

CONWAY PLANNING BOARD

MINUTES – WORK SESSION

DECEMBER 8, 2022

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A meeting of the Conway Planning Board was held on Thursday, December 8, 2022 beginning at 6:00 pm at the Conway Town Office, 23 Main Street, Conway, NH. Those present were: Chair, Ben Colbath; Selectmen’s Representative, Steven Porter; Vice Chair, Ailie Byers; Secretary, Erik Corbett; Eliza Grant; Bill Barbin; Mark Hounsell; and Planning Director, Jamel Torres. Alternate Ted Phillips was in attendance. Paul DegliAngeli, Town Engineer; and Jason Dennis, Town Counsel, of Hastings Law Firm were in attendance.

REVIEW OF DRAFT MORATORIUM ORDINANCE AND WARRANT ARTICLE

Mr. Torres stated the first warrant article proposed is a town-wide moratorium 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 50,000 square feet, not including multi-family residential structures.

Mr. Torres stated the ordinance includes a statement of circumstances, Planning Board’s written finding upon which the moratorium is based, term of the ordinance and a list of the type of developments which this ordinance applies to.

Mr. Torres stated he has had questions regarding existing hotels and whether they would be subject to the moratorium if it were to pass. Mr. Torres asked if someone wanted to rehab with the same amount of rooms or rebuild with the same amount of rooms if this would apply to those types of projects. Mr. Dennis stated under the exact language of stopping the issuance of building permits, arguably it would; if they needed a building permit this stops any issuance of a building permit.

Mr. Dennis stated if the Board wants to allow people to do some refurbishment, remodel a room or two versus tear the whole thing down and rebuild from scratch, think that could be made clear, it would just have to be different language. Mr. Dennis stated as it stands if anyone needs a building permit this would stop that.

After a brief discussion, Mr. Dennis stated language could be added so that it doesn’t apply to any building permits for which no Planning Board, Zoning Board or any review of any kind is necessary. The Board was concerned how the moratorium would affect the Red Jacket and the reconstruction after the fire; it was determined if it was reconstructed on the same footprint with the same or less amount of rooms they would fall under the proposed language.

After a brief discussion, Mr. Dennis stated language could be added that it does not apply to any approvals that have already been granted, or to any applications that were applied for before a certain date, for example before the moratorium was in effect.

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Mr. Colbath asked for public comment; Shawn Bergeron stated the Ridgeline project has a conditional approval, and they are moving forward with finalizing that approval; he doesn't want to see a moratorium put a delay on that project. Mr. Dennis stated the language he proposed that for which no application has been filed that may be too much, and could be modified to which a conditional approval has been granted.

Mr. Torres stated he has two additional provisions; an act of God and rehabilitation of existing business that requires no Planning Board or ZBA review. The Board agreed.

Mr. Porter made a motion, seconded by Ms. Byers, to post the proposed warrant article for a moratorium 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, to a public hearing on January 26, 2023 with additional language to be provided by Mr. Dennis. Mr. Colbath asked for Board comment; there was none. **Motion carried unanimously.**

Mr. Torres stated it was proposed by staff to look into a similar moratorium for short-term rentals. Mr. Torres stated it would be a proposed warrant article for a moratorium stopping building permits for any structures that will be newly utilized for residential rentals for less than 30-days.

Mr. DegliAngeli stated he would like the Board to consider not just issuing a building permit, but a moratorium on short-term rentals. Mr. DegliAngeli stated the Board of Selectmen have supported the budget to hire extra people to begin residential building inspection for the purpose of regulating short-term rentals. Mr. DegliAngeli stated this would be saying anyone who existed short-term rented as of a certain date and is registered with the Town of Conway for same may continue. Mr. DegliAngeli stated everyone else would have to wait until the temporary moratorium is done.

Mr. Barbin stated he is concerned with property values, and backdooring that whole question on what we are waiting for the Courts to resolve. Mr. DegliAngeli stated this has nothing to do with the court case; what the Courts are trying to resolve is whether or not short-term rentals are permissible in residential areas. Mr. DegliAngeli stated this is about not losing more stock for housing.

Ms. Grant stated she thinks this is really smart; we agree on a moratorium on hotels/motels, so we do need to think of the unintended consequences, and maybe an explosion of constructing short-term rentals. Mr. Hounsell stated the Town needs to get caught up with what is happening with the market, and the best thing is to send it to a public hearing to have that discussion.

Mr. Dennis stated he agrees with Mr. DegliAngeli, but the reason the language is currently what it is it derives from a statute which says "Upon recommendation of the planning board, the local legislative body may adopt or amend an ordinance establishing a moratorium or limitation on the issuance of building permits or the granting of subdivision or site plan approval for a definite term."

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Mr. Dennis stated that is what he can draft based on that statute. Mr. Dennis stated he would be happy to look at amending it, how that would play out would be a bit of a question. Mr. Dennis stated if the Board has any interest in moving forward a motion might need to be entertained to go forward with this to be put on the January agenda, but also if you want a draft that encompasses the ideas that the Town Engineer has referenced then the Board should make that motion to and if it passes he can take the time to do that and have two alternative versions to discuss in January.

Mr. Porter made a motion, seconded by Mr. Corbett, on what Mr. Dennis has just explained to us. Some board members asked for clarification of the motion, Ms. Byers stated the motion is to get language like this and language with what Paul said so we can look at the two different versions and then decide which one we want to move forward with. Mr. Dennis agreed. Mr. Colbath stated it is to bring two drafts to the January 26th meeting. Mr. Torres stated one is to limit building permits and one to limit conversions. Mr. DegliAngeli stated we have to see if it is permissible in the state. **Motion carried unanimously.**

Meeting adjourned at 6:58 pm.

Respectfully Submitted,

Holly L. Whitelaw
Planning Assistant

Planning Staff Report for Planning Board Work Session

To: Planning Board
Prepared By: Jamel Torres, Planning Director
Date: 12/1/22

Staff has prepared this report to assist the Planning Board during their work session on December 8, 2022. As requested, staff and the Town's attorney have prepared the following documents (provided under a separate cover) –

- Proposed warrant article for a Town-wide moratorium, 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 50,000 square feet, not including multi-family residential structures.
- Proposed moratorium ordinance, including the following sections --
 - Statement of Circumstances giving rise to need for moratorium.
 - Planning Board's written findings upon which the proposed moratorium ordinance is based.
 - Term of the ordinance.
 - List of the types of categories of development which this ordinance applies.

Additionally, it was recommended by staff that the Planning Board consider another proposed moratorium warrant article and ordinance related to short-term rentals in Town. As such, staff and the Town's attorney have prepared the following documents (provided under a separate cover) –

- Proposed warrant article for a Town-wide moratorium, stopping the issuance of building permits for any structures that will newly be utilized for residential rentals less than thirty (30) days.
- Proposed moratorium ordinance, including the following sections --
 - Statement of Circumstances giving rise to need for moratorium.
 - Planning Board's written findings upon which the proposed moratorium ordinance is based.
 - Term of the ordinance.
 - List of the types of categories of development which this ordinance applies.

The Planning Board should be prepared to discuss the proposed moratorium warrant articles and ordinances above referenced above (provided under a separate cover). If the Board is comfortable with the proposed language, then a public hearing should be set for the January 26, 2023 meeting.

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. 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.

§ ___ 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.

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.
- 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.