

The Planning Board for the Town of Derry held a public meeting on Wednesday, August 17, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the Board members physically present.

Members present: Jim MacEachern Chair Pro-Temp; David Nelson, Secretary; Brian Chirichiello, Town Council Representative; Randy Chase, Town Administrative Representative; David Granese, Andy Myers, Mark Connors, Members; Chris Feinauer, Alternate

Absent: John O'Connor, Joseph Tremper, Richard Malaby, John Morrison

\*Denotes virtual attendance.

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

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

Mr. Feinauer was seated for Mr. Tremper.

### **Escrow**

#### **#22-14**

**Project Name: Non-Residential Site Plan 45 So. Main**

**Developer: The Siragusa Group**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 05047 and 05048, 45 & 49 South Main Street**

The request is to renew Letter of Credit #1513, drawn on Primary Bank for an additional six months, in the amount of \$50,479.20 for the above noted project. The expiration date shall be November 30, 2022.

Motion by Chirichiello, seconded by Granese to approve as presented. The motion passed with all in favor.

#### **#22-15**

**Project Name: Peabody Road Commercial Buildings**

**Developer: Lauralei, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 36067-012, 4 Peabody Road**

The request is to approve a final release of Letter of Credit #1506 as drawn on Primary Bank in the amount of \$47,563.20. The amount to retain is zero.

Motion by Chirichiello, seconded by Granese to approve as presented. The motion passed with all in favor.

**#22-16****Project Name: Brookview Estates****Developer: MPV Development****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 29149, 18 Maple Street**

The request is to approve a final release in the amount of \$14,029.20 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

Motion by Chirichiello, seconded by Granese to approve as presented. The motion passed with all in favor.

**Minutes**

The Board reviewed the minutes of the July 20, 2022, meeting.

Motion by Granese, seconded by Chirichiello to approve the minutes of the July 20, 2022, meeting as written. The motion passed with all in favor.

The Board reviewed the site walk notes prepared by Mr. Nelson of August 03, 2022.

Mr. Connors commented with regard to the balloons losing height and their visibility.

Motion by Chirichiello, seconded by Granese to approve the site walk notes of August 03, 2022, as written. The motion passed with Chase abstained.

**Correspondence**

Mr. Nelson advised the Board has an acknowledgement of receipt of a copy of the Board's Policy and Procedures to sign. That will be passed among the members for their signature. The Board has also received a copy of the Notice of Land Use Fees under RSA 673:16, III that has been posted to the Town website as required by the new changes in legislation which take effect on August 23, 2022. The fees indicate the cost breakdowns for each type of application.

**Other Business**Voluntary Merger, 27 Cove Drive, PID 58046 & 29 Cove Drive, PID 58047

Mr. Sioras stated staff would recommend approval of the Voluntary Merger of the lots. Mr. Granese felt this was a straightforward request.

Motion by Granese, seconded by Nelson to approve a Voluntary Merger, pursuant to RSA 674:39-a, of 27 Cove Drive and 29 Cove Drive. The Parcel ID to be deleted is PID 58046. The merged lot will be known as PID 58047, 27 Cove Drive.

Chase, Feinauer, Granese, Connors, Myers, Nelson, and MacEachern voted in favor, Chiricheillo abstained, and the motion passed.

First Extension Request, Apollo Vineyards, PID 06046-004, 49 Lawrence Road

Mr. Granese noted this is the first request to extend the approval.

Motion by Granese, seconded by Nelson to grant a six-month extension to the approval granted on March 16, 2022, for a site plan for Apollo Vineyards, PID 06046-004, 49 Lawrence Road. The new expiration date will be March 16, 2023.

Chase, Feinauer, Chirichiello, Granese, Connors, Myers, Nelson, and MacEachern voted in favor and the motion passed.

Planning Director Updates

Mr. Sioras advised the Cooper family has extended an invitation to the Planning Board members to attend a celebration of life for Edward Cooper. The event will take place on Friday, August 19 at the Atkinson Country Club. Ed and John Cooper of Cooper Homes have worked with the Board many times over the years on developments in Derry.

Chairman Updates

None.

**Public Hearing****JAL, LLC****PID 11058, 19 Forest Street****PID 11059-005, 25 Daniel Road****Cathleen & Richard Brothers****PID 11070, 36 Hilda Avenue****Acceptance/Review, Lot Line Adjustment and Subdivision**

Mr. Chiricheillo stepped down.

Mr. Sioras provided the following staff report. The purpose of the plan is for a two-lot subdivision and lot line adjustments located in the Low Medium Residential District, which has a two-acre minimum. Setbacks and acreage have been met. One new, single family house lot is being created. All town departments have reviewed and signed the plan. There is one waiver request for HISS mapping. NH DES State Subdivision approval has been received. Staff recommends approval of both the waiver and the plan.

Tim Peloquin, Promised Land Survey, presented, attended by Tom Lannan and Steve Lannan of JAL, LLC. This proposal is part of the overall plan known as Denali Estates which is an extension of Daniel Road. There are several phases of that development, and the Board has seen Phases I and II. The intent of this plan is to clean up the lots and lot lines as a pre-cursor to Phase III.

Parcel 11059-005 (25 Daniel Road), which consists of 24 acres, will have a new lot line placed to the back of the lot, making that lot around 2 acres. That lot fronts on Daniel Road. The remaining area will be combined with Parcel 11058 (19 Forest Street), eliminating the lot line between the two lots. One new lot will be created at the end of Hilda Avenue, to be known as 11059-005-001, 38 Hilda Avenue. That lot has received a variance to allow the creation of 38 Hilda with less than sufficient frontage. There will also be a land swap/lot line adjustment with the abutter at 36 Hilda Avenue which will provide 36 Hilda with additional land. The final development of 19 Forest Street, PID 11058, will occur in the future.

Motion by Granese, seconded by Nelson to accept jurisdiction of the Lot Line Adjustment and Subdivision plan before the Board for JAL, LLC, PID 11058, 19 Forest Street and PID 11059-005, 25 Daniel Road, and Cathleen and Richard Brothers, ID 11070, 36 Hilda Avenue.

Chase, Feinauer, Granese, Connors, Myers, Nelson, and MacEachern voted in favor and the motion passed.

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

Chase, Granese, Connors, Myers, Nelson, and MacEachern voted no, stating the development does not have regional impact, Feinauer abstained, and the motion failed.

Motion by Granese, seconded by Nelson 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 Granese, seconded by Nelson to close the public hearing. The motion passed in favor and review of the plan returned to the Board.

Mr. Connors asked if the new lot, created at the end of Hilda Avenue, is for a single-family home, or will this be part of a connection to the larger Denali Estates subdivision? Mr. Peloquin explained the intent is for one, single family house lot. It would not be possible to connect to the other phases of the subdivision without crossing a major wetland. He confirmed Hilda Avenue will end in a cul de sac.

Mr. Nelson asked for clarification with regard to the lot lines being removed and the new lot lines. Mr. Peloquin explained Parcel 11059-005 includes the lower 20 acres of the lot and they want to put a new lot line in the lower corner to create a new lot off Hilda Avenue. They have an agreement with the owner of Parcel 11070, 36 Hilda for access and to provide additional land to their lot. The additional land is shown as the skinny piece noted as “new lot line adjustment” near the end of Hilda Ave. The intent is to then remove the line between PID 11059-005 and PID 10058, so that there is not a landlocked parcel, and combine that area with PID 11058. A new line will be added to make 11059-005, a 2-acre lot along Daniel Road. Mr. Nelson confirmed PID 11059-005 will be kept as a smaller lot with frontage on Daniel, and part of the original 11059-005 will be merged with 11058.

Mr. L’Heureux stated Public Works does not have any outstanding issues with this plan.

Motion by Granese, seconded by Nelson, to grant a waiver from LDCR Section 170-24.A.12, HISS Mapping, as after review of the waiver request, the Board finds specific circumstances relative to the plan, or the conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations.

Chase, Feinauer, Granese, Connors, Myers, Nelson, and MacEachern voted in favor and the motion passed.

Motion by Granese, seconded by Nelson to approve, pursuant to RSA 676:III, Expedited Review with the following conditions:

1. Subject to owners’ signatures
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. establish appropriate escrow as required to complete the project
5. note approved waiver on the plan
6. obtain written approval from the Planning Director/designee that the GIS disk is received, operable and complies with LDCR Section 170-24.C

7. subject to receipt of applicable state or local permits relating to the project
8. conditions precedent shall be met within 6 months
9. submission of appropriate recording fees, payable to Rockingham County Registry of Deeds (this includes the \$25.00 LCHIP fee, and recording fees for the mylar, and Notice of Decision).

Chase, Feinauer, Granese, Connors, Myers, Nelson, and MacEachern voted in favor and the motion passed.

Mr. Chirichiello was re-seated.

**Keystone Derry, LLC  
PID 05039, 74 Rockingham Road  
Review, Mixed Use Site Plan  
10,800 sf office, 3,016 sf community center, 114 residential units  
and associated parking and infrastructure  
(Continued from July 20, 2022)**

Mr. MacEachern stated the Board has seen this plan multiple times during concepts and at the last public hearing. The Board also held a site walk a few weeks ago. The Board has the minutes of the last meeting before it. Tonight, the Board will deliberate and finalize a vote on the plan, either approving or not approving the plan. This evening is for Board discussion and there will not be a public hearing.

Motion by Nelson, seconded by Chiricheillo to accept the revised plan. Discussion followed.

Tim Peloquin, Promised Land Survey, and Jordan Young, Atlantic Civil Engineering, presented for the applicant Robert MacCormack who was present this evening. Mr. Peloquin advised they have provided additional enhanced renderings for the Board, added the sight distance plan and profile sheets, and addressed some of the Town Engineer's comments.

Chase, Feinauer, Chirichiello, Granese, Connors, Myers, Nelson, and MacEachern voted in favor and the motion passed.

Mr. Connors noted there is a copy of a May 19, 2019, correspondence from legal counsel at the back of the packet; what is that? Mr. Sioras said he added that today to explain what may or may not need a variance in this zone. This was legal correspondence on that topic from three years ago. Mr. Nelson stated he had an opportunity to re-read the ordinance today and it appears every provision in the zone is waivable and would not require a variance. There were some issues previously noted that he thought might need waivers and it was discussed why it was approached differently. When things are not done in the usual form, or there are provisions that say "shall", and the applicant can't comply, those provisions need a waiver. He would be amenable, as the Board reviews the plan, to the applicant providing the additional waiver requests this evening.

Mr. MacEachern concurred with the interpretation and advised Mr. Peloquin that in looking at the plan, there are a few more waivers that will need to be requested. The first would be from the residential phasing versus commercial completion requirement. The Board is aware the project is not planned to be phased, but it should be placed in writing that the building will be constructed contiguously. Mr. Nelson stated the residential portions could be phased. If all of the commercial buildings were constructed first, there would not be a need for residential phasing. If the residential is planned to be done this year, and then they wait to do the commercial, the Board would need to condition phasing for the project. Mr. Peloquin stated the commercial buildings will be constructed first. Mr. Connors believed that provision meant all of the residential cannot be constructed before there was commercial on the lot. The intent was to make sure a plan was not approved and then only the residential portion was occupied. Mr. Nelson read the applicable section of the Zoning Ordinance, Section 165-32.4.G, Residential/Non Residential Phasing, "In approving a development in this district, the Planning Board shall ensure by approval of a condition, phasing schedule, or other measure that the non-residential portions of the development are occupied in accordance with a schedule that relates occupancy of such non-residential portions of the development to the completion of a specified percentage or specified number of phases or sections of the residential portions." He agreed this section discussed phasing based on successful occupancy of the commercial uses. Mr. Connors felt that meant the Board should apply a percentage stating so much commercial space needs to be occupied prior to the residential occupancy. For example, 50% of the commercial space should be occupied before 50% of the residential occupancy. This is commercial land that residential is allowed to be on. Mr. MacEachern said as the applicant has stated they are not intending to phase the development, they would need a waiver. Mr. Peloquin stated they do not intend to phase the development, as the commercial buildings are intended to be constructed and occupied first. Mr. Connors believed the intent of this section of the ordinance was to limit the number of buildings for larger scale projects than this one, so that the Board could say 10%, etc., and specify it to one development and not any other. This one is unique. Mr. MacEachern said the Board could do that, or the applicant can ask for a waiver, which is what the board is asking them to do for this project.

Mr. MacEachern stated a waiver was also required for the interconnected street requirement. Mr. Connors said he spoke with Mr. Sioras today and this is one of the areas that should be tightened up in the ordinance. This project also has the town house entrance which may need an additional waiver as it does not include interconnectivity and ends in a cul de sac. Mr. Sioras stated, for clarity, there should be two waivers as the two entrances don't connect.

Mr. Peloquin stated they have already requested a waiver from Section 165-32.4.I.2 c, as they will have less than two points of egress; they have a second point for the townhomes. Mr. Connors said the waiver speaks to the cul de sacs and it really should reflect three cul de sacs as there are three residential areas – the two apartment buildings ending in separate areas, and then the townhomes. Mr. Sioras said it would be cleaner to have a separate waiver request for the townhomes.

Mr. MacEachern said the other waiver request would be from the section that requires the homes to be situated to take advantage of passive solar, which is Section 165-32.4.I.1.b.iii.

Mr. Connors asked for clarification of the proposed waiver with regard to the size of the professional buildings. The town wants more commercial development so he is not sure why the Board would want to limit the size of a commercial building. He wanted to confirm the Board could waive the size because it is not related to the use. Mr. Sioras said based on the last meeting, Mr. O'Connor had asked for clarification as well on this particular section of the Ordinance. Attorney Serge's correspondence from when the district was created says the Board cannot regulate the permitted uses, but if the Board wanted a 10,000 square foot building instead of a 5,000 square foot building, then the Board could waive that internal requirement and no variance is required. That is why he shared the correspondence.

Mr. Chase stated when the ordinance was created, the Board included that particular language because the Board did not want large box stores or warehouses in the developments. There can be more than 5,000 square feet in one building, but not per occupancy. Each business can only be 5,000 square feet, similar to Hood Plaza. This would allow a variety of uses in a larger building, but not one big box store. Mr. MacEachern said as the Board goes through the first few developments in the district, he is sure they will find nuances in the language that may need to be adjusted. The Board can keep track of these and hold a workshop at a later date to discuss the corrections. He feels the Boards has cleared up some of the questions this evening.

Mr. Sioras noted the colored renderings are provided in the Board's packets this evening, and Mr. MacCormack's architect is also present to answer any of the Board's questions.

Mr. MacEachern believed the Board had covered all of the items mentioned during public feedback.

Mr. Peloquin wanted to mention that between placing the balloons and the site walk, one of the balloons got wrapped up in the pine tree. The other balloon was still flying high, but the Board could not see it. As soon as the balloons went up, he went around to various points to take pictures from different vantage points [top of Bedard, Winter Hill, and the Siragusa property]. The balloons could not be seen. Those pictures were submitted to the town for the Board.

Mr. MacEachern confirmed with the Board members there will not be a public hearing this evening as the Board is deliberating the application. The Board needs to be cognizant of the timelines set forth by the State in which to grant or deny an approval.

Mr. Connors asked if the applicant can explain why the applicant needs a waiver for parking. Mr. Peloquin stated this is a mixed-use project. The total number of required spaces for the project is 379; they are providing 386 parking spaces. Mr. Connors stated people won't walk from the apartments to the commercial buildings for parking. There needs to be enough parking at the apartments. Mr. Peloquin stated they did not want to add pavement where they don't need it. Building 1 (office) has an excess of 6 spaces; Building 2 (apartment) is missing 14 spaces; Building 3 (apartment) has an excess of one space; Building 4 (community center) has an excess of 14 spaces. Buildings 5A and 5B (townhomes) have the allotted 30 spaces. These numbers have not changed. Mr. MacCormack has constructed a similar development and is very aware of what he will need for parking. They feel what is presented will be more than adequate. It would be possible to add more parking, but a sea of pavement is not necessary. If it is found they need

to add parking spaces for the residential use, they will come back to the Board with an amended plan and request the additional parking. They are convinced at this time they don't need it. Mr. Connors said there is an issue in town with people parking off their property in town rights of way because previous Board's did not approve enough parking for the developments. This is a big concern. He feels 14 spaces is a lot of spaces to waive. The requirement is 1.5 spaces per bedroom. With visitors, there needs to be additional space for people to park.

Mr. Peloquin advised the internal architectural plans are still being worked on, and the two apartment buildings will have garage parking. The space is still being allocated and figured out with regard to the number of EV spaces and regular spaces. Mr. Connors asked if the number needs to be adjusted because they can't fit what they thought in the garage, where will those spaces go? Mr. Peloquin stated they can add pavement if necessary. The buildings cannot be constructed in the wetland setback because they are structures. Pavement is not considered a structure and can therefore be in the wetland setback. Post development, they are still providing 80% greenspace for this project. Mr. Chirichiello stated he agreed there should not be a sea of pavement, like what is seen at Walmart. He likes the idea of the developer coming back with a revised plan if they find the proposed does not work, rather than mandating extra pavement.

Mr. Peloquin advised they have a video rendering of the project they would like to share with the Board. The video provided a drone view of the project as one entered heading west on Rockingham Road, providing aerial and street views of the property. Mr. MacEachern commented after attending the site walk, he can attest the land does slope as much as was shown in the video, and the buildings will look as though they are set into the topography.

Mr. Connors asked with regard to the community center building. There had been some discussion about placing a gym for the residents on the first floor and making the second floor available for community rental. Had any thought been given to breaking the second floor up into two units and perhaps renting them as yoga or Pilates studios that the public and residents would utilize? This would add to the commercial footprint. Mr. Peloquin stated they did discuss options like that with Mr. MacCormack and would take the suggestion under advisement.

Mr. L'Heureux stated there were two elements since the last meeting to discuss. VHB has provided their first review of the plan and there were some good comments with regard to the sewer utility and sight distance. He has spoken with Mr. Young and those comments are being addressed. The bulk of the comment had to do with drainage. Much of the drainage plan will be vetted during the AoT process, and the State's comments may cause some changes in the plan. If there are substantial changes that have to be made as a result of those comments, such as elevations, location of ponds or swales, the applicant may need to come back to the Board for a Condition Compliance hearing. Mr. MacEachern suggested adding a condition that if any other reports from outside agencies require plan changes following review by the Town's Engineer, the applicant would have to come back to the Board. Mr. L'Heureux did not believe there had to be a stated condition, he just wanted the Board to be aware of the possibility and if staff felt it necessary, they would recommend the applicant return to the Board.

With regard to the impact fee at Webster's Corner (Island Pond/Route 28/South Main/Rockingham Road), Hoyle Tanner Associates provided a draft study to staff detailing the

solutions and approximate cost to improve that intersection. The Public Works Director provided a memo to Planning staff indicating there should be a 2-3% impact based on the size of the development and its impact on the intersection. The 2.5% of the \$1.7M improvements is in addition to the widening of Rockingham Road the applicant will complete. This type of impact fee will occur with other sites as they come in for review in this district and those developments will be assessed their portion of the impact on that intersection.

Mr. MacEachern recalled the town has imposed similar fees in the past, in particular when the Town was under the Growth Management Ordinance. The percentage of impact is determined by staff. The cost is based on current construction costs at the time of the assessment of the fee.

Mr. Connors stated he felt the Financial Analysis provided by staff was helpful and useful. He ran his own numbers and believed there was something wrong with the numbers as related to the number of school children. The number should be 7 rather than the 15 cited. He believes the number is closer to 25% of residents will be school age children. At 15 children, there is a net positive impact on the tax revenue. If even one police officer or firefighter is hired as a result of this development, that adds an additional expense to the town and that would use up the positive revenue gained. If the number of school age children increases to 19, the tax impact is negative. He felt the numbers should be reviewed again to make sure developments in this district will not hurt the town. Mr. Chirichiello did not agree with the hypothetical scenario. Staff was asked to produce a report and did so. He pointed out that the school system has lost over 1000 children over the last ten years, yet the school budget keeps going up. Mr. Connors said he would like to see net positive revenue projects in this district. Mr. Sioras said staff did look at the numbers. He sits on two of the school committees. Davis Demographics was hired by the SAU and was given data on all the potential projects in town, including the concepts from this district. Davis Demographics incorporated potential school age children from these conceptual projects in their report to the SAU. The 0.06 students per household number was utilized to be consistent with the SAU reports. With regard to police and fire impacts, both the Fire Chief and Deputy Police Chief were asked for input on this particular development, and both stated this development would not have an impact on their operations.

Mr. Nelson noted there has been some ponding of water on Rockingham Road near the bridge which can be as deep as 4-6 inches, causing hydroplaning. As the project moves forward, can DPW look at that area and see if that can be fixed. Mr. L'Heureux said it may be a maintenance issue.

Mr. MacEachern said it was nice to have a financial analysis included in the packet and he hopes the benefits of the district are tax positive. However, Board members cannot make a decision about a plan based on economics. That is not how decisions are made by this Board. The only time economics is part of the decision making is when the Board is when the Growth Management Ordinance is in effect and the Town is not under those conditions at this time.

Motion by Granese, seconded by Nelson to grant a waiver from the Town of Derry Zoning Ordinance, Section 165-32.4.I.2.c to allow less than 2 points of entrance/egress as after review of the waiver request, the Board finds that strict conformity to the regulations would pose an
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unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, Connors, and MacEachern voted in favor, with Nelson stating he agreed because of wetland impacts. Motion passed.

Motion by Granese, seconded by Nelson to grant a waiver from the Town of Derry Zoning Ordinance, Section 165-32.4.I.2.d to allow the development to end in three separate cul de sacs as after review of the waiver request, the Board finds 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. (Friendly amendment to three cul de sacs accepted.)

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, Connors, and MacEachern voted in favor, with Chirichiello and Granese stating they agreed because it would otherwise cause an unnecessary hardship. Nelson said he voted yes because of the potential impacts to the wetland. Connors voted yes because of the topography and wetlands. Motion passed.

Motion by Granese, seconded by Nelson to grant a waiver from the Town of Derry Zoning Ordinance, Section 165-32.4.B.18 to allow retail, professional office and personal or professional services in a building that is two stories with more than 5000 square feet in total floor area (office building).

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, Connors, and MacEachern voted in favor with Connors stating he is a proponent of more commercial space. Motion passed.

Motion by Granese, seconded by Chirichiello to grant a waiver from LDCR Section 170-63.C.4.a to allow less than the required number of parking spaces for Building 2 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 that the waiver will properly carry out the spirit and intent of the regulations.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, and MacEachern voted in favor; Connors voted no because it was stated the land in such plan would be a reason they could not do it. The land has room to add parking. Motion passed.

Motion by Granese, seconded by Nelson to grant a waiver from the Town of Derry Zoning Ordinance, Section 165-32.4.G, to allow the commercial buildings to be occupied prior to the residential buildings as the project will be built all at once. Commercial and residential units will be occupied at the same time.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, and MacEachern voted in favor; Connors voted no stating there should be a percentage applied. Motion passed.

Motion by Granese, seconded by Nelson, to grant a waiver to the Town of Derry Zoning Ordinance, Section 165-32.4.I.1.b.iii, to allow the buildings to not be oriented to take advantage of passive solar. These buildings will be surrounded by 60-80 foot tall trees so there is no opportune building orientation to take advantage of the sun.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, Connors, and MacEachern voted in favor, and the motion passed.

Mr. MacEachern noted the following findings of fact with regard to this application.

The Board finds that the plan meets the dimensional requirements of the West Running Brook district in that the frontage exceeds 50 feet, the front/side/rear setbacks are at a minimum of 10 feet, and no proposed structure is closer than 30 feet to an abutting structure.

The Board finds the proposed height of the buildings is not excessive, meets the intent of the district, and maintains the character of the district.

The Board finds there is more than 1/3 of the buildable area reserved as green space (about 80% reserved once constructed) and the plan provides a sufficient buffer to protect existing residential uses based on the proposed landscape plan and the manner in which the buildings are situated.

Pursuant to the information provided in the PLS memorandum dated August 10, 2022, to the Board relevant to the Town of Derry Zoning Ordinance, Section 165-32.4.E, the Board finds the proposed development is appropriate for the area in that:

1. The development does not overwhelm pre-existing development near the proposed site
2. Environmental resources are not detrimentally impacted by the development
3. The project is consistent with the Master Plan
4. The plan is consistent with the Architectural Design Regulations specific to the West Running Brook District, and
5. There are no other relevant factors that would affect the health, safety and welfare of town residents.

The Board finds that 114 residential units (104 apartments and 10 townhomes) are appropriate for the development given its proximity to pre-existing residential uses.

The Board finds that the proposed density is not less than what would be allowed by a conventional subdivision in the Low-Density Residential zone (one lot per 3 acres, where this lot contains 27+ acres) and a density bonus has not been requested.

The Board finds the overall design of the project is sited to best preserve natural vistas and takes advantage of the existing topography.

The Board finds the structures on the lot are interconnected with sidewalks and the layout suits the existing topography and natural features found on the site so as to minimize the cuts and fills throughout the site.

The Board finds the opportunity for pedestrian connections throughout the internal lot and the opportunity to connect to adjacent lots has been provided.

The Board finds the plan meets the intent of the streetscape requirements with regard to trees, buffered areas, public spaces and lighting.

The Board finds that the estimated future cost to widen the Island Pond/Route 28 intersection is \$1,750,000, and this project will have a 2.5% impact on the overall intersection capacity based on the Hoyle Tanner & Associates traffic study of the West Running Brook Corridor, and information provided in the traffic report prepared by the applicant's Traffic Engineer.

Motion by Nelson, seconded by Granese to agree with the above noted findings of fact. Discussion followed.

Mr. Connors said he agreed with some, but not others. Should the Board vote on them individually? Mr. MacEachern stated the vote should be for all of them; if there is disagreement then the Board member can vote no and explain why.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers and MacEachern voted yes, with Nelson stating he wanted to note one of the findings of fact stated the application was consistent with the Master Plan. State law does not allow a Board to approve or deny based on that finding. Connors voted no, as he believed the height is excessive, the density of the development is not appropriate for the area, the development is not consistent with the Master Plan, and the structures are not consistent with a small village; he agreed with all the other findings. Motion passed.

Motion by Nelson, seconded by Granese to find pursuant to LDCR Section 170-85, the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the West Running Brook District and is in compliance with Section 170-86.1.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, and MacEachern voted in favor. Connors voted no stating he did not believe the architecture was in compliance with intention of the West Running Brook District. Motion passed.

Motion by Granese, seconded by Nelson after review and deliberation of the mixed-use site plan application for PID 05039, Keystone Derry, LLC, the Board finds the applicant has satisfied the general requirements of the West Running Brook District and the Land Development Control Regulations, or in cases where the regulation cannot be met, has satisfied the waiver requirements. Therefore, **the motion is to Approve a Conditional Use Permit pursuant to the Town of Derry Zoning Ordinance, Section 165-32.4.F and RSA 676:4 I – Completed Application, with the following conditions:**

1. Comply with the Vanasse Hangen Brustlin report dated August 05, 2022, or later
2. Subject to owner's signature

3. Add the total residential square footage to Sheet C-2.00
4. Add the total height of the buildings to Sheet C-2.00, near the FFE for each building
5. Change of Use applications for the business tenants will be required to be filed with the Planning Department
6. Pursuant to RSA 673:21,V, the applicant shall provide a fair share contribution toward future signal improvements at the Webster's Corner intersection. The fair share contribution to be held in escrow shall be \$43,750.00. Pursuant to RSA 673:21,V (e), the funds shall be returned if not utilized within 6 years of the date the escrow is established.
7. Pursuant to Note 15 on Sheet C-2.00, the applicant will not phase the residential/non-residential portions of the project and the non-residential portions of the project will be occupied on/before the residential portions of the project.
8. Subject to on-site inspection by the Town's engineer
9. Establish appropriate escrow as required to complete the project
10. Note approved waiver (s) on the plan
11. Change Note 14 on Sheet C-2.00 to reflect the correct waiver provision: LDCR Section 170-63.C.4.a.
12. Add Wetland Scientist signature/stamp
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. Subject to receipt of applicable state or local permits relating to the project (i.e., AoT, Dredge and Fill, NH DES Sewer Discharge, and USEPA CGP, Building Department, Fire Department)
15. Signs for the project shall require administrative review by the Planning Board and shall comply with the Town of Derry Zoning Ordinance Section 165-101.12
16. Following final review by the Town's Engineer and permitting, if there is any significant change to this project, those changes must be brought to the Planning Board for approval.
17. Conditions precedent shall be met within 6 months.

Chase, Feinauer, Chirichiello, Granese, Nelson, Myers, Connors and MacEachern voted in favor and the motion passed.

Mr. MacEachern thanked the development team for an outstanding project which will be an excellent addition to the Town of Derry. He noted this has been a long process and this was the first of what is hoped to be many developments in the district. He wanted to thank each individual Board member for the professionalism shown through the process. For the developer and his team, their professionalism is appreciated. It is always hard to be the first plan in a new zone, and the Board will learn as it moves forward.

### **Board Member Comments**

Mr. Connors said he was a big proponent of the West Running Brook district when it was being formed but feels it has become an uncontrolled monster. He thinks the Board did the right thing with the district, but the waiver provision is not good for the Town. He feels the Board should review this district and put in restrictions such as height. This is becoming the highest residential density zone in town, which was not the plan.

Mr. Nelson stated there are new State statutes that have or will be going into effect that affect the Planning Board. Some of the procedural changes go into effect on August 23, 2022. Before the next scheduled meeting of the Board, he would like to schedule a workshop to review the new requirements and make sure the Policy and Procedures for the Board are in line with the new changes. He complimented the staff and Mr. MacEachern for being proactive on the fly and making sure some of those changes were reflected this evening. Mr. MacEachern asked Mr. Sioras to look at the schedule and provide a date for the workshop.

Mr. Granese noted Mr. Connors has stated the Board itself did the wrong thing with the West Running Brook district. There are eight other members on the Board and all of the members read the drafts. Each member has a voice that can be used and a vote. Each member votes the way they want. He does not agree the Board is at fault as everyone voted the way they wanted. Mr. Connors agreed in that he voted the way he wanted. His point is that the Board tried to do what was right and leave the zone open to make the developments like a village. The plans are not village like. The district is not turning out the way he hoped.

There was no further business before the Board.

Motion by Granese, seconded by Nelson to adjourn.

All members voted in favor and the meeting stood adjourned at 8:37 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_