

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 17, 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) [7:03 p.m.]; Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Mark Grabowski, Mark Connors, David McPherson, Members; Jim MacEachern, Alternate

Absent: David Granese

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

Mr. O'Connor called the meeting to order at 7:01 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

#19-22

Project Name: Subdivision of 74 Chester Road

Developer: Kevin Coyle

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 55012-002, 74 Chester Road

The request is to approve a final release of cash escrow in the amount of \$13,024.80 for the above noted project. The amount to retain is zero. 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 June 19, 2019, meeting.

Motion by Bartkiewicz, seconded by Grabowski to approve the minutes of the June 19, 2019, meeting as written. The motion passed with Connors and McPherson abstained.

Correspondence

Ms. Levin reported the Board is in receipt of the most recent edition of *Town and City* magazine and a letter from the US Department of Homeland Security advising of three Digital Flood Risk Map review meetings.

Other Business

Schedule a public hearing to discuss proposed changes to Section 165-34, Office Business District

Mr. O'Connor advised this public hearing is to change permitted uses, limitations, parking requirements and maximum lot coverage. Anything related to the parcels within the zone will be discussed at a separate public hearing which is the next item of business this evening.

Motion by Chirichiello, seconded by Bartkiewicz to schedule a public hearing for Wednesday, August 07, 2019, to discuss proposed amendments to the Town of Derry Zoning Ordinance, specifically, Article VI, District Provisions, Section 165-34, Office Business District to AMEND the permitted uses, limitations, parking requirements and maximum lot coverage.

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

Public Hearing

Fourth Public Hearing – To discuss proposed amendments to the Town of Derry Zoning Ordinance, Section 165-20, Zoning Map, to move four (4) properties from MHDR and two (2) properties from GC to the Office Business District (number of properties revised at the June 19, 2019 meeting)

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.

Mr. O'Connor advised that during previous hearings, a few of the residents acted as the spokesperson. He would like to limit comments to three minutes this evening as the Board has heard from the public on this matter at each hearing.

Tom May, 1 Valley Street, asked why the Board is moving the boundary to Valley Street and St. Charles. During previous discussion there had been comment it would be all or nothing. The proposal has gone from changing 20 lots to 4 lots on Aiken Street, and 2 on the other side of West Broadway. He is not sure of the agenda for this change, but it will adversely affect the neighborhood. It makes no sense to change the four lots other than to benefit the person who owns two of them. The Planning Board has said the upper part of Aiken Street is flat, lending itself to commercial development. But there is a significant slope. Ralph Valentine's lot has a

small slope from West Broadway to Aiken Street. The next property on West Broadway and then George Madden's lot has a slope of about 15-20 feet, which makes Mr. Madden's property unattractive for commercial development. Mr. May's property on Valley Street has a greater slope. Mr. May read a definition of spot zoning. "Spot zoning refers to applying a map classification for purposes of a municipal zoning ordinance to a particular parcel of land without regard to its surrounding designation."

Motion by Connors, seconded by Bartkiewicz to extend the time allowed for discussion. Discussion followed.

Mr. Chirichiello asked how many other residents would like to speak on this matter. There were three.

The motion passed with all in favor.

Mr. May continued with regard to spot zoning. It may smack of favoritism toward a particular land owner. Between St. Charles and Valley, two properties are owned by Ralph Valentine who is a Real Estate agent and a commercial developer. According to the internet, in the case of spot zoning, often times the suspicion is perhaps the person seeking the change may be a friend of the decision maker, owed a political favor, or perhaps is an influential person around town. Even though it is the town requesting this change, it still reeks of spot zoning because the only person benefiting from the change is Ralph Valentine. Mr. May was not sure if Board members knew Mr. Valentine and he may be a friend. Mr. Valentine is certainly known around town as he frequently hosts Business After Hours events for the Chamber of Commerce at his business. Mr. May spoke with regard to age discrimination. Mr. Madden is 78 years old; Mr. May is in his early 70s. If this change passes, it is only a matter of time before he and Mr. Madden will be looking at nursing homes. This change hastens that possibility for them to sell their homes which will result in commercial turnover. The neighborhood does not want to see this happen and the Board has been told this many times. The Board received a petition signed by 63 residents, they have voiced their opposition; there has been a site walk of the area. He is here tonight to voice opposition to any changes in zoning. The neighbors will take this as far as possible including to the Town Council and if necessary the Courts. He would ask that Mr. Chirichiello recuse himself because he is a real estate agent and could potentially benefit financially from any property sale. If the Board votes to approve this change, they will seek legal counsel and put deed restrictions on their property so that there can be no annexing of property, combining, or subdivision. They believe they have the right to ensure their lots stay residential in perpetuity. The Board can rezone the lots but the land owners still own the property.

Mr. Chirichiello advised he would not be stepping down. He has no listings in this area, nor does he own property in the area. He believes there is no conflict of interest.

Linda McLaughlin, 4 Valley Street, spoke of the lots on Ela and St. Charles which are also in the Town of Londonderry. The Londonderry zones are residential in this area. If the Board proceeds with its plans to change the zoning, nothing can be done with the parcels unless

Londonderry changes the zoning and the towns need to agree on what is allowed. No residents want to open a commercial business in this area. She believes that 116 West Broadway is the main issue. It is zoned in two different towns, in two different ways. The residents should not have to suffer because of that. Can everyone come to an agreement that would make everyone happy? Perhaps Mr. Valentine can subdivide so that the rear of the property remains residential with a small home that can become part of their neighborhood. Mr. Chirichiello did not believe there was enough road frontage to subdivide. Mr. Sioras explained in order to subdivide the lot, there would need to be 10,000 square feet per lot, with water and sewer and 100 feet of frontage for each lot. Mr. O'Connor noted the Board cannot speak for the landowner's thought process. Ms. McLaughlin felt this suggestion was a way for Mr. Valentine to do what he wants and add people to the neighborhood.

Lisa Joslin, 15 Aiken Street, questioned when the Board decided to only look at 6 parcels why the Board did not separate out the two parcels across the street and keep them separate from Aiken Street. She believes those two lots should be considered separately from the lots on Aiken Street, but they have all been lumped in together. Mr. O'Connor explained when the Board looks at rezoning, the Board tries not to rezone individual lots; the Board looks at blocks of land. That is their typical method. Ms. Joslin said she still felt they should be separate. Is the Board's official position that the remaining properties on Aiken Street are no longer being considered for rezoning?. Mr. O'Connor stated under this agenda, the Board is not, and he is not aware of any future proposals. Ms. Joslin said there has been discussion that Londonderry is also looking at rezoning in this area. The changes Derry is creating may cause the same issues in Londonderry the Board tried to avoid in Derry. It makes no sense to change the four properties on Aiken Street to OBD. She does not know Mr. Valentine, but would be interested in sitting down with him to see what his plans might be for his property.

Richard DiSisto, 18 Aiken Street, agrees with Ms. McLaughlin that the back of Mr. Valentine's lot should be subdivided; Mr. Madden's lot could be as well. He feels that would be a good compromise.

There was no further comment.

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

Mr. Connors said he wanted to clarify some points. Mr. May had good comments; no matter what the zoning is, it does not take away landowner property rights. The Board can't make the landowner sell their property and they are allowed to put deed restrictions in place. This Board plans for the future and is putting things in motion for good development in town. The Board is looking at this area because it is a gateway into the town. It is smart planning for the future. The current zoning allows uses the neighborhood might not want. He stressed no one is out to steal property from the landowners. This is not spot zoning. The Board has listened to the residents and has come to a reasonable approach, suggested by a Board member. Some property may make sense to redevelop. This is a district that is very restrictive; the Board wants to retain the aesthetic of the neighborhood. It was a good way to compromise and make it work for all

parties. He feels the Board has acted in good faith and is trying to build for the future and make Derry better.

Mr. O'Connor commented whether this amendment goes forward or not, people can request a variance and it can be granted.

Mr. Chirichiello stated in his neighborhood, one side of the street is residential and the other was rezoned to Central Business District 15 years ago. The neighborhood has not changed at all. Even if the lots are rezoned, nothing may happen. The uses still remain residential as pre-existing, non-conforming uses.

Mr. Grabowski noted the tension in the room was obvious. The Planning Board does not have the final say on this proposed amendment. The Planning Board decides on the form and then it is passed on to the Town Council for final approval.

Ms. Davison said she was glad to see the residents have been thinking outside the box. She is not sure the Board has the ability to tell someone what they can or cannot do with their property. She hopes there can be conversations between the property owners.

Mr. Connors noted the property in Londonderry that abuts this proposal is under scrutiny by the Town of Londonderry which is also reviewing the zoning in this area. There is no guarantee the lots in Londonderry will retain their current zoning.

Motion by Connors, seconded by Bartkiewicz to amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to move four (4) parcels from the Medium High Density Residential District, and two (2) parcels from the General Commercial District to the Office Business District and to forward the amendment to the Town Council for its review and approval. The purpose of the amendment is to allow for the best and highest use of the properties moving to the Office Business District. The parcels include 26025, 1 Valley Street; 26023, 116 West Broadway; 26024, 21 Aiken Street; 26022, 10 St Charles Street, all currently zoned MHDR and 26054, 111 West Broadway and 26053, 113 West Broadway, both currently zoned GC.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed.

Mr. Connors stated he felt this was a fair compromise and good for the neighborhood; he would have voted for more properties to be included. Mr. O'Connor added he did note the differing topography during the site walk, and was willing to compromise to provide opportunity to the entrance to Derry, now or in the future.

Mr. Sioras believed this proposed amendment would be scheduled with the Town Council sometime in September. Mr. Chirichiello stated the residents would need to consult the Town Council agenda to see when this would be discussed. Only the affected property owners would be sent notices of the Town Council's public hearing.

Pathway Homes
PID 14011, 13 Hemlock Spring Road
Allyn Greenberg, Kelly Greenberg & Joel Stephen
PID 11038, 11 Hemlock Spring Road
Acceptance/Review
Lot Line Adjustment

Mr. Sioras provided the following staff report. This is a two part plan. The first portion is a lot line adjustment between 13 and 11 Hemlock Spring Road. The second part will be a two lot subdivision. All town departments have reviewed and signed the plan. There are no waiver requests, and staff would recommend approval of the lot line adjustment plan.

Paul Chisholm, Keach Nordstrom Associates, presented for the applicants. The first plan is for a lot line adjustment. The property as it exists for 13 Hemlock Spring Road has less than 3 acres of land. 11 Hemlock Spring Road has more than four acres. 11 Hemlock Spring is providing land to 13 Hemlock Spring in the amount of 1.2 acres. This will allow 13 Hemlock Spring enough land to create two lots.

Motion by Chirichiello, seconded by Connors to accept jurisdiction of the Lot Line Adjustment plan before the Board for Pathway Homes, PID 14001, 13 Hemlock Spring Road, and Allyn Greenberg, Kelly Greenberg & Joel Stephen, PID 11038, 11 Hemlock Spring Road.

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

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

There was no public comment.

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

Mr. Chirichiello confirmed the Lot Line Adjustment allowed the owner to subdivide 13 Hemlock Spring into two single family lots. Mr. O'Connor recalled the owner did request a variance for less than the required land area and was denied.

Mr. Connors confirmed 11 Hemlock Spring is located in an area requiring one acre zoning and there is a total of 3 acres on the lot. 13 Hemlock Spring is in a zone that requires 2 acre zoning. HISS mapping was performed and the soils were acceptable to create the second lot. Mr. Connors noted Overledge Extension has very small lots with open space. Is the entire lot surveyed? Mr. Chisholm said they did a survey of the lots and the plan is stamped. Mr. O'Connor noted a condition of approval would be to set the bounds for the new lot line. Mr.

Connors inquired what is the area that looks like a road to the back area— that area is open space and cannot be built upon; there will be no future expansion in that area.

Mr. Chirichiello asked if the new lot would front on Hemlock Spring or Overledge? Overledge is a condo development with a homeowner's association fee which pays for the lighting. Mr. Chisholm stated all properties in this proposal face on Hemlock Spring Road.

Mr. L'Heureux had no comments.

Motion by Chirichiello, seconded by Connors to approve, pursuant to RSA 676:4, III, Expedited Review, 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; subject to receipt of state or local permits relating to the project; the above conditions shall be met within six months, submission of the appropriate recording fees payable to the Rockingham County Registry of Deeds – this includes the \$25.00 LCHIP fee, recording fees for the mylar and notice of decision.

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

Pathway Homes
PID 14011, 13 Hemlock Spring Road
Acceptance/Review
Two Lot Subdivision

Mr. Sioras provided the following staff report. That part of town at one time had a one acre zoning requirement. Hemlock Spring and Overledge were constructed as a Planned Residential Development (PRD). In the mid 1990's the zoning was changed to two acre zoning and duplex was removed as a permitted use. On the southern side, Bill and Alice Streets have one acre zoning. The new lot will be in the two acre zone. There is a difference between the two neighborhoods. The purpose of the plan is for a two lot subdivision. The property is located in the Low Medium Density Residential zone which requires two acres. One new home is being constructed. All town departments have reviewed and signed the plan. There are no waivers requested. He did speak with one of the neighbors and also took a ride out to the site with Alan Côté from the Highway Department to view the driveway locations. There is signage in the area that should be discussed. Staff recommends approval of the subdivision plan.

Paul Chisholm, of Keach Nordstrom Associates, presented for the applicant. This is the second part of the project. The new lot will be created from a 4+ acre parcel which will be subdivided into two, 2 acre lots. The new lot will have a Hemlock Spring address. Sheet 3 of the plan set shows the development plan and driveway locations. It will mirror the existing condition. He addressed the comments from the Technical Review Committee, and will rebuild the roadside

swale at the request of Public Works. He has a picture of the signs on Overledge Drive which were the object of conversation with the Planning Director. [Picture retained for the file]

Mr. O'Connor asked if this plan went before the Highway Safety Committee. Mr. Sioras advised Mr. Côté and Mr. Chase are on the Highway Safety Committee. Mr. Côté had indicated the signs were placed there several years ago. Review by the Highway Safety Committee was not required because the town has already addressed some concerns in the area by placing the signs there.

Motion by Connors, seconded by Bartkiewicz to accept jurisdiction of the two lot subdivision application before the Board for Pathway Homes, PID 14001, 13 Hemlock Spring Road.

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

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

Mr. Sioras explained he spoke with Mr. Bartlett, the owner of Lot 14009, 6 Hemlock Spring Road with regard to the signage. The Bartlett's raised the question about the sign. Mr. Côté spoke with them as well and he believes they understand why the signage is there. Mr. Chisholm added he provided a picture of the signs only because he knew they would be a point of discussion. Mr. Connors asked with regard to Wayne Drive; that is a private driveway.

Mr. L'Heureux explained the applicant addressed all of the DPW comments. They will also make improvements along the roadway to the large trees and steep slopes. It is probable they will need to hammer rock out to create the driveway. There are some drainage improvements attached to the project, and a stone wall will be moved to the edge of the easement to create room for the snowplows and snow banks.

Mr. Chase asked if there would be a cistern for fire protection; he is aware the condominiums do not have one because they were constructed prior to that requirement. Mr. Chisholm said they will utilize a residential sprinkler system. Kevin Allard, Pathway Homes, said there will not be a sprinkler for the existing home that was razed and reconstructed. The sprinkler is only for the new construction. The existing home is grandfathered. Mr. Chase would like that added to the notes as a condition that there will be a residential sprinkler for the new home. Mr. Allard is aware any new subdivision triggers the fire protection requirement. ‘

Ms. Davison asked if the fire suppression can be of any type. Mr. Chase explained there needs

to be either a sprinkler system or a cistern located within 1000 feet. The water is held in a tank and it is not a waivable item.

Motion by Connors, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, III, Expedited Review, 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; subject to receipt of state or local permits relating to the project; the Roadway Slope and Maintenance Easement shall be reviewed by the Town of Derry legal counsel, cost of that review to be born by the applicant, and the Easement shall be recorded at the Registry of Deeds and noted on the plan; the above conditions all shall be met within 6 months; submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds (to include the \$25.00 LCHIP fee, recording fees for the mylar and notice of decision); add a note the plan indicating the new home will be served by a residential sprinkler system.

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

Grandview Farm Derry Realty, LLC
PID 05053, 36 South Main Street
Acceptance/Review
3999 sf commercial development
Proposed gas station, convenience store and drive-through

Mr. Sioras provided the following staff report. The Board has seen this plan previously as a Design Review in the spring. Tonight is for the more formal application and the applicant seeks approval this evening. The purpose of the site plan is for a 3,999 square foot gas station, convenience store, and donut shop drive through located in the General Commercial IV zoning district. All town departments have reviewed and signed the plan. Staff recommends approval of three of the waiver requests; he would defer to Mr. L'Heureux for the fourth waiver having to do with the driveway slope; there should be some discussion on this waiver. NH DOT has granted a driveway curb cut and staff recommends approval of the plan.

Peter Zohdi, and Shayne Gendron of Edward N. Herbert Associates presented for the applicant who was present in the audience.

Mr. Gendron advised the proposal is for a 3,999 square foot building. 3,080 square feet will be dedicated to the gas station and convenience store. The gas station will have 8 filling station pumps. 919 square feet at the left end of the building will be reserved for the Dunkin Donuts drive through. There will be a small, interior counter service area. The last time the applicant was before the Board, they were still working with NH DOT. NH DOT wanted a curb cut on Route 28 and improvements made to the intersection at Island Pond Road. They have been

working with NH DOT for a bit longer than a year on this project and feel they will be making a major improvement at the intersection. They will add turn lanes into the property and one out to Route 28 south. They will redo the signalization at the traffic light and will clean up the intersection. They are granting an easement to NH DOT along the property line on Island Pond so that there are no impacts to the Clam Haven lot. They intend to have eight filling stations. Customers can enter the drive-through off Island Pond Road, drive along the back of the building to the drive through window on the left hand side of the building. There will be curbed drainage with a bioretention area to the north end of the property. The sheet flow will infiltrate below grade. The catch basins are located near Route 28 and to the rear of the property. One of the catch basins is a CD5 which creates a vortex with the stormwater which separates out the oils and suspended solids. The stormwater is then released to an underground 40,000 gallon storage tank, which outlets to the back of the site and then goes to a level spreader.

Mr. Gendron advised they are asking for a few waivers. The first is for the number of parking spaces. They are providing 29 parking spaces. The calculation found in the regulation suggests parking for a supermarket; this is not that type of use. This is a convenience store and the primary function will be to provide gasoline. The second waiver is from the required amount of green space. They are close to the required number but fell short because they had to grant land to NH DOT for the improvements. The third waiver is from the parking calculation for a gas station with regard to the employee spaces. This will be a self service gas station so there will only be employees inside the convenience store. The last waiver has to do with the slope as one enters and leaves the property. The slope is above the requirement. They need to make the area flat near the pump island and they did the best that they could. On the Island Pond side there is a 3.63% slope.

Mr. L'Heureux explained that slope is the centerline slope. The issue that Public Works identified is not at the centerline. When one looks at the edge of the curb and the contour lines, the slope is closer to 6-9% because it is so steep from Island Pond and heading out to South Main Street. He would like to make it clear that the waiver is for slopes greater than 3.63%. The town is aware there are problems with the slope on this project; the applicant will need to express the hardship and the Board can make a determination. The slope exceeds the regulation at both access points. The land goes from one plateau to another. He is aware they need the land to be flat for the gas pumps but they also need to meet the existing road.

Mr. Zohdi said Mr. L'Heureux is correct. South Main Street slopes at 7.5%. He meets the centerline but as one goes down to the road, they need to superelevate the driveway which could be at 7-8%. They have been working with NH DOT for two and a half years and have finally satisfied the state requirements. Both roads are under the purview of the State of New Hampshire. They finally have permits in hand and have done the best engineering they can.

Motion by Connors to accept jurisdiction of the site plan application before the Board for Grand View Farm Realty, LLC, PID 05053, 36 South Main Street, seconded by Bartkiewicz.

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

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.

Chris Wood, 100 Rockingham Road, said this is currently a very hairy intersection. He has spoken to the Police Department about the speeding that occurs. With the existing grade of the property, it will add to the number of accidents in the winter. He has lived there for 14 years; there are six or more accidents at this intersection during the summer months each year. The grade of the land is concerning. If someone wants to enter the site and someone is trying to beat the light, there will be an issue.

Tracey Zysk, 5 Silver Street, stated the intersection is treacherous. There is rezoning in this area; the gas station and new development that will occur as a result of the rezoning will add a lot of traffic to this area. People sit through two light cycles heading north now. There are numerous accidents at this intersection. The road is heavily traveled and Island Pond is a cross through street for commuters. This project will bring a large amount of traffic to the intersection which has not been seen since the Grandview Flea Market days (which utilized a police detail). She is glad the state is involved but is the state aware of the zoning change because that will add a lot of traffic to all four angles of the intersection. She asks the Board to look at the big picture. With development comes traffic of all types. She has questions about the traffic flow and if there is collaboration between the state and the town with regard to traffic studies. Who does the studies and when are they done? She wants the Board to consider the traffic.

James Zaniboni, 34 Stark Road, agreed there is a lot of traffic, but there will be growth in this area. The other property owned by the applicant is very nice. As a resident, he would like to see more business in town. If the Board delays this, it takes away from the tax base. Traffic is a part of growth.

Beverly Glynn, Salem, New Hampshire, stated the applicant is a 4th generation family operated business. There are not many of those types of companies left. This town is growing and she believes the town would be proud to have this applicant be part of it. They are very involved in the community and don't just come in like a large company. They stay and work with the community.

Richard Metts, 8 Dustin Avenue and 94 Rockingham Road, understands the traffic. There used to be a blinking light at this intersection. He has seen the plans for this project and B & H Oil made sure they did not touch his land. There will be a four lane intersection; two lanes in and two lanes out. Traffic is bad all over town; there are less accidents at this intersection now that there is a light at the intersection. He agrees people exceed the speed limit. The applicant worked with the state and Mr. Metts hopes this plan is good for him financially and personally; the applicant runs a good business and they are good people.

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. O'Connor had comments about the traffic. The state and independent agencies perform studies. SNHPC does as well. As a commuter, this was one of his ways to get home and avoid I-93. Once Exit 4A goes in, people will see a shift in the traffic patterns throughout town.

Mr. Sioras addressed Ms. Zysk's question with regard to the traffic studies. The state has jurisdiction on Route 28 starting at the Fairways to the Windham town line. Island Pond Road is also a state road. Any driveway in that area is under state jurisdiction. Traffic studies are required at the town and state level. The town has no final say on a state impacted road. There was a traffic study performed and the state reviews it.

Mr. Zohdi added Mr. L'Heureux and Mr. Sioras reviewed the traffic study. There is a copy in the Planning Board file; there was nothing he could see that created a problem. The road was two lanes wide. Island Pond will have four lanes at the intersection which improves the existing condition. He feels they did all that was required of them and understands Mr. L'Heureux's concern with regard to the 6% slope on the shoulder of the driveway. Route 28 runs at a 7% slope; he can't make that any different than it is. They are doing the best they can to make it work and satisfy the NH DOT and for the Alteration of Terrain permit.

Mr. Gendron stated the DOT permit is very large and there will be a dedicated turn lane into the site off Island Pond and off Route 28. They are also adding controls to the intersection and new mast arms. It was noted Steve Pernaw performed the traffic study and Fuss and O'Neill created the intersection improvement plan.

Mr. L'Heureux recognized what the applicant is trying to do and they had to address a lot of plan comments. They got it as close as they could to the regulation. He just wanted the Board to know if it granted a waiver for the slope, it was not granting a waiver to allow 3.63%; it was granting a waiver to allow a lot more than that. There is a significant slope to and from the site and the applicant needed to express the hardship for them to be granted the waiver.

With regard to the traffic study, VHB did review it and provided information in an email related to the details of the analysis. In summary, VHB had concerns with the traffic report because there will be an increase in the delay at the light for a period of 10 seconds in every direction at peak with the new signals. There may be a delay for as much as 40 seconds at peak. He wants the Board to be aware of that. He is sure the applicant's engineer will agree this should be discussed. There may be ways to minimize the delay at peak. The town is not involved with that; this is an issue for NH DOT, but he wanted to make sure that was addressed; the town is not in favor of the timing as it is set. Mr. Zohdi advised he has not yet received a copy of the VHB review, but he will work with Mr. L'Heureux to resolve the minor details.

Mr. O'Connor noted VHB also discussed the driveway slopes in the review. Can Mr. L'Heureux give a scenario of what happens on that type of slope. Mr. L'Heureux said this is a tight, steep slope for a heavy flow of traffic; it will be exacerbated in the winter. It is a short distance.

When one travels a steep driveway in the winter, one knows when one hits a spot where it makes it hard to move forward. He just wants to uphold the regulations and would like to see intersection points of no more than 3% so there are no problems with sliding or difficulty in acceleration. Mr. O'Connor asked if there was enough room for cars to queue. Mr. L'Heureux said he could not answer that. This is a difficult piece of land to develop because of the steep slope on both sides, there is a change in elevation, a retaining wall and storm drainage. The applicant has tried to improve it but can't improve the fixed points. Mr. L'Heureux stated he was doing his due diligence so that the Board knows what exactly it is voting on. The centerline of the driveways are closer to 3% , but as the driveway wraps around, the slope is steeper to meet the radii coming in and out of the site.

Mr. Connors noted as one turns into the site from Island Pond, the land drops down to a flat spot. He was more concerned with the exit out onto Route 28. There will be a right turn only heading north and people will be able to turn into the site at this location coming down the hill. Is it too steep? Mr. L'Heureux said it all depends on how it wraps back into the road. Mr. Zohdi said they are doing a lot of shoulder work on Route 28, but there will not be a dedicated lane so that people can turn into the site on Route 28. Mr. Connors had a concern that people pulling out onto Route 28 may have a problem getting up to speed. Mr. Gendron explained they are widening Route 28 in that area so there will be some width to the pavement there. The exit onto Route 28 is required to make the plan viable and it would not make a difference on the site if they reduced the number of pumps from eight to six.

Mr. Connor stated he would like to see crosswalks at this intersection so that pedestrians can get to the businesses on Island Pond. There are also neighborhoods, parks and schools nearby. He also had questions about the parking waiver and why the number of parking spaces was reduced. Mr. Zohdi explained the number of spaces (29) is inclusive of the number of employees on site. There is no option that he is aware of for off site parking for the employees. His client tried to purchase more land, but was unsuccessful. His client was able to obtain a drainage easement.

Mr. McPherson stated he is a regular customer at the applicant's other facility. They did a good job there. He only comment would have been to eliminate the exit onto Route 28 but that has been addressed. This is a good project.

Mr. Chase explained the Town of Derry follows MUTCD rules so there cannot be a crosswalk that does not lead to a sidewalk. With regard to slopes, what is the slope on South Main Street as one is heading south, and then turning north onto Rockingham Road? Mr. L'Heureux said that slope is about 6-8%. Mr. Chase noted that slope is similar to what will occur at the wrap around on site. He can see pulling onto the road that has a downhill slope; it is almost impossible to meet the regulation. Short of eliminating the entrance, the applicant can't meet the slope.

Ms. Davison inquired if safety vehicles can safety access the site? Mr. Chase said this is always brought up during TRC review by the Fire and Highway Departments: they make sure the radii is met.

Mr. MacEachern noted the Board saw these plans a few months ago. There has been cooperation between the applicant and the town. NH DOT has approved the driveways on the roads under their jurisdiction. His concern is the Route 28 issue. He does not believe there will be a large queue as people turn right out of the site onto Island Pond Road. He is more worried about people traveling north on Route 28. There is a need to look at the light cycles. The state has signed off on the road and light improvements. This is will be a good development and a good investment made in the town. He can see the cooperation between all parties.

Mr. Connors asked if there has been any thought with the future development of the old Grandview Flea Market to see site if there was an opportunity to open the back of this site up and create an access there. Multi use development at 2 Island Pond Road would affect traffic as well.

Beverly Donovan, Economic Development Director for the Town of Derry, stated it has been a little while since she has had a discussion with the owner of the 2 Island Pond Road. She is aware he is looking forward to doing something the lot and has two other access points onto Route 28. She is sure there will be cooperation between all parties going forward.

Mr. Chase said he echoed the comments made by Mr. L'Heureux and Mr. MacEachern. During the school year, there is a large queue on Rockingham Road when the busses are heading north to the two schools. Any delay in that section of intersection will be detrimental to the traffic flow. He urged the applicant to cooperate on the timing of the lights.

Mr. Sioras commented when other lights have been added to intersections in town, there is always a period of adjustment. The timing of the lights will be tweaked to make it work.

Motion by Connors, seconded by Chirichiello to grant a waiver from LDCR Section 170-64 (3) which requires a minimum of 1/3 of the net buildable area to be greenspace. The waiver would allow the applicant to fall short of this requirement by 662 square feet. The Board finds after review of the waiver request that strict conformity to the regulations would pose an unnecessary hardship to the applicant and that the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-63.B to allow 29 parking spaces where the regulation requires a total of 37 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 the waiver will properly carry out the spirit and intent of the regulations.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-63.B.4 to not include an employee of the highest shift in the parking calculations. The Board finds after review of the waiver request that strict conformity to the regulations would pose an unnecessary hardship to the applicant and that the waiver would not be contrary to the spirit and intent of the regulations.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed.

Motion by Connors, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-26.16.b.1 to allow a slope of 3.63% toward the edge of Island Pond Road and a slope of 3.53% toward the edge of South Main Street/Route 28 By Pass where the regulation requires a maximum slope of 3%. 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 the waiver will properly carry out the spirit and intent of the regulations.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed. Chase stated he understands and supports Mr. L'Heureux's evaluation of the situation but understands the hardship of the existing roadway; this is the only way to meet it with the increase in slope. Grabowski agreed there was a hardship.

Motion by Connors, seconded by Bartkiewicz to approve pursuant to RSA 676:4,I, Completed Application, with the following conditions: subject to owner's signature; subject to compliance with VHB's review, to include re-evaluation of the signalized intersection per the memo provided with the VHB review; subject to onsite 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; note approved waivers on the plan; 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.); full submission of engineered plans for the underground concrete storage tank; that the above conditions are all 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.

Chase, Grabowski, Chirichiello, Davison, Connors, McPherson, Bartkiewicz, Levin and O'Connor voted yes and the motion passed.

First Public Hearing - To AMEND Article IV, Districts, Section 165-29, Enumeration of Districts, to add Number 24, West Running Brook District; and Article V, Zoning Map and District Boundaries, to AMEND Section 165-30, Zoning Map, to add the West Running Brook District, and to AMEND Article VI, District Provisions to add a new Section 165-32.4, West Running Brook District.

Mr. Sioras identified the parcels to be moved into the proposed new West Running Brook District. Currently, those lots are zoned General Commercial IV. The changes are initiated by the Economic Development team. Mrs. Donovan and Mrs. Robidoux both worked very hard on the proposal. Mixed use was added to compliment the retail and office uses. Staff looked at the uniqueness of the area. It is believed this proposal retains the character. The vacant land varies in size up to 40 acres. The intent is to have mixed use developments. Mrs. Donovan has spoken with developers and property owners. Residential use is only allowed as a mixed use and it cannot be single family residential. The affected property owners were notified of the public hearing.

Mrs. Donovan stated she was tasked to look at the different commercial areas being used and what the development pattern are, have been, and are likely to be, and what the town is looking for with regard to revenue generation. She looked along Route 28 and noticed not much has changed in the last decade. There are car dealerships, and block and metal frame buildings, which don't drive a lot of revenue. She looked at the opportunities available in the district which includes two schools, the multifamily at the Fairways, a playground, conservation land, and a trail system that surrounds and leads to the Robert Frost Farm. She looked at the area as a whole and it made sense to create a district with a village feel. There are amenities available and it will be a safe area for residents and children in the area. She feels as projects come in, it may slow the traffic down and bring some nice development to town.

Mr. O'Connor confirmed with Mr. Sioras that if any changes were made to the document this evening, there would be an additional public hearing; this also needs to be reviewed by Town Council.

Mr. O'Connor read a letter sent by Suzanne Howe of 115 Rockingham Road, a copy of which has been provided for the file. Ms. Howe and her family have lived at this address for over twenty years. In summary, her letter outlined issues they have had with commercial neighbors including noise, blight, removal of vegetative buffers, and unsightly vehicles. With regard to the zoning change, she felt it would be beneficial to have green space maintained and to encourage businesses that do not negatively impact the community. She felt it was appropriate to recognize and protect the history of the area. New business will reduce the tax burden and she felt the creation of the West Running Brook District would do that and respect the current residents. She felt the businesses and housing developments allowed in the new district were reasonable and desirable abutters to the current residents. She strongly supported the creation of this district and thought it will beautify an historic section of Derry.

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

Ken Lamport, 12 Winter Hill Road, was concerned with property value, safety and security. He understands the Board wants to bring business to town; it has failed to do that for decades, which has affected the tax rate. His concern is multifamily units. If the Board approves this change, can someone build condos and apartments? Mr. Chase said only in conjunction with mixed use. Mr. Connors added it can't just be an apartment and the Board has control over what goes onto the lot. Mr. Chase further clarified the Board is able to make sure the uses are proportional. Mr. Chirichiello said the lots are small so there won't be large scale multifamily. Mr. Lamport stated he heard there was a 55+ being proposed for this area. Mr. Chirichiello said he is not aware. Mr. Lamport said he is concerned about the safety. He also had questions about the lack of sidewalks; why can't the developers pay for the sidewalks? Who pays for the infrastructure, such as the intersection improvements. The Board advised the developer pays for that.

Mr. O'Connor noted that page 2 is missing from the copies of the proposed district. The missing page has been provided to the Board and is also available for the public.

Mr. Chirichiello advised one of the goals of the town is to increase property value in that area of town. The town spent over three million dollars to add water down Route 28 and they would like to see the area develop in a tasteful manner. The intent is to not have large scale development.

Mr. Connors stated the Board has been working on this proposal for quite a while and there has been a lot of discussion on the text. He feels what has been crafted is the best case scenario. Currently, the area is zoned General Commercial IV and this has been crafted to bring in the right development that respects the neighborhood. Hopefully, this will result in tasteful, mixed use development. He lives in the neighborhood of these changes and feels this is the best that they will get.

Jim Smith, 129 Rockingham Road, owns Seacoast Sport Cycle. They have been in business in Derry for over fifteen years, formerly at 208 Rockingham Road. They have expanded and done very well. They are the 5th largest Ducati dealer in the nation and the largest European motorcycle dealership in the country. They purchased their property because there was room to expand. He is concerned because this change would make his business a non-permitted use. Although they would be grandfathered, he would not be able to expand. They would like to construct a large storage building (larger than 5,000 square feet) and expand on the internal retail space. The business currently employs 15-20 employees. If they are unable to expand they would have to move and that would not be a good idea for them. They are not the same as a car lot; they do a lot of high end apparel sales and do not park motorcycles outside. This change would severely impact their ability to expand and grow. Their business falls under the definition of automotive sales. Mr. Sioras noted they have a retail component as well and that portion of the business would be allowed to expand. Mr. Smith advised if they wanted to add the storage, that would not be allowed under the new zoning. Mr. Sioras suggested adding in a provision to

the zone that allows the natural expansion of pre-existing, non-conforming use. This would allow a business like Mr. Smith's to expand and grow on the lot without a variance. The language is currently found in the General Commercial II zone [See Section 165-32.1.A.2]. Mr. Chirichiello noted the town appreciates the business and would not want to see them leave.

Dave McLaughlin, Warner Hill Road, had comments pertaining to the conservation land in the area which is a valuable town asset, as is the Robert Frost Farm. There is an existing trail network that allows people to walk between the Robert Frost Farm and Broadview Farm on Young Road. It is unusual that there is commercial land available adjacent to conservation land. This proposal will abut that large area of green space and what is done in this area could affect that jewel. The people who own that land make it valuable by keeping it green.

Tracey Zysk, 5 Silver Street, understood the model for the zoning but could not envision the full picture with small areas adding condominiums or apartments. If Bedard Ave at the junkyard (109 Rockingham) becomes a retail coffee shop and they added condos or an apartment, how many units would be projected? Mrs. Donovan stated in the whole district, staff looked at the parcels. The parcels are vastly different. The language was written so that each property could be looked at based on its own merits. The spirit is that the frontage would be the most valuable so there would be retail, or restaurants. Projects may or may not add a housing element; there might be an office use. The lots will not be all residential. Ms. Zysk said she had a hard time trying to vision what this would look like. She lives in a neighborhood. How can the Board approve language that has no number attached to it? What are the impacts of this change to the schools or services? Mrs. Donovan advised they are anticipating market rate housing. In that scenario, it has been proven that type of development does not add a lot of students to the schools. Enrollment is down and any additional students will not have a high impact. Ms. Zysk felt eventually, housing costs will drop and the type of renter the Board is trying to attract may change. Mrs. Donovan explained the intent is to attract companies to the region and there is a noted lack of housing for mid 20 year old professionals or for people who are trying to downsize. Nurses working at Parkland need housing. They would like to create instances where people can walk; housing is not the focus. The focus is retail, office, restaurants and adding value to the residents in the area. The town has no say in whether housing should or should not be owner occupied. Ms. Zysk feared with development, this area could become a cut through. Have any studies been done on that? Mrs. Donovan said this is only a zoning change. Until a developer comes forward with a project, traffic pattern studies would be premature. She does not feel any changes to the parcel at 109 Rockingham Road will overwhelm the neighborhood.

Mr. Chirichiello advised the Planning Board has a say in the uses and can request the traffic information. Mrs. Zysk did not feel the Board could stop what a developer wanted to build if it was an allowed use. Mrs. Donovan said each use determines the amount of parking and this is specific. Each development is required to provide open space and walkability. There will not be an office or manufacturing building constructed on spec. Most of the property owners are cognizant of the history of the area and are working to maintain that beauty and connectivity. Ms. Zysk also wanted to know if the proximity of South Range School to this district was being considered; there may be some uses that should not be located near a school. Mrs. Donovan explained any proposed use has to be within the list of permitted uses and Sexually Oriented

Businesses are not permitted. Mr. Sioras stated each plan has to meet the site plan requirements. The Planning Board can be very specific when it comes to things like lighting, signage, landscaping, buffer zones and architectural design. Each development will be reviewed on a case by case and hours of operation will also be discussed. Notice of any public hearing for a development would be sent to the abutters.

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 discussion returned to the Board.

Mr. Connors had comments with regard to the benefit to keeping Seacoast Cycle in the area, density, and the control the Planning Board has over phasing of any project in the zone.

Mr. O'Connor did not feel this ordinance had enough 'teeth'; specifically Item 19 under Permitted Uses. The ZBA can override the Planning Board with regard to uses. Under this wording, the ZBA has to seek advice and comment from the Planning Board if it receives an application for a variance. Planning Board advice is non-binding and informational only. He would like the Planning Board to have more authority over those decisions. Mr. Sioras advised staff did look at that very issue. That particular section of the ordinance was written by the town's attorney. The ZBA is a very different board; legally it cannot be bound by Planning Board comments. Staff wanted the Planning Board to have as much input as possible for the ZBA deliberations and this was the best that could be done legally. Mr. Connors thought this wording forced the ZBA to have the Planning Board comments on record for any ZBA decision. He felt the Board should be following the advice of counsel and hoped the Board could vote on this amendment this evening.

Mr. Sioras explained if the Board will be adding the language with regard to pre existing uses, the public hearing will need to be continued. That is a substantive change. It could be placed on the next available agenda.

Ms. Davison stated Mr. O'Connor has also stated to the public there would be another public hearing and that statement should be honored.

Mr. O'Connor had another suggested change. Under Subsection K, there is wording that currently states "or"; that should be changed to "and" in the last sentence.

There was some back and forth discussion between Board members with regard to process, and Mr. McPherson provided the point of order that the Board operates under Roberts Rules and the Chairman is in charge of the meeting.

Mr. Sioras advised the second public hearing could be held on July 24th as the Board is meeting on that date.

Board members agreed the language should be added with regard to expansion of pre-existing uses to protect the existing businesses. A poll was conducted to see if all members of the Board were in favor of adding that language. All members voted in favor and those changes will be incorporated for the next hearing.

Motion by Chirichiello to continue the public hearing to July 24, 2019, seconded by Grabowski. Discussion followed.

Mr. Connors pointed out a previously agreed upon change is missing from the document. Under “streetscape” the word “industrial” should be removed from item ‘b’. The Board agreed on the friendly amendment. That change will be incorporated, as well as exchanging “or” for “and” as suggested by Mr. O’Connor.

The motion passed with all in favor.

There was no further business before the Board.

Motion by Davison, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:56 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____