

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 15, 2023, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room, with a virtual option.

Members present: John O'Connor, Chair, David Nelson, Vice Chair, Andy Myers, Secretary, Randy Chase, Town Administrator's Representative, Dave Granese, Town Council Liaison, Bryan Fishman, Alternate, Dan Healey, Members.

Absent: Mark Connors, Member, Jim MacEachern, Town Council Liaison (Alternate), John Morrison, Town Council Liaison (Alternate), Chris Feinauer, Richard Malaby, Members.

Also present: George Sioras, Planning Director; Mark L'Heureux, Town Engineering Coordinator, Lisa Carvalho, Planning Clerk.

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag.

Mr. O'Connor introduced the Planning Board and Bryan Fishman, newly elected Alternate, acting for Richard Malaby this evening.

Escrow

#23-21

Project Name: Bridgeway Church - Release

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit

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

The request is to approve Release #2 in the amount of \$24,066.72 for the above noted project. The amount to retain is \$7,387.20. This escrow is non-interest bearing.

Motion by Granese, seconded by Myers to approve as presented.

All in Favor: Chase, Healey, Granese, Fishman, Myers, Nelson, O'Connor vote Yes. The motion passed.

#23-22

Project Name: Ahern & Nichols Family Dentistry, P.A.

Developer: Hornes Pond Real Estate Group

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: PID 3626, 32 Pinkerton Street

The request is to establish a Letter of Credit #146, issued by Pentucket Bank for the above noted project in the amount of \$71,057.35. The expiration date shall be November 29, 2024.

Motion by Granese, seconded by Myers to approve as presented.

All in Favor: Chase, Healey, Granese, Fishman, Myers, Nelson, O'Connor vote Yes. The motion passed.

#23-18

Project Name: Paisanos Pizza Expansion

Developer: Dennis Brasher

Escrow Account: Same

Escrow Type: Performance Bond

Parcel ID/Location: 37074 & 37082, 4 & 6 Chester Road.

The request is to establish a Performance Bond #66803256, issued by Western Surety Company for the above noted project in the amount of \$34,764.50. The expiration date shall be November 2, 2024.

Motion by Granese, seconded by Nelson to approve as presented.

All in Favor: Chase, Healey, Granese, Fishman, Myers, Nelson, O'Connor vote Yes. Myers abstained. The motion passed.

Minutes

The Board reviewed the minutes of the November 15, 2023, meeting.

Motion by Nelson, seconded by Nelson to approve the minutes of the October 18, 2023, meeting.

All in Favor: Chase, Healey, Granese, Myers, Nelson, O'Connor vote Yes. Fishman abstained. The motion passed.

Correspondence

Mr. Myers reported that we have received a copy of New Hampshire Town & Country, the New Hampshire Municipal magazine.

Other Business

Third request to extend approval for Keystone Derry, PID 5-39. 74 Rockingham Road. The Residences of Skye.

Mr. Sioras recognized Tim Peloquin in attendance representing the owner and stated that, given the market, construction costs and interest rates, the applicant has asked for one more extension. The location is Rockingham Road, between Clam Haven and Winter Hill. Staff recommends approval of an additional six months until June of 2024.

Mr. Nelson recalled that there were two pending developments along this road and road improvements that have timing codependences. Mr. Nelson inquired if this extension would affect that relationship in any way.

Mr. Sioras said no and that this project will go first. He requested Tim Peloquin to confirm that the developer will move forward with this project in Spring of 2024.

Mr. Peloquin responded in the affirmative.

Mr. Granese stated that it is rare for the Board to grant 3 extensions. He noted that the developer has not yet secured escrow. Mr. Granese does not want to see the same situation that happened to The Grind House and the project not moving forward.

Mr. Peloquin responded that the developer is fully secured and has all State approvals for the project. Escrow is established, is fully funded, and approved by the bank. The developer is ready to move forward but is finishing up another project. The developer does not want to start the project at the beginning of the winter season. The hope is to start by the summer and with this extension should put the project start in August 2024. They will be well underway by that point.

Mr. Granese made the motion below, adding the word “final.”

Mr. Nelson enquired of Mr. Sioras whether it is legal for one sitting Planning Board to bind a decision that might come before another Board in the future.

Mr. Sioras stated that whoever on the Board makes the motion, seconds, or that votes in the affirmative would be the person to reconsider their vote.

Mr. Healey stated that he does not believe the word “final” needs to be added to the motion. If the project returns for a fourth extension, the Board could simply deny it.

Mr. Granese reiterated his concern that the land would stand vacant for another two years when another development could have been completed. The word “final” being added would put pressure on to complete the project.

Mr. Peloquin stated that he personally respects the motion with the added word. The developer will do this as soon as he is freed up from his current project in the Spring.

Motion by Granese, seconded by Myers, to approve the third and final request to extend the conditional approval granted on August 17, 2022, for an additional 6 months for Keystone Derry, LLC, PID 5-39, 74 Rockingham Road. The new expiration date will be August 17, 2024.
Roll Call Vote: Chase, Healey, Granese, Myers, Nelson, O'Connor vote Yes. Fishman abstained. The motion passed.

First Request to extend approval for Ball Family Trust, PID 11090, 53 English Range Road, 3-lot subdivision plan.

Mr. Sioras stated that he and Mr. L'Heureux have been meeting with the owner and their surveyors. We do not ask that they be in attendance for the first request. Staff recommends approval.

Motion by Granese, seconded by Myers, to approve a first request to extend the conditional approval granted on June 7, 2023, for an additional 6 months for the Ball Family Trust, 11090, 53 English Range Road. The new expiration date will be June 7, 2024.
All in Favor: Chase, Healey, Granese, Fishman, Nelson, O'Connor vote Yes. The motion passed.

Planning Director/Chairman Updates

Mr. Sioras stated that there will not be a Planning Board meeting on December 20, 2023. The Board will reconvene for meetings on January 3 and January 17, 2024.

Mr. O'Connor thanked the Board, and former members, for their work during this very busy year. He wished all a safe holiday season.

Public Hearing

A public hearing to discuss Muharem Mahmutovic, PID 37043, 1 Pinkerton Street, Acceptance/Review, Site Plan Determination, Parking Lot Expansion.

Mr. Sioras stated that this is a unique situation. We sent this applicant under Site Plan Determination. It is not a full Site Plan and not a Change of Views requiring paperwork. This is a hybrid. We felt that if you come under the Site Plan Determination, you have a Public Hearing, notify the abutters, which we have done, and then the Board could approve the Plan as it is, approve with conditions, or the Board could ask the applicant back for further information, or remand it back to Staff for review. Mr. Sioras referenced his memo, trying to find a balance between the Staff concerns and the respect the applicant. Mr. Mahmutovic, the property owner, wants to fix up the building and put new housing and tenants into it.

Mr. Sioras stated that he has included in the Board packets, emails from two of the abutters; Linda Morgan and Mark Mastromarino, both supporting the project. The Board has the minutes from the Highway Safety Committee meeting. The applicant does not have any Department Head signatures as there is still concern about the parking situation. The applicant has a legal right to move forward.

Mr. Nelson stated that the Board has an Existing Conditions drawing and Sight Line Distance drawings. Mr. Nelson asked if the Board has been provided with a Revised Conditions drawing.

Mr. Sanford replied, "No."

Mr. O'Connor state that the ZBA gave them a variance which was Commercial. At that time, they were not going to be working on the third floor and the first and second floors would be Commercial space. Now the second and third floors show apartments. Has this changed with the ZBA?

Mr. Sioras stated that the applicant was given a variance on December 3, 2020. The variance was to allow the reestablishment of commercial mix-use at that property. The Zoning Board approved 5-0. There was an antique shop and a bike shop on the first floor. The upper floors were vacant. Then the building was purchased by the applicant. There are two apartments on the first floor. The applicant would like to put residential on the second and third floors. The Zoning Board gave the variance to reestablish the mix-use. The property is in the mix-use Zone.

Mr. O'Connor recognized Mr. Muharem Mahmutovic and Mr. Earl Sanford of Sanford Engineering.

Mr. Mahmutovic stated that he purchased this property in 2018. We are providing a new engineered site plan to further improve the parking situation at 1 Pinkerton Street. When the entire building is occupied, there will be a total of five apartments and one commercial space. Currently the first floor is occupied, two 1-bedroom apartments and one commercial space. We are proposing three additional apartments on the second floor, and one on the third floor. The layout of the building will remain the same, as will the paved area of the parking lot. The goal is to obtain full approval for full occupancy and obtain building permits for three additional apartments. The proposed ten parking spaces on-site and three additional parking spaces off-site will be shared with the public. In addition to the 13 spaces, there are close to 30 off-street parking spaces within 1,000 feet of the building. Previously, and historically, the building had only six parking spaces for a larger parking need per code occupancy for larger parking need per code, than what is proposed today. The three additional parking spaces will be similar in nature as the other 8 that are located within 500 feet on 28 Bypass between one Pinkerton Street and the rotary on 28 Bypass. We have already obtained the zoning variance to allow mixed use of this building where Commercial was only used before. We have also gone to the TRC Review Board as well as The Highway Safety committee to address their concerns.

We went from 10 parking spaces, initially presented during the Zoning Hearing and approved. That was our original intent. The Planning Board then stated that we needed thirteen parking spaces. To achieve this and stay within the footprint of the property, we worked with Sanford Engineering to see if we can get these 3 additional spaces on 28 Bypass. Spaces like this exist further down the road. During construction we would make them the same as those existing spaces. They would have a 2-hour parking limit and no overnight parking, making them beneficial to the Commercial space without taking the Residential parking.

Earl Sanford was recognized. He stated that our first focus was to review the feasibility of the three spots on 28 Bypass to make certain that they would not block Sight distance. We would need 8 spaces for Residential and 5 for Retail use. Our expectation is that the Retail use would be during the day hours. He expects 50% vacancy of the Residential use during the day. We do not expect any of the residences to use the 3 retail spaces. We believe that 2 hours is a generous time limit for those spaces. The time limit will also discourage use by the Pinkerton students.

Our expectation is that the spaces may not be used at all because of the offset hours between Residential and Retail use. The Sight Lines site “edge of pavement”, but we have an apron. We meet the Sight Line including the apron. We also show the cars parked off the paved apron and onto the dirt ground. If one went North, before the apron started and drew a line from there South, there is another few feet that would push the Sight Line out, meeting the Town’s criteria. Our attempt is to make sure that it would be safe and reasonable use of that space.

Mr. Mahmutovic stated that the building is 140 years old and has always been Commercial use except for the 2 small apartments on the first floor. In the 1920-1970s it was a Congregational Church. Before Mr. Mahmutovic bought the building in 2018, there was a large antique shop which covered the entire second floor and half of the first floor. There had been a Masonic Hall on the third floor. There were many challenges in keeping the building Commercial. By making the building residential we reduced the need for many parking spaces. The Change of Use that we are proposing is less than what the building has had in the past.

Mr. O’Connor asked that the two prints showing the second and third floors be explained more clearly.

Mr. Mahmutovic responded that the second floor will have two identically laid out 2- bedroom apartments. One is 930 square feet and the other is 1,050 square feet. One will be a 2-bedroom, one bath, the other will be 2-bedroom, two bath. Each will have a kitchen, living room, laundry room and one small mechanical closet for the furnace. This will change from a wide open hall, being divided into 2 apartments. One the third floor, the only wall that we would add would be to make the space a 2-bedroom apartment. Each of the bedrooms would have its own bathroom and a closet. In the main area our plan is to keep the current walls to preserve the woodwork. The “bedroom” note on the bottom of the plan should read “mudroom” and has a bathroom as well.

Mr. O’Connor asked if this plan has been presented to the Fire Department.

Mr. Mahmutovic responded that they have seen the proposed layouts.

Motion to open the public hearing by Granese, seconded by Nelson. All in Favor: Chase, Granese, Healey, Fishman, Myers, Nelson, O’Connor vote Yes. The motion passed.
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The **Public Hearing** is now open.

No one was recognized and there were no online requests.

Mr. Sioras presented the two emails that he received from the abutters.

Dated December 4, 2023

Dear Chairman O'Connor and Members of the Board,

Although prior commitments will prevent us from attending the public hearing of 6 December at which Mr. Mahmutovic's recent application to add three parking spaces to his property at 1 Pinkerton Street, we wish nevertheless, to express our hearty approval, as owners of 16 North Main Street and the abutters most directly affected by the plan and do so by respectfully submitting this email and letter to your Board.

As with all of his previous actions in preserving the valuable structure of Association Hall, the social and cultural center of Derry Village from 1875 to 1970, Mr. Mahmutovic's current plan to enhance 1 Pinkerton Street's economic viability has thoughtfully considered a balanced approach, retaining as much as possible the 19th and early 20th century character of the original building while accepting necessary compromises to modern realities and practical considerations.

His persistence in attempting to earn a return on his investment while increasing the visibility of Derry Village as a thriving center within Derry's cultural district and preserving the area's historic resources is laudable and deserves encouragement.

Sincerely,

Mark A. Mastromarino, Ph.D.

Arvilla C. Mastromarino, M.A.T

16 North Main St Derry, NH. 03038

Dated December 6, 2023

Dear Chairman O'Connor and Members of the Board,

Although prior commitments will prevent me from attending the public hearing for December 6th at which, at which Muharem Mahmutovic's recent application to add 3 parking spaces to his property at 1 Pinkerton Street will be reviewed, I wish to express my full approval as a tenant and business owner of TomandChickpea, located within 1 Pinkerton Street, Units C and D, and do so by respectfully submitting his email and letter to your Board.

The addition of the parking spaces on the 28 Bypass will benefit all inhabitants of the building - for me in particular as it will allow more available spaces for my business, related events held within my business, as well as for other tenants and their guests.

Please consider approving Mr. Mahmutovic's proposal, as I cannot foresee any downside or negative impact the additional spaces will create.

Please include my feedback as part of the proceedings.

Sincerely,

Lori Morgan

Owner, TomandChickpea

Motion to close the public hearing by Granese, seconded by Myers. All in favor: Chase, Healey, Granese, Fishman, Myers, Nelson, O'Connor, vote Yes. The motion passed.

The **Public Hearing** is now closed.

Mr. O'Connor recognized Mr. L'Heureux.

Mr. L'Heureux stated that there were many discussions at the TRC and Highway Safety meetings, but he does not believe that all the items were addressed. There are obvious steps skipped as far as coming to the Board without trying to vet out some of this technical information, which is usually the case. We do not usually talk through technical things at the Board level. It is easier for us to try to vet that out and if we cannot come to terms, then discuss it further with the Board, we try to make sure that most plans come to the Board in compliance with the regulations.

Mr. O'Connor asked what percent completion, from the TRC perspective, does Mr. L'Heureux feel is brought in front of the Board.

Mr. L'Heureux stated that this is a new plan that was submitted beyond the TRC, so I had to review this one; it was submitted before the Board (meeting). The information with regard to Sight Distance, a wall and other particulars that were not originally part of our review. Now I've looked at the plan. I have taken an extra step to look things over at the site because originally at the TRC there was a need for field level diligence. The interesting component here is the Sight Distance on these three parking spaces. We have been very adamant about not approving these spots. They are very problematic. If this is vetted properly, it will show itself out. What we have in our regulations is for new construction for the 10 feet back from the edge of pavement. The object is 10 feet that's looked upon from driving in each direction. They are at 3.5 foot driving level. The problem is that this is a modified intersection. In a real scenario off the edge of pavement the bumper of the car is at the edge of the road. The 10 feet is the object that one is supposed to be able to see. At the same time, there is also a sight distance that the driver (of the object) is supposed to be able to view, both directions, at that 3.5 foot level and be able to see the oncoming traffic as well. In this case, they have assumed numbers, but this is a modified intersection. Technically, the stop bar is your bumper and the concrete island. That has to be used as the edge of the road, and then 10 feet back. Viewed from that 10 feet back, the existing wall obstructs the line of sight, as well as any cars that would be parked along that side. Mr. L'Heureux viewed the situation physically from the ground. Looking up from that side, all he saw was wall, from the Stop sign, all the way back to 10 feet. It is a nonconforming situation now. If the Board adds parking, it will be further exasperated. There is an open line of sight looking south, but looking north, it is restrictive. Once one adds winter maintenance and some of the other features that are proposed, like a wall, if the wall is one foot high or four feet high, one will not be able to park these cars up against that structure. One would have to open their car door only 8 inches off the ground. No one can manage this parking scenario. Most people will be afraid of some sort of obstruction on the right side of the vehicle and park away from it because they won't have spatial reference to make sure they can get close enough to get inside the lines.

As far as other site issues, there are deficiencies regarding parking sizes in the existing parking lot. There are 9,000 cars going through Pinkerton Street every day. There are 15,000 cars when combined with coming from the North to the South on 28 Bypass to the circle. We have had many accidents. There was a fatality there last year. The average wait time for a driver to go straight onto Nesmith Street or to take a left hand turn from Pinkerton Street is one minute and 10 seconds. One cannot expect that this situation can be improved by adding the parking spaces.

If a box truck parks there then the drivers from Pinkerton Street will have to come out into the intersection to look past it.

Mr. Chase stated that this was discussed at the Highway Safety meeting. The only point Mr. L'Heureux missed from that meeting was the location of the dumpster on Pinkerton Street. Currently, nothing is in that spot. The truck can stay off the road to empty the dumpster. Once parking space number one, on the end, is occupied, the truck would block at least one lane of traffic on Pinkerton Street. The dumpster would have to be reoriented to go around any vehicle in the lot. Note that the van in the picture of space #8 fills the lines. Line width is in question on the existing parking spaces.

Mr. Nelson asked for confirmation that the proposed parking spaces to be added are numbers 11-13 and received it. On the plans, the Legend indicates that the area of those parking spaces is not on the applicant's property, but on the public right-of-way. Mr. Mahmutovic replied in the affirmative. Mr. Nelson asked for confirmation that these would be public spaces, under the management of the Town of Derry, but allocated to the use of this building.

Mr. L'Heureux stated that he does not believe that they can be allocated to the building. The building will benefit from them but does not believe the spaces can be used their count for parking.

Mr. Nelson stated that in the past the Board has granted waivers for the on site parking count because we counted parking on the public street. Broadway is an example. This made sense in these cases because it is a retail area for transient parking. If we were to propose making a similar waiver here, and count those spaces, he is not sure the same criteria applies.

Mr. Chase was recognized. As discussed at the Highway Safety Committee meeting, he stated that their only part in these spaces is (the question) would we allow that waiver for these to be allowed uses for this. Only the Town Council can approve these spaces. All we can say is recommend to the Town Council that, if these spaces were approved, they would be allowed towards the count waiver toward this building. They are completely in the right-of-way. An argument was brought up (at the HSC meeting) that if one considers Broadway, when people are exiting their vehicles, it is into the travelled way. That is the nature of a downtown. The difference here is the traffic is moving much slower. Coming down the hill, going South on 28 Bypass, one does not expect parking spaces to be there. How many are keeping to the 30 mph speed limit coming down the hill? Another concern that Public Works had in bad weather, bad lighting, snow, a vehicle coming down that hill may not be able to stop.

Mr. Granese was recognized. He agreed with Mr. L'Heureux on the sight distance. Mr. Granese is not in favor of the spaces on Town property. During the wintertime there is no overnight parking on public streets in Derry. As such he would not be in favor of including these spaces in the property count. He agreed with Mr. Chase and Mr. Nelson, citing conversations with downtown businesses that had limited hours. Access by private residents presents a safety concern.

Mr. O'Connor reiterated that the Town Council must approve these 3 spaces. The Planning Board has no purview.

Mr. Healey was recognized. He feels that we should be working to make that intersection safer. Adding these parking spaces would be going the opposite direction.

Mr. Myers was recognized. He agreed with Mr. Chase on the speed that cars travel down the hill from Pinkerton. Speeds are high, with the exception of the morning and afternoon when the Pinkerton students are travelling. He agreed with Mr. Healey.

Mr. Granese stated that he likes what Mr. Mahmutovic is doing with the building. This is a Site Plan Determination. He would like to see a revised Plan, without the parking spaces, redo the parking lot so that the dumpster is not obstructed, bring the parking space sizes to regulations. This may improve the sight distance. Then ask the Board for a waiver for the parking spaces.

Mr. Sanford stated that he does not disagree with what has been said. When one backs up 10 feet behind the line, there is already obstruction by the building. By those criteria, the cars would be shadowed. I don't see that as the driving force. We agree and want there to be safety. The stop line is quite a way back on that street. Regarding the apron, there is one parallel parking space north of this area. This is not a new area to do parallel parking on that side of the street. If allowed, our 3 spaces would be in front of that space coming down the hill. We don't need or want overnight parking. He agrees with the factors, but they are somewhat mitigating. We want to collaborate on the best design for the project.

Mr. O'Connor followed up on Mr. Granese's previous comments. This Board has approved, with a contract or an agreement in letter form, other businesses to be able to supply parking. There are businesses that rent spaces to the Pinkerton students. Perhaps this would be a solution for the project.

Mr. Granese stated that after viewing Google maps, he sees the apron in question.

Mr. Sanford commented that one can see at the next lot up, the pavement takes a loop out to the right, for the cars coming south. An apron was added at some point, where the catch basins are. That is being used for parallel parking. Between the white line and the building, we have given 10 feet, which is more than one finds in most of the parallel parking.

Mr. Granese asked if the Town add the new pavement.

Google maps were reviewed. Mr. Mahmutovic stated that picture #4 shows spaces that are on the same white line and within 500 feet of the intersection exactly against the white line, 9 feet away from the white line. There are a total of eight public spaces between 1 Pinkerton Street and the rotary. Five on the right and three on the left side of the street. Those on the left are on dirt and there is a 2-hour limit sign. Whether one counts these three or the five that are 100 feet away, we were trying to add a few more. Mr. Mahmutovic does not want to spend money to add 3 public parking spaces. He believes his parking lot, as it is today, is sufficient to accommodate the changes he wants to make to the building.

All of the parking spaces in the current lot are 9 feet wide and 20 feet long and to regulation. The pictures presented represent an answer to the concern of the Highway Safety Committee as to whether a large vehicle could back up in the lot. He has reached out to other businesses to see if he could rent spaces but didn't think this was necessary for this meeting. He has an email from the owner of the BP Gas Station at the rotary that he would rent 5 spaces to him annually. This is 800 feet from the building. To include this to obtain approval to change the use he believes to be unfair to the new owner. This is why it was not presented in the original packet.

Mr. Chase stated that this has come before us prematurely. Firstly, continue to work with Public Works over this issue. Once agreement has been reached on the spaces, the next step would have been to bring this before the Town Council to have the spaces approved. The third step is to come to the Town Planning Board with Site Plan Determination and a waiver request for the use of those spaces in his calculations.

Motion by Nelson, seconded by Granese, The Board determines that this plan is not eligible for Site Plan Determination, pursuant to Section 170-51, Site Plan Determination, paragraph D and that it be remanded to TRC for further review.

Roll Call Vote: Chase, Healey, Granese, Myers, Nelson, O'Connor, vote Yes. The motion passed. Mr. Fishman abstained. The motion passed.

Mr. Sioras stated that the Fire Department sign off is key. Once one builds and has occupants on the second and third floors, the life-safety and fire codes change. Reach out to David Eastman at the Fire Department.

Mr. Healey welcomed Mr. Fishman, the new Alternate Member, to the Board.

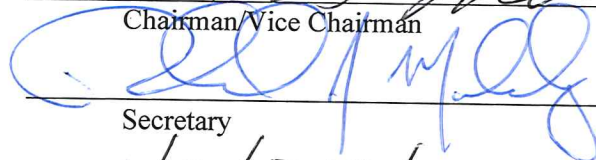
Mr. Nelson wished everyone a happy holiday.

Motion by Granese, seconded by Myers, to adjourn.

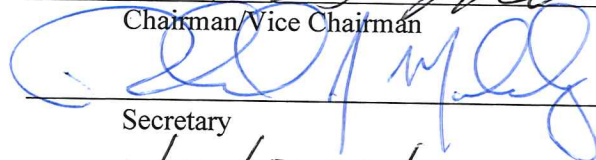
All in favor: Chase, Granese, Healey, Fishman, Myers, Nelson, O'Connor, vote Yes. The motion passed. The motion passed and the meeting was adjourned at 8:17 p.m.

Approved by:


Chairman/Vice Chairman


Secretary

Approval date:


1/3/2024

