

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 19, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: John O'Connor (Chair), Lori Davison (Vice Chair), Maya Levin (Secretary), Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Mark Grabowski, Members; David Granese, Jim MacEachern (7:03 p.m.), Alternates

Absent: Mark Connors, David McPherson

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

Mr. O'Connor called the meeting to order at 7:00 p.m. The meeting began with a salute the flag. Mr. O'Connor then noted the location of emergency exits, and introduced the Board members and staff present.

Mr. Granese was seated for Mr. McPherson.

Escrow

#19-19

Project Name: Subdivision of Map 01, Lot 28

Developer: McMaster Development, LLC

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 01028, 81 Frost Road

The request is to establish cash escrow in the amount of \$8,877.60 for the above noted project. This escrow is non-interest bearing.

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

#19-20

Project Name: Kendall Pond Apartments

Developer: DJ Development, LLC

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 24037, 19 Kendall Pond Road

The request is to establish cash escrow in the amount of \$6,804.00 for the above noted project. This escrow is non-interest bearing.

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

Mr. MacEachern entered the meeting and was seated for Mr. Connors.

#19-21

Project Name: Kendall Pond Apartments

Developer: DJ Development, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 24037, 19 Kendall Pond Road

The request is to approve a final release of Letter of Credit Number 82248751 in the amount of \$6,804.00, drawn on Haverhill Bank for the above noted project. The amount to retain is zero.

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

Minutes

The Board reviewed the minutes of the June 05, 2019, meeting. Mr. O'Connor noted there had been some suggested edits. He inquired if Mr. Grabowski was satisfied with the changes. Mr. Grabowski indicated in the affirmative.

Motion by Granese, seconded by MacEachern to approve the minutes of the June 05, 2019, meeting as amended. The motion passed with Bartkiewicz abstained.

Correspondence

Ms. Levin reported the Board is in receipt of a notice of public hearing from the Town of Merrimack regarding a telecommunication tower site plan.

Other Business

Town Council Updates

Mr. Sioras advised the Town Council approved the proposed zoning amendment with regard to the Electric Vehicle Charging Stations. That will take effect in 30 days.

Meeting Schedule - Summer

Mr. Sioras explained there has been a lot of activity in town and the Board has been busy with plan approvals and zoning amendments. Staff has met with many developers and there are too many plans coming in for Planning Board approval to be placed on the July 17th agenda. Did the Board want to hold a second meeting in July?

The Board discussed the suggestion and available dates.

Motion by MacEachern, seconded by Chirichiello to hold a second meeting on Wednesday, July 24, 2019. The motion passed with all in favor.

Schedule a Public Hearing to amend the Town of Derry Zoning Ordinance – Create a new district – West Running Brook

Mr. Sioras noted the Board finalized the text of the proposed new district at its last meeting. All changes have been incorporated.

Motion by Granese, seconded by Bartkiewicz to schedule a public hearing on July 17, 2019, to amend the Town of Derry Zoning Ordinance, Article IV, Districts, to add Number 24, West Running Brook District; Article V, Zoning Map and District Boundaries to amend the Official Zoning Map to add the West Running Brook District, and to amend Article VI, District Provisions to add a new Section 165-32.4, West Running Brook District.

Chase, Grabowski, Chirichiello, Davison, Granese, MacEachern, Bartkiewicz, Levin and O'Connor voted in favor and the motion passed.

Public Hearing

The Halligan Tavern
PID 29195, 32 West Broadway
Acceptance/Review
Site Plan Determination
Addition of a 400 SF outdoor patio

Mr. O'Connor commented the Board members have all received written comments from one of the abutters who was unable to attend the hearing this evening as he was out of town. Points were raised that any member of the Board who frequents The Halligan Tavern may want to recuse themselves from the hearing. Mr. O'Connor asked if anyone felt they needed to recuse

themselves? He personally enjoys all of the downtown establishments and did not feel the need to recuse himself. No Board member recused.

Mr. Sioras provided the following staff report. The purpose of this plan is for the addition of a 400 square foot outdoor patio adjacent to the main entrance the grassy area which is located at the corner of Central Street and West Broadway. The property is located in the Traditional Business Overlay District in the Central Business District. All town departments have reviewed and signed the plan. Staff recommends approval. The applicant has been before the Technical Review Committee and the Board has those notes in its packet.

Mr. O'Connor noted this project is part of the Downtown Façade Improvement Program which has been sanctioned by the Town Council. Money was set aside for this program and this project will be the recipient of a grant. The Economic Development Director has also reviewed this proposal. He noted the mural on Cask & Vine that was also part of the Program.

Dan Flores, of SFS Engineering Partnership, Inc., presented for the applicant, Timothy Moran, who was in the audience. Mr. Flores reviewed the plan before the Board. He indicated the outdoor area which is intended to become a patio. Adjacent to this area, on two sides is an awning, which will remain. Sidewalk runs underneath the awning; the patio will be surrounded by sidewalk. The patio is intended to be 400 square feet, constructed of pervious pavers. This will be constructed on the old grass area. There will be a retaining wall on three sides and the grade will continue to slope as it does now. They will reconstruct the sidewalk on one side, increasing the sidewalk to 5 feet in width at the request of Public Works to assist in the removal of snow from the sidewalk. There will be the addition of a 42" safety rail, constructed of wrought iron or similar material. The retaining wall will be three feet tall at its highest point, and will be flush in some areas. With regard to stormwater; the awning is on two sides of the patio. The water drains to the current grass area and then flows down to the paved area. All of the stormwater for all storms will now fully infiltrate into the patio. This will correct the existing condition. They have addressed all of the TRC comments.

Motion by Granese, seconded by Bartkiewicz to accept jurisdiction of the site plan determination application before the Board for The Halligan Tavern, PID 29195, 32 West Broadway.

Chase, Grabowski, Chirichiello, Davison, Granese, MacEachern, Bartkiewicz, Levin and O'Connor voted in favor and the motion passed.

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

Sebastian Valenti, representing Property Portfolio Group (Barbara Woodward was in the audience), stated he spoke with the owner and was told there would be no substantial impact to their rental units with regard to sound, and the owner has agreed to limit outdoor noise. He has been told there would be no outdoor entertainment past 10:00 p.m. He would like to discuss this with the Board; they would not like their tenants to be adversely affected.

There was no further comment.

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

Mr. O'Connor asked if there would be music after 10:00 p.m. Mr. Flores stated the hours of operation are noted on the plan. Mr. Moran advised he did not discuss this with the abutter. Mr. Granese commented that other establishments in the area have outdoor patios and entertainment. It is not unreasonable to have that stop at 10:00 p.m. Mr. MacEachern stated the patio is slated to provide seating for 25 people; that does not leave a lot of room for outdoor entertainment. He asked Mr. Sioras to confirm that this application was reviewed by the Downtown Façade Improvement Review Committee and the TRC. Mr. Sioras confirmed it was. Mr. MacEachern asked Mr. Sioras if, in his opinion, there was anything arduous with this application or if there were any concerns at the town level. Mr. Sioras said there were none. The TRC discussed the seating; this was particularly discussed by the Police and Fire Departments. They wanted to make sure there was ample room for people to move around and be safe.

Mr. MacEachern confirmed the awning will remain to provide access in and out and the grass area will be pavers. He also noted the metal fence that is proposed. Mr. Moran stated the hours of operation outside will be the same as the restaurant: 11:00 a.m. to 11:00 p.m. Mr. MacEachern commented the applicant is not asking for any waivers, is following the ordinance, and this project will enhance the downtown. He does not feel twenty-five extra seats will put a strain on the downtown parking.

Mr. L'Heureux advised staff had primarily been concerned with regard to stormwater runoff and the minimum width of the sidewalk. The applicant has addressed those issues; they widened the sidewalk to five feet which will allow the sidewalk machine the proper clearance to remove snow.

Mr. MacEachern asked Mr. Flores to explain how the stormwater will be handled; will there be a dry well? Mr. Flores advised the pavers are made of pervious material. There are gaps between the concrete block/bricks. There is storage capacity beneath the pavers and the stormwater will be infiltrated. There will be zero runoff for all storms. Currently there is a small amount of runoff from this area.

Mr. O'Connor noted the other facilities in town close at various times; some close at 10:00 p.m.; others close at midnight.

Motion by MacEachern, seconded by Granese to approve, pursuant to LDCR Section 170-51 – Site Plan Determination – with the following conditions: subject to owner's signature; subject to on-site inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-61.C; subject to receipt of state or local permits relating to the project; that the above conditions be met within 6 months; outside patio hours of operation are 11 a.m. to 11 p.m.

Chase, Grabowski, Chirichiello, Davison, Granese, MacEachern, Bartkiewicz, Levin and O'Connor voted in favor and the motion passed.

**MIH Development, LLC
d/b/a North Point Outdoors
SUSO 4 Derry, LP/Slate Asset Management (owner)
PID 08280-007, 22 Ashleigh Drive
Acceptance/Review, Site Plan
15,200 sf commercial development**

Mr. Sioras provided the following staff report. The purpose of the plan is for a 15,200 square foot commercial development located on Ashleigh Drive in the Industrial IV zoning district. They will construct two buildings. All town departments have reviewed and signed the plan. The Alteration of Terrain (AoT) permit is pending. The plan did go before the Technical Review Committee. There are no waiver requests. Staff recommends approval of the site plan application.

Karl Dubay of The Dubay Group, presented for the applicants. He introduced Andrew Pelkey and David Fairburn, the co-owners of North Point Outdoors, who provided an overview of the company and its operations.

Mr. Pelkey advised they provide commercial landscaping and snow removal services to local businesses. Both he and Mr. Fairburn were born and raised in Derry and have built the business over the last ten years. They employ 65 full time employees and would like to set down roots in the community and continue to grow their corporate headquarters and business in Derry where it all started. Mr. Fairburn explained they currently are operating out of two locations: their offices are at 84 West Broadway and they have a field shop just over the town line in Londonderry. They would like to consolidate all field and office operations in one location. They feel this lot and this location are perfect. The goal this evening is to request conditional approval so that they can meet their agreement with the sellers.

Mr. Dubay advised the property on Ashleigh Drive is located in the Industrial IV zone. All of the intended uses are allowed by right in the zone. There is a wetland to the rear; that is not counted toward impervious area calculations. They meet all of the applicable setbacks and landscape requirements. All zoning issues have been met. They are proposing two buildings. The first is an 11, 000 square foot commercial building and a smaller, 5,000 square foot detached office that will be located in the front corner of the lot, adjacent to Ashleigh Drive and the Plaza Common Drive. This is a six acre site. The front office building will be on the corner, with its own parking and landscaping. The commercial building will be set to the side and functions as the operations building. Parking will be to the front for that building. The property along Ashleigh Drive and the Plaza Common Drive is very heavily landscaped. In the operational, open yard area, they will use a recycled asphalt product. The property drains to the rear and the

site is pre-connected to gas, water, and sewer. The commercial building will have a sprinkler system. They will also add hydrants to the site. On the left side, they will have material storage bins for their product. The use of the back of the property will depend on the season. The property lines to the left side of the site will blend in with the existing topography. Lighting will be LED. All of the drainage is self-contained and goes to the wet pond. They have designed the site so they don't need to rely on recharge because of the type of use on the property. They want all the drainage to go to the wet pond. There will be an onsite dumpster and above ground fuel location. There is a gated entrance to the rear for emergency access; there will also be a gate near the cul de sac. They have the gates at opposite ends for good circulation and flow through the site. The office building has a sidewalk connecting it to the commercial building. The biggest take away is that this is not a retail site. Residents will not be coming to this site to purchase pickup truck loads of material. This is an operational site for their commercial clients.

Mr. Pelkey described the business plan. In the summer the focus is on landscaping; in the winter they plow snow. Much of the equipment during the winter sits off site at the client's business location. Eighty percent of the employees report to work at the job sites they service. During the summer, they work 7:00 a.m. to about 5 or 6:00 p.m. during the weekdays. The employees come into the site and park, take the vehicles out for the day and then return. There are 10 to 12 employees in one division that go back and forth with material for job sites; the rest are mostly gone for the day. The majority of the truck traffic is morning and evening; not during the day. The office staff works 9:00 a.m. to 5:00 p.m., Monday through Friday, with some Saturdays in the spring and fall.

Mr. Fairburn advised the commercial building will be utilized for storage of materials and tools, small equipment, and for some small repairs to equipment like lawnmowers and trailers. The office is a separate building and will be two stories, housing 10 to 20 people. It is a handsome building and will be the focal feature on the site. They wanted it to be more architecturally pleasing; the commercial building is a basic shop building. During the day, the shop crews and equipment leave the site and work elsewhere. There will be no material processing on site; they are more geared to the commercial client with landscape maintenance and snow removal. Mr. Dubay commented the company is Green Sno Pro Certified and will have Best Management Practices on site. This site is perfect for this use. He feels this is a straightforward application.

Motion by Granese, seconded by Bartkiewicz to accept jurisdiction of the site plan determination plan before the Board for MIH Development, LLC (North Point Outdoors) – SUSO 4/Slate Asset Management (Owner), PID 08280-007, 22 Ashleigh Drive. The motion passed with all in favor.

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

There was no public comment.

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

Mr. O'Connor noted the fuel container sits on a concrete pad. Will that pad retain the total volume of fluid if there is an issue with the container? Mr. Dubay confirmed that it will and referred Mr. O'Connor to Sheet 5.

Mr. O'Connor asked if there will be open salt storage on site as this is in an area with a sensitive aquifer. Mr. Dubay advised the salt sits in its own contained cell. It will have a cover over it. He confirmed the sign will have a natural stone/granite veneer with small accent lighting.

Ms. Davison noted the stockpile area indicated on Sheet 9; what will that be for? Mr. Fairburn explained that is a construction stockpile area and will be removed after construction. Mr. Dubay added for the SWPPP purposes they need to show a stockpile area during construction; they will install the appropriate erosion control.

Mr. MacEachern asked what will be stored in the concrete bins shown on Sheet 5. They will hold bark mulch and aggregate materials such as processed gravel, washed sand and crushed stone, etc. They will be open air containers, and have screening. Passersby will not see them. Mr. MacEachern said he was more concerned with water and runoff of the material into the wetland. The landscape plan looks complete. Mr. Dubay said along the road there is a berm; the bins are graded forward to the open area so that if there is an issue, there will be no surprises. It will be immediately evident. The pavement goes to Catch Basin 9, to the sediment forebay and then to the pond. These are natural materials.

Mr. MacEachern commented there is a good separation between the office and commercial building. He confirmed what the commercial building would look like; from the renderings they look to be similar to the buildings on Ash Street Extension. Facsimiles of the office building were not provided with the application. Mr. Fairburn offered to email them to Mrs. Robidoux to be distributed to the Board members. He advised the office building will be 65 x 42, two stories tall. The front entrance faces the material bins. There will be two farmers porches to the front, an atrium entrance and two stories of glass in the atrium. The building will be gray with a black roof. Mr. MacEachern asked that the Planning Director and Town Engineer review the facsimile to ensure it meets the architectural design regulations.

Mr. L'Heureux advised for the most part, all of DPW comments have been met. There were a few items to be completed such as labeling of the taps, the domestic water service for the garage, and more details on the wet pond and how that will be constructed. The AoT may change some of the drainage. His May 24, 2019, email to Mr. Dubay covers the outstanding items. Mr. Dubay advised he has already updated some of the items for the AoT permit.

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I Completed Application, with the following conditions: Subject to owner's signature; subject to on site inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; comply with the request for additional information/plan details as outlined in correspondence from M. L'Heureux dated May 24, 2019, relative to the water main to the garage and the water tap at the cul de sac; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-61.C; subject to receipt of state or

local permits relating to the project (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.); conditions precedent shall be met within 6 months; pending approval of the renderings of the office building by town staff.

Chase, Grabowski, Chirichiello, Davison, Granese, MacEachern, Bartkiewicz, Levin and O'Connor voted in favor and the motion passed.

Mr. Granese noted this is a nice plan, he has seen the work the company does, and he is glad they are making their home here. Mr. O'Connor welcomed the business to Derry.

**High Meadows, LLC
PID 29046, 46 High Street
Three Lot Subdivision
Reconsider denial of application and waiver request**

Mr. Sioras advised the Board received a request to reconsider its decision of May 15, 2019. At the last meeting, the Board agreed to reconsider its decision and will vote on that tonight. The applicant has provided a draft easement and maintenance agreement for the rain garden and for the common access driveway. Those were forwarded to legal for review and staff has received some suggested changes from the town attorney. It will be up to the Board to decide whether it wants to reverse its decision or not. Only the members who sat on the hearing originally should vote on this matter. It was confirmed voting members would be Ms. Levin, Mr. Bartkiewicz, Mr. O'Connor, Mr. Chirichiello, Mr. Grabowski, and Ms. Davison and that this constituted a quorum of the Board. Mr. Chirichiello stated he was glad to receive the two easement documents and the lots appeared to be thoroughly protected. Mr. Sioras advised the easement documents are at this time, for Board review only.

Mr. O'Connor advised the Board would be voting on two items: the waiver and the subdivision application.

Mr. Grabowski asked if the Board needed to re-open the public hearing. He confirmed the abutters were notified. Mr. Sioras said it would be up to the Board; traditionally, the Board would not re-open the public hearing as the matter before it tonight is a reconsideration of its vote. This is not a public hearing to obtain input from the public, but the Board can do that if it so chooses. The abutters were notified so that they could observe the Board discussion. Mr. Chirichiello did not feel there would be much to add if the hearing was re-opened.

Motion by Chirichiello, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-25.A.5, Access Through Lot's Own Frontage, as 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 for the following reasons. Discussion followed.

Mr. Grabowski advised he voted no on the waiver before and cited as his reason that it was based on staff recommendation. He is new to this Board, but has prior public experience. Staff recommendation is important and is not to be taken lightly. He came across Riggins Rules, provided to him when he started with the Board. Item #30 states, "Do not take staff recommendations lightly. These recommendations are made after much study by professional people with years of service and experience in their field and are based on pertinent laws, ordinances, regulations, policies and practices developed by you and your predecessors. The recommendations of a good staff in possession of all the facts will almost always produce a technically correct recommendation." His concern is that rather than just saying 'based on staff recommendation' he would like to review information that was provided in the member packets [May 15, 2019] that drives his thought process. There is an email dated April 03, 2019, from Mr. L'Heureux to other staff outlining the DPW concerns. "DPW does not support the waiver for a common driveway with little hardship justification. Additional costly utility modifications (rain garden, sidewalk, drainage, additional water and sewer construction on Ash St.) are required and impact [the]Town's infrastructure. Lot shape irregularity to create a 3rd lot is not in spirit of regulations." In the same packet, the meeting minutes of March 06, 2019, on page 8 of 17, indicate Mr. L'Heureux "advised DPW will not support the waiver for the shared driveway; staff does not see the hardship. From their standpoint, the lot can handle two building lots; the waiver is required to make three lots. It is the further development of the lot which requires more stormwater treatment, work into the road and sidewalk, replacement of a catch basin that is undersized which would incorporate a very difficult excavation which is costly. It seems like they are creating their own hardship by trying to create the third lot. A shared driveway is not in the spirit of the regulations. In cases where a waiver for a shared driveway has been granted in the past, those were on high speed roads."

Mr. Grabowski stated his last comment is that he believed Mr. Sioras had also stated a shared driveway is not very common. Mr. Sioras said the Board does not see many. It is more common to have a request to share two driveways; he does not recall a request for three driveways in his tenure with the town. Mr. Grabowski stated the applicant is requesting a shared driveway of non-abutting lots, crossing a third lot. Mr. Sioras reiterated he does not recall a request for three shared driveways in his 35 years with the town. Mr. Grabowski said on the easement the Board requested from the applicant, the lot with frontage on Ash Street, Parcel 29046-001, has a section of driveway that is not common to 29046 or 29046-001. It is common to Parcel 29046-002 and Parcel 29046-001. Where in the easement document is the maintenance plan for that stretch of the driveway? Mr. Sioras suggested Attorney Germaine might be able to address that question as Attorney Germaine drafted the easement document.

Attorney Brian Germaine said the intent of the common driveway easement is for the two parcels that benefit from the driveway to be responsible for maintenance of the driveway. The driveway crosses Parcel 29046 which has no benefit to them and they are not responsible for the maintenance. The other two lots do have responsibility. Parcel 29046-001 should maintain the most area because they benefit the most. He can work with the town's attorney to clarify this. The owners of the lots that benefit the most need to pave, maintain, and keep the driveway in good condition. Mr. Grabowski agreed that made sense, but it is not in the document that he has before him. There is language that the maintenance for the piece of the driveway for 29046, that

is shared with 29046-001. Attorney Germaine noted there is language that both of those lots are responsible for the construction and maintenance of individual driveways from the common driveway to their respective lots. The intent is that they are also responsible for the common driveway itself that they both benefit from. Anything that they benefit from solely or directly, they are responsible for the maintenance. That is found in paragraph six. Mr. Grabowski felt that was unclear in the draft document. Attorney Germaine agreed that could be a condition of approval; he noted he does not have the benefit of having a copy the marked up document before him. Mr. O'Connor said it could be a condition of approval to work that out; that is not unusual.

Mr. Grabowski had one last question. Where will the mailboxes for these lots be located? Craig Bailey of Bailey Associates, Inc., advised the addressing of the lots is yet to be finalized. The E-911 addresses have not been confirmed by the Fire Department which is why mailbox locations have not been noted. Mr. Chirichiello added that in the downtown, most of the mailboxes are on the house. Mr. O'Connor commented that may also need to be a condition. Mr. Sioras suggested the wording, "subject to Fire Department determination of appropriate addresses for each of the lots."

Mr. O'Connor stated he sees numerous shared driveways leading to condemes in town. With regard to the hardship, the applicant made three lots out of one. The topographical issues and the slope pose a hardship. He referenced *A Hard Road to Travel* and RSA 674:41, III, having to do with private roads and access. The lot has frontage but it is too steep to meet sight distance and it is too close to the intersection; this forces the shared driveway condition. The developer has the right to develop the lot because there is sufficient area and land to do so, whether people like the design or not. Facts in the case of *Belluscio v Town of Westmoreland* in 1994, support this. This may not be as good looking as people would like, but he feels strongly that there is a hardship.

Mr. Chirichiello agreed with Mr. O'Connor. His only concern was protection of the shared driveway. The lot is big enough for three homes and there is hardship with the separate curb cut.

Mr. O'Connor asked the Board to move to the vote if there was no more discussion.

Grabowski voted no for the reasons he stated earlier; Chirichiello voted yes, Davison voted yes because the request meets the zoning criteria the Board needs to observe, but she feels this is a bad idea – she is voting yes under duress; Bartkiewicz voted yes, Levin voted yes, and O'Connor voted yes for the reasons he stated. The motion passed.

Motion by Davison, seconded by Chirichiello to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: comply with the Vanasse Hangen Brustlin report dated April 16, 2019 or later; subject to owners' signature; subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; note approved waivers on the plan; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24.C; subject to receipt of state or local permits relating to the project (i.e., driveway, water/wastewater, building permits, fire department permits, etc.);

conditions precedent shall be met within 6 months; a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement; submission of appropriate recording fees, payable to the Town of Derry; a cross easement for the common driveway shall be shown on the plans, allowing access for all three lots as intended; a Declaration of Common Driveway Easement and Maintenance Agreement shall be submitted, reviewed by the Town of Derry legal counsel, and the easement shall be recorded at the Rockingham County Registry of Deeds, and referenced in the deeds for each property; drainage easements for all lots shall be shown on the plan to allow access and maintenance of the rain garden by all three lots; this Drainage Easement and Maintenance Agreement shall also be submitted for review by the Town of Derry legal counsel, recorded at the Registry, and referenced in the deeds; the applicant shall bear all cost associated with the easements including any review by the Town of Derry legal counsel; edge of pavement/driveway for Parcel 29046-002 shall be no closer than five feet to the building located at PID 29052; addition of trees to buffer light from the new development; installation of a No Left Turn sign at the end of the common access driveway coming out onto High Street; paving of the first 100 feet of the driveway for Lot 29046-002, and full paving of the common access driveway; a suitable barrier or guardrail shall be added between the driveway at Lot 29046-002 and Lot 29052; a blasting permit shall be obtained from the Fire Department if blasting is required on site at any location; subject to Fire Department determination of appropriate addresses for each of the lots.

Grabowski stated since the all the waivers passed he will vote yes on the application; Chirichiello, Davison, Bartkiewicz, Levin, and O'Connor voted yes and the motion passed unanimously.

Mr. O'Connor advised any aggrieved party has 30 days to file an appeal at the Superior Court. He asked the developer to meet with the abutters and let them know about the progress of the development. He asked that construction times be respectful of the neighborhood.

The Board took a five minute recess and reconvened at 8:31 p.m.

Third public hearing- to discuss proposed amendments to the Town of Derry Zoning Ordinance, Section 165-20, Zoning Map to move 20 properties from MHDR and 1 property from GC to the Office Business District.

Mr. Sioras reminded the Board, the last public hearing was in May. The Board has held a site walk on Aiken Street to view the area. At the end of the last public hearing, the Board elected to continue the discussion to this evening. Mr. Granese asked if the public hearing would be re-opened as there are many abutters present this evening. He still feels the Board is putting the cart before the horse in trying to encompass this whole area and would like to scale down the proposal. However, he would like to hear from the public first.

Mr. MacEachern asked when the discussion took place to put all of these properties in the district. This is the entire Aiken Street. He thought they were going to have further discussion about what properties should be or should not be in the expanded district. Mr. Sioras said this is the third public hearing. When the Board held the site walk the district boundary had already been set. These are the properties that have been on the table for discussion for the public hearings. Mr. MacEachern said he thought at this hearing, they were going to discuss which properties would stay in the area or not. This appears to be an all or nothing proposal. He is willing to discuss this and provide his opinion. He would like to hear from the rest of the Board members. He can't support this amendment for all twenty properties; it makes no sense to him. All of the properties from Fordway toward Valley Street/Lowell do not make sense because of the topography. No one could build anything back to front. He has been out to the area and feels that development behind the old Ritz Camera building might be feasible. He has no issues rezoning that block. But it makes less sense to change the properties heading toward Fordway once past that intersection. St. Charles Street turns into Aiken Street. The lots there, fronting on Broadway are split by the Londonderry town line. He could see changing this small area, up to Valley Street. Mr. Granese recalled the Board continued the public hearing in May so that the Board could discuss the proposed uses in an expanded zone in its workshop.

Motion by Granese to open the public hearing, seconded by MacEachern. The intent of opening the hearing is to hear new comments. The motion passed with all in favor and the floor was open to the public.

Tom May, 1 Valley Street, said he did not want to rehash old comments. The Board has heard the concerns of the residents and he thanks the Board for taking the time to visit the area. He hopes the Board has been convinced that Aiken Street should remain residential. This would include the area between St. Charles Street and Fordway. He reminds the Board the Town Administrator, at one of the hearings, said there are merits and concerns when a Board considers zoning changes. Creating economic opportunities that could provide tax relief is a bonus, but the feelings of the residents are also key. Staff looks at what might or might not work. The residents feel this change will not work. Mr. MacEachern has stated some things make sense for rezoning; the Board should proceed with caution and look at the town as a whole and see what may or may not make sense, obtain input from the people, and not rush to make a change. The residents contend this change does not make sense. Mr. Granese has stated he needs more information and the Board should look elsewhere to make zoning changes. The residents support that. Mr. May said he trusts their input has been helpful in the Board's vote. Even though they are only a block away from West Broadway, they don't want commercial influences infringing on their stable residential neighborhood. Their neighborhood is important to the make-up of the town, and this would affect their quality of life in their residential neighborhood.

Lisa Joslin, 15 Aiken Street, stated rezoning a portion of Aiken Street because of the topography creates a hardship on the residents because of the width of the road and the additional traffic. Please consider denying the entire change. At the last hearing, the Chairman stated sometimes the Board has to deal with projects that are not aesthetically pleasing. She disagrees – the Board has a responsibility to make sure all development is aesthetically pleasing to the entire neighborhood, not just because it is a hardship to the applicant. All of the residents will be

affected by hardship if this amendment passes and the properties are changed to Office Business District. This will be a hardship on the residential neighbors. She asked the Board to please keep that in mind.

George Madden, 21 Aiken Street, asked for confirmation that the Board is considering it might be best to change the lot beside him to commercial. Mr. O'Connor stated comments had been made that it would be possible to develop behind the Ritz Camera lot, but the Board is only discussing it at this point. Mr. Madden wanted to confirm nothing was happening there right now. Ms. Joslin noted development on that site would directly affect Mr. Madden; he is a direct abutter.

There was no further comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and discussion came back to the Board.

Ms. Davison asked what are the Board's options; does Mr. MacEachern need to make an alternate proposal? Mr. MacEachern wanted to hear from the rest of the Board; he can't support the current proposal. What is Londonderry zoned in this area? Mr. Sioras deferred to Ralph Valentine who owns property in both towns. Mr. Valentine said half of the Ritz Camera Building is in Londonderry, the other half is in Derry; the same is true for 10 St. Charles Street. The only parcel he can speak to is the green building; that is zoned CII in Londonderry. Mr. Sioras said he would follow up with his counterpart in Londonderry and confirm the zoning.

Mr. MacEachern said he needs to know the official zoning designation of the lots in Londonderry on the town line. He does not want to do something that is very different; it needs to be cohesive.

Mr. Chase stated east of Valley Street, a front to back single use could be difficult. There are many buildings that are one level in the front and two levels in the back. It can be done but may not be economically feasible. The intent of this change, in his opinion, is not for large scale commercial development; it is for the houses to remain the same and have a business such as a barber shop or an accountant move in. The house would look the same. On West Broadway to Clark, none of the redevelopment has resulted in the tearing down of a home. The businesses moved in and the houses stayed. That is what he envisions for this area. He can see modest commercial uses between St. Charles and Valley; there is land that could be utilized. That block has had commercial uses for 60 years; it makes no sense to keep that area residential. That is the gateway to town and it is a commercial area. It makes sense to move the Derry Restaurant and Pizza lot and the one next to it into the OBD.

Mr. Chirichiello agreed with Mr. Chase. He recognizes the topography can be tough but he did notice the Zoning Board has an application for 5 Aiken Street. The gentleman there owns a lot fronting on Broadway and wants to add commercial truck parking to the rear. That person owns

both the lots. He agrees with Mr. Chase that the first block and the two across the street should be rezoned but would like to leave the rest of the lots alone.

Mr. Grabowski agreed with Mr. Chirichiello and Mr. Chase. The proposed changes seem appropriate. He agrees with Mr. MacEachern that the topography is challenging. This is within a short distance of I-93; he does feel Aiken Street with the topography and street width itself is inhibiting.

Ms. Davison sees the wisdom in what Mr. MacEachern stated; there is not much commercial development that can occur given the rolling topography, but she could see a building being converted to a lawyer office or coffee shop, similar to what Casa Java did on Birch Street. That would be a nice addition to the neighborhood. She agrees the rest should be left alone. She agreed with the proposed.

Ms. Levin confirmed the area proposed for change by Mr. MacEachern. It would be six properties; the four between St. Charles and Valley and the two across West Broadway. Ms. Levin felt the change should not go past Clark Street.

Mr. Bartkiewicz agreed with the proposed change.

The Board reviewed the zoning in Londonderry, which is Commercial II. The house behind the Valentine property might be residential. Mr. Chase stated Londonderry is cleaning up their commercial and residential zoning. He does not feel that the Board should hold up what they are doing because of one lot in Londonderry is surrounded by commercial establishments.

Mr. Sioras confirmed the Derry Restaurant and Pizza lot is zoned General Commercial; that lot was zoned by warrant article at Town Meeting.

Mr. Granese noted the discussion is to create more business opportunity. The Board originally discussed changing 20 lots, now it is discussing six lots; why not leave the lots as is? If someone wants to bring something in, they could go to the Zoning Board. Mr. Chase said four of the six lots currently being discussed are residential; if torn down they could not be rebuilt as commercial but they could become a 30 unit multifamily residential apartment building. There is nothing the town could do to stop it.

Mr. O'Connor stated he was also leaning toward changing the six parcels. The other parcels on Aiken Street cannot fit off street parking.

Mr. MacEachern noted it seemed all the Board members were in agreement that not all of Aiken Street should be rezoned. He suggested sending this back to the Planning Director who could re-write a proposed motion for the Board and bring this back with just the six parcels for the next meeting.

Mr. Sioras suggested a straw poll of the members to make sure all were in agreement on the six parcels. Mr. Granese stated he would like to know what the allowed uses are in Londonderry for

the CII zone. Mr. Chase said he attended Londonderry's public hearing. Half of the properties in this area are either CI or CII; the zone goes through many of the lots. Londonderry is looking at the boundary of the zones and wants conformity. They are also making sure the permitted uses are appropriate for each district. Some of the properties will come out of the residential zone because they are currently businesses and will be moved to the CI or CII zones.

The Board conducted a straw poll to see if the amendment should be limited to 6 parcels. All of the Board members were in agreement.

Mr. Sioras said at the next meeting, the Board will have a revised zoning map and provide a list of the permitted uses in Londonderry for the CII uses.

Motion by Granese, seconded by Bartkiewicz to continue this hearing to July 17, 2019.

Chase, Grabowski, Chirichiello, Davison, Granese, MacEachern, Bartkiewicz, Levin and O'Connor voted in favor and the motion passed.

There will be no further notice of the public hearing.

Workshop

Workshop #6 – to discuss the permitted uses in the Office Business District

Mr. Sioras advised the changes from the last workshop have been incorporated. The two remaining discussion items are highlighted in yellow. Mrs. Robidoux stated the Board had wanted the multifamily requirements to mirror those in the TBOD; that reference has been corrected. The prior drafts cited the CBD requirements. Ms. Davison confirmed an accessory dwelling unit is not considered multifamily. Mr. Sioras noted multifamily is considered three or more units. Duplexes are two units. Mr. Chase commented multifamily in the OBD would be with mixed use; residential can occur on the second floor and above.

Mr. Sioras said the last item to be discussed is the maximum lot coverage amount. Currently, the amendment states it shall not exceed 70%. The lots in this area are small; in theory several lots would need to be purchased and combined for a larger development. Mr. Chase said he would like to see that number increased to 85% to provide the maximum amount of area for parking and the appropriate buffers. The Board agreed.

Mr. O'Connor asked that the document be cleaned up and provided to the Board at the next meeting so that the Board can schedule a public hearing. Mr. Sioras said the date would likely be in August, given the current schedule.

There was no further business before the Board.

Motion by Granese, seconded by Chirichiello to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:21 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____