

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 05, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the majority of the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice Chair; David Nelson, Secretary; Randy Chase, Town Administrative Representative; Brian Chirichiello, Town Council Liaison; James Hultgren, David Granese*, Mark Connors, David Clapp, Members; Joe Tremper* Alternate

Absent: Andy Myers

*Denotes virtual attendance.

Also present: George Sioras (7:26 p.m.), Planning Director; Elizabeth Robidoux*, Planning & Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

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

Escrow

#22-01

Project Name: Health Service Facility

Developer: 29 Ashleigh Drive, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 08280-006, 29 Ashliegh Drive

The request is to approve a Final Release in the amount of \$93,713.76 on Letter of Credit #43724, drawn on Enterprise Bank for the above noted project. The amount to retain is zero.

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

#22-02

Project Name: Paul the Plumber

Developer: PKMD Properties

Escrow Account: Same

Escrow Type: Performance Bond

Parcel ID/Location: 35004, 111 Franklin Street Ext.

The request is to approve a Final Release in the amount of \$109,719.36 for the above noted project. The amount to retain is zero.

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

#22-03**Project Name: North Point Outdoors****Developer: Same****Escrow Account: Same****Escrow Type: Performance Bond****Parcel ID/Location: 08280-007, 22 Ashleigh Drive**

The request is to approve a Final Release in the amount of \$60,944.40 for the above noted project. The amount to retain is zero.

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

#22-04**Project Name: Kendall Pond Apartments****Developer: DJ Development, LLC****Escrow Account: Same****Escrow Type: Cash****Parcel ID/Location: 24037, 19 Kendall Pond Road**

The request is to approve a Final Release in the amount of \$6,804.00 for the above noted project. The amount to retain is zero.

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

Minutes

The Board reviewed the minutes of the December 01, 2021, meeting.

Motion by MacEachern, seconded by Connors to approve the minutes of the December 01, 2021, meeting as written.

Chase, MacEachern, Hultgren, Clapp, Nelson, Connors, Granese and O'Connor voted in favor; Chirichiello abstained, and the motion passed.

Correspondence

Mr. Nelson advised the Board has received a copy of the 2022 Planning Board schedule and deadlines as well as an updated member roster.

Other Business

Voluntary Merger – 15 and 17 Escumbuit Road

Mrs. Robidoux commented at the last meeting, the Board recommended the restoration of involuntarily merged lots for this parcel. Last evening, Town Council approved the restoration of the three lots [13, 15 and 17 Escumbuit]. This evening, the Board is being asked to combine two of the three lots, 15 and 17 Escumbuit. The new lot will contain the existing home and garage. Tomorrow evening the ZBA will look at a variance application to review the non-conformity created when the lot line was put back in place; the structure is a little over three feet from the property line; that is not before the Board this evening. Following the voluntary merger, the new address will be 15 Escumbuit.

Mr. MacEachern asked if the Board should delay action on this request until the ZBA makes a decision. Mrs. Robidoux stated the lot line is in place, based on Town Council action last evening; she believes the ZBA action is more to keep the title clean with regard to the non-conformity.

Mr. Connors questioned whether the Board should have recommended the restoration of the lots as he was not sure the lots had not been voluntarily merged by the owner. The lot seems to be very small. When the current home was constructed, did that make this a voluntary merger? Mrs. Robidoux advised at the time of construction, it was one lot, not three. The lots were merged by the town, not at the request of the owner, and as such the State law indicates the town *shall* restore the lots. The owner is trying to correct any nonconformities as best they can. That is not to say that any nonconformities are cured with the restoration of the lot line. If someone wanted to build on 13 Escumbuit, they might need variances to do so, but 13 Escumbuit is not before the Board this evening. Mr. Connors believed that the act of constructing the home on the lots was a form of voluntary merger; Mrs. Robidoux respectfully disagreed as at the time it was not known there were three lots. The Assessor has reviewed this application. Mrs. Lisa Coggins* advised the new home was built on the exact footprint of the former home, so there was no change to the footprint. The Board held a discussion relative to deciphering the lots on the plan provided. Mrs. Coggins confirmed the lots are waterfront lots.

Motion by MacEachern, seconded by Chiricheillo to approve the voluntary merger of PID 16018-002, 17 Escumbuit Road and PID 16018, 15 Escumbuit Road. Parcel 16018-002 shall be deleted, and Parcel 16018 shall be retained.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese, and O'Connor voted in favor and the motion passed.

Mr. Sioras entered the meeting.

Chairman/Planning Director Updates

Mr. Sioras advised there are no public hearings scheduled for January 19, however, the Board will hold a workshop on the density requirements in residential zones. Mr. O'Connor commented the Board receives emails from the Planning staff with regard to training opportunities through NH Municipal Association, SNHPC, and the Office of Planning & Development. Many of the training sessions are one hour long.

Public Hearing

Mr. O'Connor advised the Board has a new procedure to follow with regard to the Developments of Regional Impact. The Board will need to answer the questions related to regional impact and make a determination. The requirement is found in the RSAs and the LDCR at Section 170-05.

Refined Roofing & Construction, LLC

PID 07084, 64 Drew Road

Acceptance/Review

Lot Consolidation and 6 Lot Subdivision

Mr. Sioras provided the following staff report. The owner of the property is Gino Spiro/Refined Roofing & Construction, LLC. The parcel is located at 64 Drew Road in the Low Density Residential District, which has a minimum lot size of three acres, single family homes only. The purpose of the plan is for a lot consolidation and 6 lot subdivision. All town departments reviewed the plan and signed it, with the exception of the Department of Public Works. Mr. L'Heureux can speak to that. There is a waiver request dated November 12, 2021, for relief from Section 170-25.A.(5), driveway access through a lot's own frontage. Staff met several times with the applicant's surveyor in TRC meetings. The applicant has obtained State DES subdivision approval. At this time, staff does not recommend the Board accept jurisdiction of the plan as the application appears to be incomplete. He asked the Board to refer to the comments in the staff report with regard to the items missing from application checklist. He recommends the surveyor present the plan and then the Board can decide on the motions it would like to make.

Tim Lavelle, of James Lavelle Associates, presented for the applicant. The total area is 77.6 acres with 74.36 acres in Derry. After subdivision, there will be five lots on Drew Road. The larger parcel will be combined with Parcel 112, which is an existing lot of record with frontage on Main Street in Hampstead. The frontage lots all have the three acre minimum with frontage in Derry. The larger lot will be 61.7 acres with 100 feet of frontage on Drew Road. They are requesting a waiver to allow a common driveway to avoid a wetland crossing. They are proposing a shared driveway on Lot 3 to avoid the wetland on Lot 2. The parcel has been walked twice by the Conservation Commission. Mr. Lavelle said he does not want to request a Dredge and Fill permit and that is why they want the waiver. He believes the issue about not

signing the plan had to do with the common driveway. The last few sheets of the plan show the driveway profiles. He understands there are some revisions to make on the plan, and since the Board may require other items, did not revise the plan set that is before the Board this evening.

Mr. Connors asked if the plan was to build the five lots on Drew Road and leave room through the 100 feet of frontage for a road to the larger parcel, which can then be further developed with a road leading to Hampstead. Mr. O'Connor reminded the Board members that the Board has not accepted jurisdiction of the plan so can't begin discussion on the merits of the plan. He would like to hear from Mr. L'Heureux and then the Board can make a determination on regional impact and then the acceptance of jurisdiction.

Mr. L'Heureux stated he wanted to reiterate not all of the checklist items had been addressed to the satisfaction of DPW and the Planning Department. There is significant concern about the proposed shared driveway. The lots could support their own driveways with a minor wetland impact. The developer chose to configure the lots in this manner and the impacts could be avoided. There can be hardship when there are lots with large wetlands or steep slopes but with this large a parcel, driveways can be accommodated for each lot. The lot with 100 feet of frontage does not achieve satisfactory sight distance and he would urge the applicant to look at how that is subdivided again as has been previously discussed.

Mr. Nelson understood the concerns stated by the DPW, but did not understand how that impacted the status of a completed application. The decision to grant a waiver or not is determined by the Board and he believed it was up to the Board to determine if an application was complete or not. Mr. L'Heureux explained part of the application checklist includes submission of a sight distance profile that meets the standard, which has not been submitted. Mr. O'Connor noted the submission checklist is found at LDCR 170-24.

Mr. MacEachern reviewed the questions the Board should answer with regard to the determination of regional impact which are as follows. If the answer to any of the questions is yes, then the project may have regional impact.

- Is the project next to a municipal boundary?
- Is the development located within 1,000 feet of an aquifer or surface waters that transcend a municipal boundary and will result in a large water withdrawal (57,600 gallons or more); OR will there be indoor, outdoor or underground storage of chemicals or other pollutants?
- Will this project create a new road or point of access between municipalities?
- Is the project a non-residential project resulting in 500 or more vehicle trips per day into an adjacent community?
- Is the project 200 or more residential units within 1000 feet of a municipal boundary?
- Will the project emit light, noise, smoke, odors or particles that may impact a neighboring community?
- Will the project impact shared facilities (schools, solid waste disposal facilities, or other utility services) from another community?

If the Board determines the application has a regional impact, then after acceptance of jurisdiction, the meeting should be continued to allow notification of the affected community and the regional planning commission.

Mr. O'Connor asked if the Town of Hampstead had been sent a letter about this project. Mrs. Robidoux advised she sent a letter to the Hampstead Planning Board and also spoke with the Planning Coordinator. At this time, the Hampstead Planning Board has no comments, but it is understood that Board will also need to review this application as this project crosses a municipal boundary. The Hampstead Planning Board will comment on the project at their public hearing. The Town of Hampstead was notified as an abutter as well. The application has not been filed by the applicant with the Hampstead Planning Board yet, to the best of her knowledge. The Derry Planning Board has not yet determined if there is regional impact so the plan has not been forwarded to the RPC.

Mr. Connors felt that there may be regional impact as the answer to the first three questions would be yes.

Mr. Lavelle noted that there is no road planned between the two municipalities. Currently, the owner is creating a large pasture area and has no immediate plans to develop the back 60 acres. The home is in Hampstead, but the bulk of the land is in Derry. Mr. Connors asked how the land is planned to be combined with the lot in Hampstead. Mr. Sioras said the property as a whole, has a town line through it. Mr. Lavelle added there are two parcels under consideration. They are planning a lot line adjustment with a parcel that has a municipal boundary through it.

Motion by MacEachern to accept jurisdiction of the plan. There was no second, and the motion died.

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

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in the affirmative and the motion passed.

Motion by MacEachern, seconded by Chirichiello, to accept jurisdiction of the lot consolidation and subdivision plan before the Board for Refined Roofing & Construction, LLC, PID 07084, 64 Drew Road.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted no, stating the application is found incomplete for the following reasons:

1. The zoning classification of the parcels is not on the plan (Section 170-24.A.3)
2. State plane coordinates are on the plan, but not at two boundary corners (Section 170-24.A.5)

3. Note indicating the total number of sheets in the plan and that a full set of the plan is available in the Planning Office is not on the plan (Section 170-24.A.8)
4. Plan is missing easements for sight distance (Section 170-24.A.7)
5. Drainage calculations were not provided with the application (Section 170-24.A.15)
6. An erosion and sediment control plan was not included (Section 170-24.A.15)
7. The TRC block is missing the DPW signature and no waiver was requested for this item (Section 170-24.A.22);
8. Plan does not meet Section 170-26.D.4 and 7 with regard to sight distance;
9. Utilities are not shown on the plan, specifically underground utilities (Section 170-31), and no waiver has been requested

Mr. O'Connor requested Mr. Lavelle follow up with the Planning Department to get back on a future agenda. Mr. Sioras added that abutters would be re-noticed with the date of the new public hearing once one has been scheduled.

Mr. Connors stated he observed that there is a home being constructed on one of the lots. Mr. Sioras understood the owner obtained a building permit to construct on the existing lot of record (64 Drew Road), which is permissible.

Mrs. Robidoux confirmed as the Board had made a determination of regional impact, she would forward a copy of the plan to the regional planning commission for comment. Any subsequent amendments to the plan can be forwarded as necessary.

JAL, LLC
PID 11058, 19 Forest Street
Acceptance/Review
12 Lot Subdivision

Mr. Sioras provided the following staff report. This is Denali Estates, Phase II. There was a previous subdivision by the same developer approved by the Board; the Board had performed a site walk for that plan. Those lots are currently under construction. The purpose of this plan is to create 12 new lots in the Low Medium Density Residential District, which has a minimum lot size requirement of two acres. All town departments have reviewed and signed the plan. Promised Land Survey has prepared a waiver request letter with regard to the length of the cul de sac and the mapping of high intensity soil survey. NH DES subdivision and Alteration of Terrain (AoT) permits are pending. Staff recommends approval of the waivers and the subdivision application.

Tim Peloquin, Promised Land Survey, presented for the applicants who were both present. Also present were Brenton Cole and Jeffrey Merritt of Granite Engineering, LLC, who also prepared the plan set. He advised the AoT permit is pending with the State. The Board earlier this year approved the Denali Estates Phase I plan which is under construction. The applicant purchased additional, adjacent land with a right of way available to the back property which is known as Parcel 11058 and 14014; those lots combined total 84 acres. The Denali Phase II subdivision

proposes 12 new single family house lots. Some of the lots are irregularly shaped and larger. There will be a future Phase III proposal at some point. The current intent is to extend Daniel Road. For this application, the road would need to be extended to longer than 2000 feet. Municipal water will be available, so the homes will be able to be served by hydrants which satisfies the fire suppression requirement. There are no wetland impacts with this application. As stated before, the AoT and State subdivision permits are pending. They did have several meetings with town staff and believe the proposal is a good layout.

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

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted no, stating the application did not meet the definition of a development of regional impact.

Motion by MacEachern, seconded by Chirichiello to accept jurisdiction of the subdivision before the Board for JAL, LLC, Parcel ID 11058, 19 Forest Street.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

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

There were no public comments.

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

Mr. L'Heureux stated the plan looked good from the DPW perspective but the town is still awaiting the review from the outside review engineer. He does not believe that will be an issue. Mr. Sioras added he spoke with the consultant just before the holiday. The consultant was out on vacation but looked at the plan prior and did not see any immediate issues with it; he planned to prepare the report when he returned from vacation.

Motion by MacEachern, seconded by Chirichiello, to grant a waiver from LDCR Section 170-26.B.5, Streets to allow a cul de sac length of 3300 feet where the regulations restrict the length to 2000 feet from the nearest through street. 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. Discussion followed.

Mr. Nelson stated there will hydrants supplying fire protection, which is an acceptable reason to extend the length of the road.

Mr. Connors asked if the cul de sac will be extended in the future? Mr. Peloquin stated it will. The layout shows the future connectivity, but the plans have not been finalized so he did not want to discuss that as part of this application. Mr. Connors commented there had been mention in the TRC notes about the odd shape of lot 059; can Mr. Peloquin provide an answer for that? Mr. Peloquin stated there are two frontages for that lot. There is potential to design a road in the 50 foot section which would provide connectivity back to a public right of way.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed; with Mr. Chase adding he is voting yes because of the potential for a future connection.

Motion by MacEachern, seconded by Chirichiello, to grant a waiver from LDCR Section 170-24.12.J, to not perform HISS Mapping as after review of the waiver request 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.

Mr. Peloquin advised a similar waiver was granted for Denali Phase I. They did perform HISS mapping on part of the plots along the roadways for the AoT permit application, but did not on all the entirety of the lots, as the lots will be supplied with municipal water.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

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

1. Comply with the Vanasse Hangen Brustlin forthcoming report and any future reviews
2. Subject to owner's signature
3. Subject to on-site inspection by the Town's engineer
4. Establish escrow for the setting of bounds or certify the bounds have been set
5. Establish appropriate escrow as required to complete the project
6. Note approved waiver (s) on the plan
7. If blasting occurs as part of the construction process, in addition to the BMPs for blasting noted on Sheet C14, the applicant shall comply with the following: Saf-C 1600, Explosives; Saf-C 1607, Record Keeping; Saf-C 1607.04, Notifications; and Saf-C 1607.05, Pre-Blast Inspection.
8. 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
9. Subject to receipt of applicable state or local permits relating to the project (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.)
10. Conditions precedent shall be met within 6 months.
11. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. [This includes the \$25.00 LCHIP fee, recording fees for the mylar and the Notice of Decision.]

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

**Cooper Rev. Trust of 1993
PID 06086 and 06086-015
6 East View and 5 East View
Acceptance/Review
Lot Line Adjustment and 5 Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a five lot subdivision in the Low Medium Density Residential District which has a two acre minimum. All town departments have reviewed and signed the plan. There are several waivers requested prepared by Promised Land Survey. The State subdivision and minor wetland impact permits are pending. Staff recommends approval of the waivers and subdivision plan.

Tim Peloquin, Promised Land Survey, presented for the applicant. Also present was Mark Cooper. Mr. Peloquin advised there was a residual parcel left over from previous developments. The applicant obtained a variance from the ZBA to allow for less than sufficient frontage for the lots proposed off Stoneleigh and Jewell. The plan proposes 5 frontage lots and to add area to Mrs. Cooper's existing lot, Parcel 06086-015 located at the end of East View to create an "estate lot". They are proposing two lots off the cul de sac at Stoneleigh and another two lots off the cul de sac at the end of Jewell and one lot off East View. Sheet 3 shows the best overview of the proposal.

The variance granted at the end of Stoneleigh allowed them to split the 50 foot right of way into two, 25 foot sections; the same variance was granted for the end of Jewell. Those driveways will open to larger lots. There will be a three acre lot at the end of Stoneleigh, and one 2 acre lot at the end of East View. They did perform HISS mapping on several of the lots at the request of the Planning Director to prove out the soils. There is a 5 acre lot proposed at the end of Stoneleigh; a 5.2 acre lot and a 5.8 acre lot at the end of Jewell. There will be small wetland crossings at the end of Jewell, which are detailed on Sheets 5 and 6. Those have been reviewed by the Conservation Commission. They were unable to obtain the required level of cover over the culverts and are requesting a waiver from that requirement.

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

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted no, stating the application did not meet the definition of a development of regional impact.

Motion by MacEachern, seconded by Connors to accept jurisdiction of the subdivision before the Board for Cooper Rev. Trust of 1993, PID 06086 and 06086-015, East View, Stoneleigh and Jewell Drive.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

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

Craig Gilbert, 17 Brier Lane, inquired as to any potential impacts this development would have on his property.

Timothy Domer, 3 East View Drive, believed 6 East View is in current use. There is a pond on the land that will be added to what is being called the 'estate lot'. People tend to park on East View and use the pond for recreation. Once the lots are combined, will that prevent access to the pond?

Mr. MacEachern explained if a parcel is in current use, that does not mean it is available for the public to use. The land cannot be used if it is posted by the landowner. Ten acres or more of land can be placed in current use which is a tool to reduce the tax burden. Mr. Nelson suggested review of the State laws with regard to the use of non-posted land and the extent to which a person can use it. Questions could be addressed to Fish & Game.

There were no further public comments or questions.

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

Mr. Peloquin stated the impacts on Brier Lane will be minimal. Brier Lane abuts the larger lot which will go from 9 acres to 24 acres. It is very likely there will be no further development on that lot, which will protect the residents on Brier Lane. With regard to access to the Cooper's lot, current use is a tax benefit to the homeowner. The owner has apparently allowed public access on the land; that is the owner's choice.

Mr. Connors said the property at the end of Brier Lane (Parcel 06101-018) is owned by someone other than the Cooper family. There are no guarantees there will be no development on that lot. He feels this solution is better than a road with 11 lots and this will have less impact on the abutters.

Motion by MacEachern, seconded by Chirichiello to grant waiver from Section 170-25.F, Test Pits, to not perform test pits on lots exceeding 5 acres in size as after review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello to grant a waiver from Section 170-29.J, Culverts, to minimize fill within the wetland crossing areas as after review of the waiver request the Board finds strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello to grant a waiver from Section 170-61.A.12, High Intensity Soils, for lots in excess of five acres as after review of the waiver request the Board finds strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello to grant a waiver from Section 170-61.A.30, Traffic Study, to not provide a traffic study as after review of the waiver request the Board finds strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Chirichiello, to grant a conditional use permit to allow the construction of a driveway across very poorly drained soils, pursuant to the Town of Derry Zoning Ordinance Section 165-80.B.2 (a) as the proposed construction is essential to the productive use of the land not in the Wetlands Conservation District; the design and construction methods will be such as to minimize detrimental impact upon the wetland and the site will be restored as nearly as possible to its original condition; no alternative exists which does not cross a wetland, or has less detrimental impact on the wetland; and, economic advantage alone is not reason for the proposed construction.

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

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

1. Subject to owner's signature
2. Subject to on-site inspection by the Town's engineer
3. Establish 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. Correct the Parcel ID number (noted on the cover sheet as Map 6, Lot 86-1/Robert Locke/Katherine Woods) to Map 6, Lot 86-13
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 (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.)
9. Conditions precedent shall be met within 6 months.
10. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. [This includes the \$25.00 LCHIP fee, recording fees for the mylar and the Notice of Decision.]

Chase, Chirichiello, MacEachern, Hultgren, Clapp, Connors, Nelson, Granese and O'Connor voted in favor and the motion passed.

Workshop

Workshop #1 – To discuss an amendment to Article VI, District Provisions, Section 165-32.4, West Running Brook District, Subsection 1, Design Standards for all Areas, Streetscape, B. Buffer Zones

Mr. O'Connor advised the Board is holding a workshop to correct an error found in the Ordinance. A review of the minutes found the wording the Board intended did not become part of what is currently approved. The proposed change is as follows:

Buffer Zones. A vegetated buffer of at least 100 feet shall be provided between Residential ~~Areas~~ Zones and adjacent non-residential zones.

Mr. Sioras stated the proposed change is found on page 5 of the workshop packet. The Board can see what was supposed to be approved. This would require a 100 foot buffer between various zones. The projects that are currently in the pipeline are aware and that they will need to comply with any changes made to the existing wording.

Mr. Connor said the idea was when the mixed use zone was built it would be with retail and commercial uses on the lots. Some lots are located between residential lots or abut residential neighborhoods. The intent of the wording is to put a 100 foot buffer between new development in the West Running Brook District and the existing neighborhoods. That was specifically stated during the meeting on June 05, 2019. West Running Brook District is a non-residential zone; not a residential zone. If it is a residential zone, then the wording 'non-residential' should be struck. There needs to be a 100 foot buffer between residents and the new lots in the West Running Brook zone.

Mr. Chase remembers the discussion. When it was brought up, he believed they were discussing the larger lots such as the Smith lot on Route 28 and the former fleamarket lot. At the time, he thought there might be more heavy commercial development on those lots. A 100 foot buffer on the smaller lots is detrimental and limits what they can do, especially if the lots are surrounded on three sides by residential. The Board has seen the concepts for development in this area and what has been happening in other municipalities. As much as he would like to see it, Derry will not get intense commercial development in this district. He feels the smaller lots surrounded by existing residential would have a detriment if the Board imposed the 100 foot buffer. That should be eliminated or scaled back. There are three places buffers are mentioned in the West Running Brook district: the regulation refers to the LDCR for buffers; there is a 50 foot buffer along the property line with the Robert Frost Farm, and this particular regulation says there is a 100 foot buffer everywhere else in the zone. He believes they have gone a little bit too far with this, and he was part of that initial discussion that came up with it. 100 feet is too much. He felt the 100 foot buffer should be dropped or fall back to what is in the LDCR and discuss it during conceptual review. The other option is to modify it to the point where it won't be a detriment to the smaller lots.

Mr. O'Connor felt the original intent was to change it to the 100 foot buffer between residential and non-residential zones. Is the West Running Brook District a residential zone or commercial zone? He feels it is more of an innovative zone. Mr. Connors said since he initiated the request for a 100 foot buffer, he wanted it clarified in the record. The lots on Rockingham Road were in the zone when the Board discussed the 100 foot buffer. It came up because of his concern about the smaller lots. 'Non-residential' was not there originally and now he believes the Board wants the buffer removed because it will affect what has been presented to the Board for a concept. This was supposed to protect the adjacent neighbors who have been there for years. These were commercial lots. The intent was not to have larger apartments; it was to have a smaller, mixed use village. He is not in favor of the larger buildings and the majority of the developers are using the Board's regulations to shove larger apartments on the town. He feels the 100 foot buffer should be in place and is against changing the wording. The Board can vote project by project and can waive the buffer if requested to do so; however, any Board member that votes to do that should own it and be on record that they voted to waive the buffer. He personally lobbied for this zone in his neighborhood because he thought it was a good idea. Now, the neighbors are going to be adversely affected by what the Board is doing. Mr. O'Connor stated when the district was developed, it was developed as an innovative zone and the intent was to ensure the Planning Board could control the development and not the ZBA.

Mr. Sioras noted this is a historic area. The West Running Brook is in the area; Robert Frost wrote many of his poems about this area and the Brook. The zone was created to look at the district differently than other zones. He read the purpose of the West Running Brook district into the record. "To retain the unique character that differs from the other commercial districts within the Town of Derry, given the district's location in the historic West Running Brook area. It is intended the character of the area be retained through judicious use of strict architectural design regulations and lot sizing requirements. The district encourages a mix of land uses, including residential, small scale retail/commercial, recreation and conservation in close proximity to one another in a neighborhood. This preserves the working landscape and protects environmental resources."

Mr. Connors agreed this is a unique zone and noted the purpose specifically states this is a commercial zone. The intent was not to have dense residential in what was supposed to be a village. According to the presentation to the Town Council last evening and his own research, the town is poised to add an additional 500-700 apartments. There are 13,000 housing units right now and of that, 5,000 are apartments. The town will be adding 5% more apartments within a year. The Board can vote on each plan but this was a district that was argued for months. The Board needs to look 20 years into the future. There may be a need for housing now, but there is not another baby boom and those units may be sitting empty in 20 years.

Mr. Chirichiello stated he is a real estate agent, but he is also a Rockingham County Commissioner. The County can't hire 75 nurses and 20 correctional officers because there is no housing for the new employees. There is a major housing shortage in New Hampshire. If Derry steps up to the plate to do it where other communities will not, he does not believe it will create a glut. He does not believe that these units will sit empty if they are built.

Mr. Connors said the apartments proposed in this district are not affordable; they are market rate. Mr. Chirichiello said as a Realtor, he can state there is a major housing crisis; the businesses in the State of NH can't hire help because there is no housing for employees.

Mr. MacEachern said he would echo to some extent what has been said. He did recall discussion from representatives at Parkland stating they can't hire nurses and doctors to expand and fill the current need; people need a place to live. Several businesses are looking to house people. There is a need for housing in Derry. Tuscan Village in Salem is full, and those units are listed at more than market rate. Derry is not looking to charge the Tuscan rates, but the units proposed so far are quality units. He would prefer not to see all five of the lots developed with five story apartment buildings either, but if it is allowed in the zone, then it can be in the zone based on the regulations that were passed. He was thrilled with the first few concepts the Board reviewed; they were conceptually what the Board had envisioned with residential mixed use and commercial. He would like to see more retail in the village concept. If the outer rim of a lot is developed as residential with commercial in the middle, then the 100 foot buffer should not apply. If there is commercial on the outer rim, then there is a need for a buffer to protect the abutting residential use.

Mr. Connor said he is not against the West Running Brook District. The buffer was specifically put in place because it was a unique zone. He feels that because the developers are pressing for development, pressure has been put on staff and maybe some Board members to change the regulations; the Board is moving beyond the original intent of the zone. He would like to keep 'non residential' out of it and change it to 'zones'.

Mr. Nelson stated planners follow visions and community profiles and envision things that entrepreneurs don't always embrace. That is the nature of land development. The Planning Board is a quasi-judicial body. Landowners have strict constitutional rights to develop, and the Board needs to be careful. Boards set rules for the developers to follow. The wording may be a bit too loose in this district for his taste. A village means many things are built together, cheek by jowl; for example, the Benjamin Chase Mill next to a farm or in Manchester, the Amoskeag

mills next to the millworker housing. He feels a buffer is in place to protect the existing single family homes from what might happen in this multi-use district. But a strict buffer flies in the face of the village concept. There can't be an innovative, vibrant village, and standalone traditional residential zoning. The Board needs to apply the rules as written, fairly. The Board needs to be clear as to what the goal is in this district.

Mrs. Robidoux suggested amending the current wording to read, "A vegetated buffer shall be provided between non residential uses and abutting residential zones." Mr. Connors said his issue with that is a developer could just propose a 6 foot arborvitae as the buffer. Mrs. Robidoux felt it would be appropriate at the conceptual discussion to tell the developer that in a particular case, a row of 6 foot arborvitae is not going to be an adequate buffer, and that the developer will need to work with the existing vegetation and topography. She also has a concern that the regulations state there is only a 50 foot buffer to protect the Robert Frost Farm which is one of the town jewels. In this area, the regulation calls for a 100 foot buffer; that is unjust. If there is a 100 foot buffer anywhere, it should be along the Robert Frost Farm. Part of the reason there are conceptual discussions in this area is so that the Board has the opportunity to say for this particular project, the buffer needs to be beefed up. The Board has that ability. She believes the 100 foot buffer is too much.

Mr. Clapp stated he did go back and watch the prior meetings and can see Mr. Connor's point. It is clear the Board wanted a buffer between the residential and other mixed uses. He needs more time to understand the implications of a 100 foot buffer, but wanted to articulate that the intent stated by Mr. Connors was correct based on his review of the prior meetings.

Mr. Connors said this proposed amendment stood out like a sore thumb. It was evident what had happened because the plan had already come in for a concept. He had mentioned during one meeting that part of the development could not happen because of the need for the buffer. Then in a short period of time, this amendment was brought forward. He feels this proposal is for the benefit of one project. The other projects abut either schools, wetlands, or commercial property, so they don't have an issues with their buffers. His interpretation is the Robert Frost Farm would now have a 100 foot buffer based on this buffer language. He feels this is spot zoning.

Mr. O'Connor stated this proposed amendment has nothing to do with any project. He went back and read all the material relating to the development of the West Running Brook district and he saw the wording in the approved ordinance did not match what was stated the wording should be based on the minutes of the meeting. That is the *only* reason the Board is bringing this amendment forward: to correct an error made in 2019 before any projects came before the Board.

Mr. Chase said the amendment has nothing to do with the projects and it affects more than one lot. The lots on Humphrey, Route 28, and Island Pond all abut residential areas which is why he originally said there should be a 100 foot buffer. He thought there would be more intense commercial development on those lots. In two years, the development landscape has changed. Thirteen floors of the Brady Sullivan building in Manchester are being converted to residential. He does not like the development trends, but feels the 100 foot buffer is too much. He is not seeing what he thought the town would see happen in the West Running Brook District. At the

time, he thought the 100 foot buffer would be okay, but two years later, in retrospect, he does not feel the same way. Mr. Nelson and Mr. MacEachern have made good points. The way the regulations are written, the word “zone” is not in there. It is possible that if applied exactly as written, lots could be bisected with buffer zones, depending on where the residential and commercial development is placed on the site. The wording today says ‘area’ not ‘zone’. He agrees with Mr. Nelson. The 100 foot buffer is too much.

Mr. Connors suggested since the buffer for the Robert Frost Farm is 50 feet, then the buffer here could be 50 feet which would at least be consistent. The wording ‘non-residential’ can be left out. The Board can vote on each project as it comes and waive the buffer on a project if requested to do so. The Board had agreed at the time that even though the wording for the district was loose, the Board had a common vision, and they were going to stick to it. They have not done that. He acknowledged that the lots won’t all be commercial, and the town may end up with a glut of residential units.

Mr. O’Connor suggested hearing from a few more members of the Board and then moving this discussion to the next meeting so that people have time to think about it.

Mr. Hultgren noted that he had not heard a recommendation as to what dimension the buffer should be, other than it should not be 100 feet or maybe it should be 50 feet. He would agree 100 feet is too much, but what is the right number.

Mrs. Robidoux wanted to reiterate when the changes were being discussed for this zone, she missed this particular change. This was her error as she did not get it into the final document that went to the Board for public hearing. Mr. O’Connor was correct in bringing it forward. The error was unintentional; there were a lot of changes made to the wording of this district as it was formulated.

Mr. Granese agreed with Mrs. Robidoux, Mr. MacEachern, and Mr. Chase and agreed with Mr. O’Connor that the discussion should be continued to another meeting or two. As a Board, the members need to work together.

Mr. Chase said there had been some good suggestions for potential wording. He suggested utilizing a formula such as lots under 10 acres would have a 20 foot buffer; lots under 40 acres could have a 40 foot buffer, etc., so that larger lots with more intense development would provide greater protection to the existing neighborhoods, and if the lot was smaller, with less intense development they can be more productive.

Mr. Connors said he would be okay with a 50 foot buffer since ‘non residential’ was supposed to be in the wording. The buffer regulation was put in for a reason. Mr. MacEachern suggested the Board come back to this discussion in two weeks so that the members can think about it. He is struggling with the potential for a ring of residential on the outer edges of the property, and then what happens with the commercial in the middle? In a typical residential zone, the side setback is 15 feet. The Board needs to be careful because some buildings may have residential and commercial uses in them. If commercial uses are next to residential uses, that would be a

different distance than residential to residential. Currently, there are multifamily residential buildings with a 20 foot buffer to a single family neighborhood elsewhere in town.

If there is mixed use with residential on the outer rim, then that would be residential use abutting residential use. If there is a business next to a residential use, then there should be a buffer. The larger concern is that the developers are proposing hundreds of apartments which is not what the Board had expected.

Mr. L'Heureux said he notes the effect of the buffers on development when he is performing the site inspections. He suggested the Board look at the natural buffer condition and the changes in elevation on each site. It cannot be one size fits all, but there needs to be parameters. Each use should be considered. He would suggest being more flexible based on the proposed uses, plan by plan.

Board Member Comments

Mr. Chase noted the workshop to discuss potential changes to the three acre minimum lot size requirement is scheduled for the next meeting. He will not be able to attend. As he brought the change forward, he would request the workshop be rescheduled. Mr. Sioras said it can be moved to the first agenda in February.

Mr. Connors had comments relative to the pedestrian crossing for the bike trail on the Exit 4A corridor. The NH DOT has proposed a different configuration than the pedestrian tunnel. The new proposed route traverses three house lots on the south side of Folsom Road. He is aware the Gateway Subcommittee is looking at this area with the intent of proposing zoning amendments. The rail trail puts 2500 users per day in this area; those numbers will increase. He is concerned that the proposed trail will negatively impact lots that could be considered prime development lots once the Exit 4A corridor is complete. If those lots are developed commercially, there could be pedestrian conflicts. He suggested moving the zoning amendments forward sooner rather than later so that the State has to take the amendments into consideration.

Mr. MacEachern advised the subcommittee has not made any determination about changes to the south side of Folsom Road. The area was looked at a few years ago and the determination at that time was to focus on the north side and the lots that were just moved into the Industrial VI zone. The subcommittee is waiting on the final plans for the Exit 4A corridor. There are many questions about how to handle the south side of the road because the properties are small and any changes cannot occur to just the frontage lots; the lots are not deep enough. The only way lots on the south side of Folsom will be developed is if the lots are combined. Anything other than residential use there affects the entire neighborhood. The intent would not be to rezone just three lots.

There was no further business before the Board.

Motion by Nelson, seconded by Granese to adjourn.

All members voted in favor and the meeting stood adjourned at 9:38 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____