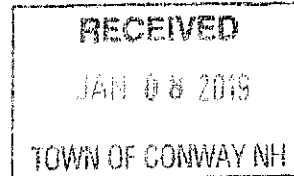
TECHNICAL SERVICES LLC



Ms. Louise Inkell
Town Clerk and Tax Collector
Town of Conway, NH
1634 East Main Street
Center Conway, NH 03813

P.O. Box 241
North Conway, New Hampshire 03860

January 8, 2019



Reference: Petitions for Proposed Zoning Ordinance Amendments


Dear Louise,

Please find three separate petitions for amendments to Conway's Zoning Ordinance enclosed. Each petition applies to a different zoning district with this submittal including various signature pages, grouped by district, each page with the proposed zoning change on the signature page.

- Center Conway Village Commercial District 11 individual pages
- Conway Village Commercial District 12 individual pages
- North Conway Village Commercial District 13 individual pages

I have included the "originals" in this submittal and have kept copies for our records. Thank you for your assistance with this process over the past few days.

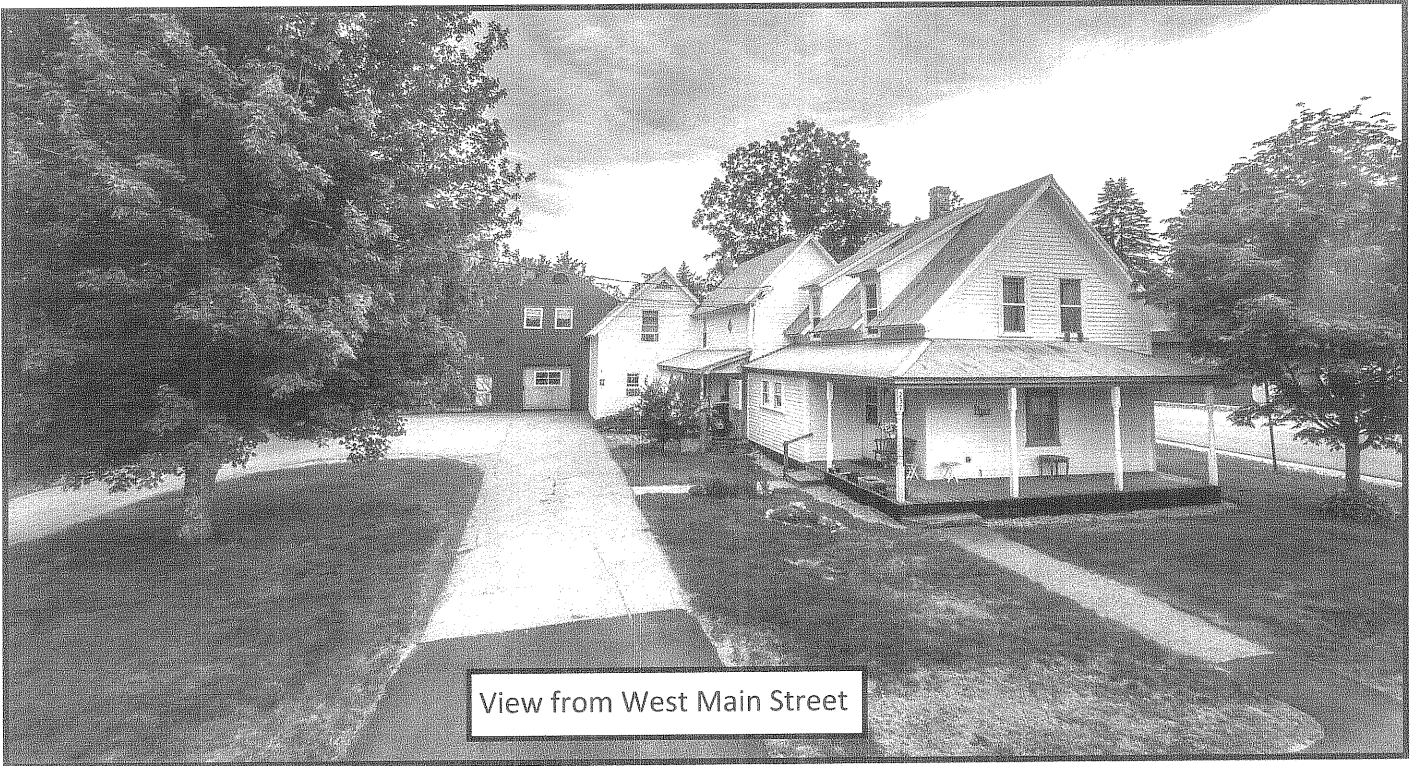
Sincerely,
Bergeron Technical Services


Shawn G. Bergeron, Sr.
Manager

ENCLOSURES – as noted in text above

Cc: file

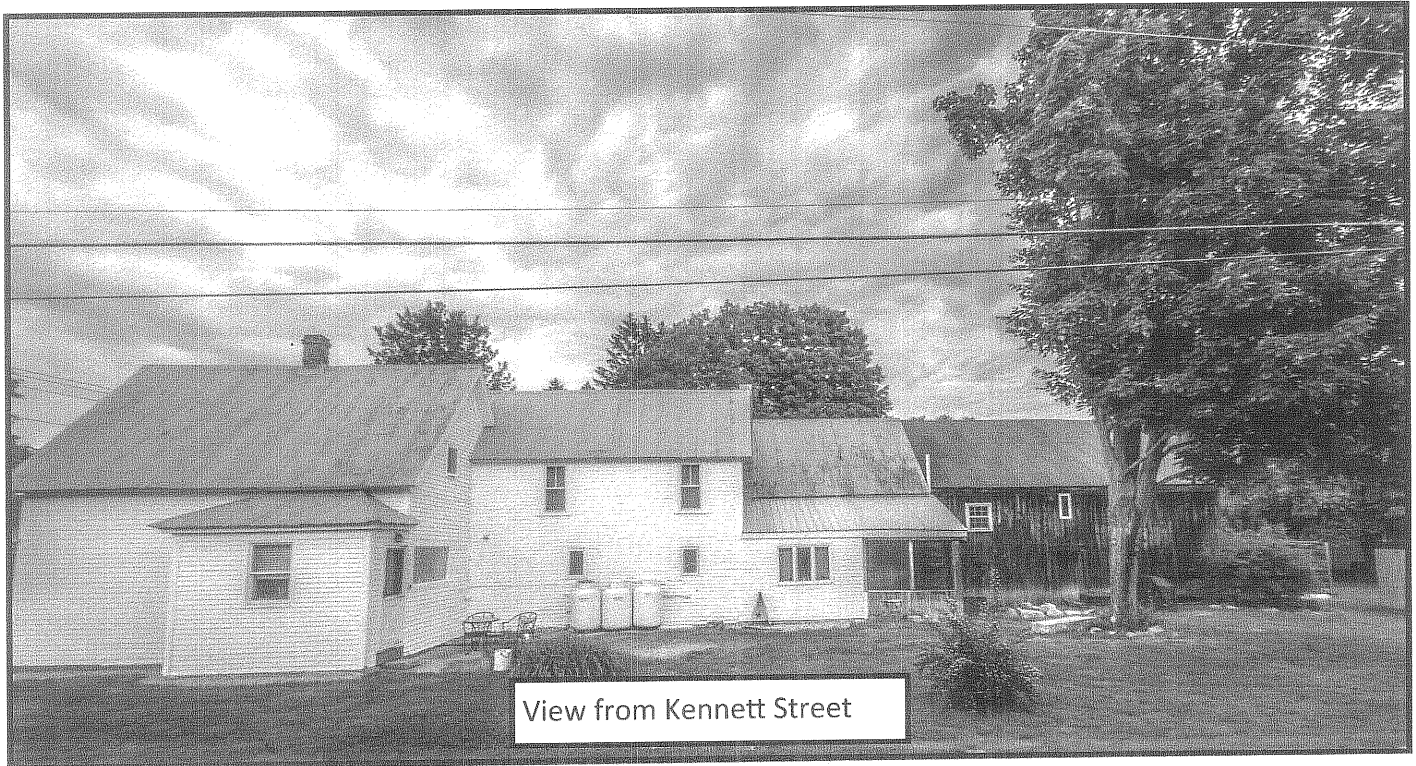
A Possible Scenario
237 West Main Street
Conway Village Commercial District



View from West Main Street

Conway PID 277-200 Lot Size .41 Acres A non-conforming parcel, .09 acre (3,921 ft² less than conforming)

Under current zoning density this can be a single-unit, perhaps with an ADU. Under the proposed zoning density this could contain three residential units.

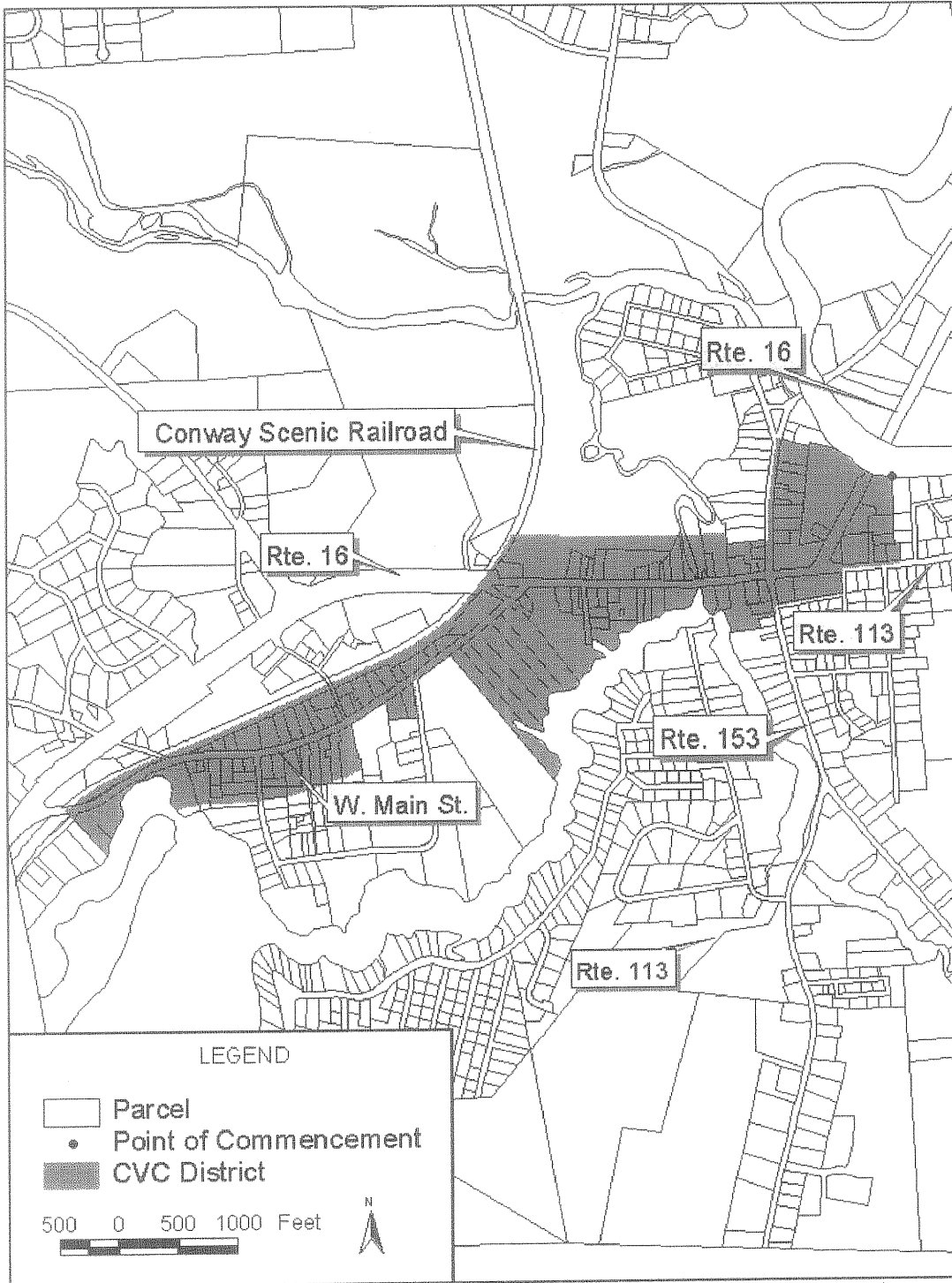


View from Kennett Street

ZONING
CCVC District



ZONING
CVC District



ZONING
NCVC District

