

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 05, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: John O'Connor (Chair), Lori Davison (Vice Chair), Maya Levin (Secretary), Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Mark Connors, David McPherson, Mark Grabowski, Members; David Granese, Alternate

Absent: Jim MacEachern, Frank Bartkiewicz

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

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

Mr. Granese was seated for Mr. Bartkiewicz.

Escrow

#19-17

Project Name: 156 Hampstead Road

Developer: Mark Reed

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 09081-002, 156 Hampstead Road

The request is to approve a final release of cash escrow in the amount of \$3,823.20 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

#19-18

Project Name: Highland Place Condos

Developer: Extended Realty, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 26232, 37 Highland Ave

The request is to approve a final release in the amount of \$5,054.41 for the above noted project. Escrow is retained under Letter of Credit #27279, drawn on Enterprise Bank. The amount to retain is zero.

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

Minutes

The Board reviewed the minutes of the May 15, 2019, meeting.

Motion by MacPherson, seconded by Davison to approve the minutes of the May 15, 2019, meeting as amended. The motion passed with Granese and Chase abstained.

Correspondence

Ms. Levin reported the Board is in receipt the latest edition of *Supply Lines with the Source*, a newsletter published by NH DES. SNHPC has provided updated CDs as well as inserts for the land use regulations books containing the missing text for RSA 91-A. Ms. Davison has provided the Board with a copy of Riggin's Rules, which she received at the recent Planning and Zoning Conference. Riggin's Rules are suggested do's and don'ts for Planning Board members.

Other Business

Chairman comments

Mr. O'Connor advised he also attended the recent Planning and Zoning conference. The NH Office of Strategic Initiatives will publish copies of the presentations on their website within the next few weeks.

Request to Reconsider Decision, PID 29046, 46 High Street

Mr. O'Connor advised the Board is in receipt of a request to reconsider its decision of May 15, 2019, relative to 46 High Street. He reviewed what occurred at the last meeting of the Board. After a lot of discussion relative to the plan, the Board voted down the third waiver request (LDCR Section 170-25.A.5) related to the common access driveway. The motion was tied, 4 in favor, 4 against, which is a failed motion. Comments were made by members of the Board that they would have liked to have seen a maintenance and access easement, reviewed by legal counsel, prior to voting. The Board knew that with an easement, there would need to be such a document and some Board members were hesitant because they did not see the document. Because the waiver was denied, the application did not meet town the regulations and had to be

denied. The motion made by the Board included a condition that a common driveway easement and easements and maintenance agreements for the rain garden be provided and recorded. The motion also included conditions to address issues raised by abutters. Many members voted no because of the outcome of the waiver vote. The Board also thought the 65 day approval clock ended on June 7, but the clock ends on June 21, 2019. The Board could have sought legal review of the documents prior to June 21.

Prior to reconsidering a vote, the Board would like to ask the applicant to voluntarily request a waiver of the 65 day clock. The Board would then vote on the request to reconsider. If that passes, the documents can be forwarded to legal counsel for review and the Board can schedule a date to reconsider the application for High Meadows. RSA 676:4, I (f), speaks to the 65 day clock and notes that any waiver of the time frame needs to be documented. Mr. O'Connor explained that is the process, but he would like to formally ask Attorney Germaine to waive the clock. The Board has precedence for these types of requests; for example, the clock was waived for the Pennichuck Water Works application which is also on the agenda this evening.

Attorney Brian Germaine, represented the applicant, High Meadows, LLC. He thanked the Board for taking a look at their request. He agrees with Mr. O'Connor's analysis. His client would request an extension of the time limits to whatever the Board would need. He feels it is prudent to give conditional approval subject to review of the easements by town legal counsel. He has provided a Declaration of Common Driveway Easement and Maintenance Agreement for the Board to review. The town's attorney can look at the language and make any recommended changes that would benefit the town and the project. He has no objection to extending the clock and agrees it is prudent to do so. Attorney Germaine reiterated he was making a formal request to waive the 65 day time requirement.

Mr. O'Connor advised the Board the next step is to take up a motion to reconsider the decision. Mr. Connors noted the Board received the request to reconsider its decision this week. There was a lot of abutters present for this plan. He did not believe the abutters were aware of the request; do they need to be renoticed? Mr. Sioras explained if the Board elected to reconsider its decision the abutters would be notified as a courtesy. Mr. O'Connor advised that only members who were present at the meeting should vote on the matter. He cannot initiate the motion, nor can Mr. Chirichiello as they voted in favor.

Motion by Connors, seconded by Davison to reconsider the Planning Board's decision to deny the three lot subdivision application for High Meadows, LLC, PID 29046, 46 High Street.

Granese voted yes, Connors voted yes, McPherson voted no, Levin voted yes, Chase abstained as he was not at the original vote. Grabowski noted the Board was not provided the option to discuss the motion. O'Connor apologized. Grabowski voted no ~~because the Board was not given a chance to discuss the motion~~, Chirichiello voted yes, Davison voted yes and O'Connor voted yes. The motion passed.

Mr. O'Connor stated the Board only has one document relating to easements; that is for the shared driveway. He would request a document relative to the rain garden easement as well.

Mr. Grabowski asked when did the Board receive the Declaration of Common Driveway Easement document. Mrs. Robidoux stated the applicant provided staff with a copy the day after the Board voted and Attorney Germaine provided a copy with his request to reconsider that was received on May 28, 2019. Mr. Grabowski asked who is responsible to make sure the application is complete and all the information is available at the time the Board votes – is that the Board or the applicant? Mr. O'Connor explained the receipt of a common driveway easement was listed as a condition of approval that evening as was an easement relative to the rain garden. He wants to make sure the rain garden document is reviewed by the town attorney as well. Mr. Grabowski asked why was the document not in hand prior to the vote and who is responsible for inquiring and making sure it is available. Mr. Sioras said it was noted as a condition of approval. Legal would then review the documents; that is standard practice. At the meeting on May 15, Mr. Chirichiello stated he wanted to see the language in the document. The language was provided afterward. Normally, the documents would be received after the hearing. Mr. O'Connor said many members wanted to see the document which made it clear to him that they wanted to see it before voting. He had the advantage of having a boiler plate document with him that evening that had been provided to him from the Rockingham County Registry of Deeds.

Mr. Connors confirmed the Board had a condition listed that legal counsel would review the document if the Board said yes. Mr. Sioras said the Board can handle that a few ways. The Board can add it as a condition of approval noting it will be sent to the town's attorney and the plan can be conditionally approved that night, or the Board can continue the plan to allow town counsel an opportunity to review the document in the interim. Mr. Connors stated he was not confused on May 15, 2019. His understanding was that even if the Board had wanted to vote yes on the plan, because the waiver failed for the common access, there was no access for the driveway. That is why he said the subdivision plan was "null and void" – there was no driveway access. Mr. Sioras agreed that was correct and the plan was not approved because there was no driveway access for one of the lots. Mr. Connors felt that even if the members wanted to vote yes, they could not because the waiver failed and the waiver was integral to the plan before the Board that evening. There was not an alternative plan presented to the Board that they could have voted upon. That was his point that evening; they had discussed alternatives, but none were brought forward. Mr. O'Connor added the Board also thought it was running out of time to make a decision. Mr. Connors did not feel the Board did anything wrong that night, there was just confusion over whether they could approve the plan with a failed waiver. Ms. Davison stated that is why the Board should reconsider the decision; she felt there had been procedural errors.

Mr. Granese stated that now the Board has voted to reconsider, should the Board vote to continue discussion to a date certain. He believed there would need to be a public hearing and legal counsel should review the document provided to the Board. Ms. Davison asked if the clock has been stopped. Mr. Sioras said it has. He suggests continuing the discussion to June 19, 2019.

Motion by Granese, seconded by Connors to continue to June 19, 2019. Discussion followed

Mr. Connors recalled Mr. Chirichiello was also looking for an easement document for the rain garden. He did not see that in the information provided to the Board this evening. Mr. O'Connor said the request has just been made to Attorney Germaine. It had been a condition of approval, but he would rather have it reviewed by legal now with the other document. The Board can be copied on the document once it is received. Attorney Germaine stated he would provide an easement document for the rain garden. He is not sure if the Board should also vote to reconsider the waiver.

Mr. Grabowski said that was his comment. As it sits, the Board voted to reconsider the decision to deny the subdivision, not the denial of the waiver. Mr. Granese suggested this could be taken up at the next meeting. Mr. Sioras said the Board will need to decide again and vote the application up and down, which includes the waivers. Mr. Grabowski felt the Board procedurally should vote to reconsider the waiver tonight. Per Robert's Rules, the only time a Board can reconsider a vote is at the next meeting of the Board; procedurally it can't do it after that. Ms. Davison felt if the waiver was part of the reconsideration of the plan in its entirety, that would be included in the discussion.

Motion by Connors to reconsider the common access driveway waiver on June 19, 2019, seconded by Grabowski. The motion passed.

Chase abstained, he was not at the original meeting; Grabowski, Chirichiello, and Davison voted yes; Granese abstained as he also was not present at the meeting, Connors, McPherson, Levin and O'Connor voted yes.

Mrs. Robidoux reminded the Board there is a motion on the floor. The Board voted on the motion to reconsider the decision on June 19th.

Connors, McPherson, Levin, Granese, Grabowski, Chirichiello, Davison and O'Connor voted yes; Chase abstained. The motion passed.

Other

Mr. Sioras advised the Board will only hold one meeting in July on July ~~19~~17, 2019. The Board will likely meet for both meetings in August.

Public Hearing**Pennichuck Water Works, Inc.
PID 10062-020, 8.5 Richardson Road
Review, amended subdivision
To designate lot as buildable
(Continued from March 20, 2019)**

Mr. O'Connor provided a history of the application. The applicant went to the ZBA for a frontage variance on June 7, 2018. The variance was approved and the plan went to TRC on September 5, 2018. The Conservation Commission heard the plan on December 3, 2018, then held a site walk on January 14, 2019. The plan was moved to the Planning Board for a hearing on February 20, 2019. This Board held a site walk on March 9, 2019 and decided to continue the plan at the March 20, 2019 meeting. Because of the proximity of the land to existing conservation land and its location the Board wanted the town to consider the acquisition of the land for additional conservation inventory. The Conservation Commission did not feel they wanted the land, nor did the Town Council. The plan is now back before the Planning Board.

Mr. Sioras provided the following staff report. When Richardson Drive was built in the 1980s, this was a well lot. Pennichuck Water Works is now selling off its well lots. They would like to remove the non-buildable restriction and sell this lot for a single family residence. David Caron, the Town Administrator, advised Mr. Ware in an email that the Town had no interest in the lot. He stated, "Thank you for Pennichuck Water Works reaching out to the town to gauge its interest in acquiring 8.5 Richardson Road. After a review of the property, input from the Conservation Commission and consideration of the Town's conservation and capital acquisition goals and resources, the Town Council has determined that it has no interest in acquiring this parcel." The Board has given the applicant three months to work this issue out.

Don Ware, of Pennichuck Water Works, stated they have exhausted any potential town acquisitions and are going back to the original request to amend the subdivision approval to remove the non-buildable lot designation. The ZBA granted relief to allow less than the required 200 feet of frontage. He feels they meet all of the criteria and this is a buildable lot. There is adequate upland and a driveway can be built that meets town standards. There is no benefit to the Pennichuck rate payers to retain this lot.

Mr. Connors confirmed Pennichuck has three old well sites; this one, one on Bedard the Board will discuss later this evening, and one on Warner Hill that has been purchased by an abutter. Mr. Connors asked if the acreage of this lot had been verified and that the lot had been surveyed. Mr. Ware stated it has. Both the Conservation Commission and Planning Board has held site walks. They waived the 65 day clock.

Mr. O'Connor noted the Board has already accepted jurisdiction of the plan.

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

Judith Arnold, 236 Hampstead Road, advised she sent a letter to the Town Council on March 26, 2019 and has had no clear answer to her questions. She knows Pennichuck purchased the lot in the 1980s for \$9,000.00. How can the lot be valued at \$220,000 when it is a non-buildable lot? Mr. O'Connor said the lot is listed as non-buildable because it had a community well on it. Questions about the value of a lot should be directed to the Assessor. The lot has not been sold, so the actual value of the lot has not been determined. Ms. Arnold stated she has 18.5 acres and pays less taxes, but she does have land in current use. She would purchase this lot but it has been made impossible for Pennichuck to sell the land at a reasonable price. Mr. O'Connor stated the Planning Board does not deal with those issues and this is a good conversation to have with Mr. Ware.

Ms. Arnold stated she did not feel 50 feet of frontage was good; no one is happy with that decision. Mr. O'Connor noted the ZBA granted the variance. Ms. Arnold asked why is this before the Planning Board. Mr. O'Connor explained the Board continued the hearing to allow the applicant to work with the Conservation Commission and Town Council to see if they wanted to acquire the lot. They did not. Ms. Arnold asked if in its discussions, did the Conservation Commission comment on the effect to the environment if this lot is developed. Mr. O'Connor stated the Commission's discussion is clearly outlined in the minutes of its meetings; they did not see any issues. Ms. Arnold stated that although the abutters were notified, they do not feel their concerns were heard. Mr. Connors took umbrage at that statement. The Planning Board heard and understood the concerns and pushed it back to the Conservation Commission and Town Council. That is not a typical action of the Board. Mr. O'Connor advised the Board will vote on the application and that decision will determine whether this can be sold as a house lot or not.

Susan Buck, 6R Richardson Road, wanted to publicly express her disappointment that 6.7 acres does not meet the Conservation Commission criteria for land acquisition. She sent a letter to the Planning Board and Town Council. She has contacted an agency to see if the abutters can create a conservancy easement for this parcel. She feels it should be left as a wildlife corridor. She does not agree that the variance should have been granted for the frontage, but knows that is out of the hands of this Board. She does not feel it will be easy to put a driveway in at this location. The focus has been on revenue for the town and not on what the residents in the neighborhood wanted.

There was no further public comment.

Motion by Granese, seconded by Grabowski to close the public hearing. The motion passed with all in favor and review of the application returned to the Board.

Mr. L'Heureux stated Public Works has no comments on the plan.

Motion by Granese, seconded by Connors to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: add a note such that the single family residence shall be serviced by a residential sprinkler system or cistern. Cistern and/or sprinkler plans are to be reviewed and approved by Derry Fire Prevention; add a Planning Board signature block; the plan needs to be in a recordable format, acceptable to the Rockingham County Registry of Deeds; subject to owner/owner's representative signature; subject to onsite inspection by the Town's Engineer; establish appropriate escrow as may be 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; sight distance profile shall be amended to meet the LDCR requirements which has the object in the driveway at 6 inches and 10 feet back from the edge of pavement; add a detail to the plan that lists and depicts the driveway requirements in the LDCR, including construction details; conditions precedent shall be met within 6 months; subject to local permits relating to the project (driveway, building, fire, etc.); a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirements; submission of the appropriate recording fees, payable to the Town of Derry. Discussion followed.

Mr. Connors stated he does not like pork chop lots with long driveways, but the Board's hands are tied because of other decisions. He feels the Conservation Commissions criteria for land acquisition is arbitrary and parcels should be considered if the parcel is near existing conservation land. The land could be donated to the town or abutters could purchase it as a group.

Connors voted yes, citing the plan meets the criteria and all other options have been exhausted. The applicant has a right to build on the lot. Granese voted no as he felt during the site walk that the plan is not good for the neighborhood and Conservation should take it over; McPherson, Levin, Chase, Chirichiello, Davison and O'Connor voted yes, Grabowski abstained as he did not feel he had enough background history on the application. The motion passed.

Yvon Cormier Construction Corp.
PID 08280-004, 23 Ashleigh Drive
Acceptance/Review
Site Plan
Addition of a 25,600 sf self-storage building
(replaces outdoor canopy)

Mr. Sioras provided the following staff report. The purpose of the plan is for the addition of a 25,600 square foot self-storage building to replace the existing outdoor canopy. The property is located in the Industrial IV zoning district. All town departments have reviewed and signed the plan. There are no waivers requested. NH DES Alteration of Terrain permit has been obtained

and a copy placed in the file. It is an existing situation and site. Staff recommends approval of the site plan application.

Chris Tymula, MHF Designs, presented for the applicant. Leo Roy was also present. Mr. Tymula believed the Board was aware of the project. In 2015 the self-storage facility was permitted; it was completed in 2017. The main reason the owner would like to remove the structure is because there is more demand for the climate controlled units. The intent is to remove the canopy and build a new, two story building. The building will have ground floor access ~~so~~ and will also have an elevator. There are 19 parking spaces to the rear of the site. All work is taking place in existing pavement. They are maintaining the high point of the land and everything will be graded to the exiting catch basis. The utilities will feed from the existing Building #2 to Building #3.

Motion by Granese to accept jurisdiction of the site plan application before the Board for Yvon Cormier Construction Corporation, PID 08280-004, 23 Ashleigh Drive, seconded by McPherson. The motion passed with all in favor.

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

There was no public comment.

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

Mr. O'Connor confirmed the new building will replace the existing outdoor canopy which has room for 18 vehicles of various sizes. What will happen to those vehicles? Mr. Tymula stated they will be removed.

Mr. L'Heureux advised all of the Public Works comments have been addressed and a stop sign will be added to the end of the driveway which is important for the further development of Ashleigh Drive.

Mr. Connors asked why they did not incorporate the third building when the plan was first approved. Mr. Tymula explained economically the outdoor spaces are not renting as well as the interior spaces, so they decided to move to a third building.

Mr. O'Connor recalled the Conservation Commission spent a lot of time reviewing the application when it first came to the Board in 2015 and even worked with a Forester to mark out trees for a selective cut. Mr. Tymula stated there will be no lights added other than the wall packs on the new building. The stop sign is on the plan and will be installed.

Motion by Granese, seconded by Connors to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: subject to owners signature, subject to on site inspection by the Town's engineer, establish appropriate escrow as required to complete the

project; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-61.C; subject to receipt of applicable state or local permits relating to the project (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, driveway, etc.); 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; conditions precedent shall be met within 6 months.

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

Mr. Tymula noted the two existing buildings are approximately 85% occupied

ACS2017, LLC
PID 02081, 62.5 Bedard Avenue
Acceptance/Review
5 Lot Subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for a five lot subdivision located in the Medium Density Residential District which has a one acre minimum size. This parcel was previously owned by Pennichuck Water Works and used as a well lot and pump station. The well has been decommissioned and the subdivision will be serviced by municipal water. In February when the land was sold, town maps for the lot indicated the lot contained 4.2 acres. Based on that, it was believed it was possible to place three single family homes on a cul de sac. The land was surveyed and the town information was corrected to show the land at 7.1 acres. That is why the applicant is able to propose 5 homes. All town departments including the Conservation Commission have reviewed and signed the plan. There is a waiver request outlined in a letter from Promised Land Survey dated April 22, 2019. They would like to reduce the right of way width from 50 feet down to the existing 42 feet. The original subdivision approved the streets at 42 feet wide. Staff would recommend approval of both the waiver request and the subdivision application. There is an email from Jim Degnan, Chair of the Conservation Commission, to Carol White, one of the abutters, answering her questions with regard to the tree cutting and the wetland impact. Mr. Degnan has advised the homes will not impact the wetlands.

Mr. O'Connor advised he reviewed the prior deeds and the land has always been noted as containing 7.2 acres of land.

Tim Peloquin of Promised Land Survey presented for the applicants who were in the audience. He advised there is no boundary dispute. The deed is clear that the lot contains 7.2 acres. His office also performed a boundary survey and confirmed the lot size. They performed a High Intensity Soils Survey (HISS), mapped the wetlands, and performed a topographical survey. They engineered a small 350 foot roadway from Bedard through the 42 foot wide existing access. That will open up to a 50 foot right of way at the property line to create the five lots.

This proposal meets the subdivision and zoning standards. The land is very flat. There are wetlands to rear and side. They are creating a small detention pond to detain the post construction runoff to create no effect on the abutters. This is supported in the drainage summary. They met with the Conservation Commission three times and are in compliance. The lots were sized for the one acre zone and HISS calculations are provided. The lots will have individual septic systems and be serviced by water supplied by an agreement with Pennichuck Water Works. The water system has been designed to Pennichuck's standards. The TRC signed off on the plan and it was reviewed by the town's outside consultant, Vanasse Hangen Brustlin. The Board has a copy of the VHB letter dated May 29, 2019; those comments have been addressed.

Mr. Peloquin advised he met with some of the abutters prior to the hearing tonight. He feels the five lot subdivision meets the regulations. This will be a short road for single family residents.

Motion by Granese, seconded by Connors to accept jurisdiction of the five lot subdivision plan before the Board for ACS2017, LLC, PID 02081, 62.5 Bedard Avenue. The motion passed with all in favor.

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

Donna Clark, 64 Bedard Avenue, wondered what redress does she have if her backyard becomes flooded as a result of the new development. Will this do something to her property? She is concerned with the proximity of the homes and how they will affect her sense of well-being and privacy. There is a stonewall between her property and this one. If she has an issue with her septic because of this, what is her recourse?

Tammy Costigan, 62 Bedard Avenue, was concerned with privacy. All of the trees were cut and now she can see the neighbor's lights. Water now puddles in her backyard. Mr. Cooper said it is from Pennichuck Water Works but this is more water than she has seen in 25 years. She is on the 42 foot wide access road and will be adding parking for four cars. The access will be dug up to install the utilities, so how will that affect her access? Water has built up across the access in years past and created an icing situation in winter. What is her recourse? She does not want to create her additional parking if the developer will be tearing up the right of way for construction. What will happen with the drainage?

Carol White, 23 Berry Road, lives on the back side of the project. She has noticed drainage in her yard since the clearing of the trees. She inquired if they would be rebuilding to take care of the water and to create privacy. This used to be all woods; now she can see the houses across Bedard Avenue. Her concern is the buffer required to absorb the water. She was told the developer could not replant trees because of the wetland. This looks bad; there are trees laying down in the clearing. She was drawn to her home 17 years ago when she was told there would not be development behind her because the land was owned by Pennichuck. What is her recourse during construction if there is blasting? What will that do to her well? What recourse do they have for their concerns and how far do they have to go to have the concerns heard?

Robert Beaulieu, 29 Berry Road has concerns about how the development will affect the water table. Will it lower the water table and affect the drainage? He has well water now but what about later? He still has trees on the back of his property, but they are on his land. What about the effect to the wetland? There are documented eagles and owls in this area. He is concerned about the effect on the wildlife.

Michael Costigan, 62 Bedard Avenue, asked what will this development cost him? He does not want to have the value of his home increased because that will increase the amount of taxes he will have to pay. He would like to see small homes like the others in the neighborhood. He does not want towering homes.

Kevin Morrison, 55 Brady Avenue, stated he has a well that is approximately 25 feet off the property line. The septic placement for the proposed lot may be close to the 75 foot buffer. He wants to make sure the 1970s well is accounted for and noted on the septic plan so that the buffer is respected. The lot was clear cut, but isolated trees were left. Those are now bending over the property line over his pool, shed and backyard. This is creating a hazardous condition on his lot. He spoke with an arborist and someone at Delahanty and they agree those trees should have been taken out. He would like to have those trees removed and the area revegetated to the benefit of his lot and two lots in the corner. The existing condition may create an insurance liability based on the way the trees were cut. He has a quote for 8 trees provided by Delahanty. When they were clearing the land, a piece of equipment got stuck many times, so the forester built a bridge out of tree trunks. This is still in place and is damming up the flow of the wetland. He would like that mitigated and the flow restored. He is available for a walk through at any time if anyone wants to see the conditions.

Mark Hargreaves, 25 Berry Road, is below the clear cut area. His concern is that privacy is gone, and water runoff has not been addressed. He is told the pond will take care of it; what is the recourse if it does not address the runoff?

Doug White, 23 Berry Road, is also concerned about the water. It has been a wet spring but he now has a very wet back yard. He feels this will increase with the construction, especially since there are no trees to help slow the runoff. Do they talk to the builder or the town with regard to construction stop and start times and for dust control?

There was no further public comment.

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

Mr. Peloquin addressed the abutters concerns. 64 Bedard Avenue abuts to the right and had concerns with drainage, recourse, and the close proximity of the homes to her home. There should be about 120 feet from her house to the closest house. The developer will need to meet the setback requirements. The detention pond will pick up the road drainage. It is intended to detain and treat the water and then release it slowly and naturally to the wetland. The drainage

has been reviewed by the town and the review engineer. There is a natural flow that runs through the land; water is moving through here. The trees were cut to open the land up, but this is a concern to some. They will create the detention pond and alleviate some of the drainage concerns. Once the land is regraded, and the lots built to plan, it will deter the drainage and put the water into the right spots. The new neighborhood will not want water there either.

Mr. O'Connor asked if there is existing pavement in the right of way; who owns that driveway? Mr. Peloquin stated part of it is the developers' and part of it is the abutter's. That was the main access to this lot. It is a driveway off Bedard Avenue and they are proposing to upgrade it to a Class V roadway. Mr. Connors confirmed the first part of the access will remain at 42 feet and the abutter will not lose any land. Mr. Peloquin stated this stub was always planned to be the access to this lot and is intended to become a public road. Sheet 4 shows the detail where the abutter's driveway will be extended to the new road and that will be the responsibility of the developer. They will work with that abutter to help them meet the right of way that they have been using. Once the access crosses the stonewall, it will transition from 42 feet in width to 50 feet wide to meet the current standards. The pavement will be 24 feet wide. They can meet the regulation because the area is flat.

Mr. Connors noted the detention pond takes up a good portion of Lot 1. Since the drainage is engineered to flow to the street, do they still need the pond? Mr. Peloquin explained there is an existing condition; after construction, the drainage should have no further effect outside the boundary of the development. The pond is intended to treat the stormwater and protect the wetland. Water will trickle into the wetland from the pond. The pond is required to keep the water on site. There is ample room to build a home, septic and the pond. There will be times when the pond is dry. Mr. Connors noted the easement area for the pond; what is this for? It is a drainage easement to the Town of Derry for maintenance.

Mr. Peloquin advised the concerns from the abutter at 23 Berry had to do with drainage and tree cutting. The abutter at 29 Berry Road had concerns about the water table and his well. The water table for their lot won't change in ten years; it takes a long time for soils to change. With regard to recourse if there is an effect on the well, he has not seen a well dry up because of drainage. The water pattern of the aquifer is intended to remain the same. When they conducted the test pits on the property they did not encounter ledge and he does not see the need to blast, but sometimes it comes up. There is a lot of fill on this site. Mr. O'Connor stated if blasting will occur, a pre-blast survey is required as part of the Fire Department permit. Mr. Peloquin stated the abutter at 55 Brady had concerns for his existing well and its proximity to the new septic system. He does not see this as an issue with the well being 25 feet from the property line. The abutter is correctly citing DES regulations having to do with the distances between wells and septic systems. They will respect the 75 foot buffer and note it. When his office designs the septic system, they will make sure it is greater than 75 feet to this neighbor's well. When they are surveying a property, they need to respect the trespass laws, but they do their best to get good information. With regard to the trees hanging over the property, his client has agreed to cut and clean up the area that is affecting the abutter's property. It is premature at this point to discuss any plantings. They will work with that abutter to improve the situation that has been created.

The Conservation Commission noted the bridge and it will be removed, especially if it is damming up the flow. Mr. O'Connor stated that is addressed on Note 10, sheet 2.

The abutter at 25 Berry has concerns about privacy and the runoff. With regard to runoff, Mr. Peloquin stated that has been addressed in the drainage report and by the consulting engineer. When the development is fully constructed, he believed the grass and drainage system will mitigate the situation. For the privacy issues, when the homes are constructed, the new homeowners will likely do their own landscaping.

The abutter at 23 Berry had concerns about water, which has been addressed and construction start/stop times and dust control. Those are valid points. The developer will abide by the hours of operation, but is it not clear what those are. Mr. Sioras stated Code Enforcement will ask the developer to not start before 7 a.m. Mr. L'Heureux advised there is no noise ordinance in the Town of Derry, so the developer can do what he wants on his own property to a certain degree. During the pre-construction meeting the developer will be encouraged to observe work hours that are between 7 – 4 p.m. or 7-5 p.m. On Saturday, they ask that there be a later start time to respect the neighbors. The developer cannot be prohibited from his ability to get the work done. The town asks that they do the work that has to be inspected by the town, such as the road construction, during town hours of operation. Mr. Peloquin said they will work this out at the pre-construction meeting. The quicker this is built, the sooner the road and land are stabilized. He agrees that the hours of 7 a.m. to 5 p.m., or whatever is decided, Monday through Saturday are reasonable hours of operation.

Mr. L'Heureux noted the plan meets the regulations and requirements. The only waiver is to allow a 42 foot wide right of way, which is in existence and premised on how the neighborhood was originally constructed. He does not have an issue with the waiver. The 42 foot right of way is part of the subdivision as it was conceived and platted as the access to this lot. Even though at the property line the right of way will transition to 50 feet wide, they technically need the waiver to meet the regulations because a 42 foot right of way is not in the spirit and intent of the regulations as they are written today. The developer is hamstrung by the existing width.

Mr. Peloquin advised there has been no discussion with the abutters to purchase an additional 8 feet from them to create the 50 feet required by the regulations. The land is very flat and it will be easy to blend with the existing right of way.

Mr. Connors was concerned because the entire lot had been clear cut; normally the developer will leave some trees along the boundary of the lot. Mr. Peloquin explained the lot is bounded by stone walls. The interior of the lot is all fill material and bamboo grew up. The bamboo, which is an invasive species, was so thick one could not walk through it. The developer chose to clear it. The land will be graded for the subdivision. Regrowth will take years, but it will come back.

Mr. L'Heureux commented the proposed drainage system meets the regulations for the town and the state. The whole point of a stormwater system is to slow the water down so that it does not pour into the brook right way; it needs to be held back and allowed to settle.

Motion by Granese, seconded by Grabowski to grant a waiver from LDCR Table of Geometric Standards as after review of the waiver request, the Board finds that specific circumstances relative to the plan, or the conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

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

Motion by Granese, seconded by Grabowski to approve, pursuant to RSA 676:4, I, Completed Application with the following conditions and friendly amendments: Comply with the Vanasse, Hangen Brustlin report dated May 29, 2019, or later; subject to owner's signature; subject to onsite 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 waiver on the plan; add a note to the plan that additional notification to the abutters may be required as the water connection will require an interruption in water service for many abutters; install pressure reduction valves within the proposed subdivision as per correspondence from Pennichuck Water Works, dated April 15, 2019, to J. McCourt, PE; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-24.C; subject to receipt of applicable state or local permits related to the project(i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.); conditions precedent shall be met within six months; the installation of a stop sign at the end of Valerie Lane; removal of trees per the agreement with the abutter at 55 Brady and maintain the appropriate distance between septic systems and existing well at 55 Brady; 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 the appropriate recording fees, payable to the Town of Derry. Discussion followed.

Mr. L'Heureux confirmed the island in the middle of the cul de sac is grass.

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

The Board took a brief recess. Mr. Granese departed the meeting at 9:01 p.m.

Workshop #6 to discuss the proposed West Running Brook Village District

Mr. Sioras stated at the last workshop, the Board agreed on the boundaries of the district, the list of permitted uses, and the intent of the district. The district is bounded on Humphrey Road by Dr. Butterfield's property; across the street at the Siragusa's property; south down Rt. 28 to the mobile home park across from the Robert Frost Farm; heading west on Rockingham Road to the property owned by Elmer Pease and the salvage yard lot. The district includes the Grandview Flea Market lot and Clam Haven. The draft was finalized and sent to legal review. Attorney Matt Serge reviewed the draft and met with staff (Mr. Sioras, Mrs. Robidoux, Mrs. Donovan, Mr. Mackey, and Mr. Wentworth). Attorney Serge suggested some changes to clarify the intent. The changes from the last workshops and from Attorney Serge are noted in red. If the Board is in agreement with the suggested changes, the amendment can move forward through the public hearing notification process and then to Town Council.

Mr. O'Connor asked if this district replaced General Commercial IV. Mr. Sioras said it does not; the proposed district is in a portion of the GC IV.

Mr. O'Connor stated he has researched the Village Plan Alternative District that is allowed under Innovative Land Control (RSA 674:21, VI) and Village Districts (RSA 52 – 52:26). Some of the language in this draft conflicts with those RSAs with regard to setbacks. Did the attorney review this? He did. Mr. Sioras said this is a zoning district, but not a district as would be formed for a Water District which is described in RSA 52. The intent is to amend the Zoning Ordinance to create a new zone. The Board discussed the conflicts between the terms. It was decided to remove the word "Village" from "West Running Brook Village District" to alleviate any confusion.

Mr. O'Connor also had a concern with regard to the proposed setbacks between larger buildings. Mr. Sioras said when they looked at this area, there are about three to four large scale lots available for a larger development as they have a lot of acreage available. This area is not intended to have a large scale development like Woodmont Orchards or Tuscan Village. The topography rolls and dips. There are wetlands on some of the lots. Attorney Serge did look at the language and noted development would be on a case by case basis. He did not feel more than 25 homes should be on a lot. The Smith property could be developed with commercial to the front and 2-3 homes to the rear, abutting the conservation land. This area is not intended to have the hundreds of housing units that are being constructed in Salem and Londonderry. Mrs. Donovan stressed the intent of the district is to be flexible on each project, based on the challenges of each site.

Mr. Connors noted 109 Rockingham Road (salvage yard) is currently being marketed as a commercial lot with 5.5 acres and 1 acre to be set aside as residential. If the property is rezoned, will they be able to subdivide the lot and keep one lot as residential? Mr. Sioras said housing is allowed but single family housing is not. This is how the realtor listed the property. Once the lot

is in this district, single family would not be allowed; there could however be mixed use with multifamily. Mr. Connors asked how flexible can the Board be? One single family home on this lot at the top of the hill, abutting the other single family homes may be more of what the neighbors (of which he is one) might want to see, rather than 10 apartment buildings. But that might open Pandora's Box. What control does the Board truly have with this new zone? Mrs. Robidoux explained when they discussed the list of permitted uses with Attorney Serge, they discussed what would happen if someone wanted to include a use that was not permitted, such as a single family home. Development plans would come to the Board under a Conditional Use Permit. In the scenario just described by Mr. Connors, because single family is not a permitted use, the developer would need to seek a variance. However, language has been included that if a use variance is sought, the applicant must obtain input from the Planning Board before the ZBA can vote or look at the application. In instances where it might make sense to have single family to the rear, such as on this lot or the Smith lot, the Board can say even though it is not a permitted use, it makes sense for this particular lot, for these specific reasons. If a developer wanted to put an airplane hanger on the five acres, the Planning Board could say that does not make sense for this lot for these specific reasons and the ZBA must take that advice into account during its deliberations when considering the hardship and the other four factors.

Mr. Connors felt it made sense to add this lot to the zone as it abuts the other lots, but the lot is surrounded by residential. He would not want to see the wrong thing on these lots. Mrs. Donovan commented she has been in contact with the broker for 109 Rockingham Road and part of the reason for the confusing listing is because the broker is not sure of the outcome of the zoning amendment discussion. It is hard to describe a property when the zoning is in flux.

Ms. Davison had some concern over the prohibited use section. Is there a possibility that someone might come in and say that a sexually oriented business is "retail"? Mr. Sioras said there is a specific ordinance in the Zoning that addresses that specific use and where it can be located. The criteria is very strict. Ms. Davison confirmed Code Enforcement would enforce the issue if someone was selling something they should not be selling.

Mr. O'Connor asked when the Master Plan update will be completed. Mr. Sioras stated it is three quarters done. The next public input session will be in October to review the implementation plan. The consultants are aware of the proposed zoning change. Mr. O'Connor believed the Economic Development Advisory Committee wanted to also weigh in on this document. Mrs. Donovan explained the EDAC held a discussion at its last meeting. They are looking toward their next charge and deciding ~~that and~~ what their next goals will be. They are not in conflict with the Planning Board; the Planning Board is more focused on the technical aspects of zoning and regulations; the EDAC focuses more on market trends and demographics. Planning is all about the future and the EDAC wants to make sure the Planning Board has the most up to date information so the Board can make the most informed decision. The EDAC is an advisory committee.

Mr. Chirichiello noted as this area also contains part of the Opportunity Zone, he did not want to delay any potential amendments in the area which might affect development of the land. Mr.

Sioras noted staff is aware of good potential development in the pipe line. Even if there was not an Opportunity Zone in this area, staff would like to move this amendment forward.

Mr. Connors had a few questions about “streetscape – buffer zones”. Should the word “industrial” be removed from Section 165-32.4.I.4.b? There are no industrial zones in this area of town. Isn’t the intent to buffer other zoning districts? He believed the intent was to keep a 100 foot vegetated buffer between any residential area and whatever is built in this new zone. The Board agreed and “industrial” will be removed.

Ms. Davison asked if this new district will add to the workload of the Planning Board. The Board is accomplishing a lot and is very busy; will this hamper the Board’s ability to be efficient if projects have to go back and forth from the Planning Board to the Zoning Board and looked at on a case by case basis? Mr. Sioras did not believe so. There won’t be a lot of large scale development; there might be three or four lots with larger proposed development.

Mrs. Robidoux added a lot of the language is in place to protect the Board and to allow flexibility. The applicant has to come to the Board conceptually at the beginning of a project. That is one quick meeting at which the Board looks at the concept and decides if it will work or not. The applicant can then go and develop the plan so that when it gets back to the Board, it will not be as burdensome. Ms. Davison stated she wants to keep options open to be able to provide the input to the applicant. Sioras said the law allows the Board to hold conceptual and design review hearings; that is encouraged with this district.

Mr. Chase asked what is the intent of the wording under Section 165-32.4.I.4.b when it speaks to Residential Areas. Is this supposed to be residential areas or residential zones? There would be no purpose to buffer residential areas from each other. Mr. Connors said there should be a 100 foot buffer between multifamily development and single family homes. Mr. Chase felt the wording should reflect the Board’s intent to buffer commercial uses (which would include multifamily) from residential zones. The wording will be changed to “...of 100 feet shall be provided between Residential zones and adjacent non-residential zones”.

Ms. Levin asked if the Board would consider adding in a list of prohibited uses to protect the area. She did not think it would hurt. Mr. Connors believed the attorneys are now advising not to include a list of prohibited uses. Mr. Sioras agreed. The most recent legal opinion is to not list the prohibited uses. Mrs. Robidoux added if the use is not on the list, it cannot be done. If someone wants to do something not on the list, they have to go to the Zoning Board. That is why staff went back and forth about using the Conditional Use Permit. Traditionally, a Conditional Use Permit is like the Board’s waiver provision, in that the Zoning Board does not provide input, the Planning Board is the authority. In any other zoning district, if a developer wanted to do a non-permitted use, they would apply only to the Zoning Board for a variance. Because developments in this district are by Conditional Use Permit, the variance provision is worded differently.

Mr. Sioras said if the Board agrees with the changes proposed this evening, a clean copy of the amendment can be presented at the next meeting and the Board can move to schedule a public hearing.

A straw poll was conducted to see if the Board wanted to accept the changes proposed this evening and move the document forward to public hearing. The Board was unanimously in favor. Mr. Sioras explained the document would be presented under Other Business on June 19, 2019. Once the document is posted, any development or proposed use would need to comply with the amendment as written.

There was no further business before the Board.

Mr. O'Connor thanked Jonny Bottino, the Media Center Associate assigned to the Board, for his efforts.

Motion by Chirichiello, seconded by Connors to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:42 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____