

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 16, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the majority of the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice Chair; Mark Connors Secretary Pro-Temp; Brian Chirichiello, Town Council Liaison; Randy Chase*, Administrative Representative, David Clapp, Member; Joe Tremper, Alternate

Absent: David Nelson, James Hultgren, David Granese, Andy Myers

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning & Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. He provided the appropriate links for members of the public to join the meeting virtually via a MAC, PC, or by phone. He then introduced the staff and Board members.

Mr. Tremper was seated for Mr. Granese.

Escrow

None.

Minutes

The Board reviewed the minutes of the March 02, 2022, meeting.

Motion by MacEachern, seconded by Connors to approve the minutes of the March 02, 2022, meeting as written.

MacEachern, Connors, Chase, and O'Connor voted in favor; Clapp, Chirichiello, and Tremper abstained, and the motion passed.

The Board reviewed the minutes of the March 12, 2022, site walk.

Motion by MacEachern, seconded by Tremper to approve the minutes of the March 12, 2022, site walk as written.

MacEachern, Tremper, Clapp, and O'Connor voted in favor; Connors, Chase, and Chirichiello abstained, and the motion passed.

Mr. Connors noted he visited the site separately.

Correspondence

Mr. Connors advised the Board has received a copy of the most recent edition of *Town and City*.

Other Business

Amend Policy & Procedures – 2nd Reading - Developments of Regional Impact

Mr. Sioras advised this is second reading of the proposed amendments to the Board's Policy & Procedures. At the last meeting, the Board agreed to the proposed wording.

Motion by MacEachern, seconded by Connors to accept the revised Policy & Procedures for the Town of Derry Planning Board, relative to Regional Impact as discussed on March 02, 2022, and March 16, 2022, and to make the changes effective immediately.

Tremper, Chirichiello, Chase, MacEachern, Connors, Clapp, and O'Connor voted in favor and the motion passed.

Planning Director Updates

Mr. Sioras advised Planning Board members terms will begin on April 01. The first meeting in April will be the organizational meeting of the Board at which the Board will elect its officers.

Chairman Updates

Mr. O'Connor advised he would be attending a webinar tomorrow with regard to Regional Impact. There may be a few items changing in the RSA and he will keep the Board informed.

Public Hearing

To review a proposal for trimming and removal of trees on English Range and Stark Roads by Eversource.

Mr. Sioras provided the following staff report. Each year, Eversource will trim trees statewide under powerlines. Stark Road and English Range Road are Scenic Roads and state law indicates because the roads are designated as scenic, the Planning Board needs to review the changes to the trees. Eversource has provided a list of the trees they plan to remove or trim along the two roadways. Most of them are noted as dead, dying, or have rot.

Allison Marcotte, Regional Arborist for Eversource Energy, presented. Ms. Marcotte advised there are 24 trees along the scenic roads that are within the right of way. There are 16 trees located on private property. They have spoken with all of the landowners and abutters to the

right of way where the removal/trimming will take place, and all are okay with the proposal. Every four years, Eversource trims around the circuits and Stark Road is on the rotation this year. English Range had a few outages last year, so Eversource will try to upgrade the reliability in that area.

Motion by MacEachern, seconded by Connors to open the public hearing. The motion passed in favor, and the floor was open to the public.

There was no public comment.

Motion by MacEachern, seconded by Connors to close the public hearing. The motion passed in favor and review of the proposal returned to the Board.

Mr. O'Connor noted most the trees on the list appeared to be in bad shape; the work will reduce the number of power outages. Mr. Connors confirmed both the private landowners and abutters along the right of way had been contacted and were in favor. Ms. Marcotte advised the trimming taking place on the scenic roads is to create 8 feet of clearance to the side, 15 feet above and 10 feet below.

Motion by MacEachern, seconded by Chirichiello to approve, pursuant to RSA 231:158, the trimming and removal of trees on English Range and Stark Roads by Eversource Energy, per the proposed work area as outlined in the correspondence provided by Eversource, received by the Town on February 17, 2022.

Tremper, Chirichiello, Chase, MacEachern, Connors, Clapp, and O'Connor voted in favor and the motion passed.

Appolo Vineyards
Michael A. Appolo, III
PID 06046-004, 49 Lawrence Road
Review, Site Plan
Expansion of existing agritourism business
(Continued from March 02, 2022)

Mr. O'Connor stated he wanted to address a few items prior to opening the public hearing. The Board members received packets of information from some of the abutters and he wanted to address the information in them. Some of the information provided was good, but there was a lot of information that was outdated.

Drones are regulated by the FAA. There is only one law in New Hampshire that relates to drones, and it has to do with Fish & Game. The Concord Monitor article had some accurate information but contained inaccurate statements with regard to farming having an ability to bypass local approval. The Upton & Hatfield information did not have a date on it, but Mr. O'Connor is aware Attorney Mayer prepared it for a Planning workshop in 2016 based on legislation approved in 2015; some of that legislation has been amended. With regard to winery

licenses, there are other agencies that have oversight which include the Department of Agriculture, the Liquor Commission, Public Health and DES. Each of those agencies has its own set of rules and regulations to be followed; some are mandated by Administrative Rules. RSA 178:8 speaks to the ability to have food trucks on site. Food may be prepared by a third party vendor. RSA 175:1 speaks to the different types of wine that may be produced. RSA 176:12 regulates NH Made products, which includes wine which can be grown, made, or packaged in NH. Many wineries bring in juice from other locations to be used in the production of wine. It is permissible to have more bottled product on site than what can be produced from the raw material on site. RSA 674:32-d states, "Agritourism as defined in RSA 31:32-a, shall not be prohibited on any property where the primary use is for agriculture, subject to RSA 674:32-b, II." RSA 21:32-a covers key points. RSA 21:32-a, I covers the definition of a farm and the structures allowed. RSA 21:32-a, II goes further into the definitions of agriculture and farming. RSA 21:32-a, II (11) adds viticulture. RSA 21:32-a, II (b) adds practice or activities on the farm ancillary to the primary use. With regard to commercial uses, he believes this use is commerce. RSA 21:32-a, II, (b) (5) specifically states "For the purposes of this section marketing shall include agritourism, which means attracting visitors to a farm to attend events or activities that are accessory uses to the primary farm operation, including, but not limited to, being provided a meal, making overnight stays, enjoyment of the farm environment, education which shall be instruction or learning about the farm's operations, or active involvement in the activities of the farm."

Mr. O'Connor advised the Board members received information which shows how the laws regarding agriculture got to where they are today. What was developed from HB 663 in 2019 is the most current RSA. Under the site plan regulations, the Planning Board can control hours of operation, lighting, parking, music, and items relating to health and safety.

Mr. Sioras advised the Board held a site walk this past Saturday; it was good to see the neighbors attend. Planning staff put together information and the Board has its own copy with regard to number of people proposed onsite. A copy was provided to the applicant. In general, staff supports the expansion of the business and wants to see the business grow. Given the concerns over the parking capacity, staff reached out to NHMA for a legal opinion. Attorney Stephen Buckley agreed this use fell under the definition of an agricultural use and under that, the applicant can hold events on the property. The Planning Board can put conditions on that, for example, limiting the hours for outdoor music, lighting, parking, signage, and other items that fall traditionally under Planning Board authority. Based on the visit Saturday, the maximum seating capacity needs to be determined. What will that number be? The Assembly Permit approved in September of 2021, prior to the expansion plans, allows 45 people outside on the patio and 30 people inside. The information provided in the application is not consistent. One sheet shows a capacity of 87, and other 75 (patrons, not including employees). The floor plan shows a building occupancy of 80; the code review indicates a total occupancy indoor and outdoor at 140. These numbers need to be considered with regard to parking density. Staff feels the parking calculation is more realistic at 2 persons per car rather than the 3 persons per car as noted on the site plan. These numbers need to be clarified. Based on a maximum capacity of 140 persons, 70 spaces would be required. The other issue to be addressed is where will the overflow parking go? There is no prohibition to parking on a public street if the street has not been posted "No Parking". Staff supports the overall site plan. Public parking falls under the

purview of the Highway Safety Committee who makes a recommendation to Town Council. If Duck Pond and/or Christopher Lane were ever posted No Parking, the residents on those streets would not be able to park on the street. The Board can put conditions on the plan limiting the nighttime hours, lighting and other things that will impact the neighbors.

Mr. O'Connor stated during the site walk, he asked Mr. Appolo about the few parking spots and vines that encroach on the neighbor's land. Mr. Appolo had advised he has a lease arrangement which is in place for 20 years; that document is recorded, and it goes with the property. [A copy of the agreement was placed in the file.] Mr. Connors asked if there were any preclusions in the lease or could Mr. Appolo do as he wished with that area. Mr. O'Connor said he glanced at the document but did not see any. Mr. Sioras reiterated the applicant received a copy of the comments compiled by staff today.

Michael Appolo, applicant, Earl Sanford, Engineer on the project, and David Ely, Architect, presented. Mr. Appolo noted he lives at the farm and would prefer to not be open late at night. He stated some of the numbers prepared and presented by Mr. Sanford and Mr. Ely are based on the sketch versus load and occupancy, which is why all of the numbers do not match. He has a general statement to read prior to the public hearing.

Mr. Sanford spoke to parking and the number of patrons. At the first meeting, he believed they made it clear the intent was to have enough onsite parking for all of the patrons. Originally, they had 81 as the maximum. When they realigned the entrance, it opened a few more spots, which brought the number up to 87. They have discussed the 3:1 parking ratio in the regulation. He is not sure how staff dropped that to 2:1 when the regulation states it should be 3:1. The septic number did not need to be updated for the 6 additional people in the two extra parking spaces. The total volume for effluent was based in 87 patrons and he felt there may be a typo on the plan sheet. The intent has always been to have all the parking on site. This provides for 87 patrons and 7 staff, for a total of 94. They are committed to live with the total capacity of 94 people and will abide by that. That would be an acceptable condition on the plan. The 140 person number is based on a fire code review; they could have 40 people outside but not have 40 outside with 80 inside. They want all guests to be on site at the 3:1 parking ratio. They have been up front about that. They will revise the plan to correct the typos. 94 people will still be the maximum number. It is possible to have 200 people outside, but that does not mean they would have that many. This is the first time they are seeing the 140 number; they do not want to accommodate that many on site. Based on the separate uses, they are using a 3:1 ratio for the parking calculation. The entrance is currently shaped like a 'Y'. With the new configuration, they will have gained 2 spaces. The same ratio was used for LaBelle in Amherst when they calculated their septic load, and it was approved by the State. They don't want to push this plan out to another meeting just because of parking. They did not want 140 patrons on site at any time and have not requested that number.

David Ely stated there have been many numbers mentioned this evening with regard to the occupant load. He had provided two sets of numbers. The first set are the practical ones based on seating capacity and employees. For the other numbers, they utilized the 2015 International Building Code for the uses. This is broken down into assembly areas, mercantile areas, the business area and factory (wine production) area. There are 60 exterior seats, 21 interior seats

(total 81 seats), with 9 employees for a total of 90 people. Based on the Building Code with the combination of all uses, that is a total of 95 for an occupancy load in all the areas. There is some repetition between areas because some will move from one area to another, and the business and facility numbers are combined. There is a discrepancy between the number of seats, the employees, and the occupancy load because of the Building Code. The plan shows an occupancy load of 90 occupants for the building and patio.

Mr. Appolo wanted to clarify the existing interior space for the tasting room has an occupancy permit for 30; that number moves to the new space. This is not 30 additional. At the most, the maximum number of employees in the winery is 4; he does not see that number increasing. The Building Code says he could have 9 based on the amount of space. He would prefer to defer the rest of his statements until after the public hearing concludes.

Motion by MacEachern, seconded by Chirichiello to open the public hearing. The motion passed with all in favor and the floor was open to the public.

Mr. O'Connor advised the comment period would be timed and limited to three minutes. [Note: the automatic timer malfunctioned, and time was kept by the Clerk.] Depending on the number of statements, Mr. O'Connor stated he reserved the right to request speakers to move on if the comments were redundant.

Richard Burnes, 42 Lawrence Road, stated he lives across the street. His major concern is parking on Lawrence Road. In front of his home there have been 30 accidents, mostly involving his rock wall. It would ruin his life to see cars parked on the road. They don't belong there. This is a small neighborhood. Big farms can do good things and they can do bad things to small homes and properties. Parking is his biggest concern. He would like to see no parking on either side of the street. Will this winery be used for tasting only events? Will the amount of alcohol consumed be restricted? He does not want to see a drinking establishment in the neighborhood. The farm and winery is not a problem and has not been. Mr. Burnes stated he has hosted tastings there and no one got out of hand; there have been 30-40 people there at one time. It bothers him that with all of the available land on the property, there appears to be no available parking. He noted most of the product used to create the wine is purchased elsewhere. Mr. O'Connor advised the Board cannot put up "No Parking" signs. That request has to be made by the residents to the Highway Safety Committee. Mr. Burnes stated if noise becomes a problem, he will complain. It was noted the Board cannot comment one way or the other with regard to supporting No Parking on the public road.

Mark Guittarr, 39 Lawrence Road, lives across Duck Pond Road. He wanted to know how many of the Board members had been to Appolo Vineyards on a social basis. Several Board members noted they have frequented this and other Derry businesses. Mr. Guittarr feels there are more than a few Board members who have a conflict of interest as they frequent the winery. He feels those Board members have a responsibility to recuse themselves from voting on the application. He believes this project will affect the quality of life for the neighborhood because of the increase in traffic and the noise. He wants to be able to enjoy his property without the nuisance, noise and abundance of traffic on the weekends. The residents like to enjoy the neighborhood. The increase in traffic flow and additional parking creates a hazard. This needs to stop. Event

facilities such as LaBelle Winery and Birch Wood started small. He believes those businesses started in the home and then when they grew too large, expanded into larger venues. He believes this project will diminish his quality of life. With regard to zoning, this is a residential neighborhood. Farms and agricultural rules have been discussed. He would like to have the overflow parking addressed. He would like the Board to state the limit of parking on the roads and asks the Board to consider this. He would like the Board to consider the needs and concerns of the neighborhood as it makes its decision.

Tamara Lampes, 36 Lawrence Road, stated she attended the site walk and has previously addressed the Board. She understands Mr. Appolo wants to grow his business. He can do that. He has stated the weather impacts him; she suggested he build a gazebo for people to gather in during inclement weather. She believes they have been good and tolerant neighbors. If his property became overcrowded on the weekends with extra traffic and people, they did not complain. She wishes he was happy with what he has; it is a lot. She hopes the Board is biased because it is not fair to the other people in the neighborhood who pay taxes and enjoy the neighborhood.

Joe Vogelsang, 13 Emerald Drive, stated he is a patron of Appolo Winery. He believes Mr. Appolo has made an effort to grow his business with as little disruption as possible. During the six years he has been in business, changes have occurred with regard to parking and people have made complaints about what they feel is not to their liking. The applicant has an agritourism business. Mr. Appolo has broken no laws and is making an effort to alleviate the parking on public streets as much as he can. It has been said there have been as many as 50 cars on the public road; Mr. Vogelsang is confident the expansion will accommodate those concerns. His unofficial count has been around 30 cars. He does not believe Mr. Appolo's effort to expand his business during the late fall/winter will exceed his onsite parking. This type of business is agricultural which is well defined in State statute and his business falls within the definition. He feels the neighbors should have approached Mr. Appolo to find common ground. He stated not everything that happens in a neighborhood is to everyone's liking. He has noise in his neighborhood from traffic passing on the ByPass and now has increased traffic as people use his road to avoid the new traffic light that was installed. The community and region is growing and he would rather see a business expand and increase the tax revenue than to have his taxes increased.

Ronald and Laura Desjardins, 2 Christopher Lane, spoke. Mr. Desjardins stated no one has addressed his concern about water, specifically the pond on his property. Will run off cause a problem? Will additional people affect the water in the area? Who does he call when the pond on his property either dries up or overflows? Who does he call when cars park on the road? With regard to agritourism, if people pay to hear music, is it a music venue? When is a stage added? When does this use become something other than a winery? Rules and guidelines need to be set. The Board members don't live in this neighborhood and see the parties three days a week during the summer. What are the limits and who does he call? He has spoken with the Police and Fire Departments and received different answers. This is not a low impact use. Mr. Appolo must know he impacts the neighborhood. One time a Fire truck could not make it down the street. What do the neighbors do? He would like the Board to address the water issue. The pond on his property could overflow. The proposed drainage improvements may take some

water away from the existing pond. The well will now accommodate 90 people, three days a week. This is an unknown impact that can severely impact the neighborhood.

Daniel Berube gave an address of 36 Lawrence Road. He stated on the plan, there is an existing well house shown within 100 feet of a handicap parking space. He noted if a well is to be used for 25 or more people year round, it becomes a community well. There may be an issue created for the well as the handicap spaces located nearby will need to be salted during the winter months. What is the amount of oil and coolants that will leach into the ground? The well may need to be tested for contaminants.

There was no further public comment.

Motion by MacEachern, seconded by Connors to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Mr. Sioras appreciated the clarification of the total number of people on site. He would also like to discuss the 3 person per car ratio. In the real world, will three people per car be realistic? His gut says it will be more like 2 people per vehicle. Mr. Appolo stated his experience indicates three people per vehicle is realistic; people car pool, the tables seat 6, and people like designated drivers.

Mr. Sanford stated the decorative dug well located to the front of the property is for irrigation purposes only. The drinking well is drilled and shown on the plan behind the home. The decorative well is not being used for irrigation right now, but that is the only thing it would ever be used for. It is a nice, visual feature so they would like to retain it and keep it as a wishing well.

With regard to drainage, Mr. Sanford stated he performed a full hydrological study which includes rain gardens and a detention basin to mitigate the increase in impervious area. There will be no increase in runoff from the increased impervious area; the town has the reports. He noted the neighbors had been offered the opportunity to have all of this explained after the site walk and no one took them up on the offer. He is hearing that this use might blossom to 100 times what it is now. The capacity is increasing from 75 to 94; that is a 16% increase. The big difference is that they will have on site parking to get cars off the street and negate that parking nuisance. That is the goal of the plan. He agrees parking on the street is not ideal for the neighborhood.

Mr. Appolo commented there are two other issues to be discussed: the reinforced grass parking area and the paved apron for the entrance and exit at Duck Pond. The outdoor business was an oasis for people, especially during COVID. It was a good, safe place for people to gather. He wants to expand his outdoor and seasonal capacity. The Master Plan cites a goal of expanding and protecting local farms. He believes his use brings more people to Derry than the Robert Frost Farm. They recommend restaurants and other businesses to their patrons. His business was mentioned as a NH Small Business COVID success story and is featured in the book *Drink the Northeast*, by Carlo DeVito. The letters received from the abutters are insulting and an exaggeration. The neighbors claim the State and licensing professionals are wrong and have

made errors in their calculations. He repeatedly asked the neighbors to address any issues with him – including during the site walk - and they do not. His business is one of the most regulated and he reports to many agencies. He paid \$11,000 last year in alcohol and meals tax which lowers the property taxes in this neighborhood. Under RSA 21:34, he is required to utilize at least 35% of the product produced, not grown, on the farm. 100% of his wine is produced on the farm. Produced means ready to market. If the law specified “grown” most maple sugar shacks would not be in business. There are bands in the afternoon, but the music is at a conversation level. His business features private parties which do not occur three times per weekend. Music always ends before 10 PM. At one time he is aware there were three police cars on Duck Pond Road and the report stated no noise was found to be present. The Kisiel family have rock bands occasionally on their porch; perhaps that is the music one neighbor heard. There are fireworks at 2 a.m. and racing cars in the neighborhood. His building was sized to match the parking and he has done everything by the book and in full view. He is playing by the rules. He would not like to see the site plan over-engineered and limited so that people can’t exit to the south. That will not decrease the parking on Duck Pond. People want options and if they don’t have any, they will park on the street. Mr. Sanford and Mr. L’Heureux have spent a lot of time discussing the engineering of the site plan. Mr. Appolo admitted he is not really in favor of the reinforced mesh and will fix any ruts that occur in the grass. It is in his best interest to do so. 72% of his business occurs between July and December. This is not a day care or shopping center use. Many marketing events bring people to the winery for the first time and then they come back. Most days, the total number of people on site is below 35, including weddings. This is not a rowdy use. In the context of the space, if someone wants a larger group, he refers them to other venues. Shorter hours will keep more people on site rather than having them come and go as they do now. He is typically open on Friday between 3 and 8 PM; Saturday and Sunday between 11 and 5 PM. During the Two Hour Tours, more people come to the vineyard. This is for a popular dating website. Women tend to come two in a car and the men, individually. Typically, there are under 40 people who come for these tastings. He closes the other portions of the farm while these particular guests are there. He would like to see some resolution tonight and asked the Board to please approve the site plan, with the exclusion of the mesh reinforcement.

Mr. L’Heureux said he would like to go back to when the project was first discussed. His perception of the project was that it was strictly wine tasting as an assembly establishment. He only learned of the other types of assembly at the public hearing. That piqued his attention with regard to the change in the parking ratio and the number of cars. A use in the entertainment realm usually has a parking ratio of 2:1 rather than the 3:1 ratio. That number needs to be vetted by the Board. He does not believe it has been fully vetted yet. He sees issues based on the dynamic of the site which constricts the expansion of parking. The site needs to support its own use and not spill into the roadway. That was made clear when the Board looked at the Siragusa plan and the LaBelle plan; those applicants paved the parking lots and met the regulations. That is important from the perspective of safety and stormwater management. He believes the Board should adhere to the parking regulations. Trucks crossing the grass to clear the porta potties once a month, are not the same as cars turning in and out of spaces on grass daily or hourly. Once the grass is torn open, it becomes an erosion issue. He agrees the netting is not a long term solution. There needs to be a permanent, long term solution in order for the site to support itself and be a success. In the current Land Development Control Regulations, the parking calculations for Churches and other Places of Assembly are 1 space for every 3 seats; cocktail

lounges or bars/nightclubs are 1 space for every 2 seats. Then there are the calculations based on the number of square feet for the facility, which was used for the Siragusa plan.

Mr. O'Connor noted the applicant provided an extensive stormwater report. Mr. L'Heureux stated the site won't sustain itself with regard to stormwater on grass that is broken.

Mr. Connors acknowledged the frustration with the agricultural aspect of the plan. The State handed this to the towns and he agrees the definition is very broad, but the town has no purview over that. Any changes to the RSA need to be made at the State level. With regard to recusals, Board members support local businesses, and they can't recuse themselves from hearings involving those businesses or they would never be able to vote on anything. He understands the application is going from 82 people (30 in/45 out/7 employees) to 94 which is an increase of about 12 people. The major concern is parking on the street; he can attest to that. He can acknowledge when cars are parked on both sides of Duck Pond, the access is tight. Planning Board does not control that. He suggested having parking on one side; perhaps there can be a sign that states "No Winery Parking" but that needs to be discussed with Highway Safety. The business has been operating there for a few years. The Town staff is good, and he feels the Board should put faith in the staff that they know what they are doing and that they have vetted the plan. If the pond has something in it that it should not, that would be a call to NH DES. He feels there needs to be solutions. He does not like it when neighbors are not getting along. This is a nice place to sit outside. He was not aware there was inside seating and assumed people only go inside when the weather is not nice. Mr. Appolo said in the new scenario, people will go inside to purchase the bottle of wine they take home with them. Seating can alternate under the porch or on the Crush Pad. Mr. Connors said he is a little confused on the parking calculation. The regulations do not use a per person car count. For a restaurant it is 3 patrons per one parking space, not the number per car. Mr. Connors feels 3 patrons per car is reasonable. They meet that requirement. To Mr. L'Heureux's point, the Board needs to decide on whether the lot is paved or not; the Board also needs to look at what the hours of operation will be. Mr. Connors recalled the Board just approved another winery business in a residential neighborhood with the driveway access between two homes. There will be music on a deck near two homes with later hours than proposed here. There needs to be equity with these applications. With regard to parking, the developer made a good point about removing turf that provides nutrients. The turf is established. If the turf gets scraped up by the tires it needs to be fixed. Can the Board say, if it becomes a problem, they have to pave it? Farm stands have dirt parking lots. He feels there needs to be equity and there should be a solution for all.

Mr. Clapp said he believed the applicant is solving a problem with the parking. He does not have a problem with the lack of pavement because if there is a problem with the grass, the owner will fix it. He noted people are not happy with the taxes in town. Mr. Appolo has a right to run his business. From what he has heard tonight, Mr. Appolo is not breaking laws and is within the regulations.

Mr. Tremper believed parking on the grass will get the cars off the street. Typically, at a farm stand, 90% of the parking is on grass and there are no issues. He thinks the grass parking is fine.

Mr. Chiricheillo stated he lives near Hood Pond. Sometimes the activity there is a nuisance, but they put up with it. He would like to know about the timing of events at the venue. When do things end normally? Mr. Appolo said they could have private morning or late afternoon events. There have been three weddings on site (one was his own). Music always ends by 10 PM and he had no issue with making sure everything stopped at that time. Mr. Chirichiello asked when is the facility open on the weekend. Mr. Appolo said they are open 3-8 on Friday and 11-5 on Saturday and Sunday. Sunday afternoon can be a little slow, but it is less expensive to book on a Sunday afternoon for things like bridal showers. Mr. Chirichiello felt there had to be a happy medium. He is asking for the hours in the event the Board needs to limit them. Mr. Appolo said corporate events typically happen on Thursday evenings. Corporations will book the patio and that is generally between 6 and 9 PM. They don't run super late, and the noise level is not loud. The main complaint has been parking. Mr. Chirichiello asked if the plan will eliminate the road parking? Do people park on Lawrence Road? Mr. Appolo said on Duck Pond, not Lawrence. Mr. Chirichiello inquired as to the location of the well for 2 Christopher as he did not see it on the plan. He did not believe the Board could do much with the water use. If the lot is paved there will not be any runoff. Mr. Sanford said their drainage plan intercepts the water to the two rain gardens and they have mitigated any off site effects. Mr. Chiricheillo noted the parking has already been discussed and Highway Safety can also be involved. With regard to conflicts of interest, he does not see any as no Board member has a financial interest in the project.

On several occasions during the Board discussion, Mr. O'Connor had to request that comments from the audience desist.

Mr. MacEachern said he understood the current operations run on Thursdays from 6-9 and they are open Friday through Sunday. There will be a substantial addition to the building and Mr. Appolo will be able to have more people on site. There is the outdoor patio, the covered patio, and the interior. The business will change. There will be different opportunities for people to be on site in the winter with this expansion. This makes it a year round facility. They are not really changing the number of people on site by very much, but they will need to establish new hours and which nights they will be open. There are rules and regulations to follow and it is important for everyone to be aware of them and to make decisions about them. There is not much the Board can do about the agricultural portion, but the Board can discuss the hours of operation, lighting, when bands can play, etc. To be fair to both the business and the residents, it is important to establish criteria. The Board needs to determine the level of parking required. There are 42 people for 14 paved spaces. What is covered is 48 patrons; he is allowed 87 and he also needs employee parking. If the ground gets disturbed, he may not be able to repair it fast enough to be able to use it right away. There is a business on this lot and he can expand it. The ZBA starts with no and then people need to prove why it should be a yes. With the Planning Board, if the applicant follows the rules, the Board cannot say no. The Board can control hours of operation, light and noise; things that affect the abutters. As a Board, hours of operation need to be established, for example, 3-8, 11-5 and 6-9. Will there be more nights where the winery will be open? Mr. Appolo said there is occasional use where someone books a corporate event; the last one was held in 2019. As part of the NH DOT Tourist Sign program, they are required to be open 5 hours a day, 5 days a week. He would like to be open during the day on Tuesday, Wednesday and Thursday between noon to 5 PM. Mr. MacEachern spoke to the manufacturing on the property. How many employees are on site? Mr. Appolo said they manufacture wine on

the property. During the week and early morning, Mr. Appolo is the only one in the winery. The employees come in on the weekend and do what needs to be done and leave before the customers get there. He would like to be able to open and utilize the indoor space during the winter on Tuesday, Wednesday and Thursday as generally available to the public, with evening hours on Thursday, Friday and Saturday. Thursday evening would be 6-9 PM, Friday 3-9 PM and Saturday and Sunday 11 – 5 PM with the option of holding Saturday events until 9 PM.

Mr. Connors asked if this was manufacturing hours *and* open to the public hours. Mr. Chirichiello did not believe the manufacturing hours were the issue. Mr. MacEachern said he wanted to confirm the hours the winery is open to the public. Mr. Appolo will run his business during the day and normally be the only one on site. Mr. MacEachern wanted to pinpoint when Mr. Appolo would normally be open, outside of any seasonal hours. Mr. Appolo confirmed the employees work on Saturday and Sunday and are gone by the time any customers arrive. Mr. MacEachern noted this is a multifaceted business. They manufacture and bottle wine, show the production area, and provide wine tastings. Mr. MacEachern wanted to make sense of and understand the numbers. Mr. Connors asked if the manufacturing was going to be separate from the public hours. Mr. MacEachern said he was only concerned with the hours the facility would be open to the public. With regard to parking, he believed there was sufficient space base on the restaurant calculation in the LDCR. Should the Board look at expanding paved parking? Mr. L’Heureux said the parking spaces should all be paved because they would be more likely to attract people who visit to use the parking area rather than the street. Mr. O’Connor was not in favor of paving all of the parking lot as the pavement can cause heat stress to the vine roots. Mr. Connors wanted to know if the reason for not paving was financial, or if it was because this an agricultural use and that gives Mr. Appolo the right to not pave it. Mr. L’Heureux noted that having the note on the plan stating if the grass gets torn up that they will pave it is not enforceable. It has to be one way or the other. Mr. O’Connor noted people park on grass at Mack’s Apples and the Deerfield Fair. Mr. L’Heureux agreed with a larger venue such as the fair, parking on grass may not be as much of an issue because the vehicles do not make the tight turns in and out of the parking spaces on a repetitive basis. The repetitive motion is what will tear the grass up.

Mr. O’Connor asked with regard to the proposed mesh as he has no experience with it. Mr. L’Heureux said he also did not have experience with it and can’t guarantee it won’t be a trip hazard if it unravels. It looks difficult to maintain, especially if it unravels. Mr. O’Connor noted the Board could approve grass parking. Mr. Chirichiello said that requires a waiver. Mr. MacEachern did not believe the parking issue had to do with the number of spaces at this point. Mr. Connors noted the Board puts conditions on plans all the time. What can be done to state it must be maintained in a certain condition? Mr. L’Heureux said that would be subjective. Mr. Sanford pointed out Note 3 on Sheet 2 (Seasonal and Winter Parking Notes) which states, “Where fields or lawns are used for temporary parking, the use and frequency shall be such that vegetation is maintained in good, stable condition. In the event of rain or other destabilizing influences that result in ruts or other degradation to the turf, the parking area turf shall be restored within 5 days, and in no case shall turf parking be allowed where there is appreciable wear and tear.” If the plan is approved with this note, the applicant is duty bound to maintain it. Mr. L’Heureux explained once the grass is destroyed, it can’t be replaced within 5 days. If the area can’t be used because it is being repaired, that puts parking back out onto the street. Mr.

Sanford did not agree with that perspective. He has experience at wedding events and has been on the crew where the degraded area is restored within a day. Sod does not die overnight and with TLC can be kept in a green state. It just takes work. Mr. Connors asked if the Board decided to require pavement for all of the parking space, would the runoff calculations work. Mr. L'Heureux said the drainage summary would need to be recalculated. Mr. Sanford added they would lose vines because of the pavement.

Mr. Chase stated he has concerns with regard to an expansion of what appears to be a commercial operation in a residential zone. He agrees with having grass in the parking area. If mats are placed down, they will get torn up. Once the area is torn up, it will take time to fix it and the area can't be used during that time. Pavement is the best solution for that problem. It may not be the best solution for the vineyard. He believes there needs to be a surface other than grass. He believes the entrance and exit off Duck Pond Road should be maintained. Two entrances are better than one from a highway safety perspective. People will use the entrance from Duck Pond Road; if it is not there, they will park in the road. He believed Mr. L'Heureux was correct that trucks once a month turning in and out won't hurt the grass. Cars however, twist and turn, tearing up the grass and leaving contaminants. He would like to see a different solution.

Mr. MacEachern said he could go either way with the Duck Pond entrance. He is struggling with the paved surface versus grass. He is sensitive to the agricultural use and also Mr. L'Heureux's point. He is not sold there are enough surfaces paved for some of the events. He is okay with people parking on the grass for larger events but for things like Business After Hours, there needs to be more paved parking spaces. He feels the proposed paving should be expanded. There are enough parking spaces. He suggested paving the parking spaces adjacent to the barn and leaving the area near the vines open.

Mr. Connors reviewed the calculation which resulted in 36 parking spaces. Is the question should the Board overrule Mr. L'Heureux, or add pavement? He felt the Board needed to make a decision or move this application to another night. Mr. Sanborn said adding additional pavement would require the drainage to be recalculated and reconfigured; it creates a domino effect. The current drainage calculations include the paved apron onto Duck Pond Road. The rain gardens are positioned to take the roof runoff. The rest of the runoff needs to go elsewhere.

L'Heureux stated this was not an all or nothing, or win or lose situation for him. It is about what is best for the business and the residents. He believes paved parking with delineated spaces is better for the patrons and does not encourage parking on the street. Mr. MacEachern suggested 7 paved spaces in front of the barn and keeping the paved apron to Duck Pond. As visitors entered from Duck Pond, they would see the paved spaces and visually be encouraged to park there; it would not be as confusing as the open grass area. The aisle could be paved as well from Duck Pond to the Lawrence Road exit. He does not want to negatively impact the vines, and would like to see the 9 spaces near the vines left as grass.

Mr. Appolo said the barn is surrounded by grass – does the Board want the barn surrounded by pavement? Mr. Connors noted many people want to maintain the agricultural look, but that

becomes a challenge as grass will be torn up. Mr. MacEachern felt the aisles should be paved. The vast majority of visitors will likely park on pavement.

Mr. L'Heureux noted the applicant is making other changes on the site. People won't be put off by pavement in front of the barn; with cars parked there, people won't see the pavement. Mr. Connors asked if the applicant could come back with a new plan and drainage, or can the Board place the additional pavement as a condition? Mr. Sioras said the Board will need to vote the waiver either up or down as it has been submitted.

Mr. Appolo did not want more asphalt than they needed on the site. The LDCR does not mention farms and how they should be addressed. No other farm within 40 miles is held to the standard where they are required to pave the parking lot. Sunnycrest and Macks are all parking on dirt.

Mr. MacEachern inquired as to the outdoor lighting as it appears a lighting plan has not been provided. Mr. Sanborn said the lights will be on the building and are downward facing to not create glare. There will be lighting for safety purposes for the parking areas. Mr. L'Heureux added submittals typically include the photometric plan because lighting is a safety item. Mr. Sanborn did not feel a lighting plan furthered the agricultural use.

Mr. O'Connor called for a break. The meeting recessed at 9:10 p.m.

The meeting resumed at 9:20 p.m.

Members of the audience were upset the Board was taking so long to reach a decision as there were other items on the agenda. Mr. O'Connor explained the Board can vote to extend the meeting beyond 10:00 p.m. Mr. O'Connor said the Board will continue to discuss this application; there is a lot line adjustment application following this hearing. When it comes time for the West Running Brook buffer amendment discussion, the Board will only be discussing whether or not to amend the buffer language. The Board will not be discussing the location of buildings or potential plans that may come before the Board. The Planning Board has not received an application and has just viewed concept plans. The discussions were not binding on the applicant or the Board. The Board will only discuss the dimensional requirements of the buffer. One of the members of the audience inquired if it was true one of the developers had walked away from a project. Mr. O'Connor stated he had no idea. There has not been a project presented to the Board for review on Rockingham Road.

Mr. MacEachern stated the waivers would be presented in the affirmative and the Board will then vote to grant or deny the waiver request. Any no votes require a reason why the Board member voted no.

Motion by MacEachern, seconded by Connors to grant a waiver from LDCR Section 170-63.A.5 to not require all drives and parking areas to be paved, as after review of the waiver request the

Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations. The non-paved areas are limited to those designated on the plan as “seasonal” and the surface shall remain grass only.

Connors, Clapp, Tremper, MacEachern, and O’Connor voted in favor with MacEachern stating the plans state the grass area will be maintained; Chase voted no as he believed the parking areas needed a stabilized surface and the Board should follow the recommendation of staff; Chirichiello voted no for the same reason. The motion passed.

Motion by MacEachern, seconded by Connors to grant a waiver from LDCR Section 170-61.A.34 to allow acceptance of an application that is missing a Department signature. The Board finds after review of the waiver request that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern, and O’Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chiricheillo to approve, pursuant to RSA 676:4, I, Completed application with the following conditions:

1. Subject to owner’s signature
2. Per LDCR Section 170-61.A.4 &13: Ensure the appropriate professional stamps are on the final plan
3. Per LDCR Section 170-61.A.6: Add State Plane Coordinates, shown at two boundary corners.
4. Per LDCR Section 170-61.A.10: Addition of note on the plan identifying and explaining the vine and parking easement area which is located on 2 Duck Pond Road (to include applicable deed references/RCRD recordings)
5. Per LDCR Section 170-61.19: Depict location of solid waste storage areas and snow storage on the plan.
6. Per LDCR Section 170-61.A.20: Addition of proposed light fixture details to the plan if the lighting fixtures will be different than those already existing at the facility.
7. Per LDCR Section 170-61.21: Provide landscaping details/plan sheet

8. Per LDCR Section 170-67.A: addition of lighting plan showing levels of illumination and the lumination patterns.
9. Subject to on-site inspection by the Town's engineer
10. Establish appropriate escrow as required to complete the project
11. Eliminate what appears to be 12 parking spaces on the unimproved portion of Duck Pond Road (shown on sheets 6 and 7)
12. Note approved waivers on the plan
13. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-61.C
14. Hours the facility is open to the public shall be Tuesday, Wednesday, Thursday between 12 PM and 5 PM; Thursday 6 PM to 9 PM; Friday 3 PM to 8 PM; Saturday 11 AM to 9 PM; Sunday 11 AM to 5 PM. These hours include the ability to play music and do things that are ancillary to the business. All activities must cease by the noted end times.
15. Conditions precedent shall be met within 6 months.

Discussion followed.

Mr. Chase confirmed the proposed mesh was not included in the approval for the grass surface and that the Duck Pond entrance will remain on the plan. Mr. Connors confirmed because it is noted on the plan already, the Board did not need a special condition to ensure the applicant maintains the grass.

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern, and O'Connor voted in favor and the motion passed.

Mr. O'Connor advised the plan has been approved and anyone who did not agree with the decision had 30 days to ask for reconsideration, appeal the decision the Superior Court, or to the Housing Board of Appeals.

Mr. MacEachern noted if the abutters would like to purse the issue of parking on public streets, the proper avenue is to contact the Highway Safety Committee. Mr. Sioras said that committee meets the 3rd Thursday of the month at 9:00 a.m. Jill Jamro in Public Works should be contacted in order to discuss placement on that committee's agenda.

David J. Dupont, Jr.
PID 07100, 63.5 Drew Road (Derry)
David Thompson
PID 02171, 37 Houston's Way (Hampstead)
Acceptance/Review
Lot Line Adjustment

Mr. Sioras provided the following staff report. 63.5 Drew Road is located in Derry and 37 Houston's Way is in Hampstead on the town line. The purpose of the plan is for a lot line adjustment between the two parcels. The parcel in Derry is located in the Low Medium Density Residential zone. No town department signatures were required for this application. There are several waiver requests submitted by James M. Lavelle, dated March 01, 2022. The waiver requests are from the two foot contour, topography, and wetland mapping requirements. No state permits are required, and the staff would recommend approval of both the waiver requests and the lot line adjustment application. No new development is being proposed with this application. Staff also recommends the Board find this application has regional impact as it involves a municipal boundary.

Tim Lavelle, of James M. Lavelle Associates, presented for the applicants. The lots go through a municipal boundary. The Thompson property is located in Hampstead and the Dupont property is located in Derry. Parcel A which totals 1.08 acres is to the rear of the Dupont property. Mr. Dupont would like to deed Parcel A to Mr. Thompson. The reason for the lot line adjustment is there is an existing garage on the Thompson property on the boundary of the municipal line and the existing property line. There is also a horse corral in that area. There had been an easement for the barn and corral prior to either Mr. Thompson or Mr. Dupont owning the properties. This will clear that up. They are asking for waivers from the three regulations as they don't affect the proposal and is an unnecessary expense.

Motion by MacEachern, seconded by Connors to accept revised plans as submitted on March 10, 2022, for the project.

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Connors to accept jurisdiction of the Lot Line Adjustment plan before the Board for David Dupont, Jr., PID 07100, 63.5 Drew Road and David Thompson, 37 Houston Way (Hampstead).

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Connors to find, pursuant to RSA 36:56, the proposal as presented at this time, meets the definition of a development of regional impact. Discussion followed.

Mr. Connors confirmed staff recommends the Board find there is regional impact because the lots cross a municipal boundary. There is no effect to the plan. The Town of Hampstead is already aware of the regional impact as the Hampstead Planning Board contacted the Town with regard to this application.

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello to open the public hearing. The motion passed with all in favor and the floor was open to the public.

There was no public comment.

Motion by MacEachern, seconded by Connors to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Motion by MacEachern, seconded by Connors to grant the following waivers from the LDCR as after review, the Board finds strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

LDCR Section 170-24.A.11, Two Foot Contours; LDCR Section 170-24.A.12, HISS Mapping and LDCR Section 170-24.A.13, Wetland Mapping.

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello to approve, pursuant to RSA 674:4, III, Expedited Review, with the following conditions.

1. Subject to owners' signature
2. Subject to onsite inspection by the Town's Engineer
3. Establish escrow for the setting of bounds, or certify the bounds have been set
4. Note approved waivers on the plan
5. Obtain written approval from the Planning Director/designee that the GIS disk is received, is operable, and complies with LDCR Section 170-24.C
6. Conditions precedent shall be met within 6 months

7. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds (this includes the \$25.00 LCHIP fee, recording fee for the mylar, and the Notices of Decision)

Connors, Clapp, Tremper, Chirichiello, Chase, MacEachern and O'Connor voted in favor and the motion passed.

To discuss proposed amendments to the following section of the Town of Derry Zoning Ordinance: Article VI, District Provisions, Section 165-32.4.1.B, Design Standards For All Areas in the West Running Brook District, specifically, Buffer Zones.

Mr. O'Connor reminded those present the discussion is limited to buffer zones; there will be no discussion regarding complexes.

Mr. Sioras provided the following staff report. The Board is considering amending Section 165-32.4.1.B of the Zoning Ordinance. The current wording is, "A vegetated buffer of at least 100 feet shall be provided between Residential Areas and adjacent zones." The proposed wording deletes one sentence and adds two sentences. The proposed wording is as follows. "The Planning Board will recommend a buffer zone on a per project basis during the conceptual phase. The Planning Board may utilize LDCR Section 170 when determining buffering to protect abutting residential uses."

Motion by MacEachern, seconded by Chirichiello to open the public hearing. The motion passed in favor and the floor was open to the public.

Tracey Zysk, 5 Silver Street, said she understood this amendment would eliminate the buffer, case by case for the four projects. She felt discussions about building is relevant. Mr. O'Connor stated he would not use the word "eliminate". The Board would review plans based on what comes before the Board for a proposal, whether it is an office or a residential complex. Ms. Zysk stated at the last meeting, the Board voted 5-1. What was that vote for? Mrs. Robidoux advised that vote had to do with the wording of the proposed amendment; the discussion is recorded in the minutes of that meeting. Mr. O'Connor reminded those present the proposed wording is to allow the Board to recommend a buffer zone on a per project basis during the conceptual phase. If the Board votes to accept the amendments as proposed, the amendments would be forwarded to Town Council who would hold their own public hearing.

Ms. Zysk asked for clarification that if this is approved, it could make the lot bigger. Mr. O'Connor said it would depend upon the particular site plan. Mr. MacEachern noted the lots are defined by acreage; it does not make the lot bigger. A four acre lot would remain a four acre lot. Mr. Connors wanted to clarify the Board is discussing removing the language referencing a 100 foot vegetated buffer between residential areas and adjacent zones. The amendment has it reviewed on a case by case basis for every lot in the West Running Brook zone, not just one or two lots. All of the lots have the 100 foot buffer. With this change, it would be reviewed on a case by case basis by future Boards. Ms. Zysk asked what the purpose is of doing that. Mr. O'Connor explained when the Board looked at the zone, it was shown that with a 100 foot

buffer, some of the lots in the zone could not be developed. Ms. Zysk wanted to know why Mr. O'Connor could discuss the potential of what could be built but the public could not. The buffer can change the potential of what can be built. Mr. O'Connor stated some lots could have wetland buffers on them which can create an acceptable buffer; that distance might be 80 rather than 100 feet. Ms. Zysk stated two meetings ago, Mr. MacEachern said that without a buffer, the developer could sprinkle in more townhouses. Mr. O'Connor explained that is unknown at this point. It would depend upon each plan, and it might not happen. Ms. Zysk wanted to know why the Board was voting on this. Mr. O'Connor explained an error was found in the approved wording. When the Board discussed it to correct it, the Board looked at the wording more closely. As written, some lots could not even have one home on them if it was followed exactly. Ms. Zysk stated she has lived in this area for 50 years and the junkyard has been there for 65 years and it has always been that size. Now the Board is changing it. Mr. O'Connor advised no decisions have been made about the buffer or for any project on that particular lot.

Mr. Connors stated the Board is discussing changing the language that regulates the size of the buffer. It was 100 feet all around the West Running Brook lots; the Board felt that was too big. One hundred feet on some lots would make some lots undevelopable or would have a significant impact on what could be developed. Some Board members suggested changing the distance number, but the vote was to leave it for discussion at the concept stage. He felt that wording would be too flexible and so he voted no as he felt there needed to be protection for the existing neighborhoods. The Board will make a decision on the size of the buffer for each lot. Ms. Zysk felt the Board could then make it a zero foot buffer potentially. Mr. O'Connor advised there are building and yard setbacks. Ms. Zysk believed the setback was for natural environments. Mr. Connors stated the setbacks need to stay in the West Running Brook District and they are a specific distance for the side and rear setbacks. That setback has nothing to do with the vegetated buffer. Mr. Connors said with this change there would not be a buffer unless the Board votes it in. Ms. Zysk understood the Board would look at this on a case by case basis. Mr. Chirichiello noted Ms. Zysk is focusing on one lot. Ms. Zysk stated she has been following this for two years and has watched the zone change dramatically. Mr. Chirichiello explained the Board is looking at all of the lots in the zone, not just the four for which the Board has seen a concept. That is why the Board wants the ability to be able to look at specific buffers for each specific lot. Mr. O'Connor explained this is a very unique and innovative zone; the Board approves the projects by Conditional Use Permit. Ms. Zysk stated as a resident, and as someone who grew up in this area, she is aware of how wet some of the lots are. The ambiguity is concerning and she feels there is a lack. She watched the meeting when the developer said, "I made the change you asked for, and this is it, or I am walking."

Mr. Chiricheillo stated if anyone has any questions, they should be contacting the Planning Department and speaking with Mr. Sioras or Mrs. Robidoux. Sometimes social media does not have the correct information. Ms. Zysk commented public meetings are not posted on the Town of Derry Facebook page. She had a hard time finding the legal notice for this meeting and when she phoned the Planning office she was told to look under "Legal Notices", and that the meeting notice was also posted at the Derry Library. The meeting was not posted under "Public Meeting". That is concerning. She believes any public meeting should be able to be found under the "Public Meetings" tab on the front page and that no one goes to the Library to look for

public notices. Mr. O'Connor commented anyone can sign up for automatic notices of meetings through the town website and can receive an email about the notices automatically.

Mr. Chirichiello stated if someone is new to the area or has questions, they should not hesitate to contact the Planning Department. Ms. Zysk stated this whole thing has dragged out two years. Then all of a sudden, the Board is changing the buffer in one meeting and it seems like they could not get it done quick enough. It has gone from a village feel to something else. As residents they are very concerned. Mr. Chirichiello said any presentations have been conceptual. The Board could end up seeing a plan for 600 units or 10 units. He feels the community is expending negative energy on concepts; there is nothing to discuss yet. Ms. Zysk said the development behind the former Circle of Friends is solid.

Kenneth McAdams, 30 Bedard Avenue, felt having a zero distance buffer was a not good thing and there should be some definite limit set.

Kenneth Lamport, 12 Winter Hill Road, asked how long has the 100 foot buffer been in effect. The Board stated since about 2019. Mr. Lamport was not an advocate of a zero distance buffer. Parking lots or buildings could go right up to the street. The Board said that is incorrect. Mr. Connors stated there are setbacks which regulate how close to the property line a structure can be built. His concern when the Board created the zone was that there would not be enough commercial. He was told this zone needed to be mixed use. The Economic Development Director brought forth the mixed use village concept which included a mix of commercial and retail. He had been concerned about the structure of the zone as it butts up against existing residential area. He wanted a vegetated buffer between developed lots to protect the neighbors, so that the land was not clear cut to the property line. He felt that afforded some protection. He suggested 100 feet which was approved. The question tonight is, does the 100 feet make sense.

Motion by MacEachern, second by Connor to extend the meeting an additional ten minutes as it is now 10:00 p.m. The motion passed with all in favor.

Mr. Connors stated no one can build a building or put a parking lot right up to the property line. Mr. Lamport asked what is the 100 foot vegetated buffer. Mr. Connors said his idea of it is that trees or vegetation would be left between the project the residential neighborhood. The 100 feet is needed as protection between a project and an existing neighborhood. When he looked at the maps during the workshop, maybe 100 feet does not make sense. The Board decided it should be done on a case by case basis. His concern is with who might be sitting on the Board in the future and what they might say about any given project. He would like to have a number, but was out voted which is why there was a 5-1 vote at that meeting. Mr. Lamport stated he would like to have a number rather than leaving it up to the Board to decide if they like a developer or not. That is not fair to the community. Mr. O'Connor noted that comment is being made by Mr. Lamport, not the Board. The Board does not favor one developer over another. Mr. Lamport reaffirmed he is not an advocate of not having a firm distance and he would like a number in the regulation. Mr. O'Connor stated each project is different and the property line angles vary on each lot.

Chris Feinauer, 71 Island Pond Road, appreciated the concerns and what has been stated by the residents. He wondered if the Board would consider a threshold and objective. There is an established setback. Is there a number that the Board and residents can be comfortable with, with the objective of getting it to 100 feet? The Board could create an established doctrine. Does this set guidance for future leaders to work from? He feels it would be amicable and not show benefit to any potential developer coming into the zone and it is also fair and balanced.

Suzanne ~~Howard~~Howe, 115 Rockingham Road said there is a level of distrust toward the Board because this zone has changed. Previous workshops discussed 20 to 25 units going on these lots, sharing equal space with businesses. The Watts Junkyard is proposed to have 75 residential units on a 5 acre parcel. Now the Board wants to turn over the leverage it has with buffers. They are trusting Board members to remain true to their word. She is concerned because projects have changed dramatically. She is obtaining her information from the meetings, not social media. Residents had been told there would not be large scale, multifamily developments. The residents are watching and when they support the Board and agree to a zoning change, Board needs to follow through and make sure the neighbors are not stabbed in the back. The neighbors supported the Board for this zone and now the Board needs to do what it promised.

Christopher ~~Howard~~Howe, 115 Rockingham Road, said with the buffer, there are certain things that can impact buildable space. Setbacks are one; the buffer is another. The original intent of the West Running Brook district was a good idea. The problem is there is a lot of opportunity to interpret the regulations by Board members, which is a problem. A few meetings ago, he heard concern about legal liability having to do with equally administering how this zone is being utilized because of a lack of definition about what the Board wants to do in this zone. Eliminating a definition is not going to help with that lack of definition. 100 feet may not be the right number. The residents are petrified there may be a four story building in their backyard and the buffer is the only protection documented for those residents. Removing it is very sensitive to people in this room. The Board may want to consider how many stories could be allowed. Mr. O'Connor stated the number of stories in a building should not be on the table for discussion this evening. Mr. ~~Howard~~Howe disagreed because it was relative to the buffer; there have been discussions about a four story building being built. The buffer directly impacts the amount of space and the number of residents allowed on a five acre lot. It is directly relevant and it is infuriating the Board won't discuss it.

John Morrison, 42 Bedard Avenue, stated the residents need a specific number for the buffer dimension; it gives the residents protection no matter who is sitting on the Board. There cannot be a zero distance buffer. He agrees there may be limited development based on the size of the lot, but the residents first and foremost, need to be taken care of. Something between 25 and 50 feet would good. Every lot will be different, they understand that. However, the residents need a solid number, not just the Board stating they can make a decision on the buffer distance each time there is a plan in front of them. Personal views and people can change. With a specific number, the residents are guaranteed a distance.

There was no further public comment.

Motion by MacEachern, seconded by Connors to close the public hearing. The motion passed in favor and review of the amendment came back to the Board.

Motion by Connors, seconded by Chirichiello to extend the meeting an additional ten minutes. The motion passed in favor and the meeting was extended to 10:20 p.m.

Mr. Chirichiello explained the process is that there is first a conceptual plan. Then the plan gets to the application stage where the abutters are notified and a public hearing is held so that the neighbors have an opportunity to comment on the plan. The Board was looking at the ability to be flexible because all of the lots in this zone are different. If there is a defined distance for the buffer, it could create unintended consequences or issues the Board does not want on some lots. This wording gives the Board flexibility. The neighbors will have input on the plan and can suggest during the public hearing where they feel buffering should be. There needs to be a happy medium, otherwise the Board will need to look at every lot in the zone to see what fits all the lots. He is not sure there is an answer to that. Mr. O'Connor noted an applicant can ask the Board to waive the distance even if there is a specific dimension assigned to it. Mr. Chirichiello felt Mr. MacEachern had made a good point during one of the workshops. What if there is a commercial use on the next lot? If a Dunkin Donuts abutted a residential lot, of course the Board would want more of a buffer and that is why there needs to be flexibility. He believes the Board loses design control with the 100 foot distance.

Mr. Connors said that was a good point and he began to see the impacts when he saw the effect of a 100 foot buffer around some of the lots. The Planning Board is different from the Zoning Board of Adjustment. The ZBA needs to agree there is a hardship in order to grant a variance. This Board has to vote yes if plans meet the regulations. If there is no stated buffer in the regulations, the developers will think they don't need one, and he did not believe the Board had teeth. Several Board members disagreed. Mr. Connors continued, stating as Mr. O'Connor said, if the dimension is left at 100 feet, that distance can be waived. Why not add a standard so that the Board is accountable to the public and if the dimension needs to be changed, the Board can state the distance is being waived for this project, for this reason. The Board had three conceptual projects before it and did not recommend a buffer. Planning staff should have told those developers they could not have structures in certain places because there needed to be a buffer. This change also came up because of a typo in the document. The Board used that typo correction to open the door and the wording was changed beyond the typo. He still believes the Board should have taken that opportunity to look at the height of buildings in the zone. The Board chose not to do that. He still feels there is a need to add a definite buffer dimension whether that distance is 25 feet or 10 feet. A vegetated buffer between a big residential development and the neighborhood is not a big ask and would keep future Boards accountable. He believed the HowardHowe family just left this meeting because Mr. HowardHowe felt he should have been able to speak about conceptual projects because "conceptual" is in the proposed wording. Mr. Connors would like to have a number tied to the dimensional requirement.

Mr. Chase disagreed with Mr. Connors. This is not a zero distance buffer. The wording states there will be a buffer, but it will be on a case by case basis. If a buffer is not put in, the Board still needs to be accountable. He feels this is the best solution for what the zone offers. If an

arbitrary number is tied to the buffer dimension that could potentially chase away development. With the conceptual discussion, if the Board sees a commercial building against a residential zone, the Board can say there might need to be a 50 foot buffer in that location. There needs to be trust that the Planning Board will be professional and responsible and take into account the neighbors and what will be built, and what needs to be put there in addition to the setbacks. He believed the wording should stay as written.

Mr. O'Connor reminded the Board the discussion this evening is not about conceptual plans. Mr. Connors said the Board has seen three concepts; what happens with those plans and any proposed buffer zones? How is this imposed retroactively? One of the projects had townhomes abutting a residential neighborhood. Mr. O'Connor noted that is residential use abutting residential use. Mr. Connors felt this is zone against zone. This was commercial land that the town has changed because it was sold on the fact that mixed use is what was needed. This is a mixed use, commercial zone. This is not a residential zone.

Motion by MacEachern, seconded by Connors to extend an additional ten minutes. The motion passed and the meeting was extended to 10:30 p.m.

Mr. O'Connor stated this is the last time extension for the evening.

Mr. Sioras stated when the plans come to TRC, that review is thorough. Staff will look at the buffer to see what is proposed, especially when commercial use abuts a residence. Staff makes it a point to look at those types of items. In this zone, the Board sees the concept first and then the plan goes to TRC. Staff will say buffers are required. This Board has a right to impose a buffer, and has been cognizant, taking buffering seriously, and has been sensitive to abutters. The Board has the ability to add conditions to a plan for any type of buffering. The 'concept' language was added to this amendment. He feels the Board still has an opportunity to discuss appropriate buffering with the developers whenever those plans come before the Board, even though the Board has already held a conceptual discussion. Mr. Sioras noted the wording about discussing it during the conceptual discussion was not in the ordinance when the Board held those discussions with the developers.

Mr. Connors stated some developers have already received positive feedback and he does not feel they will come back and be amenable to adding a buffer because it was not recommended during the conceptual discussion. He felt they should be held to the previous wording with the 100 foot buffer requirement. Mr. O'Connor stated the Board can require a buffer during the public hearing.

Mr. Chiricheillo said the first thing a developer would do when considering building on a lot would be to contact the town to see what the town requires for new projects. Mr. Connors was adamant that the developments the Board has seen conceptually were not told they had to have a 100 foot buffer as the developers did not show that on the concepts. He wanted to know what the buffer will be for those three projects. Mr. O'Connor felt it would be what the Board wanted it to be as discussed during the public hearing. Mr. MacEachern added they will have to have a buffer as part of the final approval on those lots. It could be a condition of approval.

Mr. L'Heureux wanted to offer a different perspective. Town staff during TRC recommended the vegetative buffer for the Starbucks plan be amended to provide more protection for the abutter, and additional screening was added to the plan. Staff caught it, asked for it, and the developer did it. Each site has a dynamic aspect that may cause an issue in the way the lot is occupied. Town staff will do its best to identify those issues meticulously and mitigate them. Staff looks at those details. There should be a residential buffer, but he feels that 100 feet would be excessive anywhere in town. That is like having a lot between lots. A typical hard line buffer is normally 30 feet with rows of arborvitae.

Motion by MacEachern to accept the proposed amendment to the Town of Derry Zoning Ordinance, and forward same to Town Council for review and recommended approval: Article VI, District Provisions, Section 165-32.4.1.B, Design standards for all areas in the West Running Brook District, specifically Buffer Zones as written. The motion was seconded by Chirichiello.

Mr. MacEachern noted a yes vote would move the amendment to Town Council, a no vote would not move the amendment forward.

Chase, Tremper, Chirichiello, MacEachern, and O'Connor voted yes. Connors voted no stating the Board has contradicted itself in how the Board went about this and what was promised for the zone and what was originally agreed to in order to build the zone in the first place and there was plenty of discussion about how flexible the zone was to start with. He believes the Board is opening itself up to legal liability to leave a zone this flexible. Clapp voted no, as after hearing the audience and the arguments, he felt there should be a specific number stated. If there needs to be a wavier, that can happen at another point in time. The motion passed by a vote of 5 for and 2 against.

Mr. O'Connor advised this amendment will move forward to the Town Council and the residents are welcome to attend that hearing. He thanked Mr. Clapp for his service to the Planning Board and wished him well on the School Board.

Board Member Comments

Given the hour, there was no time for Board member comments.

Motion by MacEachern, seconded by Chirichiello to adjourn.

All members voted in favor and the meeting stood adjourned at 10:32 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: