

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 19, 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 Administrative Representative; Dave Granese, Town Council Representative, Chris Feinauer; Richard Malaby, Dan Healey, Mark Connors, Members.

Absent: John Morrison, Alternate

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Mark L'Heureux, Town Engineering Coordinator, Beverly Donovan, Economic Development Director, Lisa Carvalho, Planning Clerk

\*Denotes virtual attendance.

Mr. O'Connor opened the meeting at 7:02 p.m. The meeting began with a salute to the flag.

### **Minutes**

The Board reviewed the minutes of the June 21, 2023, meeting.

Motion by Granese, seconded by Healey to approve the minutes of the June 07, 2023, meeting as amended.

All in Favor: Chase, Healey, Granese, Feinauer, Malaby, Myers, Nelson, O'Connor vote Yes. Connors abstained and the motion passed.

### **Correspondence**

Mr. Myers reported the Board is in receipt of the most recent edition of *Town and City* magazine.

### **Other Business**

#### 2<sup>nd</sup> Extension Request, PID 05039, 74 Rockingham Road – Keystone Derry

Mr. Sioras stated this is the mixed-use development at 74 Rockingham Road. There is an explanation by Timothy Peloquin, the surveyor on the project, (who is in attendance to handle questions.) They need more time to put escrow together, and are waiting to get their final sewer discharge permit from the State. Staff recommends approval.

Mr. Connors asked if the request to amend/revise the site plan, as stated in their letter of July 6, 2023, is included in this motion. Mr. L'Heureux stated that if changes are made to the site plan it will come back to the Planning Board for review. This is not part of the motion being stated.

Motion to approve, an additional six-month extension of the conditional approval granted on August 17<sup>th</sup>, 2022, to Keystone Derry, LLC, PID 05039, 74 Rockingham Road. The new expiration date will be February 19, 2024, by Granese, seconded by Myers.

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

### **Chairman and Planning Director Updates**

Mr. Sioras noted there were several abutters in attendance for the last item on the agenda at 109 Rockingham Road, as well as the Engineer on the project, Doug MacGuire. Mr. Sioras invited them to adjourn to the meeting room to look at the plan ahead of time, while the Planning Board meeting will continue.

### **Public Hearing**

#### **A public hearing to discuss Seven Hills Development, LLC, PID 31013, 15 Madden Road, Revocation of Site Plan Pursuant to RSA 676:4-A (I) (a)**

Mr. Sioras stated that this is an unusual situation. With the Exit 4A Project that is under construction, eventually the connector road will be coming down Madden Road to Folsom Road at the curve. American Excavation, Tom Lannan, the owner, is here. There had originally been approval for a third building along Madden Road. The new road would have taken that building as part of the Exit. We released the Escrow at the last meeting. Once Escrow is released, the approvals must be revoked. The site plan will go away as the building will never be built. The Public Hearing is required for the Revocation.

Motion to open the public hearing by Nelson, seconded by Granese. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now open.

No one was recognized and there were no online requests.

Motion to close the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now closed.

Mr. Connors asked for clarification on which Phase of the Exit 4A project this request is specifically for: Phase A or B. Mr. Sioras stated that Phase A is the diamond shape under construction on Route 93 as we speak. Phase B is the connector road that will come through the property in question. Phase C will be through the Police Station and down Tsienneto Road. Mr. Connors thanked Mr. Sioras for the clarification.



Motion to revoke the site plan approval granted by the Board on March 03, 2004, pursuant to RSA 676:4-A (I) (a), and to record a Notice of Revocation at the Rockingham County Registry of Deeds by Granese, seconded by Nelson.

Roll Call Vote: Chase, Healey, Granese, Feinauer, Malaby, Myers, Nelson, O'Connor. All vote Yes. Motion passed.

**A public hearing to discuss Marjorie A. Palmer, Revocable Trust, Marjorie A. Palmer, Trustee, PID 03125, 14 Stark Road, relating to the Scenic Road**

Mr. Sioras stated that Stark Road is a scenic road, so there must be a separate Public Hearing. The first part is the public hearing on the road only, to any improvements – trees, walls, driveways. Staff recommends the work to be done. The second part is the subdivision plan to follow.

Motion to open the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now open.

Bill Mason, of 7 Stark Road, came to comment. His property is across the street from 14 Stark Road. On his side of the street, the lots were clear cut. Is the plan to do the same and cut down all the trees on the 14 Stark Road lot? Is there a plan to put in more fire hydrants with more houses coming in? Mr. Connors believes that hydrants should be installed every 1,000 feet. If that is not evident/available, one has the option of putting a sprinkler system inside one's home. Mr. Mason believes it would be unfortunate to remove so many trees. Mr. O'Connor asked if there were any further questions.

No additional persons recognized and there were no online requests.

Motion to close the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now closed.

Shayne Gendron, of Edward N. Herbert Associates, representing Marjorie A. Palmer was recognized. Marjorie Palmer is in attendance. There was a meeting with TRC approximately one month ago. One of the concerns is site distance at this parcel. We were asked to make some improvements along Stark Road, which include clearing the trees, pushing back the stone wall fifteen (15) feet on the property line, and making some improvements along Stark Road for drainage. Most of the big trees along the road would need to be removed, to gain the sight distance needed for the proposed driveways. We have noted that we are going to do sprinkler systems inside the buildings.

Mr. O'Connor asked how far down they would go with the tree removal.

Mr. Gendron responded that they have been asked to improve 519 feet of frontage along Stark Road. This will allow better maintenance for the Town by giving them an easement. It will also help achieve sight distance and improve drainage along Stark Road. The stone wall will be moved back fifteen (15) feet.

Mr. Nelson asked if the stone wall extends beyond the boundary of the subject parcels?

Mr. Gendron responded Yes.

Mr. Nelson commented that the wall would be near the road and then back 15 feet and then near the road again.

Mr. Gendron replied that he has no right to move a wall on another's property.

Mr. Nelson asked if we needed to move the wall that far, or at all, as it would seem injurious to the overall scenic effect.

Mr. L'Heureux pointed out that the rise in elevation and the position of the trees near the roadway is a difference of 6-8 feet of height. The large trees are rooted in the line of sight for any driveway to get through. There must be 200 feet in each direction. Once you're back ten (10) feet from the edge of the pavement, the stumps, trees and 6-8 feet of material must be removed and the approaches regraded to build the driveway. It is steep on the edge of the pavement. The stone wall traverses in and out between the trees.

Mr. Connors suggested accessing a Google map of the street for clarity. He also commented that this would have an effect on the scenic road. Will the wall be connected on the angles?

Mr. L'Heureux commented that before the abutter's property was put in, it was the same dynamic on that side of the road, not as high, but with extremely large trees on the edge of the road. The wall was reset with some conformity.

Mr. Myers also requested visuals to vote on the issue more responsibly. Google street map was provided.

Mr. Gendron corrected that the Town asked for an easement of ten (10) feet. It is moving back as they want more width on the right of way for future road improvements. They are also requesting we create a swale, as on the opposite side of the road, but slightly more elevated as the driveways will go up to the homes. It is not known at this time how many trees will be removed, although it can be discussed if they are further back than the proposed ten (10) feet.

Mr. O'Connor allowed Mr. Mason to ask an additional question. He stated that immediately south of these lots is Mrs. Palmer's garlic field and as this is also her property, why couldn't the wall be moved back there as well?



Mr. Nelson noted that there are utility poles that the Town would like to have clear of the wall and that are located near the swale. Will they be asked to move their poles?

Mr. L'Heureux replied that it will be a shallow swale because the applicant will want to go down 3% as per our driveway requirements off the road and then climb back up 5% to the topography of the lot. It rises at a constant slope away from the road. He does not see utility poles having to be moved unless they are overexposed. He did not notice any potential overexposures from his observations in the field.

Mr. Connors asked regarding jurisdiction of the poles.

Mr. L'Heureux responded that if during roadway improvements it is found that poles need to be moved, we would coordinate with Eversource.

Mr. Connors asked how far back from the road can the Town control what trees get cut.

Mr. Sioras confirmed that once the project is on private property, we have no jurisdiction over how many trees can be removed.

Mr. L'Heureux believes it is a fifty (50) foot right of way. Typically, on these old roads, the right of way is not centered. One side may have eight (8) feet and the other side sixteen (16) feet.

Motion by Granese, seconded by Nelson, to allow the cutting or removal of trees, or the tearing down or destruction of portions of the existing stone wall to facilitate the two-lot subdivision proposed for PID 03128, 14 Stark Road, owned by the Marjorie A. Palmer Revokable Trust with the following conditions:

1. A scenic road public hearing is required for Eversource to locate/relocate poles on the frontage, pursuant to RSA 231:158, II if new utilities are to be set.
2. Pursuant to Note 14, stones from the stone walls (or portions thereof) removed for the construction of slope, drainage, and utility easements shall be relocated and the stone wall reconstructed outside of the easement area(s).

Mr. O'Connor invited Board comment.

Mr. Nelson, while he understands the position of the abutters, also understands the requirements for sight distance for safe vehicular travel from the driveway into the public street. With the aid of the visuals, in terms of the embankment on which the stone wall sits, he sees no other choice but to grant permission.

Mr. Connors asked, if the owners are asking us to do something special on a scenic road to benefit them financially, do we have the ability to also require that owner to move the wall back onto her property adjacent so that the wall is contiguous?

Mr. Sioras replied that we are only looking at 14 Stark Road and so that cannot be done as part of this request. In 1984, Stark Road was much more scenic. Back then this was a dirt road and the Town widened and paved it. By law, we must hold this public hearing even though it is not what it used to be.

Roll Call Vote: Chase, Healey, Granese, Nelson, Connors, Malaby, O'Connor vote Yes. Feinauer – reluctantly Yes, stating concern at the loss of “scenic road”. Myers abstained. The motion passes with one abstention.

**A public hearing to discuss Marjorie A. Palmer, Revocable Trust, Marjorie A. Palmer, Trustee, PID 03128, 14 Stark Road to discuss the plan for a two-lot Subdivision located on Stark Road in the Low-Medium Density Residential District. (2-acre lot size)**

Mr. Sioras stated that the request is to create a two-lot subdivision. 2 acres is the minimum, with 150 feet of road frontage in this zoning district. All Town departments have reviewed and signed the plan. They have obtained the State subdivision approval number. We have a copy in the file. Staff recommends approval of the application. Mr. Sioras yielded to Mr. Gendron.

Shayne Gendron, of Edward N. Herbert Associates, representing Marjorie A. Palmer Revocable Trust was recognized. He stated that this is a 4.2-acre parcel that will be subdivided into two, 2.1-acre lots. As previously stated, there will be improvements along Stark Road. We are providing a ten (10) foot wide slope and utility easement to the Town. We have State subdivision approval. We show the proposed driveways and locations on the plans. We met with TRC. The lots are conventional in shape.

Motion by Granese, seconded by Nelson to accept jurisdiction of the two-lot subdivision plan before the Board for Marjorie A Palmer Revocable Trust, PID 03128, 14 Stark Road.  
Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

Motion by Granese, seconded by Nelson, pursuant to RSA 36:56, the Board finds the proposal as presented at this time meets the definition of a development of regional impact.  
Roll Call Vote: Chase votes No, he does not believe this small two-lot subdivision meets the definition of a regional impact. Healey, Granese, Feinauer, Connors, Malaby, Myers, Nelson, O'Connor voted No for the same reason. All vote No.

Motion to open the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now open.

No one was recognized and there were no online requests.



Motion to close the public hearing by Connors, seconded by Granese. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now closed.

### **Finding of Facts**

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

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

Motion to agree with the above noted findings of fact by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

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

1. Subject to owner's signature.
2. Submit an 11"x17" plan, showing the new lots and addresses as assigned by Fire Prevention and the new parcel ID number as assigned by the Assessing Department.
3. Amend Note 11 to state, "All new driveways are to have 12" of NHDOT 304.3 crushed gravel for the entire length of the driveway."
4. Subject to on-site inspection by the Town's engineer
5. Establish escrow for the setting of bounds or certify the bounds have been set.
6. Establish appropriate escrow as required to complete the project.
7. 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
8. Subject to receipt of applicable state or local permits relating to the project.
9. Conditions precedent shall be met within six 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.)

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

Mr. Connors and Mr. Myers agree that the developer should make the project as visually pleasing as possible.

**A public hearing to discuss JAL, LLC, PID 11058-008, 40 Daniel Road, Danali Builders, LLC, PID 11059-006, 30 Daniel Road, PID 11059-007, 28 Daniel Road, PID 11059-008, 26 Daniel Road, Acceptance/Review, Lot Line Adjustment.**

Mr. Sioras stated the purpose of the plan is for a lot line adjustment for the above referenced parcels. Town and State Department signatures are not required for the lot line change. There is a waiver request from Promised Land Survey for the High Intensity Soil Survey. This is an internal lot line change at Danali Estates on Daniel Road. Staff recommends approval of both the lot line plan and the waiver request. Mr. Sioras yielded to Mr. Tim Peloquin of Promised Land Survey for questions.

Mr. Tim Peloquin, of Promised Land Survey, was recognized and stated that this is a simple lot line adjustment. Generally, we hold the precise two (2) acre minimum. There is a Phase 3 and 4 coming this fall that involves road construction and steering around large portions of ledge and less blasting. This is driven primarily by road alignment and is the most feasible way to construct the roadway. There will be additional interconnecting roads and will improve traffic flow and emergency vehicle access.

Motion by Nelson, seconded by Granese to accept jurisdiction of the lot line adjustment plan before the Board for JAL, LLC, PID 11058-008, 40 Daniel Road, and Denali Builders, LLC, PID 11059-006, 30 Daniel Road, PID 11059-007, 28 Daniel Road, and PID 11059-008, 26 Daniel Road.  
Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor.  
The motion passed with all in favor.

Motion to open the public hearing by Nelson, seconded by Granese. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now open.

No one was recognized and there were no online requests.

Motion to close the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now closed.

Mr. Granese asked Mr. Peloquin for clarification of the request.

Mr. Peloquin replied that the Board has granted this before in this subdivision. These are two (2) acre lots on Town water. Their septic systems meet all State standards. The High Intensity Soil Survey is not necessary.



Motion to grant a waiver from LDCR Section 170-24.A (12), HISS Mapping as the proposed lots are to be serviced by municipal water and as such the loading requirements are diminished. 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, by Granese, seconded by Nelson.

Roll Call Vote: Chase, Healey, Granese, Feinauer, Connors, Malaby, Myers, Nelson, O'Connor. The motion passed with all in favor. The waiver is granted.

### **Finding of Facts**

Motion to find the proposed plan does not alter existing conditions which would affect access to the lots, ensuring the health, safety, and welfare of the neighborhood remains unchanged as a result of the adjustment of the lot line by Nelson, seconded by Granese.

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

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

1. Subject to owner's signature.
2. Subject to on-site 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(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. Conditions precedent shall be met within six months.
8. 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.)

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

**A public hearing to discuss Spofford Development (Owner: Watts Auto Salvage), PID 05038-001, 109 Rockingham Road, Acceptance/Review, Mixed Use Site Plan, 23,300 SF Commercial, 63 apartments, 9 townhomes.**

Mr. Sioras stated that he has spoken with several neighbors and received phone calls. This project was here a year ago as a Conceptual, which is required in the West Running Brook District. The applicant has worked with the staff over the past year as well as Fire, Police, Planning, Public Works, Building, Code Enforcement, and Conservation Commission. We expect to hear from the abutters. Overall, the quality of the project has improved from a year ago. They have reduced the overall density. When this started it was approximately 90 units. The total is now down to 72 units. We have asked them to look at some of the landscaping, which they have addressed. In general terms, they have addressed the comments that we had.

There will not be access to Bedard Avenue. We have a Traffic Study done by a third-party consultant who was hired by the Town. The Engineer will discuss that in more detail. We also had a Fiscal Analysis done for the school impact. The grand total will be 72 units consisting of 3 studio apartments (these are all Market rate apartments), 18 one-bedrooms, 42 two-bedrooms and 9 townhomes in the rear. Based on the Fiscal Analysis, the total number of school-aged children will be nine (9). They also have their NH DES Alteration of Terrain State Permit which is pending and we will get a copy of that eventually. Mr. Sioras suggested that we hear from the abutters and take input. There has been a suggestion of doing a site walk. In the big picture, staff would recommend approval once we have heard from the public and the abutters.

Mr. O'Connor stated that there is a revision with regard to the impact fee in the proposed motion document that we will be going through. Also, this project started a few years ago. There were at that time four (4) Board Members that listened to the Conceptual that are gone now. We have a lot of new members. There have been many conflicts on social media. If any Board Member feels they have a bias toward this project, it will be up to them to make their own decision to voluntarily recuse themselves. Mr. O'Connor yielded to Mr. MacGuire.

Mr. Doug MacGuire of The Dubai Group, Inc. is representing the applicant on this project and offered to do an overview of the project as it has been a couple of years since it was previously before the Board.

Motion by Nelson, seconded by Granese, to accept supplemental information from the applicant at this time.

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

Mr. MacGuire handed hard copies depicting the various changes to the site plan design to each Board Member. He stated that he had a productive conversation with the abutters as they were waiting, and he feels they are now more informed. We came forward first in June of 2021 with a concept showing a 5,000 SF restaurant on the first floor with an additional three stories of residential. Behind the restaurant was going to be a parking garage area for the benefit of the residential units. We did this as there is a significant grade change on the property that limits how it can be successfully developed. There is a parking lot in the back that comes up one full floor. The garage is built on the first floor in the front, making up the difference in grade. We had originally proposed 9 townhouses that were intended to be more transitional from multi-family garden style, to townhouses, then to the abutting single-family. When we submitted that plan to the Board in June of 2021, one comment was that we were proposing a garage-under on the townhouses that were three stories high and there was concern of height for the buildings. There was also feedback on the façade and proposed color. Based on that feedback, we came back with a revised conceptual plan in July of 2021, with no changes to proposed density but altered the townhouses to eliminate the garages and lower them by a full floor. We also provided new renderings. At the end of the meeting in July of 2021, we had requested the Board perform an informal Poll Vote with regards to the merit of the application, recognizing that it would be a significant undertaking of engineering to move forward. We asked about the density and the architectural façade and if the Board was comfortable with access to Bedard for the townhomes only, at which point you were. We have now made substantial changes to the Plan due to



elevation. We shifted the access on Rockingham Road from the far easterly side close to Bedard to a more centered access. That made drastic grade changes because Rockingham Road has a fair amount of grade on it dropping from east to west. There is an existing retaining wall there now due to this grade drop. The site had to be picked up to be level. Moving the access to the property reduced starting elevation from 322, coming in on the right side, to 314. This is 6 feet lower at the entrance and this carries through the rest of the development. The parking area that supports the restaurant went from 329 to 321, an 8 foot reduction. These reductions allow us to eliminate the retaining wall at the front of the property. We also took the liberty of rotating the townhouses, based on feedback regarding elevation and based on my conversations with the abutters, they do not want access to the property from Bedard Avenue. We have eliminated that access, tucked up the townhouses and placed the garages so that we could build them into the slope. Previously, the back of the townhouses had to have an 8-foot retaining wall from the back of the parking lot and then the back of their units was at elevation 354. We have dropped that to 334. The front was at 363, now at 343. This is a 20-foot reduction in height for the townhouses. It gives a natural buffer to the rear of the property. The original plans had buildings 60 feet from the property line. We are now 95 feet to the closest point on the property line. The benefit is that there is now a 20-foot natural grade change that looks over these units. This new design will reduce the perceived visual impacts that we originally contemplated. There are also heavily landscaped areas behind the units and along Bedard. There will also be improvements to Rockingham Road. The traffic study looked not only at trips generated by our project and their effect on the surrounding roadways, but also the existing conditions via traffic counts on Bedard and Rockingham Road and the impacts in the area. What the Traffic Engineer determined is that there is an existing access problem on Bedard regardless of our project. There is enough traffic coming into Bedard and enough opposing volume, even without our project, to warrant a left turn lane into Bedard. When we were contemplating our access onto Bedard, it would have been a must as we would be increasing potential issues. But, when we eliminated access to Bedard, we still felt, after talking with the Highway Safety Committee and per recommendations of the Traffic Engineer, that improvements needed to be done, regardless of our project, because it's adjacent to our project. We are proposing roadway widening in this area to add a left turn pocket into Bedard Avenue. It transitions to go back toward the intersection and so it is a full left turn exclusive lane pocket. That does not provide any benefit of access to our property based on where we now propose our driveway location. We are also proposing to widen the corridor of our frontage to a three (3) lane cross section. This would provide a shared left turn lane to benefit projects in between Bedard and Winter Hill. There are commercial properties across from us and for their future benefit it makes sense to do a shared left turn lane, 3 lane cross section with additional widened shoulders. This would be a condition of the potential approval. We recognize that we are adding traffic but hoping to mitigate that with these improvements. This concludes the overview.

Mr. MacGuire continued with the regular site plans. The site is currently a junk yard. Significant grade changes are shown and a Soil Analysis layout is included. There is a page showing all concrete currently at the site will be removed, including the front retaining wall. The site plan meets all Town requirements regarding parking calculations. Derry's parking requirements are robust compared to other towns, requiring 1.5 spaces per bedroom with a minimum of 2, meaning that a 1-bedroom apartment will get 2 and a 2-bedroom is getting 3 parking spaces, which adds for a fair amount of visitor parking as reflected in the plans. We are



not asking for any relief on the aspect of restaurant parking. One of the main points discussed previously at the TRC was good circulation including wide radii at the top that can accommodate a fire truck turning without backing up. We created a loading area to the right of the garage access so delivery trucks would not be in the way of fire apparatus or emergency vehicles. We have a widened section at our access out to a widened drive 14 feet coming in and two 11-foot lanes, a left and right turn. Those were not required per the traffic study as there is not enough queuing anticipated to warrant it, however, we felt, and the Fire Department appreciated, that we add that extra section to ensure that it won't happen. There will not be any blocking of the intersection internally or otherwise. Dumpsters are at the lower and upper levels. Garages are provided under the townhouses as well as parking in front of them, providing additional visitor spacing, which is very similar to what was conceptually presented. The next page shows the landscaping plan showing the buffer between the residential use areas and we are preserving existing vegetation on the right-hand side. Revising the grades helped to ensure the original retaining walls will not be required, although we may need a small one at the delivery area. There is a treatment pond on the right-hand side that we can get all our drainage to, and we supplement a little bit of infiltration on the lower side of the bump out of the L, as that area is still in fill. All utilities come in from Rockingham Road, as shown on the Utility Plan, with no impact to Bedard. We will use connections to the existing sewer and water. We have added hydrants at the direction of the Fire Department. Both buildings will utilize sprinklers as the means of fire suppression, and meet all Derry Fire Department regulations. Those notes have been added to our plans. Our Erosion Control plan shows that any steep slopes will be stabilized, matted, and protected as best we can during construction. We anticipate access for construction will be from Rockingham Road. The Lighting Plan includes LED full cut-off fixtures, which means no horizontal throw from light above 90 degrees. As stated, the project is sitting significantly lower and so there shouldn't be any light pollution to the abutting neighbors. We provided Impervious Area Summaries. No wetland impacts are proposed. We have good greenspace percentages, particularly with the adjustments to the townhouses, providing a large greenspace buffer. We've provided construction details and we have provided the building elevations. There is a proposed view of the garden-style residential building where you can see the awning on the lower level where the restaurant is proposed. On the left side you can see access to the second floor of the building from the rear side. The perceived height from that side will be 3 stories, 4 from the front. We have perspective views that we can share with the Board and the abutters to get a better feel for the view, but these straight-on views meet your requirements of standard elevations. Views show the back side and the rear parking lot. Perspectives for the townhouses as seen from the rear, show them built into the slope, looking as if they are two stories and it shows the overall reduction in height due to pulling the project forward.

Motion by Granese, seconded by Nelson to accept jurisdiction of the Mixed-Use site plan before the Board for Spofford Development (Owner: Watts Auto Salvage), PID 05038-001, 109 Rockingham Road.

Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.



Motion by Granese, seconded by Nelson, pursuant to RSA 36:56, the Board finds the proposal as presented at this time meets the definition of a development of regional impact. Roll Call Vote: Chase votes No, although this is a larger plan than the first, it still does not meet the definition of a regional impact. Healey, Granese, Feinauer, Malaby, Myers, Nelson, O'Connor voted No for the same reason as Mr. Chase. All vote No.

Motion to open the public hearing by Nelson, seconded by Granese. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now open.

Tom Cardon of 2 Cunningham Drive approached the Board. He stated that on the agenda for the Planning Board it stated that there are 23,300 SF of commercial and on Sheet #5 shows a total of 5,300 SF. Why the discrepancy? Ms. Elizabeth Robidoux (Planning and Economic Development Assistant) replied that this accounts for the non-residential space that includes the parking garage and the 5,300 SF for the restaurant. Mr. Cardon stated that he has been following these projects and seems to him that the spirit of the West Running Brook District was to have a mix of commercial and residential and is challenged to see that one restaurant will satisfy the requirements of West Running Brook District.

Chris Howe of 115 Rockingham Road approached the Board. He stated that he feels the West Running Brook code is very subjective. Does the project have the aesthetic of character? Maybe. A four-story structure, that may be the largest structure in Derry, can be questioned if it falls in with the character of the neighborhood. He stated that he finds it hard to classify it in that way. He shared that he has thought that there is legal liability for Derry to not have quantifiable measures for what we consider that character to be. In regard to the middle lane, which he regards as a "suicide lane" he sees that there could be problems with travelling up Rockingham Road to turn on to Bedard and sitting in that lane during heavy traffic times with possible oncoming traffic in that same lane. From a safety perspective this raises concern for Mr. Howe. Regarding the abutting trees on the Winter Hill side, he is curious to know if this is done to achieve the drainage needed on the project and if a variance was required in order to be able to remove all of the trees. The building on that side will be large and losing those trees may be an issue for the neighbors.

There were no online requests.

Motion to close the public hearing by Granese, seconded by Nelson. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. The motion passed with all in favor.

The **Public Hearing** is now closed.

Mr. O'Connor requested Mr. MacGuire address the public concerns.

Mr. MacGuire stated that the first page of the plans shows the whole corridor, all of which is designed to NH DOT roadway standards, despite it being a Town-maintained Road. He highlighted the left-hand pocket as it comes out toward Bedard with the exclusive left turn and the opened intersection at Bedard. It also shows the widening to 3 lanes along Rockingham to Winter Hill. There were some existing improvements proposed for another development that this Board had acted on and we tied into their improvements. Had they not been ahead of us in doing an improvement, we likely would have terminated the shared lane after it was through our frontage, not carrying it to Winter Hill. There was not necessarily a need from a traffic standpoint for that improvement to Winter Hill, however, recognizing that we didn't want to have an unsafe accordion effect, we are taking responsibility for that and expanding all the way to Winter Hill. Originally, they proposed a left turn into their driveway and terminated it back to the other side of Winter Hill. They would not terminate just to widen out again. Mr. MacGuire respectfully disagrees that this is an unsafe situation, but rather it is an improvement. There is good sight distance although one is dropping in grade. The design shows that it is safe to pull out into the lane of traffic.

Mr. MacGuire stated that the trees on the Winter Hill side are in the proposed drainage system and will be allowed to naturalize. They will be maintained to continue growing in.

Mr. O'Connor invited comments from the Board.

Mr. Connors noted the strip of land that is right of way between the proposed site and Winter Hill that comes down from the lot at 1 Cabot Drive. He stated that the first house on Winter Hill owns the small piece of land at the top of this right of way that is closest to Rockingham Road. The lot lines show that this small piece of land is in part of each lot. He asked Mr. MacGuire if he knew the actual ownerships, so that it could be clear where the lot lines are. This is a 10-20 foot area of land.

Mr. MacGuire replied that the lines shown are from Derry GIS system but may be inaccurate as their plan doesn't show every lot line on every sheet. Per Mr. MacGuire's survey, he recognizes that that entire swath is private property.

Mr. Connors stated that he appreciates the changes that have been made. He commented that in the packet the Board received, the remediations of any soil contamination is covered and the DES signed off on it. As a resident of this neighborhood, he is aware that large quantities of dirt from the actual junk yard had been removed by the owner in a 1-2-month period from the lower level of the lot. Hundreds of pounds of dirt have been moved to the area where you propose the townhomes, which he believes to be most of the contaminated soil. He had asked in the first conceptual meeting where the test pits were. The DES plan provided shows that all 7 of the test pits were done in the lower part of the lot. None were shown where the contaminated soil was likely removed to. Mr. Connors has concerns that this soil be tested down 15 feet, where the report provided shows testing down to 22". He stated that he is not sure where the liability is for this situation. Bob Mackey got a lot of complaints when the dirt was being moved. He stated that he feels strongly that testing be done in that area to a significant depth as possible contaminants may have been buried. [Note: Mr. Connors inadvertently cited he spoke with Alan Côté in Public Works; he meant to say Bob Mackey.]



Mr. O'Connor commented if this has been known for a couple of years, why has DES not been contacted? He stated that we have a Certificate of No Further Action from DES.

Mr. Connors stated that it is on record that he, as well as other neighbors, have requested the testing and it has not been done.

Mr. O'Connor asked Mr. L'Heureux, when construction starts, if they run into contaminated soil, aren't they supposed to immediately stop and then notify public health? This would be visible contamination.

Mr. L'Heureux responded that they might not be able to tell.

Mr. O'Connor asked Mr. L'Heureux if Craig Durrett (Derry's Environmental Coordinator) had inspected the area.

Mr. L'Heureux responded that he does not know to what extent we have done testing for the Town, only what DES has done.

Mr. Nelson called attention to page 3 of the Offsite Improvement Plan. There is a note that references the melding of the offsite improvements for your site plan and the Keystone site plan. It states: "Improvements... are assumed to be completed prior to construction of this plan." Both plans are in motion. If your plan comes to completion first, does that cause any issues with coordination?

Mr. MacGuire stated that when they put together the offsite plan, they tried to take that possibility into consideration. We are designing for the worst-case scenario, meaning, Keystone is fully built and we have to tie into them. It is much easier for us to taper back into existing grades. That would have to be coordinated with Mr. L'Heureux for his sign off on any minor changes. As Keystone has a head start, Mr. MacGuire stated that his proposal works seamlessly with theirs. We took into account Keystone's approved plans. Should Keystone decide to not move forward, we would likely safely taper back those transitions of the turn lane back prior to Winter Hill and it would go back to a 2 lane section in that area. In that case, it would be on Keystone to tie into our widened section if Keystone decided to develop after us, which would be coordinated by Mr. L'Heureux and the Town.

Mr. Nelson asked that the Town staff keep an eye on this, and that Mr. MacGuire stay in sync with the other developer. We have two plans that show they are going to splice together. If one of them doesn't happen or changes, he would like to see that come back before this Board for a site plan amendment.

Mr. Sioras commented that the Engineer, Jordan Young, representing the Keystone development, is present in the audience for questions.

Mr. O'Connor noted the plans for the garage under the mixed-use building. He asked, are you thinking of doing anything with EV chargers?

Mr. MacGuire stated that this is a component that has been coming into play, but has not been discussed specifically in this case. The intent of this facility is to be for a higher end, young professional type user. There may be a need for it and the right place would be to have it under cover. He will suggest this to the developer.

Mr. O'Connor stated that some developers are putting in the electrical conduit now to install the systems later. Mr. MacGuire stated that he sees the benefit of being prepared for this.

Mr. O'Connor asked how the buildings are being heated and cooled. Is there plan for HVAC, as he does not see it on the roof.

Mr. MacGuire stated that the full architectural designs are not completed. The developer has been working with Market Square Architects, who did the rendering work and the floor plans. It may not show on our plan; but there may be a section they are intending to block. It has not been fully designed, to his knowledge, at this point.

Mr. Connors asked if Mr. MacGuire is aware of them being added on the roof and hidden or at ground level.

Mr. MacGuire stated that he would anticipate that it would be designed into the roof system and be blocked aesthetically, as regulations require. If and when this project moves forward, there would be full architectural plans that would go through the building permit process.

Mr. Connors asked if there was any taxpayer impact to the \$1.75 million for Webster's Corner.

Mr. Sioras replied no. This is part of the impact fee in that zone. All the developers will contribute based on their percentage of traffic impact, according to Mike Fowler. As other developers come in, they will also pay a traffic impact fee. It will not be taxpayer money. The Webster's Corner intersection is under State jurisdiction.

Mr. Connors asked if the middle lane being added will stay within the Town right of way or will there be property taken from any of the neighbors? Also, what will the sides look like, as you have asked for waiver for sidewalks? Will there be a bike lane?

Mr. MacGuire replied that they are working fully within the right of way. Mr. L'Heureux had previously noted some areas of concern. We are favoring some right of way on our property side to make sure that we are not impacting anything within that alignment. We have a full DOT grade widening section with 5-foot paved shoulders and then gravel beyond that for an additional 2-3 feet. That is outside the fog line of the travel lane.

Mr. Connors suggested a sidewalk to Bedard for the children to use to get safely to the school located in the neighborhood behind this development.



Mr. O'Connor asked, regarding the impact fee, how long does this stay in Escrow? Mr. Sioras replied that it is six years. Mr. O'Connor stated that if after 6 years nothing gets done, the money is dispersed back.

Mr. Connors asked if eliminating the commercial component would make the building shorter.

Mr. MacGuire responded that due to the high cost of construction, to make a project like this work they have to have a certain number in their pro-forma, and their numbers are tight based on the present market. He then reviewed graphics showing the perspective from many angles. He stated that he realized that the impact of the visuals were important to the Board and that the developer has camouflaged the height of the buildings based on the grading in the lot.

Mr. Chase asked, in what way is this the biggest building in Derry. He noted other, taller, residential buildings already existing in Derry, providing examples.

Mr. Connors stated that the West Running Brook requirement says that the commercial space must be occupied before the residential space. Would stripping the commercial component out, and having the development be all residential, allow them to have less parking, have less apartments, and make this a little bit better for the neighborhood?

Mr. Sioras stated that when the Board votes on this, the staff recommendations for conditions of approval include "adding a note to the plan stating the applicant will not phase the project, and the non-residential portion of the project will be occupied on/before the residential portions of the project."

Mr. MacGuire asked for clarification. If they build multi-story buildings, constructed at the same time and they have not occupied the commercial space, are you saying that we cannot occupy the residential space?

Ms. Robidoux replied that the intent for this development is to build the front building first to satisfy that condition. For other developments in the district where there are commercial buildings separate from the residential buildings, we do not want residential constructed and occupied and nothing done with the commercial buildings.

Mr. Sioras commended the developers on working well with the neighbors and staff and feels they have done an excellent job. One of the members may recommend a site walk. If that is the case, the next meeting will be two weeks from tonight on August 2<sup>nd</sup>. The abutters will not be notified again because the Public Hearing has been closed. He recommended doing a site walk with a view from the top of the property, rather than from Rockingham Road.

Mr. Nelson stated that, with respect to the phasing, the Zoning Ordinance states on page 84, item G: "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 a specified number of phases or sections of the residential portions."

Mr. MacGuire stated that he had a good conversation with many of the abutters this evening. There was no abutter comment. There were no concerns raised by the Board members. Do we need a site walk? He stated that he does not know what can be gained from a site walk.

Mr. O'Connor replied that in the notes there is discussion as well as a TRC note.

Mr. Granese stated that we have always done site walks for plans like this. As a Councilor-at-Large, he has received 4-5 calls from neighbors, regarding issues with this. He also stated that he is uncomfortable voting on the first two waivers tonight.

Mr. Nelson stated that given the fact that there are going to be significant changes in the grade between the existing conditions and the final development he is also unsure what we plan to see. We have the right to have a site walk and should hold one if there is need.

Mr. Connors agreed that a site walk is not necessary. The information is available online with Google maps and the site plans that we have.

Motion by Granese, seconded by Feinauer, to schedule a site walk for this plan. Roll Call Vote: Chase votes No, at this time he is well familiar with the site and would get no value from a site walk. Healey, Nelson, Connors, Malaby, Myers, voted No for the same reason. Granese and Feinauer, and O'Connor vote Yes. The majority vote No for the site walk; motion failed.

Mr. Connors asked if the issue of contamination is within our purview to investigate.

Mr. Sioras replied that it could be added as a condition. He stated that he spoke with Mr. Durrett directly, our Environmental Engineer from Public Works, on this issue. They had a lengthy discussion yesterday. He provided the staff reports. Cheryl Brown, the DES person, signed off. Mr. Sioras will defer to the Environmental Engineer. Mr. Durrett is of the opinion that the State signed off on this. The new owner will be responsible for any contamination found on site in the future if the plan is approved.

Mr. Connors stated someone is going to be liable if there is an issue.

Mr. Feinauer stated contamination deserves to be addressed if the Town is aware of this and has been on notice since this started.

Ms. Robidoux stated that if it is of concern to the Board, it can be made a condition of approval that the applicant have testing done in the area of the top part of the site.

Mr. O'Connor asked who would be financially responsible for this testing.

Mr. Sioras replied that it would be the owner of the property at the time of testing. The owner had to do the remediation, pay for the environmental study that Germaine and Exeter Environmental did. The onus would be on the owner and the applicant. It is not the Town's responsibility.



Mr. O'Connor asked that if there is going to be soil testing, does DES have to be notified.

Mr. Sioras replied that yes, they must notify DES at the State and the State will do their review.

Mr. MacGuire stated that there are four waivers that they are requesting which he believes are reasonable, given the complexity of the West Running Brook District. The first waiver being requested is to not require sidewalk along the frontage of the development. There are no existing sidewalks in the vicinity of the proposed site. As stated, there are five foot shoulders on the plan, which should be adequate. We are also requesting a waiver to not require at least two points of entry and egress from the site. Getting 2 points of access to the site would require access to Bedard and a significant grade change which would be a substantial change to the plan. This was discussed with the staff and Fire Department. This is why we did the widened access entrance and circulation internally to allow for turn around without back up maneuvers of the large vehicles, and a loading area out of the travel path. We did the design changes to accommodate that and to justify the merits of that waiver. The third waiver is like the second waiver in that we are not proposing any cul-du-sacs for the townhomes, although, loosely interpreted, there is the ability to turn in the parking lot = which could be perceived as a cul-du-sac. We are requesting this waiver to cover any uncertainty. The last waiver addresses your regulations which do not allow for studio apartments. We are proposing 3 studios out of 72 units. We thought that there is benefit of having them based on the proforma numbers that the developer is running.

Mr. O'Connor announced that our new policy states that at 9:30 pm we remind attendees of the time and agree to stop, no matter where we are, at 10:00 pm.

Mr. Connors asked how we find for the Architectural Design Regulations when it has been stated that these designs are incomplete.

Mr. Nelson responded that the Architectural Design Regulations were intended to provide a palate of tools and guidelines and we ask the developer to express how all of those guidelines and requirements are being met. We never said that we would have a Town approved color palate. It was never that strict. The Board has some discretion in saying we think it meets the intent of the regulations or we don't because of A, B or C.

Mr. Chase asked for the square foot size of the studios.

Mr. MacGuire stated that he did not have the specifics on this, because he did not bring the floor plans this evening. They are designed as studios. The architect did full floor plans. They have not done the mechanicals. These buildings are based on reality and are a fair representation of what we are proposing. He stated that they would hold to the minimum requirements.

**Grant Waivers**

Motion by Connors, seconded by Nelson, to grant a waiver from Zoning Ordinance, Section 165.32.4 (I) (2), to not require sidewalk along the frontage of the property as there are no existing sidewalks anywhere in the vicinity of the proposed site and therefore no opportunity for connection. 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.

Roll Call Vote: Chase, Healey, Nelson Feinauer, Connors, Malaby, O'Connor vote Yes. Granese, Myers vote No. The motion passes. The waiver is granted.

Discussion before the vote:

Mr. Nelson inquired as to other developers on this corridor adding sidewalks in the future.

Mr. Chase stated that we must vote based on the site plan in front of us, not on future development. Also, the Town cannot maintain a non-contiguous sidewalk.

Mr. Connors stated again that a path/walkway in the back for the children to access Bedard to travel to school would be preferred. There has been discussion of West Running Brook being a walkable, connected community.

Mr. MacGuire suggested that they could make an internal path through the landscaping that brought access to Bedard. People using that path would have to come to the front of the property so that we are not encouraging access to all areas of Bedard.

Motion by Connors, seconded by Nelson, to grant a waiver from Zoning Ordinance, Section 165.32.4 (I) (2) (c), to not require at least two points of entry and egress into the site. The existing topography of the site does not permit a second point of egress to the property, and the site has been designed to accommodate the circulation of the Town's fire apparatus. 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.

Roll Call Vote: Chase, Healey, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor. Granese abstaining as he was in favor of the site walk. The waiver is granted.

Motion by Connors, seconded by Nelson, to grant a waiver from Zoning Ordinance, Section 165.32.4 (I) (2) (d), to permit the use of a cul-de-sac for access to the proposed townhomes. The property does not allow for a second access point due to the existing topography constraints. 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.

Roll Call Vote: Chase, Healey, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor vote Yes. Granese abstaining as he was in favor of the site walk. The waiver is granted.

Discussion before the vote:



Mr. Nelson noted that in the section that is being quoted, it says “cul-du-sacs are prohibited unless conducive to a harmonious village pattern due to topographic constraints.” There is an exception built into the regulation.

Mr. MacGuire stated that it was submitted in an abundance of caution, as we were unsure what the Board’s interpretation would be.

Motion by Connors, seconded by Nelson, to grant a waiver from Zoning Ordinance, Section 165.32.4 (J) (2), to allow three studio apartments as the majority of the building is made up of one and two bedroom apartments. 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.

Roll Call Vote: Healey votes Yes. Chase voted no stating the square foot size has not been provided and he does not believe there is proven hardship. , Granese, Nelson, Feinauer, Connors, Malaby, Myers and O’Connor vote No for the same reasons. The waiver fails.

Discussion before the vote:

Mr. Connors commented that he does not see hardship has been proven as to why they should have the studio apartments.

Discussion after the vote:

Mr. MacGuire asked for clarification. If the studios become newly designed as 1-bedrooms, would that be acceptable to the Board? Mr. Sioras replied yes.

### **Architectural Design Regulations**

Motion by Nelson, seconded by Connors, pursuant to LDCR 170-85, the Board finds that the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the West Running Brook District and meets a VERY HIGH level of compliance as outlined in Section 170-84. Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Connors, Malaby, Myers, O’Connor. The motion passed with all in favor.

Discussion before the vote:

Mr. Connors asked again how we find for the Architectural Design Regulations when it has been stated that these designs are incomplete, regarding HVAC locations and other items that are not included here.

Mr. O’Connor replied that we have received plans at the Conceptual showing the sizes and layout of the rooms, mechanical areas.

Mr. Nelson suggested that if there is a substantial deviation from what was presented and approved, they should return for a Condition Compliance Hearing. It is a judgement call of staff to determine what would be a substantial deviation. We are not approving final construction blueprints here because that is not within our purview.

Mr. Sioras agreed with Mr. Nelson. He suggested that in the Condition of Approval and the later Motion, the developer add one item to say Architectural subject to Staff review.

### **Finding of Facts**

The Board finds the proposed plan provides safe and efficient vehicular and pedestrian access, and the design and construction of the accessways 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 as noted by the waiver approved this evening.

The Board finds the landscape plan meets the intent of the regulations.

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 and the property has a sufficient number of hydrants for the proposed use.

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

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 49% reserved once constructed) and the plan provides a sufficient buffer to protect existing residential uses based on the proposed landscape plan, the abutting wetland, and the manner in which the buildings are situated.

Pursuant to the information provided in The Dubay Group's memorandum dated February 23, 2023, 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 regulation specific to the West Running Brook District, and
5. There are no other relevant factors that would affect the health, safety, and welfare of the Town residents.

The Board finds that 72 residential units (63 apartments and 9 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 5.5 acres) and a density bonus that 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 opportunity for pedestrian connections throughout the internal lot and the opportunity to connect to adjacent lots via a sidewalk along the frontage has been waived.

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 via a sidewalk along the frontage has been waived.

The Board finds the plan meets the intents 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 \$1,750,000.00, and this project will have a 1% 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 to agree with the above noted findings of fact by Nelson, seconded by Myers.  
Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Malaby, Myers, O'Connor. Connors  
Votes No because the Density seems too much for 5.5 acres. The motion passes.

After review and deliberation of the mixed-use site plan application for PID 05038-001, Spofford Development (Owner: Watts Auto Salvage), the Board finds the applicant has satisfied the general requirements of the West Running Brook District and Land Development Control Regulations, or in cases where the regulation cannot be met, has satisfied the waiver requirement.

Motion by Healey, seconded by Myers, 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:

3. The project is consistent with the master plan.
4. The plan is consistent with the architectural design regulation specific to the West Running Brook District, and
5. There are no other relevant factors that would affect the health, safety, and welfare of the Town residents.

The Board finds that 72 residential units (63 apartments and 9 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 5.5 acres) and a density bonus that 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 opportunity for pedestrian connections throughout the internal lot and the opportunity to connect to adjacent lots via a sidewalk along the frontage has been waived.

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Motion to agree with the above noted findings of fact by Nelson, seconded by Myers.  
Roll Call Vote: Chase, Healey, Granese, Nelson, Feinauer, Malaby, Myers, O'Connor. Connors  
Votes No because the Density seems too much for 5.5 acres. The motion passes.

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Motion by Healey, seconded by Myers, 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 forthcoming VHB review letter and any subsequent reviews of the plan.
2. Subject to owner's signature.
3. Subject to on-site inspection by the Town's engineer.
4. Establish escrow for the re-setting of bounds or certify the bounds have been set.
5. Establish appropriate escrow as required to complete the project.
6. Note approved waiver(s) on the plan.
7. 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
8. Subject to receipt of applicable state or local permits relating to the project.
9. Change of Use applications for the business tenant will be required to be filed with the Planning department.
10. 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
11. 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 \$17,500.00. 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.
12. Add a note to the plan stating the applicant will not phase the project, and the non-residential portion of the project will be occupied on/before the residential portions of the of the project.
13. Conditions precedent shall be met within six months.
14. Testing shall be performed on the upper portion of the parcel, where the logging trucks currently sit.
15. Changes in the Architectural Renderings that are of a significant nature must come back to the Planning Board for a Condition Compliance Hearing.

Discussion before the vote:

Mr. Connors noted in item #12 regarding the phrasing "will be occupied on/before the residential portions of the project." An editing is needed.

Mr. Healey requested an amendment to the Motion above.

Mr. Healey suggested changing item #12 above to read: *Add a note to the plan stating the applicant will not phase the project, and the non-residential portion of the project will be **constructed** before residential portions of the of the project **or concurrently**.*

Mr. Connors stated that he lobbied for this lot to be added to the West Running Brook District to help the neighborhood. This does not meet the intent. He stated that he is almost willing to get rid of the commercial piece on this particular property to make it a better project. He stated that he does not think we should do this for one property.

Mr. Healey stated that he has concerns about building this, and then maybe there is no tenant in the restaurant, and you have residential sitting empty because of this statement (Condition #12).

Mr. MacGuire stated that he does not believe the Board can legally say that one must have the commercial area occupied because that is beyond anyone's physical control. Assume it is occupied by a pizza place and in 6 months they go out of business, do all the residents have to move out? Obviously, that cannot happen. The intent is to build both buildings at the same time. There are significant resources being spent in the construction of the commercial component. The goal is to have it occupied. He is not sure that the Board can legally insist it is occupied and remains occupied.

Granese raises a point of order: The time is now 10:00 pm.

Motion by Healey, seconded by Chase, to suspend the rule to end the meeting at 10:00 pm. Roll Call Vote: Chase, Healey, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor vote Yes. Granese is abstaining. We have suspended the rules.

Mr. MacGuire continued. He stated our intents are the same. He does not believe the Board can legally say that one must have the commercial area occupied because that is beyond anyone's physical control. The amendment that Mr. Healey added makes sense. The commercial section is being constructed while the residential section is being constructed. One cannot construct 72 residential units at the same time that one is building a commercial unit. One markets the commercial for lease and occupancy. If it does not get occupied immediately, they still must occupy the residences that they built. He believes this is a reasonable request. He would be in favor of the amendment, which would satisfy the concern.

Motion by Healey, seconded by Nelson, to change item #12 above to read: *Add a note to the plan stating the applicant will not phase the project, and the non-residential portion of the project will be **constructed** before residential portions of the of the project **or concurrently**.* Roll Call Vote: Chase, Healey, Nelson, Feinauer, Connors, Malaby, Myers, O'Connor vote Yes. Granese is abstaining. The motion passes.

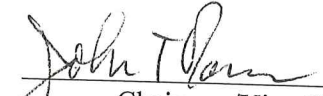
Motion by Healey, seconded by Myers, to Approve a Conditional Use Permit pursuant to the Town of Derry Zoning Ordinance, Section 165-32.4.F and RSA 676:4 (I) – Completed Application, with the above conditions and amendment. Roll Call Vote: Chase, Healey, Nelson, Feinauer, Malaby, Myers, O'Connor vote Yes. Granese is abstaining. Connors votes No because of the density and feels this is outside of the goals of the West Running Brook District. The motion passes.

Mr. O'Connor stated that anyone who is aggrieved with this plan has 30 days to appeal to Superior Court.

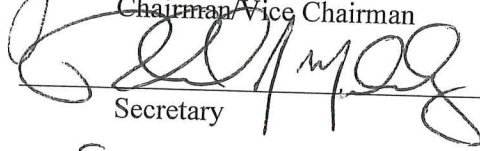
Motion by Nelson, seconded by Myers to adjourn. The motion passed with all in favor and the meeting stood adjourned at 10:06 p.m.



Approved by:



Chairman/Vice Chairman



Secretary

Approval date:

8-02-23