

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 07, 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: John O'Connor, Chairman; Randy Chase, Town Administrative Representative; David Nelson, Secretary; Andy Myers, Member; Richard Malaby, John Morrison, Chris Feinauer, Alternates

Absent: Mark Connors, Joseph Tremper, Jim MacEachern, Brian Chirichiello, David Granese

*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 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. Malaby was seated for Mr. Granese; Mr. Morrison was seated for Mr. MacEachern; Mr. Feinauer was seated for Mr. Tremper.

Escrow

#22-23

Project Name: Bridgeway Christian Church

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 03117-025, 148 Rockingham Road

The request is to establish Letter of Credit #49719-1, drawn on Enterprise Bank, in the amount of \$59,292.00 for the above noted project. The expiration date is November 21, 2023.

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

#22-24**Project Name: Site Plan 35 Maple Street****Developer: Horne's Pond Real Estate Group****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 29151, 35 Maple Street**

The request is to establish Letter of Credit #24284 in the amount of \$136,915.92 for the above noted project. The expiration date is December 01, 2023.

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

Minutes

The Board reviewed the minutes of the November 16, 2022, meeting.

Motion by Myers, seconded by Nelson to approve the minutes of the November 16, 2022, meeting. The motion passed with Morrison, Feinauer, and Nelson abstaining.

Correspondence

None.

Other Business

PID 29151, 35 Maple Street, Administrative Review, Architectural Design, Autobody Shop Addition

The Town of Derry Planning Board has the authority, per the Land Development Control Regulations, Section 170-83.A, to review changes that would affect the exterior of a building. Specifically in Section 170-84.A.1, alterations to structures within the Traditional Business Overlay shall have a Very High level of compliance with the regulations. Section 170-86.F.8 speaks to the color of a building, and specifically states 'subtle colors are appropriate on larger, plainer buildings, whereas smaller buildings with more detailing can more effectively incorporate brighter colors. Bright colors should be limited to accent areas. High intensity colors, metallic colors, or fluorescent colors should not be used'.

Mr. Sioras explained the Board recently approved a commercial site plan on Maple Street. The applicant has come back before the Board to fulfill a condition of approval. They have provided a rendering of the proposed garage addition which appears to maintain the look of the

commercial building located across the street at the corner of Courthouse Lane and Rollins Street. Staff recommends approval. Mr. Nelson inquired as to the hashed area on the submittal. If as noted, that portion of the building will not change because it is existing, that is reasonable. He would like, for comparison purposes, to know what colors/materials exist today. Grant Benson, III, explained this is a wood structure. The addition is for the garage and the addition will have gray or clay vinyl siding with a shingle roof. There will be a stone looking area on the end of the building. Currently the building is a light gray, with T1-11 which is a plywood siding that is grooved and looks like board and batten. Mr. Myers felt the rendering proposed a sharp looking building, and it would be a good improvement to the area.

Motion by Nelson, seconded by Myers to find after review of the proposal that the proposed façade for the building addition at PID 29151, 35 Maple Street is appropriate for the Traditional Business Overlay District as the proposed demonstrates overall compliance with the Architectural Design Regulations, the proposed does not detrimentally affect the nature of the surrounding uses, the style of the surrounding buildings, or special features of historic, cultural or community interest in the vicinity of the project, and the proposed colors are appropriate for the neighborhood and the district.

Chase, Malaby, Morrison, Feinauer, Myers, Nelson, and O'Connor voted in favor and the motion passed.

Chairman and Planning Director Updates

Mr. O'Connor advised there will not be a Planning Board meeting scheduled for December 21, 2022. The next meeting of the Board will be January 04, 2023.

Mr. Myers recused himself for the next agenda item.

Public Hearing

Dennis Brasher

PID 37082 and 37074

4 & 6 Chester Road

Acceptance/Review, Site Plan

Parking lot addition and expanded commercial space

Mr. Sioras provided the following staff report. The purpose of this plan is for a parking lot expansion and expanded commercial space at Paisano's Pizzeria, located in the General Commercial district. The existing house at 6 Chester Road will be torn down and replaced with the new parking area. All town departments have reviewed and signed the plan. There are several waiver requests outlined in an email from Ashkar Engineering, dated December 01, 2022. The TRC has reviewed this proposal. Staff would recommend approval of both the waiver requests and the site plan application.

Michel Ashkar, Ashkar Engineering, presented for the applicant, Dennis Brasher, who was also present. He explained there are existing buildings at 4 and 6 Chester Road. 6 Chester sits on the

corner of Thornton and Chester Road. The home will be razed to create parking for the commercial building known as Paisano's Pizzeria (4 Chester Road). The Pizzeria occupies one portion of the building; the remainder of the building is vacant. The client's project creates three additional storefronts and so they will need parking for those uses. The parking lot will serve all of the uses. The Technical Review Committee reviewed the plan. The project proposes 15 parking stalls which will be created. The project will require six waivers.

The first waiver is from the requirement that there be shade trees along the street frontage. They have limited frontage space. The second waiver is to allow less than 1/3 green space of the total lot. They are very limited in the total area of the lot and will add some green area. Most of the lot is the parking lot, with a retaining wall on one side which will not exceed 4 feet in height. They will add plantings. The handicap stalls and loading areas for the stores will have dedicated parking. The third waiver request is to allow the dumpster to be less than 25 feet from the property line. The dumpster will be enclosed by a fence. Snow will be taken away as necessary to keep the parking lot clear.

Mr. Ashkar did speak with the Conservation Commission Chairman because of the location of the brook. The plan was looked at in favor because the plan proposes to protect the brook from erosion and contaminants. He has reviewed the drainage plan with the Town and has satisfied the regulations with regard to the drainage requirements. The drainage will lead to the catch basin located in the street if there is flow in excess of the 100 year storm. Walkways are shown on the plan.

There is an additional waiver request to allow a decreased parking stall size to 9' x 18' rather than the required 9' x 20'. The size had to be reduced because of the lot constraints. The last request is to allow less than the required number of parking spaces; the restaurant is a takeout restaurant.

Motion by Nelson, seconded by Morrison to accept jurisdiction of the site plan before the Board for Dennis Brasher, PID 37074, 6 Chester Road and 4 Chester Road, LLC, PID 37082, 4 Chester Road.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

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

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted no, stating the project does not meet the definition of regional impact. The motion failed.

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

Zachary Mills, 8 Thornton Street, noted the athletic field house is not far from this location and the Pinkerton athletes practice there. What effect will this parking lot have on that traffic? The

athletes park in the street near the trail which narrows the access on the street. If there is an increase in traffic on the road, how will that be handled? What will the uses be in the new units?

There was no further public comment.

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

Mr. Ashkar advised there will be an entrance on Chester Road and an entrance and exit on Thornton Street. The 15 parking stalls will not create much additional traffic as only two or three cars may exit at the same time. Mr. O'Connor noted the current use is mostly take out. Mr. Ashkar stated the intended uses are things like a travel agent or real estate agent. These will not be high intensity uses. The plan is to be open until 6 pm for those uses. Paisano's opens at 4 pm and the parking will be shared.

Mr. Sioras noted any new tenants will need to follow the change in use process with town staff. Staff will review the proposed use which includes a review of the potential parking or traffic impact. A decision is made at that time if the use works with the site or not.

Mr. O'Connor inquired about the Conservation Commission requests or requirements for this plan. Mr. Sioras explained the applicant spoke with James Degnan, the Commission Chairman, and it was determined Conservation Commission review was not required because there was no impact on the wetlands across the street. There will be silt fence installed for the construction phase.

Mr. L'Heureux advised the applicant addressed all of his department's concerns during the TRC process.

Mr. Nelson noted there is no locus map on the plan set that indicates the district boundary shown. What is the abutting zone? Mr. Sioras stated the zone is General Commercial, but on the other side of Thornton it is Medium Density Residential. The majority of the lots around the rotary are zoned General Commercial. Mr. Nelson inquired if the corner of Thornton Street had the historical maintenance area for the former mill raceway (Gregg Mill)? Mr. Sioras believed that to be across the street. Mr. Nelson noted the plan does not include a lighting plan. Mr. Ashkar explained lighting will be placed on the building and will light the parking lot. Mr. Nelson recommended any approval by the Board include a condition that the photometrics be included in the final plan set to include model numbers.

Mr. O'Connor noted Thornton Street is a one way street. Mr. Ashkar stated they propose a one way only sign at the Thornton Street exit. It is possible they may petition the town later to make that a two way street.

Mr. Chase stated the site plan contradicts itself. On Sheet 1, Note 5 states, "The proposed parking lot construction falls beyond the 100' buffer of a riverbank and does not border any vegetated wetland", however, the plan shows the 100' floodplain distance from Beaver Brook is encroached by the existing commercial building and the proposed parking lot. Mr. Ashkar stated

that is why they spoke with the Conservation Commission. Mr. Chase advised that contradiction on the plan needs to be corrected. Mr. Ashkar stated he will amend Note 5 to state that a portion of the proposed parking lot lies within the 100 year flood zone.

Motion by Nelson, seconded by Morrison to grant a waiver from LDCR Section 170-63.B (1) to not require street trees along the frontage of the property as this is an existing site and landscaping will be added along the frontage. 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, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison to grant a waiver from LDCR Section 170-64.A (3) to not require 1/3 green space on the lots 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.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison, to grant a waiver from LDCR Section 170-25.A (5) to allow a curb cut to be located closer than 75 feet from an intersection as this is the best location for the curb cut given the existing conditions and utilities. 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, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison, to grant a waiver from LDCR Section 170-67.B (1) to allow a dumpster to be located closer than 25 feet to the property line 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.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison, to grant a waiver from LDCR Section 170-63.C (1) to allow parking stalls to be 9' x 18' rather than the required 9' x 20' 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.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison, to grant a waiver from LDCR Section 170-63.B (4) (j) to allow 15 parking spaces rather than the required 40 parking spaces as lot size constraints will not allow the creation of more spaces and this plan improves an existing, unsafe condition with regard to customer parking. 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.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison to find pursuant to LDCR 170-85, that the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the General Commercial district and meets a MEDIUM HIGH level of compliance as outlined in Section 170-84.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison to agree with the following findings of fact:

The Board finds the proposed plan provides safe and efficient vehicular and pedestrian access, and the design and construction of the driveways and walkways are adequate to accommodate the anticipated volume of traffic proposed by the development.

The Board finds the proposed parking plan is adequate for the site, and meets the parking density requirements for the use.

The Board finds the landscape plan meets the intent of the regulations and a residential landscape buffer is not required as the nearest residential use is separated by a road or accessway with existing vegetation that provides a natural buffer.

The Board finds the stormwater management as proposed is designed to control the post development runoff so that it does not exceed predevelopment runoff.

The Board finds the utility construction standards are met.

The Board finds exterior lighting, solid waste storage and snow storage provisions, and erosion and sediment control provisions are adequate.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Morrison to approve pursuant to RSA 676:4,I, Completed Application, with the following conditions:

1. Subject to owner's signature
2. Subject to on-site inspection by the Town's engineer
3. Establish appropriate escrow as required to complete the project
4. Note approved waiver (s) on the plan
5. Add a note to the plan indicating the Book and Page of the recorded reciprocal access and parking easement agreement.
6. 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
7. Subject to receipt of applicable local permits relating to the project
8. Lighting plan shall be included in the final plan set showing the fixture type, photometrics and fixture locations
9. Revise Note 5 on Sheet 1 to indicate a portion of the proposed parking lot is partially located in the 100 foot floodplain buffer.
10. Conditions precedent shall be met within 6 months.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Mr. Myers was reseated.

Cheryl O'Connell Revocable Trust
Sarah Barton & Caroline Dodge, Trustees
PID 07013, 175 Warner Hill Road
Acceptance/Review, 2 lot subdivision

Mr. Sioras provided the following staff report. The purpose of this plan is for a two lot subdivision located in the Low Density Residential district. The property is being subdivided as part of a family trust agreement. No new development is being proposed. All town departments have reviewed and signed the plan. There are several waiver requests outlined in a letter from Promised Land Survey, dated November 21, 2022. No state permits are required. Staff recommends approval of the waiver requests and the subdivision application.

Tim Peloquin, Promised Land Survey, presented. Caroline Dodge was also present. The land is part of the estate of Cheryl O'Connell for the family members, which is why no new development is proposed. The proposal consists of the creation of two new lots of record for which building permits could be obtained. That is not the intent at this time. The lot on the left has a small cemetery. The parent lot consists of almost 30 acres. His office did perform a perimeter survey and topographical survey. The lots will be divided into a 19 acre lot and a 10 acre lot. Since they are such large lots, his office is requesting waivers from HISS mapping,

wetlands mapping, lot sizing by soil type, test pits and driveway plan and profiles as they are not proposing development at this time. Sheet 3 shows the proposed acreage and bounds.

Motion by Nelson, seconded by Myers, to accept jurisdiction of the 2 lot subdivision plan before the Board for the Cheryl O'Connell Rev. Trust, PID 07013, 175 Warner Hill Road.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

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

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted no, stating the proposal has no regional impact and the motion failed.

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

Terren Kelloway, 252 Island Pond Road, asked if with the subdivision there is any chance that condominiums would be constructed on the lot. He lives down hill from the project and would not want runoff from a large parking lot. He has no issues with the two lot subdivision and understands there are no plans at this time to build anything, but he has a concern for any future development that might impact his lot or well. There is an open drainage system in front of his home and they see a good amount of water when there are heavy storms.

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

Mr. Peloquin stated this application will have no negative impact on drainage or other lots. With regard to condominiums, any plan of that type would need to come back to the Board for review and approval. The approval of the plan assures the variance remains in effect. Any future development would address drainage, etc. The applicant would need to prove there is no negative impact downstream and that would be proven by the engineering and stormwater models. This zone is for single family homes only and is a three acre zone. There is no likelihood of condominiums.

Mr. Myers inquired about the ZBA variance. Mr. Peloquin explained Mrs. O'Connell passed in 2021 and left the land to her daughters. The estate dictates the land be divided between the two. Mr. Myers confirmed there is no intent to develop at this time, but what is planned for the future? Mr. Peloquin stated the daughters have stated they do not intend to develop the land at this time. They would like to keep the land as long as possible. The variance was required to allow the creation of the lot on Warner Hill Road with less than sufficient frontage. There was only 150 feet where 200 feet of frontage is required.

Mr. Chase stated he has no issues with the plan. He recalls when the variance was granted, Ms. Barton had planned to construct a home on Warner Hill Road. When was that boundary line, as shown to the ZBA, changed to the current configuration? Mr. Peloquin stated they received the frontage variance and the intent was to create a 3 acre lot off Warner Hill, leaving the remainder with frontage on Island Pond Road. That subdivision plan did not move forward, and was not approved by this Board, although it had been reviewed by the TRC. Mr. Chase suggested the proposed findings of fact should be amended as one of the lots does not have 200 feet of frontage.

Mr. Nelson commented on the new cemetery easement proposed on the plan. There is no easement document in the submission. Where is the easement recorded and whom does the easement favor? Mr. Peloquin stated NH State law states development may not occur within 25 feet of a known cemetery. He will need to research that a bit more and would ask that a condition be placed on the plan that a more expansive note be added. Mr. Nelson said he would like to know who will maintain the cemetery. Ms. Dodge stated her grandfather was buried in this cemetery in 1985 after the family applied to Concord to create a private cemetery. This is a family cemetery. Mr. Peloquin stated there needs to be 25 foot setback and the easement ensures the protective area around the burial ground. Mr. Nelson said it should be clear on the plan who owns the easement. There cannot be an easement that benefits oneself. Mr. Peloquin confirmed he would re-word “easement” to “setback” and cite the applicable RSA.

Motion by Nelson, seconded by Myers, to grant a waiver from the following sections of the LDCRs as no development is being proposed at this time. If development occurs on the lots, sight distance will need to be proven to obtain a driveway permit, septic plans will need to be prepared which will include test pits and identification of the soils on the lot, as well as the location of any wetlands. The two lots are proposed at 10.6 and 19.32 acres which should provide sufficient lot area. The applicable sections of the LDCR are:

LDCR Section 170-24.A (12), HISS Mapping
LDCR Section 170-24.A (13), Wetlands Mapping
LDCR Section 170-25.B, Minimum Area By Soil Type
LDCR Section 170-25.F, Test Pits
LDCR Section 170-26.D, Stopping and Sight Distance

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

Chase, Malaby, Morrison, Feinauer, Nelson, and O’Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Myers to find that the plan meets the dimensional requirements of the Low Density Residential district in that the frontage either exceeds 200 feet or a variance has been granted for frontage that is less than 200 feet, the front setbacks are at a minimum of 35 feet, the side/rear setbacks are at a minimum of 15 feet, and no structures are proposed at this time.

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Myers to approve, pursuant to RSA 676:4, III, Expedited Review, with the following conditions:

1. Subject to owner's signature
2. Submit a revised 11 x 17 plan, showing the new lots, with addresses as assigned by Fire Prevention and the Parcel Id numbers as assigned by the Assessing Department. The sheet needs to be revised to show the current lot configuration.
3. Subject to on-site inspection by the Town's engineer
4. Establish escrow for the setting of bounds or certify the bounds have been set
5. Note approved waiver (s) on the plan
6. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-24.C
7. Subject to receipt of applicable state or local permits relating to the project
8. Clarification shall be added on the plan set, stating the cemetery has either an easement or a setback as stipulated in State law for the private burial lot.
9. Conditions precedent shall be met within 6 months.
10. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. [This includes the \$25.00 LCHIP fee, recording fees for the mylar and the Notice of Decision.]

Chase, Malaby, Morrison, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

The Board recessed for 5 minutes.

Workshop #2 – to discuss proposed changes to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, specifically the dimensional requirements in the district.

Mr. Sioras stated following the last discussion, the thoughts of the Board members were compiled into the document before the Board this evening. In particular, the challenges faced by the landowner at 16 Franklin Street were noted. That is a difficult lot to redevelop based on the current regulations. The Board is not required to make a decision on any of the proposed changes this evening and this is the beginning of the discussion.

Mrs. Robidoux stated the Planning staff would like to respectfully request that the Planning Board review the requirements of the Traditional Business Overlay District (TBOD), in particular, the Area and Dimensional requirements. Following the expansion of the district boundaries in 2021 to include the side streets off East and West Broadway in the Central

Business District, Planning staff, in conjunction with Code Enforcement, began to see challenges in trying to apply the setbacks on these side streets. It has become apparent there were unintended consequences when the zone expanded. Planning staff has prepared proposed amendments for the Board's consideration. It is just a starting point for discussion as the Board should carefully review any amendments and any possible consequences of the changes. Based on Board member comments at recent meetings, in particular the conceptual discussion for 16 Franklin Street, it appears the Board would like to further explore utilizing a Conditional Use Permit as a way to provide relief for the dimensional requirements that could not be met in the TBOD. Statutorily, the Board has the authority to utilize 'innovative land use controls' pursuant to RSA 674:16, I and II (the Board can require a conditional use permit) and 674:21 (allows the Board to use innovative land use controls and CUPs). A list of items for the Board to consider as it discusses amendments in the zone has been provided.

Proposed changes include adding a provision to Section 165-49 under the Purpose, which states, "The lots in this district are unique, particularly those that do not front on East or West Broadway. In order to properly protect the life safety and welfare of residents and visitors in this district, deviations from the dimensional requirements shall be by Conditional Use Permit." Essentially, the Board has the authority to waive the requirements upon application and the section lists the requirements that would need to be met in order for a CUP to be granted by the Board.

Additionally, staff recognized it might be important to keep the zero front line setback in the original TBOD which include the lots that front on East Broadway from Crystal Ave to West Broadway on Maple Street. It makes sense to maintain the current dimensional requirements in the district for those lots. For everything else, the ordinance could state an applicant could come to the Board if they could not make the requirement work for their lot.

Mr. Nelson said he would want to start with some requirements. He is more familiar with stating the requirements and then providing a solution if the requirements can't be met. He questioned the Board's vision for uses and potential redevelopment when the Board expanded the boundary of the TBOD. Did the Board expect to get primarily residential or a mix of uses? Did the Board anticipate tear downs and redevelopment? He believed it would be better to understand what the Board wants to see and then come up with the flexibility for people who would like to develop lots in the district.

Mr. Chase explained the vision was to allow more mixed use in the district and bring more business to the side streets along Central, Railroad Ave, Wall Street, and Maple Street, for an example. Those streets go back several blocks. The Board thought it would be possible to go a block off of Broadway and see retail/commercial uses with residential above. That is why the Board maintained the existing setbacks.

Mr. Nelson said when the first TBOD was created he was a member of the Board. For the most part at that time, the majority of the existing storefronts conformed to the zero setback and the Board did not create major changes in the streetscape. The Board did not want to see strip malls set back from Broadway but wanted it to look urban. He does not think that is the existing condition on the side streets. He would think it is hard to enforce the setbacks on any of the lots.

Maybe rather than doing lot by lot relief, perhaps the Board should change the setbacks on those streets back to whatever the requirement was when the lots were in the former district. Mr. Chase said he would not be in favor of going back to the original setback without a provision that people can develop to the East and West Broadway standard. For 16 Franklin Street, maybe the building setback could be 8 feet and the applicant could add a sidewalk which would allow flexibility. If the wording goes back to the old zoning, it may be difficult to expand to mixed use and gain a more urban environment. There is more difficulty on the north side of Broadway. Many of the streets already have sidewalks, but not all of the sidewalks are contiguous. The west side of Railroad Avenue has the structures set back. One side of the street is set up well, the other side is not and needs a more creative solution. Both issues should be addressed.

Mr. Nelson felt Mr. Chase's comments were in favor of the lot by lot decision. Timing is an issue. If the Board wants to change the setbacks, it would affect teardown and redevelopments. How many applications will the Board see and how many decades will it be before there is a uniform appearance? A sawtooth effect with some lots with large setbacks and others with no setback from the street is not the vision he would expect the Board would want. It is good to expand the opportunity for mixed use but the parcels that can take advantage would be the exception, unless there is massive downtown urban renewal. Mr. Chase thought the Board should start somewhere. Once one lot is redeveloped, others will follow. In Portsmouth and Dover, there were buildings that were originally set back from the road. Daniels Street transformed over a 10 year period and went from a 'sawtooth' to having all the buildings on the sidewalk. He agreed it does take time. Railroad Ave was developed on the west side within three years. That side of the street would look very different if the TBOD had been in effect for those lots at the time they were redeveloped.

Mr. O'Connor felt the intent of the ordinance was to not have residential use below the second floor. Mr. Chase explained the variance obtained for 16 Franklin Street was to not require the retail/commercial use on the first floor. The setback variance request was denied which triggered this amendment request. The further back on the street the lot is, the harder it is to transition.

Mr. O'Connor felt there needed to be a two story minimum in the district. Mr. Nelson asked if there is any issue with the width of the streets. Broadway, although not very wide, has parking on both sides, street trees, and sidewalks which makes it pedestrian friendly. If the Board attempts a zero front setback and sidewalks, but the road is not wide enough for the on street parking, does that cause unintended consequences? Mr. Chase believed it did. 16 Franklin Street is a good example because the property line is close to the road pavement. Sidewalks could not be added without taking part of the street. If the building could be set back, then the developer can install a sidewalk. It might make sense to make allowances to have buildings further back on the lot. Mr. Nelson thought then the Board should utilize a Conditional Use Permit to increase the front setback in order to accommodate sidewalks. Mr. Chase said as an example, in that case, the building setbacks would have to be met, unless the developer wanted to add a provision for a sidewalk, then they could move the building back. Mr. Nelson felt that might create a disconnected section of sidewalk.

Mr. L'Heureux stated it is not a good idea unless the sidewalks are all done in one section. It is hard to maintain them otherwise. Also, there is a need to look at the lots and how they might be redeveloped. The market right now is for residential uses. If the buildings are placed off the road with sidewalks, it creates less of an area to the rear. Snow removal can affect parking to the rear of the lots. When one thing is moved, it affects something else. He likes to have a range to work within and a starting point. The Board should be considering parking, access points, and circulation.

Mr. Nelson thought most side streets contained residential and multifamily uses in this zone. Where do those residents park now? Mr. Sioras stated the lots are distinct. Franklin, Pearl, Manning, Maple, and Martin are all different from the area near Railroad Avenue. The multifamily dwellings on Railroad Ave were constructed in the 1980s and met the setback. Central Street has residential uses set back with sidewalks on both sides. The regulations cannot be applied fairly across all of the lots in the district. How would Franklin Street be redeveloped? Right now, the homes would need to be right on the road. The Conditional Use Permit could state structures have to be 10 feet off the road if there is to be an addition of a sidewalk. He is not advocating for sidewalks, but that might work better in that area. With Railroad Avenue, people use the sidewalks on the south side of the road.

Mr. Nelson felt there was some pressure with regard to timing but suggests the Board hold a district walk to see the whole district and talk about the lots. It would give the Board a better vision from which to work. Mr. Sioras said he could see people purchasing an older home and razing it to expand the parking opportunities.

Mr. Nelson said he would like to fix the unintended consequences, but does not want to hurry to a solution, as the Board would run the risk of creating more unintended consequences. Mr. O'Connor inquired about the time element. Mr. Sioras said they want to be fair to the applicant at 16 Franklin, whom they did advise this discussion might take three to four months.

Mr. Chase liked the idea of the district walk, especially for the north side which has more constraints. Mr. Sioras noted during snowstorms, Franklin Street gets very narrow. The town has received complaints because the snowbanks can get so high that they obstruct the travel way. Mr. L'Heureux added Public Works routinely removes the snow during storms because of the narrow streets. It is important to look at circulation with regard to redevelopment plans. Where would people park – will it be in the back or the front? There can't be too much open pavement in the front of the lots because of the snow.

Mr. Nelson suggested looking at one street at a time to see if there are opportunities for public/private partnerships, to see if there are opportunities to develop a larger area, rather than developing piecemeal. It would be a more holistic approach to take on sections and streets rather than just the side streets.

Planning staff will suggest a few dates for the district walk at the next meeting, which will be January 04.

Workshop #1 – To discuss the wording of Article XIX, Independent Adult Community Overlay District in relation to HB1661, Section 72

Mr. Sioras advised in the most recent legislative changes, specifically HB1661, there are provisions surrounding workforce housing that will take effect in July of 2023. Any provisions contained in the Adult Overlay District will also apply to any Workforce Housing development. There is some thought that the Bill will be reintroduced during the next Legislative session.

Mrs. Robidoux advised currently, the Independent Adult Overlay District is out of compliance with State and potentially Fair Housing requirements. Staff would recommend reviewing this regulation whether legislative changes are made or not. The definition for Independent Adult Community contains a clause that states occupancy by anyone under the age of 18 is prohibited for more than ninety days in any calendar year. Where the ordinance does not specifically state at least 80% of the occupied units to be occupied by persons 55 or older, it may be that the ordinance currently discriminates on the basis of familial status. This should be reviewed by legal counsel, or perhaps add that to the ordinance. That 80% wording should be in the ordinance in order for it to say that someone under the age of 18 cannot live in the development.

Mr. Nelson asked if the ordinance included the 80% occupancy rule, people under the age of 18 would be allowed for short visits and that would not be discriminatory. Mrs. Robidoux believed that to be true.

Mrs. Robidoux suggested the Board not change the zones where this type of development is allowed. The Board might want to look at lot requirements and density. There seems to be a conflict with Section 165-146 (2) which states that only one person must be 55 years old or older and Section 165-50 (2). The words as they are written imply that if the residents are not partners or married, everyone residing in the unit has to be 55 or older. For example, she could live in the development, but could not have her 26 year old son live with her, the way it is worded now. Her son would have to be 55 or older, because he is not her partner or spouse. Mr. Nelson added that would also exclude a 37 year old live-in, part-time nursing assistant if the resident required one.

Mrs. Robidoux said as they looked at the ordinance it became apparent this section of the ordinance needed to be reviewed with not just an eye to housing for older persons, but also with regard to workforce housing. Mr. Nelson believed in any district where Adult Housing is allowed and had special provisions, the town will also have to allow Workforce Housing. Mrs. Robidoux agreed, adding all of the provisions for Adult Housing would apply to the workforce housing development. For example, on four acres, with a density bonus of 1.5 units if the lots are on water and sewer. Mr. O'Connor believed under the new legislation, the town is pre-empted from regulating workforce housing. The bill that created this legislation was killed several times and then was added at the last minute to the CTE funding bill.

The Board tasked Planning staff with clarifying whether the town is pre-empted from legislating workforce housing as a result of this Bill; whether under the Fair Housing Act the town can include its current wording, and how can it address Workforce Housing.

Mr. Nelson suggested the Board review the community vision for adult housing and look at the demographic shifts. Is there a difference in community need between housing that is good for older baby boomers and people who need affordable workforce housing? Do these requirements look different? What are the differences between the two community goals? If there is a lot of overlap, maybe what the State is suggesting makes sense.

Mr. Sioras commented there are several successful Adult communities in town: Indian Hill, which has 2 bedroom townhomes; Bunker Estates, garden-style 1-2 bedroom apartments; Villages at Oakwood, which are single family homes and Chases Mill Condominiums. The Adult Community Overlay was put in place as part of the Growth Management Ordinance. New Hampshire is an aging state. People want to stay in their community but don't want three bedroom homes.

The discussion will be continued to second workshop at the next Planning Board meeting, which will give staff time to conduct the research.

There were no Board member comments. Mr. O'Connor wished all a happy holiday season.

There was no further business before the Board.

Motion by Nelson, seconded by Myers to adjourn. The motion passed with all in favor and the meeting adjourned at 9:04 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____