

**CONWAY PLANNING BOARD  
MINUTES  
JANUARY 26, 2023**

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**CONWAY PLANNING BOARD**

**MINUTES**

**JANUARY 26, 2023**

A meeting of the Conway Planning Board was held on Thursday, January 26, 2023 beginning at 6:00 pm at the Conway Town Office, Conway, NH. Those present were: Chair, Benjamin Colbath; Selectmen's Representative, Steven Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Bill Barbin; Eliza Grant; Mark Hounsell; Planning Director, Jamel Torres; and Planning Assistant, Holly Whitelaw. Alternates Ted Phillips and Steven Hartmann were in attendance. Jason Dennis, Town Council, was in attendance.

**REVIEW AND ACCEPTANCE OF MINUTES**

**Mr. Porter made a motion, seconded by Mr. Barbin, to approve the minutes of December 8, 2022 – work session, and December 8, 2022 – regular session as written. Motion carried unanimously.**

**AGENDA OUT-OF-ORDER**

**Mr. Porter made a motion, seconded by Ms. Grant, to take CMR Properties, LLC out-of-order. Motion carried with Mr. Hounsell voting present.**

**CMR PROPERTIES, LLC (FILE #S23-02) ONE-UNIT SUBDIVISION REVIEW (PID 214-84.2)**

Josh McAllister of HEB Engineers and Ken Cargill of Cooper Cargill Chant appeared before the Board. This is an application to create a unit subdivision around Building 4 at 239 Skimobile Road, North Conway. Mr. McAllister gave an overview of the project. **Mr. Porter made a motion, seconded by Ms. Byers, to accept the application of CMR Properties, LLC for a unit subdivision as complete with the staff report. Motion carried unanimously.**

Mr. Colbath asked for Board comment; there was none. Mr. McAllister read a waiver request for §130-24.B. **Mr. Porter made a motion, seconded by Mr. Barbin, to grant the waiver request for §130-24.B.** Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.** Mr. Colbath asked for public comment; there was none.

**Mr. Porter made a motion, seconded by Mr. Barbin, to approve the unit subdivision for CMR Properties, LLC. Motion carried unanimously.** The plans were signed.

**AGENDA OUT-OF-ORDER**

**Mr. Porter made a motion, seconded by Ms. Byers, to take Steven B. and Anita S. Cheney Revocable Trusts out-of-order. Motion carried with Mr. Hounsell and Ms. Grant voting present.**

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

Andrew Fisher of Ammonoosuc Survey Company and Steve Cheney appeared before the Board. This is an application to construct a 4,200 square foot multi-unit storage building and create a commercial unit subdivision at 77 Old West Side Road, North Conway. Mr. Fisher submitted photometric plans. Mr. Fisher stated they were granted two variances from the Zoning Board of Adjustment; one for the use and one for density. Mr. Fisher reviewed the project.

**Mr. Porter made a motion, seconded by Ms. Byers, to accept the application for Steven B. and Anita S. Cheney Revocable Trusts for a Concurrent Site Plan and Unit Subdivision review as complete. Motion carried unanimously.**

Mr. Torres stated this project requires a concurrent site plan and subdivision review; the Board needs to make a motion to allow it to be heard as a concurrent site plan and subdivision review. **Mr. Porter made a motion, seconded by Ms. Grant, to hear the Steven B. and Anita S. Cheney Revocable Trusts application as a concurrent site plan and subdivision review. Motion carried unanimously.**

Mr. Colbath asked for Board comment; Mr. Colbath asked Mr. Fisher to explain the variance for a commercial use in a residential area granted by the Zoning Board of Adjustment. Mr. Fisher stated this parcel is in the residential district, and the building is commercial since it is not strictly accessory to the residential use; other people could potentially lease the spaces.

Mr. Fisher stated directly across the street is a commercial storage building; so, this is not totally out of character for this location. Mr. Fisher stated it is a fairly innocuous commercial use with it being a storage building; vehicular traffic is extremely low. Mr. Fisher stated it didn't seem outrageous to ask for this in a residential district; the Board agreed and the variance was granted. Mr. Fisher stated we then realized we didn't have density so a variance was granted for a density.

Mr. Colbath asked about a landscaped parking lot. Mr. Fisher stated what we are proposing is a driveway, not a parking lot, so we are requesting a waiver to not have parking spaces.

Mr. Colbath asked for public comment; Nancy Stewart stated she lives on the corner of West Side and Cathedral Ledge Road and she believes the commercial space across the street was built in 1968 by the Donabedian family, so it is nothing new to the area. Ms. Stewart stated she would hate to see the strawberry fields turn commercial because this was allowed. Ms. Stewart stated she does not want to see the West Side Road as a strip.

Ms. Stewart stated living on the corner of West Side Road, she knows there should be a traffic study done, but she doubts it; you have to see it on a weekend, it is tremendous. Ms. Stewart stated she would hate to see all the trees cut down between West Side Road and Cathedral ledge. Ms. Stewart stated with Echo Lake, Diana's Bath and Cathedral Ledge, it is a whole different area there. Ms. Stewart stated when Chet Lucy hitched his horses on Sunday morning and you could hear the clip clop, that is agricultural. Mr. Colbath stated the commercial use was granted by the Zoning Board of Adjustment.

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Al Hospers of Bow Lane stated this is an inappropriate use for this area. Mr. Hospers stated he was okay with the condominium units; they sit back from the road and they are people who just live there. Mr. Hospers stated he moved here 26 years ago; the Airbnb's have changed things and this is going to change things. Mr. Hospers stated he finds this absurd to be putting this here; if they were putting in the units for the people there that might be one thing, but this is clearly a full-on commercial use.

Mr. Hospers stated this is the same as the units going in on Route 302; we don't need it here and we don't want it here. Mr. Hospers stated it is not personal, it has to do with quality of life, and a nice quiet reasonable neighborhood.

Susan Wilcox of Sparhawk Lane stated she has two main problems; the first is the precedent that this sets by putting commercial in a residential area. Ms. Wilcox stated this opens the door to put commercial in the residential area, and opens the whole Town of Conway to put commercial in residential areas. Ms. Wilcox stated the second is if you are using the right-of-way to increase your property then he doesn't have the acreage, he pays taxes on 5.63 acres; therefore, he does not have the acreage to put another unit on it.

Ms. Wilcox stated why doesn't he put this in Hales; because they don't allow it, they have rules. Ms. Wilcox stated this is going against the rules in the residential agricultural area. Ms. Wilcox stated she is not sure how he has been able to get this far, but it is clearly not acceptable. Ms. Wilcox stated this is ruining the neighborhood and it is going to ruin the next neighborhood. Ms. Wilcox stated Echo Lake has put signs along Bow Lane for no parking; do you think they did that because there was no traffic. Ms. Wilcox stated there is traffic all summer long. Ms. Wilcox stated this is wrong, and it is bending a lot of rules.

Dulcie Heiman stated when the five-unit apartment building was before the Board, Mr. Cheney stated he would not build any further on the property. Ms. Heiman stated in April of 2021 Mr. Cheney stated it was for private storage and not intended for commercial use; it was her understanding that he was offering garages for his tenants.

Mr. Porter stated it is a commercial entity in a residential community. Mr. Torres stated the commercial use and the density has been approved by the Zoning Board of Adjustment. Mr. Dennis stated the Superior Court affirmed the ZBA decision and upheld the density requirement. Mr. Dennis stated his recollection on the basis for the variance for density was because it is on a right-of-way, so the property owner owns to the centerline, and if you count all of that it was more than six acres.

Mr. Dennis stated geometrically they had enough land, but the zoning ordinance states that the right-of-way cannot be used for density purposes. Mr. Dennis stated from the ZBA process it can be there as a commercial structure and can be there despite not being compliant with density.

Ms. Grant asked what was the hardship to grant the variance for the commercial use. Mr. Fisher stated he would have to look back at that decision, but the proposed new structure has no water and no sewer so there is no impact upon the rest of the property.

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Ms. Grant stated in the past when there have been neighbors who have felt there was undue impact by a proposal such as this by permitting as commercial, there is a provision under §110-39 which is a nuisance provision. Ms. Grant stated the neighbors could write up why you feel this is a nuisance to your neighborhood and can ask for specific mitigations from the Board.

Mr. Cheney stated he moved here in 1980, he's been building houses here since then as well as having done subdivisions; his intention is to not make this ugly to the neighborhood, he takes care of them.

Tony Walker of 3041 West Side Road stated she doesn't recall that commercial was ever used at the first hearing they went to. Ms. Walker stated this should not be used as commercial; she is opposed it. Mr. Dennis stated the application cannot be denied based on being a commercial use because that variance was granted and it cannot be denied based on density because that variance was granted. Mr. Dennis stated those variances don't mean site plan is approved, just means it cannot be denied for those two reasons.

Mr. Hounsell stated he would like to hear more about the opportunity under nuisance. Mr. Torres read §110-39. Ms. Grant stated it was last utilized for the Viewpoint project; the neighborhood put together a list of nuisances and asked for mitigations. Mr. Hounsell stated one of the things we can do for those that object is give them some time to make their list of complaints.

Ned Sullivan stated Mr. Cheney keeps his places immaculate, and he is sure this project will be aesthetically nice, like he keeps all of his properties.

Donna McCluskey of Crossbow Lane stated on behalf of the neighborhood they would like to ask for a continuance for the nuisance thing that was discussed. Mr. Hounsell asked if objection is the same as nuisance. Mr. Dennis stated there could be a number of different objections that doesn't rise to the level of nuisance; you would have to have a separate meeting to make that determination. Mr. Dennis stated the Board could make a motion to continue to give the abutters time to make the nuisance presentation under the ordinance.

**Mr. Porter made a motion, seconded by Mr. Barbin, to continue the full site plan review for Steven B. and Anita S. Cheney Revocable Trusts until February 23, 2022. Motion carried with Ms. Byers voting in the negative.** The Board determined that the nuisance complaint should be submitted two weeks prior to the meeting.

**TOWN OF CONWAY BOARD OF SELECTMEN – MOTION FOR REHEARING REQUEST**

This is a motion for rehearing request in regard to the Tarberry Company, LLC (File #FR22-11) to change 6,226 square feet of retail and 1,144 square feet of support space to three separate quick service food and beverage options at 2686 White Mountain Highway, North Conway (PID 218-43). This request was withdrawn.

**PUBLIC HEARING – MORATORIUMS**

**Hotels, Motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet:** To see if the Town will vote to adopt an ordinance establishing a temporary Town-wide moratorium, to be in effect for one year, stopping the issuance of building permits, granting of subdivision approval, and granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures. This ordinance shall not apply to any project or work that (a) has already received all necessary approvals, (b) received conditional approval, (c) that does not require any new or additional planning board or zoning board application or review, and (d) consists of reasonable repair or restoration necessitated by any natural disaster, Act of God, or loss covered by insurance.

Mr. Colbath asked for Board comment; Mr. Hounsell asked if each of those items have to be met, or just one of them. Mr. Torres stated you only have to meet one of them.

Mr. Colbath opened the public hearing at 7:41 pm. Mr. Colbath asked for public comment; Amy Snow asked when does the one-year start and when does it end. It was determined that there would be a date if it goes on the warrant.

David Haine stated he doesn't think the Planning Board should be micromanaging the economy, these are people's rights. Mr. Haine stated you are taking a right away and he doesn't think it should be done haphazardly; it effects the Valley, not just Conway. Mr. Haine stated if the Planning Board can't handle it then maybe get some help, but don't micromanage it; it is not something the Planning Board should be doing.

Ned Sullivan stated this would be devaluing property that people are already paying taxes on; he doesn't think it is necessary.

Greydon Turner asked how many large projects does the Board get each year on average. Ms. Byers stated in the past three years in went from 13 million to 30 million to 70 million. Mr. Turner asked if that is total or specifically to the hotel, motels, 50,000 square foot. Ms. Byers stated that is total. Mr. Turner asked wouldn't that be relative since we are proposing a moratorium on a specific development if we knew what those specific development numbers were. Mr. Turner asked what was the real catalyst for this to say we need to stop this. Mr. Turner asked if this is the right solution because he is not sure what is the actual cause.

Mr. Colbath stated this came up because of the Master Plan process as it has not been updated since 2003. Mr. Colbath stated as Board members we receive a lot of complaints about the amount of development that is going in, and many don't have a full understanding of the process. Mr. Colbath stated it has come to their attention that maybe we need to slow down a bit while we undertake the Master Plan process.

Mr. Hounsell stated our zoning needs work, and we basically don't have a Master Plan; that is task number one. Mr. Hounsell stated it seems to him that the voters should be asked if they would like to take a pause on throwing more stuff into Town before we really have an idea as a Town what we want our town to look like going forward.

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Mr. Turner asked if we are going to need another year after this. Ms. Byers stated by state statute we are only allowed to do one-year moratoriums. Mr. Barbin stated there is no expectation that 12-months is going to come to the solution, and he thinks that is where the moratorium is a little bit shaky. Mr. Barbin stated if we are proposing that there is a hardship and the solution is the Master Plan, the Master Plan doesn't come in in 12-months; and the ordinances are not going to come in align with that.

Mr. Barbin stated we are going to put in a moratorium based on the idea that extra moratoriums after the fact will get us to the solution, and he thinks that puts us on shaky ground with developers. Mr. Colbath stated there is nothing saying that we would propose to do it again next year. Ms. Byers stated we need staff time to work on the Master Plan.

Mr. Barbin stated he thinks that is where a good attorney could say you may want to say that not planning is a problem that developers should absorb, or that your lack of staffing is a problem that property owners should absorb, but he thinks a developer could argue for property owners' rights and say not their problem; you can't diminish their value based on that. Mr. Barbin stated he is on board because he wants to be in agreement, and he believes in theory that we need to have a pause; unfortunately, he feels the mechanism is not really good for us. Mr. Barbin stated he doesn't think it is unchallengeable.

Randy Gaudette of Lucy Brook Farm asked are we just looking at the financial aspect of this. Mr. Gaudette stated with each hotel he thinks there is no way they are going to fill this hotel, and each time he goes by it is full. Mr. Gaudette asked how many more people can this Town hold. Mr. Gaudette stated he doesn't think financial aspects of it should be the number one priority on what kind of decision everyone makes.

Mr. Colbath stated he doesn't think financial aspects were the number one decision on this. Mr. Colbath stated we also have to take into consideration the labor pool in this town; the consistent question is who are they going to get to work there, and that is not something we can consider in our rulings. Mr. Colbath stated the labor market is a problem, and think that was one of the considerations when drafting this.

Mr. Porter stated financial is not the intention of proposing the moratorium. Mr. Porter stated the reason he pursued the moratorium is realistically with the way this Town has grown and not to take away from people's rights, but at some point the growth of this Town we have more commercial businesses and less residential homes. Mr. Porter stated if we continue at this pace we are not going to be able to live here.

Mr. Hounsell stated this is not micromanaging the economy, and he is aware that this could make things difficult for the business man, but they will rebound and will rebound faster if we get ourselves a game plan. Mr. Hounsell stated we are seeing the Town he grew up in disappear; families are not able to thrive as they once used to, and community neighborhoods are being squeezed. Mr. Hounsell stated the changing of the Town is changing to whether or not we are just going to become a tourist town totally or are we still going to have a place where parents want to raise their children. Mr. Hounsell stated he believes this is necessary so that we can address that to the people of the Town of Conway that want to make this a family friendly community which is its heritage.

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Theresa Bernhardt asked if there are towns that the Board is focused on that you would like to model as having similarities to our Town that are having the same problems, the same attributes. Mr. Colbath stated that is a great question for the Master Plan process.

Josh Brustin asked with the commercial development is it about the look of the commercial zone were we have these big projects, or is this more about local housing. Mr. Colbath stated its all of it. Ms. Byers stated for her it came down to the time and energy that these larger projects require for staff; it takes away from their ability to do anything else. Mr. Brustin stated so part of it is allowing some catch-up time. Ms. Byers agreed.

Mr. Brustin asked if we go a year and it gets put in front of the voters again is there more legal exposure there based on waiting for the Master Plan process. Mr. Dennis stated he doesn't think the exposure changes; it is the same exposure the same risk and basically the same argument that we might hear later with short-term rentals. Mr. Dennis stated people who want to use their property in a certain way are always going to say that some restriction or limitation is inconsistent with their rights and have a right to make a legal challenge.

Mr. Dennis stated the fact that the moratorium process is going on simultaneously actually reduces the exposure because what you need to do during the moratorium process is come up with unique circumstances to support it; and one of the unique circumstances is in fact that the Town is going through Master Plan process.

Mr. Colbath closed public comment at 8:17 pm. **Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed moratorium regarding Hotels, Motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet to the warrant. Motion carried unanimously.**

**Residential rentals less than thirty (30) days:** To see if the Town will vote to adopt an ordinance establishing a temporary Town-wide moratorium, to be in effect for one year, to stop the issuance of building permits for any structures that will newly be utilized for residential rentals less than thirty (30) days.

Mr. Colbath asked for Board comment; Mr. Colbath stated this was proposed by Paul DegliAngeli, Town Engineer and Deputy Town Manager, and he is on vacation. Ms. Byers asked if this is specifically for commercial short-term rentals. Mr. Torres stated this would be town-wide.

Mr. Colbath opened the public hearing at 8:19 pm. Mr. Colbath asked for public comment; Shawn Bergeron stated this clearly is an attempt to regulate short-term rentals.

Mr. Bergeron stated the process in the Town of Conway to get a building permit for a single-family home is at best simple, so he is not even sure where you could begin with enforcement on this. Mr. Bergeron stated with regard to the wording "newly be utilized" he could obtain a building permit for a single-family home, live in it for four months then it becomes a short-term rental and he has met the requirement. Mr. Bergeron stated he does not think this is enforceable or accurately produced presentation. Mr. Bergeron stated item (a) is well thought out, item (b) is not.



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Mr. Hounsell stated he thinks Mr. Bergeron makes valid points; he does support whatever we can do to stop short-term rentals in residential areas, but he thinks there will be a serious enforcement issue because we don't have residential building inspections. Mr. Hounsell stated he likes what it is trying to do, but it is not well thought out and he does not like the way it is written.

Mr. Torres stated it is his understanding that the intent of this proposal is the first step towards regulating short-term rentals; most successful towns in the country regulate short-term rentals effectively. Mr. Torres stated he thinks the intent was to put a pause to develop regulations over the next year and try to adopt those before the moratorium ends.

Tom Reed stated he along with Greydon Turner and Mr. Porter spent an entire summer developing a set of regulations, a set of regulations that went on a warrant article that was passed overwhelming by the voters that has been dropped by the Board of Selectmen.

Mr. Turner stated he is hoping this is not put on the warrant; it is hasty at best. Mr. Turner stated this is not well thought out; it is something that is being beaten to death and we don't have a response on our appeal yet. Mr. Turner stated this is going to do nothing but irritate; it is not going to serve a purpose. Mr. Turner stated even those of us on different sides see too many holes in this to be truly effective.

Mr. Reed stated it is his opinion that the question that is pending before the Supreme Court as whether short-term rentals are permitted in a residential zone is separate and apart from the regulations of short-term rentals; they have nothing to do with one another. Mr. Reed stated there is no reason you can't go forward and regulate them.

Josh Brustin stated he looks forward to the decision from the Supreme Court as it will allow some forward movement in this discussion. Mr. Brustin stated when it came up on the warrant it was really challenging; it was ambiguous at best. Mr. Brustin stated you were asking the taxpayers to take something the town considered illegal and make them legal and to regulate.

Mr. Brustin stated we need to determine if they are legal or not. Mr. Brustin stated if they are determined to be legal he doesn't think there is anything wrong with starting that process over again. Mr. Brustin stated he hopes that it will bring sides together in a way that has not happened yet.

Mr. Colbath stated the Board is not trying to circumvent any legal decision. Mr. Barbin stated he thinks it is a distraction. Ms. Grant stated she is concerned with enforcement. Mr. Porter stated he has serious problems with the way it is worded.

**Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed moratorium regarding residential rentals less than thirty (30) days to the warrant.** Mr. Colbath asked for Board comment; Mr. Hounsell stated the only way to enforce this would be by denying all residential building permits. **Motion defeated unanimously.**

**PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY THE PLANNING BOARD**

**§190-31. – Definition of Manufactured Home** – The purpose of this amendment is to add a definition of Manufactured Home as follows: “Any structure, meeting the federal Manufactured Home Construction and Safety Standards Act, commonly known as the HUD Code, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width and 40 body feet or more in length, or when erected on site has at least 320 square feet of habitable space, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical systems contained therein. Manufactured housing as defined here does not include presite built housing as defined in RSA 674:31-a.”.

Mr. Colbath asked for Board comment; Mr. Torres stated he spoke with David Pandora, Building Inspector, and his concern with the language is that he will require a foundation during the building permit process so he thought “with or without a foundation” could be removed. Mr. Dennis stated while being tied down is an appropriate installation standard, he doesn’t believe it belongs in the definition of what a manufactured home is because it is a manufactured home when it is there and it is a manufactured home when it is moving to its next pad.

Ms. Byers asked if we are defining the manufactured home but he is going to require it when it is being installed those can be considered two different things. Mr. Torres agreed and stated he was just trying to limit confusion.

Mr. Colbath opened the public hearing at 8:37 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 8:37 pm. **Ms. Byers made a motion, seconded by Mr. Porter, to recommend the proposed amendment to §190-31. – definition of Manufactured Home to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Modular Housing or Structure (or Presite Building Structure)** – The purpose of this amendment is to add a definition of Modular Housing or Structure (or Presite Building Structure) as follows: “Any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building lot. A modular home is separated and distinct from a manufactured housing unit.”.

Mr. Colbath asked for Board comment; Mr. Hounsell stated the word “separated” should be “separate”. The Board agreed.

Mr. Colbath opened the public hearing at 8:40 pm. Mr. Colbath asked for public comment; Tom Reed asked if there is something in the body of the zoning ordinance that ever refers to the definition that you want to add. Ms. Byers stated we had the term “mobile home” that hasn’t been used in a while. Mr. Reed asked why are you proposing a definition which there is no reference to in the body of the ordinance itself.

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Mr. Hounsell stated there is going to be. Mr. Reed stated you can do that at the time when revamping the ordinance. Mr. Colbath stated the list of definitions were identified by Board members as things we didn't have defined. Ms. Grant stated there is reference to modular homes in the cluster ordinance.

Shawn Bergeron stated a reason to have it defined in the ordinance is from a building code and fire code perspective; in the State of New Hampshire a modular home doesn't meet the same requirements as a stick built single-family home. Mr. Bergeron stated for the building department staff, if someone brings in a legitimate modular home it has already been inspected and approved, and they can wash their hands of it.

Mr. Colbath closed public comment at 8:43 pm. **Mr. Barbin made a motion, seconded by Mr. Hounsell, to recommend the proposed amendment to §190-31. – definition of Modular Housing or Structure (or Presite Building Structure) to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Boarding House/Rooming House** – The purpose of this amendment is to add a definition of Boarding House/Rooming House as follows: “A dwelling operated as a business or on a not-for-profit basis providing rooms for rent on a daily, weekly, or other basis. The rooms do not include cooking facilities and thus are not individual dwelling units. Meals may or may not be provided by the owner/operator. Such rooms generally serve as the primary residence (of whatever duration) for the occupants though they may be available also as lodging for visitors.”.

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened the public hearing at 8:44 pm. Mr. Colbath asked for public comment; Shawn Bergeron asked if this is voted into the ordinance what happens to the existing definition of Owner-Occupied Lodging House and/or Owner-Occupied Boarding house; will that remain. Ms. Byers answered in the affirmative and stated this is not to replace.

Mr. Bergeron asked couldn't this be a definition of a short-term rental. Ms. Byers stated she believes this came up because we had a definition for Bed & Breakfast and transient housing, but we didn't have boarding house or rooming house and we have a hostel, so this filled those gaps. Ms. Grant asked if this has a line in the use table. Mr. Torres answered in the affirmative. Ms. Grant stated we just don't have a definition.

Mr. Colbath closed public comment at 8:47 pm. Mr. Hounsell stated he is concerned this is going to muddy the short-term rental conversations; he is not inclined to support this one. Ms. Grant stated rooming houses owner-occupied are permitted in all the residential districts, but rooming houses non-owner occupied are not permitted in residential districts. Ms. Grant stated if someone was trying to call a short-term rental a non-occupied rooming house it would not be permitted in the residential districts.

Mr. Dennis stated if there is a concern in regard to the short-term rental piece and how this definition might interplay the last sentence does say “Such rooms generally serve as the primary residence...”; that would mean that this could not be a substitute for a short-term rental because he does not believe that a short-term rental is a primary residence of the person who lives there.

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**Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed amendment to §190-31. – definition of Boarding House/Rooming House to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Duplex** – The purpose of this amendment is to add a definition of Duplex as follows: “A structure containing two separate residential dwelling units.”

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened the public hearing at 8:50 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 8:50 pm. **Mr. Porter made a motion, seconded by Ms. Byers, to recommend the proposed amendment to §190-31. – definition of Duplex to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Residential Dwelling Unit – Multifamily** – The purpose of this amendment is to add a definition of Residential Dwelling Unit – Multifamily as follows: “A building or portion thereof containing three or more residential units with separate cooking and toilet facilities for each dwelling on one individual lot.”

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened the public hearing at 8:51 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 8:51 pm. **Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed amendment to §190-31. – definition of Residential Dwelling Unit – Multifamily to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Residential Dwelling Unit** – The purpose of this amendment is to add a definition of Residential Dwelling Unit as follows: “A single unit providing a room or group of rooms located within a structure and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating for the exclusive use of a single family maintaining a household.”

Mr. Colbath asked for Board comment; Ms. Byers proposed the following change “...exclusive use for one or more persons living as of a single family maintaining a household.”

Mr. Colbath opened the public hearing at 8:54 pm. Mr. Colbath asked for public comment; Tom Reed asked what is the problem with the existing definition. Ms. Byers stated the ordinance currently has Residential/Dwelling Unit; this removes the slash. Mr. Reed asked what the Board perceives to be the problem with the existing definition. Mr. Colbath stated it is a clarification based off the intent of it.

Mr. Reed stated it is more muddled this way than what it is presently. Mr. Reed stated the existing definition needs what a household is; that is what Judge Ignatius stumbled over in the litigation that is pending in front of the NH Supreme Court. Mr. Reed stated if you want to avoid litigation be specific, be clear, define a household; don’t leave it up to some judge; simplest thing to do is add a definition for household. Mr. Hounsell agreed that we need to have a definition of household.

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Daymond Steer of Conway Daily Sun asked what was the intention and how would this new definition change the way residential dwelling units are defined. Mr. Steer asked what is the practical impact of what you are trying to attempt; he doesn't see how it clarified. Mr. Torres stated the Planning Board is interested in updating the definitions in the zoning ordinance in general related to residential uses. Mr. Steer asked updated to what, what is the impact. Mr. Hounsell stated it brings clarity. Mr. Colbath closed public comment at 9:03 pm.

Mr. Dennis stated a definition of household would be appropriate, either now or in the future.

**Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed amendment to §190-31. – definition of to the warrant as amended. Motion carried with Mr. Barbin voting in the negative.**

**§190-31. – Definition of Household** – Mr. Dennis stated the current definition proposed in the Town's reply brief in the Kudrick case. Mr. Dennis stated the definition is as follows "To be living as a unit as one or more persons that intends to maintain a usual residence in the same dwelling place."

Mr. Colbath asked for Board comment; Mr. Hounsell stated he has a problem with the word "intends". Mr. Colbath asked for public comment; there was none. **Mr. Porter made a motion, seconded by Mr. Barbin, to post the definition of Household to a public hearing on February 9, 2023. Motion carried unanimously.**

**§190-31. – Definition of Condominium** – The purpose of this amendment is to add a definition of a Condominium as follows: "A special system of real property ownership that includes individually owned "units" and areas owned in common by the unit owners ("common areas").

Mr. Colbath asked for Board comment; there was none. Mr. Colbath opened the public hearing at 9:22 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 9:22 pm.

**Ms. Byers made a motion, seconded by Ms. Grant, to recommend the proposed amendment to §190-31. – definition of Condominium to the warrant as written. Motion carried unanimously.**

**§190-31. – Definition of Townhouse** – The purpose of this amendment is to add a definition of a Townhouse as follows: "A one-family dwelling unit which is part of a group of two or more such units separated by a common party wall, having no doors, windows, or other provisions for human passage or visibility. Each unit shall have individual outside entrances at ground level (which may face in different directions) and may have more than one level."

Mr. Colbath asked for Board comment; there was a brief discussion regarding the comma after "party wall". The Board agreed to amend the definition by removing the comma. Mr. Colbath opened the public hearing at 9:22 pm. Mr. Colbath asked for public comment; there was none. Mr. Colbath closed public comment at 9:22 pm.

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**Mr. Porter made a motion, seconded by Ms. Byers, to recommend the proposed amendment to §190-31. – definition of Townhouse to the warrant as amended. Motion carried unanimously.**

**PUBLIC HEARING – ZONING AMENDMENTS PROPOSED BY PETITION**

**§190-13.K.(11) – Kennels** – The purpose of this amendment is to add (e) The values of surrounding properties are not diminished; (f) There will be no nuisance to abutters and/or neighbors preventing the peaceful enjoyment of their property and home; and (g) additional conditions may be attached to this Special Exception by the Board of Adjustment consistent with the intent and purpose of this ordinance to protect the health, safety, and general welfare of the Town’s residents.

Mr. Colbath asked for Board comment; Mr. Colbath stated his question would be on no nuisance to the abutters; its vague. Mr. Torres asked how do you define nuisance. Mr. Hounsell stated it is subjective.

Mr. Colbath opened the public hearing at 9:30 pm. Mr. Colbath asked for public comment; Amy Snow stated the thing that spurred this was noise inside our homes. Ms. Snow stated the Town of Conway’s noise ordinance indicates that the burden of proof is on the people who are saying it is a nuisance. Ms. Snow stated but sometimes you don’t know something is a nuisance until after it is there.

Ms. Snow stated she is aware of the letter that the Board received from the AKC, and everything that is being proposed came from other towns. Ms. Snow stated this has been since 2000 when the Humane Society who said they are not building outdoor kennels and now here we are. Ms. Snow stated what we have does not work for the residents.

Ms. Snow stated with the ordinance we have now if they can take care of the waste and put them in by a certain time with enough land they have to approve it without looking at the rest of the ordinance. Ms. Snow stated we had proof, we had recordings of dogs, hearing the dogs in our houses but that didn’t matter. Ms. Snow stated she doesn’t have anything against kennels or the Humane Society, just where they decided to locate that kennel.

Ms. Snow stated another issue she and her neighbors have is we don’t understand how a commercial entity could build a structure without going through a site plan review. Ms. Snow stated their original building permit said a 50’x20’ structure for a dog run, what they built was a 24’x28’ which is 1,152 square feet. Ms. Snow stated there was no oversight, there was no chance for anyone to come in and say you have 25-acres put it on the south side of your building not in our backyards.

Ms. Grant stated our zoning ordinance does not have a definition of nuisance, and probably should because it is in the site plan review. Ms. Grant stated when special exceptions come to the Zoning Board it is a checklist, and they went down their checklist and everything was met. Ms. Grant stated there was nothing on the checklist that provided the Zoning Board a mechanism to work with abutters concerns. Ms. Grant stated she does think something like this is needed.

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Ms. Byers asked in regard to the letter received from the AKC regarding guarding, working and herding livestock, is what they stated their belief that this new definition would remove those. Mr. Colbath stated he couldn't draw the correlation. Ms. Byers stated she couldn't find the direct link between the two. Ms. Snow stated the RSA excludes working dogs, guard dogs because they are working.

Mr. Colbath closed public comment at 9:36 pm. **Mr. Porter made a motion, seconded by Ms. Grant, to recommend the proposed amendment to §190-13.K.(11) – Kennels to the warrant. Motion carried with Ms. Byers abstaining from voting.**

**§190-20.E.(1) & (2) – Structure and building height** – The purpose of this amendment is to change structure height from 55-feet to 45-feet; and to change building height from 45-feet to 35-feet in the Highway Commercial District [not including properties located in the North Conway area north of North Conway Village].

Mr. Colbath asked for Board comment; Mr. Porter stated if this is adopted that creates a whole lot of problems, making buildings non-conforming. Mr. Torres stated they would be a legal non-conforming use. Ms. Byers stated this would be two-stories max.

Mr. Colbath opened the public hearing at 9:39 pm. Mr. Colbath asked for public comment; Kit Hickey stated she has heard time and time again regarding the overdevelopment of our town, losing the quaint character of our town, massive developments, losing greenspace, and housing being an issue. Ms. Hickey stated all other districts went to the voters last voting cycle and it is her belief that this district should be put to the voters. Mr. Colbath closed public comment at 9:40 pm.

**Mr. Colbath made a motion, seconded by Mr. Porter, to recommend the proposed amendment to §190-20.E.(1) & (2) – Structure and building height to the warrant. Motion carried unanimously.**

**§190-31. – Definition of Sign** – The purpose of this amendment is to modify the definition of a sign to as follows: “Any device, fixture, placard, mural, painting, work of art, structure or attachment thereto clearly visible and readable from a public road that uses color, form, graphic, illumination, symbol, or writing and whose primary purpose is to advertise, announce the purpose of, or identify a business or commercial entity, enterprise or product. ~~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”.

Mr. Colbath asked for Board comment; Mr. Colbath stated he has a few concerns with some of the added language. Mr. Colbath stated “clearly visible and readable from a public road” is an objective issue; depending on who is looking at it, how they are looking at it could help define if it is a sign or not. Mr. Colbath stated he really takes issue with the wording “whose primary purpose is to advertise”; adding “primary purpose” to it makes it so you can debate just about anything is a sign or not a sign.

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Mr. Colbath stated from working in the sign industry people want as much signage as possible, as big and as bright, and if there is language like this that can be debated people are going to get away with having a lot of signs that they claim are not signs; that is his concern.

Mr. Colbath opened public comment at 9:45 pm. Mr. Colbath asked for public comment; Kelly Ovitt Puc of Sulloway & Hollis who represents Settlers Green stated the impetus for this proposed zoning ordinance petition was the three letters that her client received at the end of December from the Zoning Officer saying her clients' paintings on the walls in Settlers Crossing and Settlers Common, of which there is three, were not in compliance with the zoning ordinance because they were deemed signs and they exceeded the size limitations.

Ms. Ovitt Puc stated it was not specified what those size limitations were or how they were exceeded. Ms. Ovitt Puc stated if you look at the zoning ordinance it might be clear why it wasn't specified because the zoning ordinance is very heavily weighted towards commercial signs. Ms. Ovitt Puc stated so while the definition that you have in the zoning ordinance is very broad which enabled the Zoning Officer to interpret a painting on a wall to be a sign, throughout the zoning ordinance it was very clear that it was intended to regulate primarily commercial signs.

Ms. Ovitt Puc stated what they are trying to do is make a reasonable adjustment so that the signs that were intended to be regulated are regulated and the signs that weren't to be intended to be regulated aren't regulated which is really public art. Ms. Ovitt Puc stated it's probably not going to be perfect, but no definition is going to be perfect because it does require some judgement. Ms. Ovitt Puc stated is it on a public way on a public road where there might be some safety concerns about the size of the sign, or if it is lighted.

Ms. Ovitt Puc stated the other criteria was is it designed to have a commercial or business motive or is it something that's really just art. Mr. Colbath asked why instead not propose a mural ordinance. Ms. Ovitt Puc stated by leaving the sign definition the way it is it upholds that determination that it's going to fall under a sign so you need to somehow carve out what is not intended to be regulated from the existing broad definition.

Ms. Byers asked if the thought with this definition that the one in Settlers that says Welcome to North Conway since it is not selling anything it would not be considered a sign. Ms. Ovitt Puc stated that is part of the idea, but one does fall on a public road so it wouldn't fall under that criteria, but, yes, the non-commercial non promoting business or venture.

Mr. Hounsell stated he is inclined to support this at this time knowing we still need to improve our sign ordinance; this improves it that it brings clarity and helps recognize that art and murals are different from a commercial sign and should not be treated the same.

Ms. Grant stated she is struggling with this, things that our murals or that we are considering art should be separated from the sign issue so that signs can be tightly controlled. Ms. Grant stated finding a way to mix them with signs opens a can of worms that makes her uncomfortable. Ms. Grant stated creating this more permissible part of the sign definition doesn't seem the logical way to do that, the logical way to her is to categorize them differently.



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Mr. Torres read a letter from Jeremy Gibbs, Code Enforcement Officer [attached]. Mr. Colbath stated he really likes the murals at Settlers Green, he thinks they are artwork and he doesn't think artwork is signage; he thinks that signs can be artistic. Mr. Colbath stated it is muddying the waters; he wishes there was a clearer path for art in this town, a mural ordinance or a permitting process, that would not be so contentious.

Mr. Dennis stated the Institute of Justice, a national non-profit organization, has indicated its opinion that first that the sign ordinance infringes upon the first amendment to the United States Constitution by regulating speech based on its content and not regulating signs based on time, place and manner, which is more legally permissible. Mr. Dennis stated they have also expressed the opinion that by including signs, murals, graphics, etc. such as those at Settlers Green it then renders the definition of sign unconstitutionally broad because in order to regulate, any government entity needs to have a legitimate purpose for doing something and then narrowly tailor that to accomplish that goal. Mr. Dennis stated these are the opinions that have been expressed by someone who is willing to sue the Town in Federal Court.

Mr. Dennis stated with regards to Settlers in particular, what is interesting about this is that there was some more recent thinking within enforcement circles that weren't, but the new opinion is based on the original opinion from 2017. Mr. Dennis stated when Dot Seybold was communicating with someone in the Town Office, she was told they were signs and that she would have to go through the permit process; she didn't, and then there was never enforcement so there they are today.

Mr. Dennis stated they were deemed to be signs back in 2017; deemed to be signs because of the definition of sign as it exists right now. Mr. Dennis read the definition of sign as it exists now. Mr. Dennis stated meaning if you paint one blue stripe and one yellow stripe down your door, supporting Ukraine, you have created a sign because you are conveying information. Mr. Dennis stated as he understands it that is why Settlers was recently cited.

Mr. Dennis stated there are definitely some enforcement difficulties; what is the difference between visible and clearly visible for example. Mr. Dennis stated the primary purpose, you can ask ten different people and likely get a different opinion whether the sign existing above the Leavitt's Bakery has a primary purpose to be commercial or not. Mr. Dennis stated you would get multiple different opinions. Mr. Dennis stated for him legally the primary purpose is why it was done in the first place, not what it does now.

Mr. Dennis stated if this were to go to Court and Leavitt's were to say we can keep that now if this petitioned article is passed because it was not the primary purpose, it was high school project, it would be hard to say otherwise, legally. Mr. Dennis stated for him, his legal opinion, if this passes Leavitt's sign could stay; that is subject to interpretation and argument. Mr. Dennis stated it fixes some problems, and it creates some problems.

Mr. Colbath closed public comment at 10:07 pm. **Mr. Hounsell made a motion, seconded by Ms. Byers, to recommend the proposed amendment to §190-31 – definition of sign to the warrant. Motion carried with Ms. Grant, Mr. Corbett, Mr. Barbin and Mr. Hounsell voting in the affirmative and Ms. Byers, Mr. Porter and Mr. Colbath voting in the negative.**

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

Mr. Torres stated they have requested to be continued until the February 9, 2023 Planning Board meeting. **Mr. Colbath made a motion, seconded by Ms. Byers, to continue the McDonalds Corp/McDonalds USA, LLC Full Site Plan Review until February 9, 2023. Motion carried unanimously.**

**OTHER BUSINESS**

**Selectmen’s Report:** There was no report.

**Issues for Consideration:** Mr. Hounsell stated it is his understanding that there might be a charitable gaming operation coming to Conway, and he believes that it would constitute a change-of-use. Mr. Hounsell stated he knows we can’t say you can’t operate a business here, but we can determine where they are located and he would recommend the Industrial District.

**Media Questions:** Daymond Steer of the Conway Daily Sun asked about “exclusive use” in the dwelling unit definition. Mr. Dennis stated to him it means not other things.

Meeting adjourned at 10:25 pm.

Respectfully Submitted,

Holly L. Whitelaw  
Planning Assistant

**ARTICLE \_\_\_ (Non-Monetary)** To see if the Town will vote to adopt an ordinance establishing a temporary Town-wide moratorium, to be in effect from April \_\_\_, 2023 to April \_\_\_, 2024, stopping the issuance of building permits, granting of subdivision approval, and granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures. This ordinance shall not apply to any project or work that (a) has already received all necessary approvals, (b) received conditional approval, (c) that does not require any new or additional planning board or zoning board application or review, and (d) consists of reasonable repair or restoration necessitated by any natural disaster, Act of God, or loss covered by insurance. The full text of the ordinance is as follows:

**CHAPTER \_\_\_ RSA 674:23 MORATORIUM ON HOTELS, MOTELS, RESORT HOTELS, AND CERTAIN COMMERCIAL STRUCTURES**

[HISTORY: Adopted by the Town of Conway April \_\_\_ 2023; Effective April \_\_\_, 2023 to April \_\_\_, 2024]

**§ \_\_\_ STATEMENT OF CIRCUMSTANCES GIVING RISE TO NEED FOR MORATORIUM**

Because the Town of Conway is facing a number of unusual circumstances, including traffic congestion, green space impacts, a critical housing shortage (due to a lack of workforce and affordable housing stock), a lack of industrial/commercial workplace industries outside hospitality/tourism, a general shortage of a workforce, resulting in many businesses needing to limit their days/hours of operation, and infrastructure impacts, the Town, in order to create a better environment for living in, working in, recreating in, and visiting our beautiful community, ordains it necessary to establish a 1-year moratorium on the issuance of building permits, the granting of subdivision approval, and the granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures. This ordinance shall not apply to any project or work that (a) has already received all necessary approvals, (b) received conditional approval, (c) that does not require any new or additional planning board or zoning board application or review, and (d) consists of reasonable repair or restoration necessitated by any natural disaster, Act of God, or loss covered by insurance.

**§ \_\_\_ PLANNING BOARD'S WRITTEN FINDINGS UPON WHICH § \_\_\_ IS BASED** (The relevant Planning Board Minutes of \_\_\_\_\_, which include more detailed findings, are appended to this ordinance)

By vote of \_\_\_ to \_\_\_ the Town of Conway Planning Board finds as follows:

- A. Recently, the growth in commercial development has far exceeded the growth of services and development for residents.
- B. The recent growth has had an adverse impact on infrastructure adequacy, traffic patterns and traffic safety, provision of services, workforce availability, housing, and stewardship of greenspace and the natural resources that are the heart of the Town's tourism industry and thus vital for economic survival of the Town.
- C. Additionally, due to unbalanced development, a large part of Town staff time in the Planning Department is dedicated to reviewing significant commercial plans, resulting in more administrative staff time than planning-oriented staff time.

- D. Due to the demand upon Town staff resources, staff has not had the capacity to be proactive in creating/reviewing ordinances, looking for alternative ways of solving Town problems, and updating the Master Plan.
- E. The proposed moratorium would help to free up staff planning resources to not solely review large commercial projects, but also allow them to allocate time and energy to proactive planning measures for the health, comfort, convenience, safety, welfare and prosperity of the Town and its citizens.
- F. The proposed moratorium will help the Town work to restore the work/life balance that Conway needs.
- G. As a tourism destination town, Conway needs time to alleviate pressures that are currently being exacerbated by commercial development that has been coming at a faster and faster rate in the past few years.
- H. The proposed moratorium will help to alleviate the adverse impacts referenced herein and help forestall further decline in year-round population, along with decreased workforce and decreased services.

§ \_\_\_ TERM OF THE ORDINANCE

The term of this ordinance shall be one year, from April \_\_\_, 2023 to April \_\_\_, 2024.

§ \_\_\_ LIST OF THE TYPES OF CATEGORIES OF DEVELOPMENT TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures.

NOT POSTED TO THE  
WARRANT

**ARTICLE \_\_\_ (Non-Monetary)** To see if the Town will vote to adopt an ordinance establishing a temporary Town-wide moratorium, to be in effect from April \_\_\_, 2023 to April \_\_\_, 2024, to stop the issuance of building permits for any structures that will newly be utilized for residential rentals less than thirty (30) days. The full text of the ordinance is as follows:

**CHAPTER \_\_\_ RSA 674:23 MORATORIUM ON NEW CONSTRUCTION OR USE OF A STRUCTURE FOR RESIDENTIAL RENTALS LESS THAN THIRTY (30) DAYS**

[HISTORY: Adopted by the Town of Conway April \_\_\_ 2023; Effective April \_\_\_, 2023 to April \_\_\_, 2024]

**§ \_\_\_ STATEMENT OF CIRCUMSTANCES GIVING RISE TO NEED FOR MORATORIUM**

Because the Town of Conway is facing a number of unusual circumstances, including traffic congestion, green space impacts, a critical housing shortage (due to a lack of workforce and affordable housing stock), a lack of industrial/commercial workplace industries outside hospitality/tourism, a general shortage of a workforce, resulting in many businesses needing to limit their days/hours of operation, and infrastructure impacts, the Town, in order to create a better environment for living in, working in, recreating in, and visiting our beautiful community, ordains it necessary to establish a 1-year moratorium on the issuance of building permits, the granting of subdivision approval, and the granting of site plan approval for hotels, motels, resort hotels, and commercial structures greater than or equal to 50,000 square feet, not including multifamily residential structures.

**§ \_\_\_ PLANNING BOARD'S WRITTEN FINDINGS UPON WHICH § \_\_\_ IS BASED** (The relevant Planning Board Minutes of \_\_\_\_\_, which include more detailed findings, are appended to this ordinance)

By vote of \_\_\_ to \_\_\_ the Town of Conway Planning Board finds as follows:

- A. Recently, the growth in commercial development has far exceeded the growth of services and development for residents.
- B. The recent growth has had an adverse impact on infrastructure adequacy, traffic patterns and traffic safety, provision of services, workforce availability, housing, and stewardship of greenspace and the natural resources that are the heart of the Town's tourism industry and thus vital for economic survival of the Town.
- C. Because they serve as the functional equivalent of hotels and motels, residential rentals for less than thirty (30) days, so-called short-term rentals, contribute to the adverse impact on the Town, including adverse impacts on the Town's neighborhoods and communities.
- D. Additionally, because of excessive noise, illegal parking, trash, and disorderly conduct, short-term rentals create further stress upon the Town's resources and services, including police, fire, municipal waste services, and emergency medical services.
- E. Due to unbalanced development, a large part of Town staff time in the Planning Department is dedicated to reviewing significant commercial plans, resulting in more administrative staff time than planning-oriented staff time.
- F. Staff also has to spend time addressing complaints related to short-term rentals, particularly in residential neighborhoods.

- G. Due to the demand upon Town staff resources, staff has not had the capacity to be proactive in creating/reviewing ordinances, looking for alternative ways of solving Town problems, and updating the Master Plan.
- H. The proposed moratorium would help to free up staff planning resources to not solely review large commercial projects, but also allow them to allocate time and energy to proactive planning measures for the health, comfort, convenience, safety, welfare and prosperity of the Town and its citizens.
- I. The proposed moratorium will help the Town work to restore the work/life balance that Conway needs.
- J. As a tourism destination town, Conway needs time to alleviate pressures that are currently being exacerbated by commercial development that has been coming at a faster and faster rate in the past few years.
- K. The proposed moratorium will help to alleviate the adverse impacts referenced herein and help forestall further decline in year-round population, along with decreased workforce and decreased services.

§ \_\_\_ TERM OF THE ORDINANCE

The term of this ordinance shall be one year, from April \_\_\_, 2023 to April \_\_\_, 2024.

§ \_\_\_ LIST OF THE TYPES OF CATEGORIES OF DEVELOPMENT TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to structures that will newly be utilized for residential rentals for less than thirty (30) days.

November 21, 2019

29 Champney Rd.

North Conway, NH 03860

(603) 730-5380

[tomjreed@hotmail.com](mailto:tomjreed@hotmail.com)

Mr. Thomas Holmes, Manager

Town of Conway

1634 E. Main St.

Center Conway, NH 03813

Dear sir:

Enclosed is my memo regarding the interplay of short-term rentals and Conway's zoning ordinance. Perhaps this is a clearer and more articulate description of the issue than I can explain during public comment.

Amending C. 190 to create a short-term rental use will not cure the current problems because all now-existing short term rentals will be protected as non-conforming uses until they are destroyed or abandoned. C. 190-30. I submit that the best course of action is for the Selectman to declare that all short-term rentals in the RA zone are only permitted if they are owner occupied tourist homes and that all others are unpermitted in order to negate the non-conforming use argument. Then, the ordinance could be amended so as to meet a middle ground that might satisfy all competing interests by way of compromise. For instance, and without limit:

1. either rename the section or add a subsection to refer to its regulation of STR's;
2. include a definition of STR's consistent with the sub-committee's proposal of less than 30 and 15 or more days;
3. change the capacity restraints to a number that reflects the dwelling's size;
4. similarly, impose parking requirements based upon size;
5. impose safety requirements not otherwise required such as ingress/egress emergency lighting, smoke detectors, CO detectors and the like;
6. annual septic tank pumping;
7. permitting and inspection process.

Please forward this memo to Mr. Mallia so he doesn't necessarily have to start from scratch researching the "household" issue. I suspect that he would like to revisit that issue. I suggest that if you discount my advice as simply that of a disgruntled voter, then forward it to counsel for N.H.M.A. and ask him for his opinion. I am confident that Mr. Johnston would be willing to help.

Sincerely,

Tom Reed

c: Selectmen Thibodeau and Porter and Chief Thomas Soloman



**Are STR's (leaseholds of less than month to month) a permitted use in the RA zone of Conway?**

They may be as an owner-occupied tourist home/rooming house since they serve a transient guest base. However, the occupation and operation must occur conjunctively by the owner, meaning at the same time. That is, connected to one another. There is a limit of four double-occupancy sleeping units. C. 190, p. 135. C. 190 Attachment 2:5. "Webster's New Collegiate Dictionary" 9<sup>th</sup>.

STR's are not owner occupied lodging or boarding houses because they are not a regular, non-transient type of accommodation providing meals. C. 190, p. 135.

It should be noted that hotels and motels are not a permitted use in the RA zone. C. 190 Attachment 2:3.

The only final possibility would be as a residential/dwelling unit, and they are not based upon a plain reading of the ordinance. C. 190, p. 135. The decision in Working Stiffs is of little assistance because of the difference in the language of the respective ordinances. We must thus construe our ordinance according to the "words and phrases according to common and approved usage of the language, ...and construing the ordinance as a whole." Dennis, NH Supreme Court Decides State's First Short-Term Rental Case, 30 New Hampshire Bar News 6, at p. 4 (November 20,2119).

Conway's definition of residential/dwelling unit requires that the occupants be "living as a household." C. 190 at p. 135. That phrase has a particular meaning and is essential to determining the definition's true meaning.

There is N.H. case law and statutory law on the issue that is instructive as to what the phrase means.

Our Supreme court has addressed the issue in determining what is a "household member" in the context of a sex assault prosecution. State v. Moncada, 161 N.H. 791 (2011). The Court turned to a dictionary to hold that the definition of household is "those who dwell under the same roof and compose a family; a domestic establishment; *specif*: a social unit comprised of those living together in the same dwelling place." *Id.* at 799. It went on to distinguish "occasional visitors," who are not considered members of a household. It noted that the Court had previously held that households are groups of people living in the same place who maintain a "single economic unit" and participate and contribute to its maintenance and does not include a boarder or tenant. State v. Hearns, 151 N.H. 226, 234-35 (2004).

Our Legislature has defined "household member" on two occasions in the context of Legislative Ethics (avoiding conflicts of interests). R.S.A. 14-B:1, II and 14-C:2, VI. Both statutes define members of a household as sharing a common economic interest in the expenses of daily living.

It is submitted that a "household" may not be constituted by transient individuals, even though they may be sleeping under the same roof or function as a household at an entirely different location outside of Conway. Rather, it is a group of individuals who intend to live together, as a joint economic venture for an indefinite period of time – that is without contemplated end point – that constitute a household and satisfy the definition of residence/dwelling unit.

Our zoning ordinance enumerates a variety of purposes underlying it including to lessen congestion in the streets, the promotion of health and general welfare of the population, to prevent overcrowding of land and to avoid the undue concentration of population. C. 190-3. It also notes that it is a "permissive" ordinance and that if a use is not specifically permitted (as described in the Appendix), then it is excluded and "not permitted in the zoning district." C. 190-5. That section also directs that when two or more provisions of the ordinance are at variance, then the "most restrictive, or that imposing the highest standard, shall govern." Id.

STR's do not fall within the definition of "residential/dwelling unit" because the occupants are not "living as a household." They are transient guests as contemplated in the definitions of hotel/motel, tourist home and lodging house/boardinghouse. They do not have the group intent to share the economic costs of running a home in Conway for an indefinite period of time under the same roof. These people are more akin to the occasional visitor, boarder or tenant referred to in Moncada. They do not share the common economic interest in the cost of day-to-day living at a particular location. Rather, they are simply visitors. To the extent that an argument may be made that there is an inherent conflict between the definitions of residential/dwelling unit and tourist home, it is the latter that must be satisfied or "met" by STR's because it is the more restrictive of the two. This interpretation is more consistent with the ordinance's stated purposes and goals because it helps to lessen overcrowding, undue concentration of population and street congestion, all of which promotes the general good and welfare.

STR's are only presently permitted in the R/A zone if they satisfy the requirements of "owner occupied tourist home" which means that the owner lives there at the same time as no more than eight people are visiting and staying overnight.

Tom Reed

29 Champney Rd.

North Conway, NH

Section 190-31f - Definition of Residential Dwelling Unit

"Single family" won't pass constitutional muster because of the implication that the individuals must be related.

A social unit comprised of those living together in the same dwelling place.

"household" definition: A group of people who intend to live together as a joint economic venture for an indefinite period of time. The definition excludes transient individuals, specifically those occupying a dwelling or structure for a period of less than thirty continuous days or any leasehold of less than thirty continuous days.

Strongly suggest a preamble specifying the facts that prompt the amendments.



**Town of Conway**  
**OFFICE OF THE BUILDING INSPECTOR**

**23 MAIN STREET**  
**CONWAY, NH 03813**  
**PHONE (603) 447-3811**  
**E-MAIL [buildinginspector@conwaynh.org](mailto:buildinginspector@conwaynh.org)**

**December 22, 2022**

**Jamel Torres**

**Jamel, read through the agenda for your public hearing on zoning definitions and have a couple of comments below;**

**Manufactured Home, the only part that I have concern with is the foundation.  
RSA 205-D requires all manufactured homes be placed on a concrete slab foundation with tie  
downs,**

**Modular Homes fall under RSA 205-C2 copy attached.**

**Boarding or Rooming House under NFPA 101 Life safety classify Boarding (Lodging) or Rooming  
House are building that provide sleeping for 16 or fewer persons on either transient or permanent  
basis with or without meals but without separate cooking facilities for individual occupants.**

**Duplex sounds good.**

**Multifamily Residential Dwelling sounds good.**

**Residential Dwelling sounds good.**

**Condominium sounds good.**

**Town of Conway Building Inspector**  
**David S. Pandora**

A handwritten signature in black ink, appearing to read "David S. Pandora", with a long horizontal line extending to the right.

# TITLE XVII

## HOUSING AND REDEVELOPMENT

### CHAPTER 205-D

#### MANUFACTURED HOUSING INSTALLATION STANDARDS

##### Section 205-D:1

###### **205-D:1 Definitions. –**

In this chapter:

- I. "Anchoring system" means a method of construction which when properly designed and installed will resist overturning and lateral movement of the manufactured house.
- II. "Board" means the installation standards board.
- III. "Commissioner" means the commissioner of the department of safety.
- IV. "Dealer" or "retailer" means any person engaged in the retail selling or offering for sale, brokering, or distribution of manufactured houses, primarily to a person who purchases these houses for residential use.
- V. [Repealed.]
- VI. "Federal Manufactured Housing Construction and Safety Standard" means a standard for the construction, design, and performance of a manufactured house which meets the needs of the public including the need for quality, durability, and safety which has been duly adopted by the federal government pursuant to the National Manufactured Housing Construction and Safety Standards Acts of 1974, 42 United States Code, section 5401, et seq.
- VII. "Installation" means the placement of a manufactured house on a permanent or temporary system. This term includes, but is not limited to, supporting, restraining, blocking, leveling, securing, anchoring, and connection of plumbing, heating, cooling, and electrical systems and the multiple or expandable sections of the house. Installation shall include site preparation.
- VIII. "Installation standards" means reasonable specifications for the installation of a manufactured house, at the place of occupancy, to ensure proper siting, the joining of all sections of the house, and the installation of stabilization, support, or anchoring systems.
- IX. "Installer" means any person who performs the installation of manufactured houses as prescribed under this chapter.
- X. "Local enforcement agency" means the building inspector or other local government official with authority to issue permits or enforce building codes.
- XI. "Manufactured housing" means any structure, transportable in one or more sections, which in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include campers or recreation vehicles as defined in RSA 216-I:1 or RSA 259:84-a; presite built housing as defined in RSA 674:31-a; or modular buildings as defined in RSA 205-C:1, XI.
- XII. "Manufacturer" means any person engaged in manufacturing or assembling manufactured housing.
- XIII. "Site" means a designated lot or parcel of land designed for the accommodation of a manufactured house.

**Source.** 2004, 191:1, eff. July 1, 2004. 2011, 224:100, I, eff. July 1, 2011.

# TITLE XVII

## HOUSING AND REDEVELOPMENT

### CHAPTER 205-C

#### MODULAR BUILDING STANDARDS

##### Section 205-C:2

###### **205-C:2 Modular Building Standard. –**

I. All modular buildings and building components ordered on or after the date one year after the effective date of RSA 155-A:2 shall comply with the modular building code and the state fire code.

II. All modular buildings and building components bearing a label of certification pursuant to the requirements of this chapter shall be deemed by local enforcement agencies as meeting the modular building code, however, such certification shall not be deemed to preempt enforcement of any state or local standards governing installation or work performed on the building site, including but not limited to site grading, foundations, driveways, on-site water and sewer systems or connections to off-site systems, and electrical line connections to the power source.

III. Nothing in this chapter shall be construed as amending, repealing or superseding any local law, ordinance, code or regulation, and all modular buildings and building components shall comply with all applicable state or local building requirements that exceed the modular building code, in addition to any land use restrictions including but not limited to subdivision regulations, use and location restrictions, density and dimensional limitations, or historic district laws or ordinances.

**Source.** 1990, 169:2. 1997, 44:5. 2002, 8:6, eff. Sept. 14, 2002; 270:3, eff. Sept. 14, 2002 at 12:01 a.m.

**§190-31. – Definition of Residential Dwelling Unit** – The purpose of this amendment is to add a definition of Residential Dwelling Unit as follows: “A single unit providing a room or group of rooms located within a structure and forming a single habitable unit with facilities which are used, or are intended to be used, for living, sleeping, cooking and eating for the exclusive use of a ~~single family maintaining a household~~ **for one or more persons living as a household.**”.

Received on 12/12/22

The majority of the Town of Conway is zoned Residential/Agricultural. Within these areas are numerous neighborhoods where families live and expect to live in peace. These zones also abut Village Residential zones where, again, families expect to be able to enjoy their property in peace.

Outdoor kennels are detrimental to property values and prevent peaceful enjoyment of residents' properties due to continued barking of numerous canines.

To this end: We, the undersigned registered voters in the Town of Conway, NH wish to have the below petitioned Warrant Article inserted onto the Town of Conway 2023 warrant.

**By Petition:** To see if the Town will vote to adopt these amendments to Chapter 190 (Zoning) of the Municipal Code of Conway to amend 190-13 K (11) by adding (e) **The values of surrounding properties are not diminished.** (f) **There will be no nuisance to abutters and/or neighbors preventing the peaceful enjoyment of their property and home.** And (g) **Additional conditions may be attached to this Special Exception by the Board of Adjustment consistent with the intent and purpose of this Ordinance to protect the health, safety, and general welfare of the Town's residents.**

Name	Physical Address	Signature
1 Amy Snow	189 East Main St	
2 Bruno Velhies	118 East Main St	
3 Stephen Solomon	45 Bentler Dr	
4 Carol Dinepro	49 Pollard St	
5 Lori Inell (Velhies)	20 Quint St	
6 Jill MacMillan	39 Pollard St.	
7 Nancy Kildebrand	99E. Main St.	
8 Theresa Davison	96 E. Main St.	
9 Mark Thompson	199 E main St.	Mark Thompson
10 Kathryn Thompson	199 E Main St.	Kathryn Thompson
11 Cherie Norton	2936 East Conway Rd	Cherie Norton
12	2939 East Conway Rd	Barbara O'Rourke



E. Structure and building height.

1. Structure height shall not exceed 45 55 feet for any structure, except wind energy systems permitted in accordance with Chapter 179 of the Conway Code. For properties located in the North Conway area north of North Conway Village, structure height shall not exceed 40 feet.
2. Building height shall not exceed 35 45 feet. For properties located in the North Conway area north of North Conway Village, building height shall not exceed 30 feet.

Denise Leighton, Denise Leighton 221-12A Webster Rd  
Signature, Printed Name & Address Ctr Conway, 03813

Karen C Umberger KAREN UMBERGER 136 Birch Bend  
Signature, Printed Name & Address Keosauque, NH 03847

James S. Umberger JAMES S. UMBERGER 136 Birch Bend  
Signature, Printed Name & Address Keosauque, NH 03847

Allison Tulip ALLISON TULIP 10 Cross Street  
Signature, Printed Name & Address N. Conway, NH 03860

\_\_\_\_\_  
Signature, Printed Name & Address

**Petitioned Warrant Article  
for the Town of Conway, New Hampshire**

By signing below, I confirm that I am a registered voter of the Town of Conway, New Hampshire, and I join in asking the Select Board to place the following question on the Town Warrant for a vote at the 2023 Conway Annual Meeting.

**To see if the Town will change the definition of the term “sign” in Section 190:31 of the Conway Zoning Ordinance to exempt from size and other municipal regulation (a) murals, paintings and works of art which do not expressly advertise products or services and (b) “signs” that are not visible from a public roadway. The definition would be changed as follows (with ~~strikethrough~~ identifying a deletion and underline identifying an addition):**

Sign: Any device, fixture, placard, ~~mural, painting, work of art,~~ structure or attachment thereto clearly visible and readable from a public road that uses color, form, graphic, illumination, symbol, or writing and whose primary purpose is to advertise, announce the purpose of, or identify a business or commercial entity, enterprise or product. ~~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.

1. Name: Robert L. Reilly Signature: Robert L. Reilly
2. Name: Jamie Wood Signature: Jamie Wood
3. Name: Deborah Gorman Signature: Deborah Gorman
4. Name: Robert Casseau Signature: Robert Casseau
5. Name: Dawn Eggers Signature: Dawn Eggers
6. Name: Susan DeLaney Signature: Susan DeLaney
7. Name: Steve Fawcett Signature: Steve Fawcett
8. Name: Walter A. [unclear] Signature: Walter A. [unclear]
9. Name: Mareen E. Lynch Signature: Mareen E. Lynch

1/26/23

To: Planning Board members,

It is my opinion that the warrant article petitioned by Settlers Green could be very difficult to enforce should it pass in April as it is written. I personally do not believe this warrant article will resolve the issues that some residents believe exists with The Town Of Conway's current definition of sign. Instead I believe it could add another category of interpretation based on the "Primary Purpose" and with no way to regulate based on traditional methods of size, type of sign, location e.g. roof sign, wall sign etc. the town staff would have no way to regulate any of it. How do you determine the "Primary Purpose" without looking at the content? As you may or may not know content based enforcement has been ruled by the U.S. Supreme Court to be a violation of the First Amendment. I respectfully request that you carefully consider your decision to support or not support this warrant article.

Sincerely,

Jeremy Gibbs  
Code Enforcement Officer