

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 15, 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; Frank Bartkiewicz, Mark Connors, David McPherson (7:29 p.m.) Mark Grabowski, Members

Absent: Randy Chase, David Granese, Jim MacEachern

Also present: George Sioras, Planning Director (7:29 p.m.); Elizabeth Robidoux, Planning and Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor called the meeting to order at 7:02 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.

## **Escrow**

### **#19-16**

**Project Name: Two lot subdivision of Parcel 06058**

**Developer: Linda Rutter**

**Escrow Account: Same**

**Escrow Type: Cash Escrow**

**Parcel ID/Location: 06058, 52 Lane Road**

The request is to establish cash escrow in the amount of \$23,801.04 for the above noted project. This escrow is non-interest bearing.

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

## **Minutes**

The Board reviewed the minutes of the May 01, 2019, meeting.

Motion by Bartkiewicz, seconded by Levin to approve the minutes of the May 01, 2019, meeting as presented. The motion passed with Grabowski abstained.

The Board reviewed the notes from the May 11, 2019, site walk of 46 High Street.

Motion by Chirichiello, seconded by Levin to approve the minutes of the May 11, 2019, site walk as presented. The motion passed with Bartkiewicz and O'Connor abstained.

## Correspondence

Ms. Levin reported the Board is in receipt a Notice of Public Hearing from the Town of Salem, advising there will be hearings to discuss the Tuscan Village sign standards on May 21, June 18, and July 16, 2019. The Board has been notified of errors in the 2018-2019 NH Planning and Land Use Regulation Book, Granite Engineering has sent a letter requesting the Board consider their services for outside construction reviews, and the most recent edition of *Town and City* is available in the Planning office.

## Other Business

### Opportunity Zone Information Meeting - Recap

Mr. O'Connor advised an Opportunity Zone allows capital gains to be placed into a fund to foster development in the Opportunity Zone area; there is up to a ten year tax credit for these types of investments. The Greater Derry-Londonderry Chamber of Commerce held an information meeting at Tupelo Music Hall today and those present learned more about the zones. The session was well attended. DerryCAM taped the session which will be available on YouTube.

## Public Hearing

**To discuss a proposed amendment to the Town of Derry Zoning Ordinance to Article III, General Provisions, to add Section 165-41.1, Electronic Vehicle Charging Stations to allow the use in all zoning districts with restrictions and to amend Article VI, District Provisions, Section 165-33.B.25 and Section 165-49.B.20 to remove Electronic Vehicle Charging Stations as a permitted use.**

A scrivener's error was noted: "Electronic Vehicle Charging Station" should be "Electric Vehicle Charging Station".

Motion by Chirichiello, seconded by Levin 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 Chirichiello to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the discussion returned to the Board.

Motion by Davison, seconded by Chirichiello to accept a proposed amendment to Article III, General Provisions, to ADD Section 165-14.1, Electric Vehicle Charging Stations to allow the use in all zoning districts with restrictions, AND to amend Article VI, District Provisions, Section 165-33.B.25 and Section 165-49.B.20 to remove Electric Vehicle Charging Stations as a permitted use. The amendment shall be forwarded to Town Council for their review and approval.

Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Mr. O'Connor noted two members of the Board are attending another meeting across town and will be joining the Board shortly; this is why an alternate was not seated.

**Wal-Mart Real Estate Business Trust**  
**PID 08279, 11 Ashleigh Drive**  
**Acceptance/Review**  
**Addition of Walmart Grocery Pickup**  
**Façade Improvements**

Mrs. Robidoux provided the following staff report. Walmart has asked to add an online grocery pickup similar to what the Board approved for Hannaford. The pickup location will be off the to the left hand side of the building. Staff will access the vehicles coming to pick up their goods from this location. There is also a façade improvement proposed. Her understanding is the main pylon sign on Manchester Road and the identifying sign at Ashleigh will not be changed but there are some façade improvements proposed for the front of the building. Those items are under consideration for the Board this evening.

Austin Turner of Bohler Engineering and Cathy Yockey of Harrison French & Associates presented for the applicant. Mr. Turner advised Walmart is adding an online pickup area for the purchase of product and groceries. The pickups take place at a designated time and space with product delivered to the vehicles. Customers do not exit their vehicles. The designated pickup area is proposed near the pharmacy drive up. Ten spaces are designated with a canopy over the limits of the ten spaces. There will be restriping of parking spaces as part of this project. Overall, there will be a loss of three parking spaces on site. Currently, there are 726 parking spaces, the proposed condition is 723 spaces where the required amount of spaces for the site is 504. This proposal supplements the existing condition and does not generate new traffic. They are providing one location to address the proposal, which is off to the side and does not interfere with the current parking dynamic.

There is also minor re-imaging for the store proposed. Mr. O'Connor asked if the intent is to expand or repaint the facility exterior. Ms. Yockey said the plan is to change the Walmart spark sign and replace it with a vinyl film behind the spark. One exit door will be painted orange where the employees come out to deliver product for the online pickup. They will add parking signs for the pickup area. The "Outdoor Living" sign will change to "Lawn and Garden"; "Market" will change to "Grocery". Currently, there is 760 square feet of signage on the building; after the rebranding, there will be a little over 600 square feet of signage. They will also add a sign for the Vision Center. Mr. O'Connor confirmed there is no intent to paint over or remove the existing granite on the façade. Ms. Yockey advised the background color will change behind the big Walmart spark.

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

Mr. Chirichiello asked if there were predetermined times for customer pickup. Mr. Turner stated the pickup hours are between 8:00 a.m. and 8:00 p.m. Customers order online, the order is confirmed and the customer is provided with a window of time for pickup, along with the number of the allocated parking space. The order is delivered to the vehicle during the designated time frame which controls any queuing. Mr. Connors asked if handicap spaces were being removed. Mr. Turner said there are not. Mr. Connors asked how Walmart keeps other customers from parking in the designated spaces. Mr. Turner said the spaces are monitored by store personnel. They know when someone should be parking in those spaces. Ms. Yockey explained she uses the service quite a bit and is provided with a number to call when she arrives at the store. Mr. Turner said store personnel will know if someone is parking in the space who should not be.

Mr. L'Heureux had no comments on this plan.

Mr. Grabowski asked if based on experience at other locations of a similar size, will the number of spaces provided be enough. How big can this program be? Ms. Yockey said she uses the service every week and it is rare for her to go in the store. This service makes it easier to shop. Mr. Turner explained operationally, there is a certain number of spaces available and the pickup times are orchestrated so that customers are not double booked. Mr. Grabowski asked if the service ~~go-got~~ busier, would Walmart condense the pickup times. Ms. Yockey said the customer picks the time they would like to pick up their order. Walmart notifies the customer when the order is ready; the customer calls the store when they are on their way to the store or have arrived and the goods are delivered to the vehicle; it does not take long to deliver the order to the vehicle. Only a certain number of people are allowed to secure a specific time frame.

Motion by Chirichiello, seconded by Bartkiewicz to accept jurisdiction of the online grocery pickup and canopy application before the Board for Wal-Mart Real Estate Business Trust, PID 08279, 11 Ashleigh Drive.

Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Chirichiello, seconded by Bartkiewicz to grant the following waivers from the LDCR: LDCR Section 170-61.A.4, to not provide a sheet showing the property boundary and monumentation, LDCR Section 170-61.A.11, to not provide the two foot contours on the plan, LDCR Section 170-61.A.12, to not perform HISS mapping of the parcel, LDCR Section 170-61.A.13, to not perform wetland mapping of the parcel, LDCR Section 170-61.A.27, to not provide drainage calculations for the project, LDCR Section 170-61.A.30, to not provide a traffic impact statement, LDCR Section 170-62.A.1, to not provide a road design on the plan, LDCR Section 170-61.A.35, to not provide state plane coordinates at two boundary corners, and LDCR Section 170-70, to not provide construction escrow for the project. After review of the waiver requests, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Mrs. Robidoux stated that the requested waivers were for items that are normally part of the submission checklist for new construction. This is an existing site, so they did not need to comply.

Motion by Chirichiello, seconded by Bartkiewicz to approve, pursuant to RSA 676:4 I – Completed Application, with the following conditions: Subject to owner's/owner's representative signature; subject to on-site inspection by the Town's Engineer, obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24.C/170-61.C; note approved waivers on the plan; submission of 22" x 34" revised plans for signature by the Board; subject to receipt of state or local permits relating to the project; the above conditions shall be met within 6 months; snow and ice removal shall be performed by a Green Sno Pro certified contractor following Best Management Practices for the application of de-icing materials.

Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

*Mr. McPherson and Mr. Sioras entered the meeting.*

**McMaster Development, LLC  
PID 01028, 81 Frost Road  
Acceptance/Review  
2 Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a two-lot subdivision. One new house lot is being created. There is an existing house on the parcel. The property is located in the Low Medium Density Residential District which requires a minimum of two acres per lot. All town departments have reviewed and signed the plan and there are no waivers requested. The state subdivision approval is pending. Staff would recommend approval of the subdivision plan.

Tim Peloquin, Promised Land Survey, presented for the applicant. The parcel is a six acre lot and the proposal is to divide it into two, three acre parcels. There is a prime wetland located to the rear which is a nice marsh. The plan respects the prime wetland buffer. The Conservation Commission reviewed the plan and held a site walk. The plan meets all of the technical requirements. Sheets 4 and 5 show the sight distance profiles. The lots are on a corner. The existing driveway meets all of the regulations. Sheet 5 shows a slight cut of about one and a half feet, for a distance of 58 feet to the north for the new driveway. They will regrade this area to meet AASHTO and Town of Derry requirements. The Department of Public Works has reviewed this plan. Along the frontage of the parcel, the applicant will cut trees to the base to ensure visibility and to provide room for the snowplows to clear the road as it is narrow in places. This has been agreed to by the applicant and DPW.

Motion by Chirichiello, seconded by Bartkiewicz to accept jurisdiction of the two lot subdivision application before the Board for McMaster Development, LLC, PID 01028, 81 Frost Road.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

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

Joseph Massa, 82 Frost Road, said he assumed the new home would be on the Windham side. Mr. Peloquin oriented the location of the proposed home with relation to Mr. Massa's property. Mr. Massa questioned whether more structures could be constructed on the lots. Mr. Peloquin stated there would be no further subdivision of the lots. Mr. Massa noted there is a history of flooding in the area and mentioned the story of the sinking bridge.

There was no further public comment.

Motion by Connors, 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. L'Heureux stated the applicant has addressed the department comments. He met with the developer out in the field and marked out the trees to be removed for sight visibility and snow removal. All trees are to be cut flush with the ground and the root system left to stabilize the steep slope.

Mr. Connors confirmed the minimum lot size is two acres in this zone. The existing lot is long and narrow to the rear. Why are the lots not squared off? Mr. Peloquin explained they needed the area for the good soils to meet the HISS map requirements. They won't use the land to the rear; it will remain in its natural state. He agrees it is an odd shaped lot. Mr. Connors noted town staff had concerns about the proximity of the wetland. It seems this new lot is shoe-horned, and the lot will be very restrictive. Mr. Peloquin agreed. The home is anticipated to be 28' x 52', and the view to the marsh will be very nice. Any additional structures such as a deck would need to be constructed within the building setback. He believed it was possible to build a deck on the new home but not a patio. When the septic design is finalized, they will work with the Building Department on the house construction plans. Mr. Connors felt not much more than the house could be constructed on this lot. Mr. Peloquin said there is a 150 foot setback to the marsh that is a no build buffer. The septic system will be located to the front of the house to provide the best protection for the wetland. Mr. Chirichiello was glad to hear that. The effluent disposal area will be approximately 1250 gallons. The water table there is about 42". Mr. Chirichiello asked if any of the buildings will be affected by the 100 or 500 year floodplain. Mr. Peloquin stated they would not and he will certify it.

Motion by Chirichiello, 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 escrow for the setting of bounds or certify the bounds have been set; 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 170-24.C/170-61.C; all the trees marked in orange (agreed to by DPW and the developer) shall be removed and the stumps cut flush with the existing terrain within 10 feet of the existing pavement (Frost Road) along the entire lot frontage; the stumps will be left in place to maintain slope stabilization; all points in curvature along the right of way of Parcel 01028 shall be noted as 'to be set' by granite bounds and shown on the subdivision plat; subject to receipt of state or local permits relating to the project; conditions precedent shall be met within six months; a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirements; submission of the appropriate recording fees, payable to the Town of Derry.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Mr. Connors noted during the motion he was not a fan of the lot configuration, but the plan meets the technical requirements.

**Pinkerton Academy  
PID 43006, 43008 and 08068  
19 North Main Street, 39 North Main Street, 33 Tsienneto Road  
Review of Site Plan  
Extension of athletic field access road  
(Continued from May 01, 2019)**

Mr. Sioras provided the following staff report. The purpose of the plan is for an extension to the existing athletic field access road out to Tsienneto Road with associated parking, drainage, lighting and grading. The Board held a site walk a month ago and addressed issues raised at the last meeting such as the visibility. The Board also discussed the position of the Highway Safety Committee. Police and Fire wanted the access to be out to Tsienneto Road; this was confirmed by Randy Chase who sits on that committee. The Alteration of Terrain and Wetlands permits have been received and copies are in the file. Staff recommends approval of the waiver requests and the site plan application. He noted it would be up to the Chairman as to whether the public hearing was re-opened or not. It was confirmed the Board has before it revised plans.

Motion by Chirichiello to receive the revised plans for review, seconded by McPherson.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Brian Pratt of Fuss and O'Neill and Dr. Timothy Powers, Headmaster, Pinkerton Academy, presented.

Mr. Pratt advised they had been before the Board on April 03, and a site walk was held on April 10, 2019. There had been comments and concerns raised at the April 03 meeting the Board addressed during the site walk. Of major concern were the sight distance at Tsienneto Road and question about sidewalks along the driveway. They had prepared an exhibit for the site walk to address those concerns. During the walk, they looked at the sight distance and he believed after the Board viewed the site, the consensus was to not add sidewalk. They are still requesting the Board not require sidewalk; they don't want to encourage pedestrians to use this access as a cut through. They would like the pedestrians to walk along North Main Street where there are existing sidewalks and signalized intersections. With regard to the request for a mid-block crosswalk, they would need a higher volume of pedestrian traffic to meet the warrant to install one. They do not meet the warrant at this time and NH DOT will not allow them to put one in. VHB has signed off on the plan; they have received the AOT and Wetland permit – all of the comments were related to drainage and required minor housekeeping tweaks. There were no design changes as a result of the comments. They would like to request approval this evening.

Mr. O'Connor queried the audience to see if anyone would be interested in addressing the Board with regard to this project. As no one responded, he opted to not re-open the public hearing.

Mr. L'Heureux advised the applicant addressed all their previous concerns.



Mr. O'Connor asked what will happen to the existing Junior parking lot once this driveway is constructed; where will those students go? Mr. Pratt explained the Junior lot is accessed by the existing driveway. In the future, students can utilize the North Main Street or Tsienneto Road entrance; that will be dedicated by which way the students travel. Mr. O'Connor asked if the flashing lights on Tsienneto to be added for this project will be manual or timed. Mr. Pratt said they will have a traffic sign on which lights will flash during the morning arrival and afternoon release. The sign is an advance warning device that tells travelers an intersection is coming up where traffic will enter and exit the road.

Mr. Chirichiello asked if that was the only sign; would there be a school zone sign? It will not be a school zone sign; this area is not in the school zone. There will be an aesthetic sign for Pinkerton at the entrance to the access off Tsienneto Road.

Mr. Connors asked if the house at 33 Tsienneto will be removed for the Exit 4A project. Mr. Pratt did not believe it to be on any of the road improvement plans as a building to be removed. He knows the state is still evaluating the area and is not sure if it will be added to the list later to accommodate road drainage. The work for the driveway access will be done this summer.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-26.A.14, to allow cape cod berm/bituminous curbing where the regulation requires vertical granite curbing, 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.

McPherson, Grabowski, Chirichiello, Davison, Bartkiewicz, Levin, and O'Connor voted in favor; Connors voted no as he felt there should be vertical granite curbing. The motion passed.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-26.A.17, to allow roadway embankment slopes as steep as 2:1 where the regulation requires 4:1 slopes. The Board finds 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-61.A.4, to allow only a partial boundary of the site where the regulation requires a full boundary survey. The Board finds 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-26.A.15 to allow less than the required 300 foot centerline per Table B of the Table of Geometric Standards, 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.

McPherson, Grabowski, Chirichiello, Davison, Bartkiewicz, Levin, and O'Connor voted in favor; Connors voted no, stating it is a school with students exiting in this location and it should meet the regulation. The motion passed.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-26.A.18, to allow guardrail on all slopes steeper than 3:1. 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Bartkiewicz to grant a conditional use permit to allow the construction of an access 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application with the following conditions: Comply with the Vanasse Hangen Brustlin report dated May 09, 2019 or later; subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; the headwall proposed near Tsienneto Road and the wall at station 13+50 must be designed by Geotech; the plans shall include the designs for these walls to include the plan, profile and cross sections; 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 170-61.C; the conditions precedent shall be met in six months; and snow and ice removal shall be performed by a Green Sno Pro certified contractor following Best Management Practices for the application of de-icing materials.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

**High Meadows, LLC**  
**PID 29046, 46 High Street**  
**Review**  
**3 Lot Subdivision**  
**(Continued from April 17, 2019)**

Mr. Sioras provided the following staff report. The Board met on this project a month ago and held a site walk this past Saturday to review the site. He commended Mr. Bailey who he felt did a good job updating the plan. At the last meeting, the Board discussed the waiver requests for water and sewer permits. Staff does not support the waiver from LDCR Section 170-25.A.5 Driveway Access Through Frontage. If the waiver is denied, then the application would not meet the requirements for approval. Staff has no issues with the other two waiver requests.

Mr. O'Connor advised he was not at the site walk and wanted to clarify the location of the lots as referred to in the site plan notes. Mrs. Robidoux explained she identified the lots as follows in the site walk notes: Lot 29046-001 is identified as "Lot 1"; the lot with access off Hillside is identified as "Lot 2" and the lot with access of High Street, is identified as the "parent lot".

Craig Bailey of Brian L. Bailey Associates and Attorney Brian Germaine of Germaine and Blaszkowski represented Deni Owen, who was in the audience.

Mr. Bailey thanked the Board for the site walk and felt there had been some good discussion on site. The Board was able to get comfortable with the lot corners, driveway locations and overall configuration of the lot. There were good questions from the public and the Board. He would like to ask for conditional approval this evening for the three lot subdivision. The current configuration is to provide access through a shared driveway for 29046 and 29046-001, as shown on Sheet 2 of the plan set. There have been no significant changes to the plan or the intent since the last hearing.

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

Charles Stanion, 5 Everett Street, questioned why the plans provided to the public had not been updated; he inferred from the information provided to the public that they would be updated for this meeting. Mrs. Robidoux explained the surveyor had stated he would have the plans updated for the final plat to be signed by the Board.

Wendy Vanzant, 8 Ash Street, said with regard to the area where the shed used to be, the land dips down. Will there be a retaining wall installed there? How will they stop the water because her yard floods now due to the excavation on site?

John Janigian, 9 Everett Street, noted the drainage should be prohibited from going onto another's property and it is noted the plan meets those requirements. The driveway from Hillside is adjacent to his property and will be adding impervious surface; water will drain off onto the properties on either side of the driveway. He would like clarification on that. For the same

driveway coming from Hillside, it was said the sewer connection would be installed to connect to Parcel 29046-002. Is there ledge under that area? If blasting is required, he would be concerned. One of his buildings is on a slab and ~~to~~ the other has a stone foundation. If everything works out okay, he would like to request the driveway be paved at least 80-85 feet from Hillside, or at least past the end of his building, so that no dust goes into the open windows of his buildings or into the air conditioning units. He did see the note that acknowledged he did not want snow plowed against his building because of the air conditioning units.

Fred Cyr, 44 High Street, said he looked at the plan and noted the 15-foot side setback. It appeared there were some stakes on the property that were closer than 15 feet to the sideline. With a shared driveway, that does not seem like enough width for a legal entrance off of Hillside. He feels this is a good place for two homes without a shared driveway.

Charles Stanion, 5 Everett Street, noted the homes are close together in this neighborhood. The addition of three homes will add light and noise. There had been some mention that a buffer could be discussed and wondered what the applicant would propose for that. Water runoff is a concern.

Deni Oven, 46 High Street, wanted to address some of the comments made during the meetings. She understands people remember how things were in the past and that they have lost a view of trees on this lot, but this lot is not their personal green space. She understands the abutters misunderstood the meaning of single family zoning. Their expectation that there would be only one single house there led them to be upset when they found there were to be three single family houses. Their outrage was based on misunderstanding of the facts. She understands they have had to look at felled trees, piles of loam and some heavy equipment for a while, but if their original project had gone as planned it would have been completed by now. The environmental concerns have no basis in fact with regard to this project and the comments strayed into complaints about other properties and general complaints about the town and other things that have happened in the past. All were used to create drama and the illusion of impending disaster. Anecdotally, she has a client down the street on High Street who thanked her for tearing down the 'eye sore' and suggested some other neighborhood properties Ms. Oven should buy and tear down as well. They are here tonight to talk about the viability of the subdivision plan. She provided a quick history of High Meadows. When they were first introduced to the property, Ray Paquin's family and heirs represented this to them as a multifamily lot. The family was happy to sell it to them to be developed as a multifamily project. The Ovens' then proceeded to work on a plan to develop a town house project similar to those across the street and as nice as the condos up the road, also on High Street. They wanted to continue the revitalization of the neighborhood by building a well laid out complex of upscale units, beautifully landscaped. If Fred [Oven] made contrary statements, it was because he lashed out when confronted and accused of doing something illegal, when in fact everything was permitted and above board. The abatement company involved with the removal of the asbestos material was a duly licensed company. All work was done in compliance with federal, state, and local regulations. If the abutter who suggested asbestos blew into his yard had brought that to her attention at that time, she could have held the company responsible, and it could have been handled at that time. The April 17<sup>th</sup> meeting was the first she had heard about it and it would be difficult to make a case for that now. When she purchased the property, she walked around the block and introduced herself

to those that were home at the time. There were several, and she gave them her contact information in case they had any questions. People asked her what she intended to do with the land and she told them she was not sure what the town would allow, but it would conform to the building and zoning guidelines and it would be a nice looking finished development. Little did she know at the time that the town was going to pull the rug out from under their project.

The very first thing they did was hire a licensed land surveyor to mark off the boundaries because they wanted to make sure they did not infringe on anyone else's land. They then prepared the land in anticipation of the next step. She noted heavy equipment was brought in and trees cut with proper permits. They took down the old house, which was never on the Historic Register, and piled the loam which is still there. They pulled permits and informed the appropriate town departments at every turn. They did nothing wrong. They met with town officials (Planning Department, Building Inspector, Code Enforcement) out at the site, discussed their preliminary plans, the impact of driveways on traffic, sight distances, building heights, etc. In short, the town was well aware of their plans. With the input received from them, the Ovens' moved forward. They removed the asbestos and demolished the house, all with the proper permits, and filled in the cellar hole. They met again with the Building and Planning officials and went over the plans in great detail. Everyone seemed to be in agreement that the plan was workable. Based on town feedback they moved forward with working out the finer details. They hired an architect. Then, very suddenly, without warning, miraculously fast, the zoning was changed to single family, which put the brakes on the project, resulting in them coming up with a new plan. The next idea was to run a short cul de sac into the lot. They could have got five to six homes on the cul de sac but where they had enough frontage for three lots, they kept the plan at three lots. They had already reduced their expectation of a 13 unit town house development, to six units, and then down to three single family homes. The abutters do not have a right to design a piece of land they don't own. She would be happy to sell the land to them and they can create their own park. The abutters are trying to argue that a 1.79 acre lot with plenty of frontage and access to town water and sewer isn't big enough for three houses. The majority of the abutters don't even live in the properties that abut the Ovens' lot. Of the eleven abutting properties, only four are owner occupied. This is surprising based on the commotion raised at the April 17<sup>th</sup> meeting. Of those four, the average size of their lots comes out to .175 of an acre. This lot is ten times bigger than that. For the abutters to complain about the scale of the plan and say the land is not big enough for three houses is ludicrous. If the abutters are under the impression the Ovens' get what they want from the town, that is inaccurate. If the Ovens got what they wanted, they would have 13 townhomes on the lot. She only wants what is possible now. They comply with the ordinances and are within the guidelines and they only ask for what is fair.

Mr. O'Connor thanked Ms. Oven for her comments. He stated he was taken aback by one comment and was not being disrespectful, but the Board has been working on zoning changes in this area for a long time. All of the zoning workshops were public and out there for the public to see. He is taken aback by her comment that she had no advance notice of the amendment. Ms. Oven advised no one said anything to her during any of her meetings with staff. She was not aware of it.

One of the abutters inquired if they would be able to respond to explanations made by the surveyor. Mr. O'Connor stated the Board may decide to re-open the public hearing but he was going to ask the surveyor to answer the questions brought up by the abutters.

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

Mr. Bailey addressed the comments. The final plan will show the current location of the shed on 8 Ash Street; that change did not warrant the expense of submitting a new plan set. With regard to the pavement along the driveway between 10 Hillside and 9 Everett, the town has a minimum requirement for the first 40 feet of the driveway. He did not feel it was an unreasonable request to pave the driveway past the building. Mr. L'Heureux clarified the driveway regulation. There are requirements for the first 40 feet of driveway with regard to the depth and type of gravel and the minimum width. Pavement is only required for a portion of the driveway near the right of way to protect the right of way. There is no requirement to pave the entire driveway; developers can elect to do so. Mr. O'Connor noted the abutter's request went beyond what the regulation requires. Mr. Sioras felt it was reasonable to extend the pavement to protect the abutters from dust based on what was seen on the site walk. Mr. L'Heureux added the distance of the first 40 feet of driveway is for the slope requirements. The Fire Department added additional language to this section with regard to how the driveway is constructed depending upon the length of the driveway. For a typical development of this size, developers usually pave for the full length of the driveway. The town only requires a paved apron at the right of way, not pavement for the first 40 feet. Mr. O'Connor asked if the driveway off Hillside would be sloped so as not to put drainage on abutting properties. Mr. Bailey said drainage would be built into the cross section, even as part of a gravel driveway; it is all part of the review. Mr. O'Connor asked if any borings had been done in this area to check for ledge. None had. Mr. O'Connor stated if any blasting is to be done, there will need to be a pre-blast survey performed and a permit obtained from the Fire Department. Mr. Bailey acknowledged that is the normal criteria.

Mr. Connors commented during the site walk, there had been some discussion about other alternatives for the driveway. The lot seems big enough for three homes but the dynamic of it seems interesting. The dynamics are due to the shape of the lot and the frontage. Mr. Bailey explained the lots are large in relation to the lots in the neighborhood. The town has a 15 foot side setback which has been met. None of the existing homes in this neighborhood meet the side setback. There have been encroachments on this property and adjustments to correct the encroachments. The dynamics of the neighborhood lead into to this proposal as the best use of the property. Vegetative screening is proposed. The kidney shaped rain garden is proposed at elevation 278. The current elevation is 289 and the whole corner will need to be dropped, increasing the sight distance, improving the dynamics of the intersection. There will be new single family homes which are screened. Could there be access to the other lots from the rear? Technically, yes, but he is not sure that is the best use of the land. After considering it, he does not feel it is the best. This plan will have parking under the home for Parcel 29046. The proposed topography improves the sight distance. The three way shared driveway (from Hillside) was considered and he discussed it with the applicant, but they feel a two way shared driveway is the best approach. There will be less impervious area. Access to the homes from the rear is possible but not the best option in terms of engineering or the best use of the land.

Mr. Connors cited a concern about the building that has the easement. Has there been any discussion about a lot line adjustment with that property to remove the easement? Also is there any reason to not go out the front with the sewer to maybe avoid a pump, since the property goes out to High Street near the rain garden. Mr. Bailey explained the sewer for Lot 29046-002 would not go to High Street; the stub for the other lot along High Street actually connects to sewer service on Maple. It is funky enough already. Mr. L'Heureux said the developer can get gravity to Hillside. Mr. Connors asked if it was possible to provide protection for the abutting building on Parcel 29052. Mr. Bailey felt it was neighborly to install bollards and it was a reasonable request. They did not look at a lot line adjustment with the neighbor.

Mr. O'Connor noted that there should be a sign installed at the end of the driveway off High Street indicating there is No Left Turn. High Street is a one-way street. Mr. Bailey said he would verify there was a note on the plan to that effect. A sign here would be prudent.

Mr. Sioras asked Mr. Bailey to explain the history of the lot line adjustment between the Rioux lot and this lot in 2015. Mr. Bailey advised there had been a lot line adjustment between the Paquin family and 5 Everett Street to improve on encroachments.

Mr. McPherson asked for more information about the driveway to High Street. Where is Mr. Bailey measuring the sight line and distance to the intersection? Mr. Bailey referenced Sheet 7 in the plan set. The sight distance is measured 10 feet off the edge of pavement, at 3.5 feet in height. If one is looking north on High Street, there is 200 feet of sight distance. When one looks south, one looks past Everett to the fire hydrant. Mr. McPherson said when one comes up the Maple Street incline there are trees on the corner of High Street. What is the distance from the proposed driveway and the edge of the curve on Maple Street; it does not look like there is much distance between the driveway and the intersection if someone turned left onto High Street. Mr. Bailey said the area is close in proximity but it is wide open and one can see across High Street onto Maple.

Mr. Chirichiello asked if the wording for the shared driveway and how maintenance will be handled had been provided to the Board; he thought it had been discussed prior. Mr. O'Connor said he has sample wording for a Declaration of Common Driveway Easement and Maintenance Agreement; the Board will need to discuss the waiver.

Mr. Chirichiello asked about snow removal – would it be wise to add a snow storage area on the plan to protect the Janigian's building. Mr. Bailey said the natural place to store and pile material for the driveway off Hillside would be down past the Janigian building to where the lot opens up. Mr. Chirichiello said he would not want to see this driveway getting narrow in the winter; his largest concern is the shared driveway. Mr. Connors asked where the shared driveway is shown on the plan; it is hard to read the sheets because of the topo lines.

Mr. Bailey located the driveway on the plans. The driveway is perpendicular to High Street and takes an immediate curve to the right, but pavement goes straight into the garage for lot 29046. The pavement arches around so people can back out of their driveway. Mr. Connors asked if the shared driveway is one car width or two. Mr. Bailey said the garage bay is 12 feet wide, so it

will provide access for one car. Mr. Connors wanted to make sure the driveway to Lot 29046-001 is not blocked by cars on 29046. Mr. Bailey thought most of the parking would take place before the catch basin, or inside the garage. The catch basin is about 30 feet from the house. There will be an end loaded garage under for Lot 29046-001. There will also be a structure to the side to hold back the front yard. Mr. Connors said the driveway also crosses the third lot, so this is really a driveway shared by three lots, not two. There is a rain garden to the right of the shared driveway that will collect the stormwater; will stormwater wash across the driveway? Mr. Bailey said the drainage will go under the driveway.

Mr. O'Connor asked if the number of bedrooms was known for the homes. Mr. Bailey said these will be three bedroom homes. Mr. Sioras advised there is no parking calculation for a single family home. Ms. Davison said she would assume there would be at least two cars per home. Mr. Bailey confirmed there would be an access and maintenance easement. Mr. Connors asked who would be responsible for maintenance. Mr. O'Connor stated that would be well defined in the easement agreement. The applicant would be asked to bring that document to the Board to approve the document and the document would need to be recorded at the Registry of Deeds. Mr. L'Heureux stated there would also need to be an agreement for the maintenance of the rain garden as well. Mr. O'Connor asked if the MS4 permit came into play on this application. Mr. L'Heureux explained the drainage is designed to clear the water. Mr. Connors said the owner indicated previously that there had been another design for 13 townhomes prior to the zoning change. Mr. L'Heureux stated that as that plan was not submitted for Planning Board review, he cannot comment on it.

Mr. O'Connor noted staff does not support the waiver for the common driveway which is the third waiver request. If the waiver is denied, the application does not meet the requirements. The shared driveways in Derry are typically mandated by the State on roads under state jurisdiction; he does not recall precedence for a shared driveway, but the waiver will be up to the Board to decide. If the Board approves the waiver, he will recommend conditions to be added to any approval of the plan.

Attorney Germaine stated the applicant is requesting a waiver from LDCR Section 170-25.A.5. When they first came to the Board, the DPW representative indicated they did not support the waiver and quoted, "...stormwater treatment, excavation issues, it's going to be costly, it seems like it is creating more of a hardship, there is more work involved and it is not in the spirit of the ordinance." Attorney Germaine stated RSA ~~674~~676:44, III, speaks to the hardship test for waivers. The hardship test is met when strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations or specific circumstances relative to the plan, or the conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations. The Board can see the topography of the land is a hardship; they are not talking about an odd shaped lot when they are discussing lot 29046-001. Sight distance and traffic is a concern and they don't meet the sight distance because of the topography. Under LDCR Section 170-50 the waiver requirements are similar to the state requirement, but there is no regulation which speaks to shared driveways. There is no precedence; waivers are always handled on a case by case basis. He feels the easement document is appropriate. Maintenance is a common issue with shared driveways: who is plowing it, who is maintaining it, where do people park, things of that nature. In looking at



this, he looked at what other towns in the area do. Most don't have regulations with regard to common driveways. The Town of Salem does and states, "Each lot shall have a safe, independent and direct access from a public street through its own frontage. The Board may require a driveway to be shared by two or more lots when warranted by traffic or adverse topographic conditions. All shared driveways shall be improved to facilitate two way traffic flow and shall be established by easement. The easement shall address maintenance responsibilities." The Town of Salem codified the hardship standard. The Town of Derry has not addressed this legislatively. There are other shared driveways in town. This easily meets the hardship test. The traffic and topographic hardship has been met. The only way to access this lot (29046-001) is through a shared driveway. A shared driveway is not unreasonable, if you put the proper easements in place. Cost is the developers issue. Stormwater and excavation have already been discussed. It is not creating more of a hardship; it is resolving a hardship because the slope is being minimized. More work involved would be the problem of the developer. All of this is in the spirit of the ordinance because this property meets all of the conditions required by the Board and the town. The only request for a waiver with regard to the access is the shared driveway not accessed through the frontage. He feels they meet all that and the request to come back before the Board with the easement document is a reasonable one. Attorney Germaine said he felt the hardship test is met. It is this Board's decision to determine that. The DPW doesn't seem to like the shared driveway concept. The Fire Department and the Police Department signed off on this; the public safety departments have all decided this is not a problem. It is up to this Board to determine whether or not this waiver should be granted. He saw on the agenda tonight this is all or nothing; if the Board decides to go that way, then so be it. He feels this can be addressed very easily with appropriate draftsmanship of the easement. He likes the idea that the Chair already has a copy of a declaration that will accomplish this goal. Mr. O'Connor noted the Police Captain stated he reviewed the plan but did not accept it. He also asked for confirmation of the cited RSA, which is RSA 676:44, III (e) 1 and 2.

Mr. Chirichiello appreciated that Mr. O'Connor had a boiler plate document for the easement and maintenance agreement, but he is not comfortable and would like to see specific wording. There are always issues with shared driveways. This is the sticking point; he needs to make sure future owners are protected and have rights. He is not sure how to proceed past that.

Mr. Sioras said the applicant can write up the easement language and the Board can have the document reviewed by legal counsel. It can be brought back to the Board under Administrative Business. Mr. Chirichiello said that would prevent him from voting on that tonight; he was not comfortable with the shared driveway because he knows the issues they cause. The rain garden also needs a maintenance agreement; it has drainage from all three lots. He would want to see that all in place before he can get comfortable with waiving that particular section of the LDCR. He is not comfortable voting tonight. He might be more comfortable if he could see the wording of the document, maybe the discussion could be extended. Mr. O'Connor asked if the clock had started. Mr. Sioras said yes, because the Board took jurisdiction. Mrs. Robidoux said the clock was running down and believed it was June 7.

Mr. Connors asked if the shared driveways will be paved for the full length. Mr. Bailey was not sure; the drainage system was designed to handle the stormwater volume if they were paved.

Attorney Germaine stated the Board could grant the waiver and approve the plan this evening, subject to receiving an easement for maintenance repairs that is satisfactory to the board and legal counsel and subject to the rain garden maintenance agreement. It is really maintenance and repairs that are concerning Mr. Chirichiello.

Mr. Chirichiello said if they approved the plan and waiver, it would have to be subject to a maintenance/repair easement subject to review by the Board and its legal counsel, as well as the maintenance agreement. This is really a concern.

Mr. O'Connor questioned if the driveways are not paved, and the town experienced another Mother's Day flood, would stormwater fill the rain garden. Mr. Bailey advised the applicant is willing to pave the driveways for the 100 feet off Hillside and all of the shared driveways.

Motion by Connors, seconded by Chirichiello to grant a waiver from LDCR Section 170-24.A.12, High Intensity Soil Survey, 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Chirichiello to grant a waiver from LDCR Section 170-24.A.13, Wetlands Mapping, 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.

McPherson, Grabowski, Chirichiello, Davison, Connors, Bartkiewicz, Levin, and O'Connor voted in favor and the motion passed unanimously.

Motion by Connors, seconded by Davison to grant a waiver from LDCR Section 170-25.A.5, Access through lot's own frontage, as after review of the waiver request the Board finds that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Connors stated he did not like the shared driveway concept, but feels there is a hardship. He voted yes. Bartkiewicz did not like the concept of the shared driveway, but voted yes. Levin voted yes. McPherson supported the recommendation from staff, he does not support the waiver and voted no. Grabowski supported the recommendation from staff and voted no. Chirichiello said he would like to see the wording as he was not comfortable without seeing it, and he also supported the recommendation of staff; he voted no. Davison supported the recommendation of staff and felt the shared driveway was unworkable from all ends of it; she voted no. O'Connor voted yes, stating there could be an easement. The motion failed as it was a tie vote.

Mr. Sioras advised the Board should vote on the application. It would need to be voted up or down. Mr. O'Connor believed if the vote was to approve the plan, would that mean the vote was to approve the plan with two homes without a shared driveway, since the shared driveway waiver

failed. Mr. Sioras recommended the Board vote, adding the normal conditions but because the waiver was denied, the plan does not meet the town's regulations as presented this evening. Mr. Connors asked what happened if the Board voted to approve the plan. Mr. Sioras said they can't because the waiver failed, the plan does not meet the regulations.

Motion by Connors, seconded by Chirichiello to grant approval 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 owner's 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 or 170-61.C; subject to receipt of state or local permits relating to the project; conditions precedent shall be met within 6 months; a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement; submission of appropriate recording fees, payable to the Town of Derry; drainage easements for all lots shall be shown on the plan to allow access and maintenance of the rain garden by all three lots and included in the deeds; the applicant shall bear the 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; a suitable barrier or guardrail shall be added between the driveway at 29046-002 and the building at 29052; a blasting permit shall be obtained from the Fire Department if blasting is required on the site at any location; a No Left Turn sign shall be installed at the end of the driveway coming onto High Street.

Connors voted no because of the last vote, the plan is void. Bartkiewicz, and Levin voted no for the same reason. McPherson voted no in keeping with his earlier remarks. Grabowski voted no as he agreed with Connors. Discussion followed.

Mr. Chirichiello asked if he voted yes, would it be on the plan as presented with a shared driveway. Mr. Sioras said the Board is voting on this particular plan as designed. Mr. Chirichiello questioned that without permission for the shared driveway, does this become a plan that requires lots with access through their own frontage. Mr. Sioras said Mr. Chirichiello voted no on the earlier motion because he wanted the easement documents to review. The staff report suggests the Board obtain legal review of the documents, so that covers that concern.

Chirichiello voted yes because other than the issues with the shared driveway, he had no issues with the overall plan. Davison voted no because since the waiver failed, a revised plan would need to come back to the Board. Discussion followed.

Connors asked if he could reconsider his vote. Mr. O'Connor reminded him the Board was in the middle of a vote. Mr. Connors felt he was contradicting himself because he shared the same concerns with the shared driveway situation but did not want to mess up the Board. Mr. Sioras said the vote needs to continue and then Mr. Connors could move to reconsider the decision.

Connors stated he was keeping his vote as no. O'Connor voted yes. The motion failed by a vote of 2-7-0.

Mr. Sioras advised the applicant had 30 days to appeal the decision to the Superior Court.

There was no further business before the Board.

Motion by Chirichiello, seconded by Connors to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:29 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_