

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 24, 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); Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz (Secretary Pro-Temp), Mark Connors; Members; Jim MacEachern, David Granese, Alternates

Absent: Lori Davison, Maya Levin, Mark Grabowski, David McPherson

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

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

Mr. Granese was seated for Ms. Davison; Mr. MacEachern was seated for Ms. Levin. Mr. Bartkiewicz was appointed Secretary Pro-Temp.

Escrow

None

Minutes

The minutes of the July 17, 2019, meeting were not available for review.

Correspondence

Mr. Bartkiewicz advised the Board has been provided with a Save the Date notice for the Fall 2019 Land Use Law Conference which will be held on October 5 in Concord.

Other Business

PRV Site Plan – Informational Discussion

Tom Carrier, Deputy Director of Public Works, presented. He believed the Board members were aware of the State of New Hampshire's project to extend municipal water to communities experiencing a shortage in water or water supply contamination issues. The project plans to provide 1 million gallons from Manchester Water Works down Route 28 in Derry to service the Towns of Windham, Salem, Hampstead, and eventually Plaistow. In Derry, there will 7600 feet

of 6" water line running from Ryan's Hill to the Windham town line. There is a second phase of the project which consists of constructing a booster pumping station, but that will come before the Board at a later date. The purpose of the discussion this evening is to provide information to the Board with regard to the pressure reducing valve (PRV) station on Route 28. The wood structure will be 14' x 18' in size and will be located via an easement at 205 Rockingham Road which is a 46 acre parcel owned by Harland Brown. The lot is located in the General Commercial IV district. Mr. Brown is granting the Town a 53' x 85' easement. The Town will construct in the easement and install associated landscaping. The structure will be much smaller than that located at 120 Rockingham Road. The purpose of the building is to reduce pressure. There will not be a generator or pump station associated with this project. There will be lighting and a security gate. The other part of the easement also exists at 203 Rockingham Road. The town will utilize a curb cut and existing driveway at 203 Rockingham Road which is a three acre parcel to gain access to the PRV station. This alleviates the town constructing another driveway to access the PRV station. There will be minimal drainage work associated with the project where the parking area meets the existing driveway.

Mr. Connors asked if there was a difference between this structure and the structure on Bedard. Mr. Carrier explained there is a Booster Pump Station on Bedard Avenue; a similar structure would be constructed during Phase II of the water project, but that would be near the Derry/Londonderry town line; that would be a 30' x 50' building. The town is still working on the details. The PRV building will be on Route 28, close to Birch Wood Vineyards. They will use the existing driveway at 203 Rockingham to access the building which will be constructed on 205 Rockingham Road.

Economic Development Advisory Committee

Mr. Sioras advised he has been in contact with the Chairman of the Economic Development Advisory Committee, Christina Gossel. There has been some discussion at the EDAC level about having a representative of the EDAC attend Planning Board meetings to provide input on EDAC's position on various zoning amendments. Mr. O'Connor stated EDAC representatives are welcome to attend the Planning Board meetings and present items to the Board via email, letters, or attendance at the Board's meetings. They are welcome to provide input during public hearings.

Other Business

Proposed changes to the Land Development Control Regulations – Architectural Design

Mr. Sioras noted the Board members were in receipt of proposed changes to the Architectural Design Regulations. Mr. O'Connor stated he will address that document later this evening.

Summer Schedule

Mr. Sioras advised there is a public hearing scheduled for August 07, but believed there would not be any plan submissions for August 21st. The Board will not meet on that evening and will reconvene on September 04.

Public Hearing

MPV Development, LLC
PID 29149, 18 Maple Street
Acceptance/Review
Site Plan, 6 unit multifamily building

Mr. Sioras provided the following staff report. This lot has a long history. In 2005, the Board approved a 9 unit multifamily development. The applicant did not complete the conditions of approval after being granted two extensions and the approval lapsed. The purpose of this plan is for a 6 unit townhouse development located in the Medium High Density Residential District. The parcel is currently vacant and serviced by town water and sewer. This applicant is being submitted under the revised MHDR requirements, which is why the density has decreased. All town departments have reviewed and signed the plan. There are several waiver requests. Staff supports the project which will assist in revitalizing this area of Maple Street.

Matt Routhier of Bedford Design presented for the applicant. The vacant parcel is 0.73 acres in size. There is a multifamily building to the east and a two family dwelling to the west. The intent is to construct six, two bedroom units with three parking spaces for each unit. One space will be provided in the garage and there will be two visitor spaces for each. The total number of parking spaces for the project is twenty. The existing curb cut to the property will be moved 130 feet to the west to avoid the intersection. The site run off will go to an underground detention infiltration system. From the back, the structure will be three stories, but from the street it will appear to be two stories facing Maple Street. Municipal water and sewer and natural gas are available on the lot; all utilities will be underground. They are requesting a few waivers.

The first waiver is from the street tree strip requirement. They are providing the appropriate number of trees, but they will not be in the strip because of the sight distance. They are asking for a waiver from the HISS map requirement as the project is on municipal water and sewer. They are requesting a waiver from the 30 foot residential buffer requirement to the west adjacent to the two family building. This area is adjacent to the sewer easement and entrance to the site.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the multifamily site plan application before the Board for MPV Development, PID 29149, 18 Maple Street.

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

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

Rebecca Packard, 14 Maple Street, lives in an abutting single family home. The existing multifamily is using a large portion of 18 Maple Street as a parking area. There is a double driveway for the multifamily next to her lot. The person who owns the multifamily at 16 Maple does not appear to care what the tenants do. This project will drastically add traffic in a bad area. Are there plans for lights and what will be done to make this area safer for people going in and out of their property? How will the fire apparatus or emergency personnel access the new lot? It appears that 16 Maple Street will not have access to the rear of their property once the stockade fence is installed. There are over 8 people living to the rear of that building. There are over 15 cars parked next door now. This project will add 20 cars and will double the traffic. What does this project do to the brook? When 16 Maple plows snow, it is plowed into the brook and they put trash in the brook as well.

Mr. O'Connor said if someone is putting something into the brook, Code Enforcement should be notified. Ms. Packard stated she has left voicemails, but nothing has changed. She would like to see a higher quality development than what is there now.

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 returned to the Board.

Mr. O'Connor asked Mr. Routhier to address the abutter's comments. Mr. Routhier believed the people living at 16 Maple are tenants. The project at 18 Maple Street will be condominiums which typically have residents with a pride of ownership. The parking spaces adjacent to the brook will have a guardrail which should prevent snow from falling into the brook. There is also a snow storage area near the building called out on the plan. All stormwater drainage will go to underground storage with infiltration, so he does not anticipate any increase in runoff. The stormwater will discharge to the brook in an overflow situation. The driveway location provides the most sight distance. He believes traffic moves fairly quickly through this area and it is difficult to get out of the existing driveways. There is not a large increase in traffic for this project, so they don't see it as a concern.

Mr. O'Connor noted the Board did receive a traffic study related to the project. He drove by the area today and also noted the residents at 16 Maple park at 18 Maple Street. The proposed plan shows a stockade fence that will be installed between the properties. Mr. Routhier

acknowledged the fence is proposed along the property line and believes that will eliminate the cross movement between the two parcels.

Mr. Chirichiello noted the plan shows townhouse style condominiums. Will there be condominium documents with rules and regulations? Mr. Routhier replied in the affirmative, adding the units will be for sale, not rent.

Mr. Connors indicated the same person owns 16 and 18 Maple Street. He looked at the site and had the same questions with regard to the parking. He questioned the legality of the number of units in 16 Maple Street. How will the existing vehicles at 16 Maple fit on that lot, once 18 Maple Street is constructed? There should not be flow between the lots with the installation of the fence and landscaping. This should alleviate some of the issues raised by Ms. Packard.

Mr. Granese asked if Mr. Routhier could expound more on the waiver request with regard to the 30 foot residential buffer. Mr. Routhier explained the property to the west is a two family. The residential buffer comes into effect because it is not multifamily. They are not required to install a buffer to the east as the building there is multifamily. They will add a short fence and landscaping, but because of the easement, they are limited in what they can do.

Mr. Chirichiello inquired if there will be any improvements to the sidewalk along the frontage of the lot. Mr. Routhier said they will work on the section where the curb cut is planned and where they are making utility cuts. There is no plan to replace/reconstruct the sidewalk along the front of the lot.

Mr. L'Heureux advised that overall, the applicant addressed the TRC notes and comments. The plan meets the regulations. He also had a concern with regard to the condition of the existing lot and the abutting property. But this plan will establish a clear boundary and that should alleviate those issues.

Mr. Sioras said the concerns with regard to 16 Maple Street will be forwarded to Code Enforcement. This is a standalone project and the property next door is a legal, pre-existing, non-conforming use. Maple Street predates any zoning requirements. The site issues will be cleaned up with the project. The density requirements have gotten much more stringent. 16 Maple Street would not be able have the amount of density it currently has if it was proposed today. The other issues are more related to Code Enforcement.

Mr. O'Connor noted the Board does not have purview over the parking situation at 16 Maple Street. Mr. Sioras added the Fire and Police Departments are aware of the existing condition and both departments signed off on this plan. Mr. Chirichiello agreed this development will do much to improve the area.

Mr. MacEachern asked if the density requirements allowed for 6 units. Mr. Sioras explained under the former density calculations, the applicant would have been allowed more units. Under the current regulations, they are allowed 5,000 square feet per dwelling unit.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-64.B.1 to not install the 15 foot street tree strip along the frontage of the property. After review of the waiver request, the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

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

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-61.A.12, HISS Mapping. The Board finds after review of the waiver request that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-64.C.ii for the Residential Buffer along the property line with Parcel 29150. After review of the waiver request, the Board finds that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Motion by MacEachern, seconded by Bartkiewicz, to approve, pursuant to RSA 676:4,I, Completed Application, subject to the following conditions: Comply with the Vanasse Hangen Brustlin report, subject to owner's signature, subject to onsite inspection by the Town's Engineer, establish appropriate escrow as required to complete the project; ensure the sight distance also meets AASHTO requirements and that those are so noted on the plan, obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-61.C; note approved waivers on the plan; subject to receipt of state or local permits relating to the project (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.); submission of the Condominium Documents, to be reviewed by the town's legal counsel, cost of that review to be borne by the applicant; that the above conditions are 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.

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

**Nikko Land Development, LLC
PID 06040-001, 45 Mill Road
Acceptance/Review
Six Lot Subdivision**

Mr. Sioras provided the following staff report. This is a unique parcel of land. The purpose of the plan is for a six lot subdivision located in the Low Density Residential zoning district which has a three acre minimum. Four lots will have frontage on Mill Road and two lots will have frontage on Alyssa Drive. All town departments have reviewed and signed the plan, including the Conservation Commission. Staff would recommend approval of the first waiver, but some discussion should take place with regard to the request to not provide high intensity soil (HISS) mapping for the septic location and wetlands on these lots. State permits are pending. Staff would recommend approval of the subdivision plan.

Mr. O'Connor asked Mr. Peloquin to elaborate on the waiver from the HISS mapping requirement so that the Board can understand the reasoning for the request.

Motion by Granese, seconded by MacEachern to accept jurisdiction of the six lot subdivision before the Board for Nikko Land Development, LLC, PID 06040-001, 45 Mill Road.

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

Tim Peloquin, Promised Land Survey, presented for the applicants who were present in the audience. The intent is to construct a six lot subdivision. The four lots on Mill Road meet the three acre zoning requirement and 200 feet for frontage. The two lots at the end of Alyssa were granted a variance to allow less than the required frontage. The applicant opted to construct two driveways rather than creating a road and adding more lots from Alyssa, back to Mill Road. The subdivision is being created from a 32 acre parcel that was land left over from a previous subdivision. One of the lots will be 5.5 acres; the second will be 12.5 acres. The larger lot incorporates the site of a former sawmill and has a large meadow. The landowner intends to conserve and preserve the land on his residential lot. The bounds of the parent parcel have been surveyed, a topographical survey was performed, wetlands were delineated and located; test pits and perc tests were also performed. Sight distance has been proven for all of the driveways.

Normally, for lots of over three acres, Mr. Peloquin admitted he would ask for waiver from the HISS map requirement. In his experience, lots of that size will always be able to support a septic system. Lot sizing should be done for lots of around one to one and a half acres to make sure they can meet the requirements. He would like to limit the costs for his client. The 4000 square foot receiving area is typical and they will meet all of the DES requirements. 4000 square feet is ten times the actual size required for a 4-5 bedroom home. Even with the wetlands, he is confident he will meet the requirement.

Mr. Peloquin stated the other waiver is to allow an irregular lot line. He referred the Board to sheet 3. On the east side of 49 Mill Road, the lot line is irregular to the rear. They wanted to maintain the three acre lot size and protect the historic mill site on 25 Alyssa Drive, as well as the existing pathways on that lot. Mr. Peloquin felt he should mention there are two small wetland crossings for two of the driveways: one on parcel the 12 acre lot (25 Alyssa) and one on 39 Mill Road. That lot (#39 Mill Road) will have a long driveway, but the crossing is considered 'minimum' by NH DES. The Conservation Commission walked the property and agrees the crossings are minimal and the driveways are in the best possible locations. The Commission seemed in favor of creating the larger lot to preserve the natural features and historic site.

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

James Christoffels, 42 Mill Road, felt this development will raise the value of the homes in the area, thus increasing the amount of taxes that will be due for his property. Can that be avoided? Mr. O'Connor stated the applicant owns the property. If they meet all of the criteria of the regulations, the Board has to look at the application in a positive manner. Mr. Christoffels asked if there is anyway the neighbors could band together and stop the development. Mr. O'Connor explained the Board does not know what size homes the owner plans to build on the lots. If the plan is approved, the Board can ask for a timeline as to when construction might start but, the Board needs to first approve the subdivision. The plan needs to meet certain criteria. Mr. Christoffels said this is a lot for the neighborhood. He has lived there for 30 years. 90% of the neighbors do not want this plan approved. There will be a 12 acre lot in the backyard of the residents on Alyssa. Mr. O'Connor advised the Board will take the abutter comments into consideration and perhaps make adjustments.

Carlton and Rhonda Lane, 24 Alyssa Drive, own the last home on the left side of the cul de sac. They will abut the new lot. They have several concerns. Mr. Lane said this is a wet area and they have to deal with the water in their yard each spring. (He indicated the areas on sheet 5 of the plan.) The water runs across the property to the rear of their home, near the location of the proposed new driveway, which is parallel to their home. They are concerned the water will flow to their driveway and back up. Mr. Peloquin has suggested adding a culvert to alleviate this. A house to the rear of their lot will cause water to come down the hill and normally, it would flow by the area proposed for the leach field for the new home. The water will now go into their backyard. It is very wet to the point where the land finally dries out at the end of June enough that they can mow. They are very concerned about the water and that it may flow into their yard. Mrs. Lane recalled during discussions at the ZBA hearing, a 50 foot buffer would be placed along their property line. They were also told the 12 acre lot could not be subdivided at the ZBA hearing, but that seems to have been lost along the way. The applicant was allotted a variance to allow 22.9 feet of frontage each for the two lots on Alyssa, rather than the required 200 feet. She does not want to have to revisit this again if a road is constructed off the end of Alyssa and the land further subdivided. Mr. Lane spoke with regard to the proposed buffer. The plan says "proposed". Mr. Peloquin has told them that wording will be amended upon the approval of the Board. He would prefer to have a firm commitment. Mrs. Lane reiterated water is a very big issue in their front yard near the two new proposed driveways off Alyssa Drive. They have been

told a blocked catch basin may be part of the problem. Mr. Lane stated the driveway on the left side is a concern as it might block the water flowing to the catch basins. Mrs. Lane summarized by stating their main concerns are the water, the 50 foot setback, and that the 12 acre lot is not subdivided.

Dennis Wiley, 122 Island Pond Road, stated he likes the plan because there are a minimum number of homes on the property. This plan allows the wildlife to co-exist.

Mike Walters, 22 Alyssa Drive, understands the issues with regard to the water; this is a wet area. The ZBA did discuss prohibiting subdivision of the 12 acre lot, which was a major factor in the neighbors agreeing with the variance. He is also concerned the land could get further subdivided in the future. That restriction has not been noted anywhere.

Mr. Umlah of 46 Mill Road had questions with regard to the easement for the lot across the street from his home. Water runs through that area. How can anything be built there? Will the water back up?

There were no further public comments.

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

Mr. Peloquin advised property taxes are not something that are under the applicant's control. There is a watershed in the backyard of the existing neighbors. He referred the Board to sheet 2. Water is a preexisting condition in the backyards of the homes on the west side of Alyssa that will not increase because of this development. On Sheet 5, the Board can see that when the homes are constructed to the rear of 26 Alyssa Drive, it is possible the driveway will dam up the area. He is suggesting adding a culvert so that the water does not pond. He will work with DPW on this. There are catch basins at the end of Alyssa. He explained the drainage system. The catch basin at the end of Alyssa is under one to two feet of debris, so the water backed up and is affecting the abutter. The new driveways will make improvements to the Lane's lot, and he can improve the drainage in this area. There is a pipe in the woods that has an easement associated with it. With regard to future subdivision of the 12 acre lot, he does recall some discussion at the ZBA level, but it was not made a condition of approval. He recalls mention that with the creation of six lots, it was likely there would not be further subdivision. The current owner of the property is reluctant to have that condition imposed on the plan, but he has no intent to further subdivide the lot. With only 22 feet of frontage, he can't subdivide. There is a large wetland to the east of the 12.5 acre lot, and this watershed feeds Ballard Pond. As it exists, Alyssa Drive is 2000 feet long. The regulation does not allow a cul de sac to be longer than 2000 feet, so the road cannot be extended without a variance or coming back to the Board. There would be many hurdles to further subdividing this lot.

Mr. O'Connor asked who would be responsible for the old dam noted on the plan. Mr. Peloquin noted the dam is in ruins and would likely be addressed with a wetland permit if they altered it.

Mr. Sioras advised the landowner would be responsible for the dam. There was a similar situation on Adams Pond.

Mr. Connors asked if the Conservation Commission reviewed the plan. Mr. Peloquin explained the Commission walked the land. The dam is in ruins. There are good trails through the woods. The Conservation Commission asked that the washing machine be removed from the brook. ATVs are utilizing this area; this development will help alleviate some of the dumping on the property and the aggressive use of the land. For the 50 foot buffer, once the plan is approved, he will change the wording to “new” and the metes and bounds will be associated with it. The buffer was offered at the ZBA meeting by the applicant.

There is a large brook across from 46 Mill Road. There will be two, 46” culverts installed as the brook runs through that area. There is an easement shown for this area. An easement is a right for others to use the land for a particular purpose. DPW requested a small, 25’ x 50’ easement to allow the town to maintain the drainage pipes if required. The flow will not be blocked downstream.

Mr. Connors asked about the driveways at the end of Alyssa. Mr. Peloquin advised the driveways are separated by a small strip of land and are not conjoined, other than right at the very end of the cul de sac. They will be paved for a very small section (about 12-13 feet) at the edge of the right of way; the applicant may or may not pave the driveways.

Mr. Connors asked if there would be enough sheet flow to cause back up along the driveway. Mr. Peloquin said that can be worked out with the engineer to figure out a way to turn the water away; it is not a continuous flow – he believes it is more emergency overflow. For the odd shaped lot lines; that was done strategically by the owner; it follows the wetland line.

Mr. Connors noted there are several large lots that abut this development and Island Pond Road. It does not look as if Alyssa Drive can be extended but what prevents someone from subdividing the lots off Island Pond and putting in lots that would abut to the rear of these lots and the lots existing on Alyssa? Mr. Peloquin stated the land is owned by the Wiley family and by the Kneeland family. It is possible those lots could be subdivided but it would be a very long road to get lots to abut the homes on Alyssa. He reconfirmed the location of the wetland crossings.

Mr. Chirichiello asked for more information about the green space buffer. Mr. Peloquin explained this is not a ‘no tree cut buffer’. In the event hazards occurred, the landowner should have the ability to manage the trees in the buffer. The buffer is to ensure there is no building activity there such as a shed, driveway, etc. The green space will be left, but it can be maintained.

Mr. Chase had questions with regard to the requested HISS map waiver. For 49 Mill Road, the structures are being placed on a small wedge of land. There is open water behind that upland. He is hesitant to grant a waiver for HISS mapping on that lot; he is not sure it appropriate. He also pointed out a typo in the word “angles” on sheet 2. Mr. Peloquin said he believed there was

plenty of land to the rear of that particular lot of about 1 ½ acres; there is a ¾ of an acre area to the front of the lot. Based on his experience, the land will still qualify for a septic system.

Mr. L'Heureux stated most of the comments from DPW have been addressed. He looked at the catch basin detail and notes there is no detail B in the plan set, although one is referenced. Those details need to be added to the plan. He would also like to see more spot elevations for the driveways; with regard to the culverts, they will need to ensure that what they want to do can be done with the existing infrastructure. It was confirmed the new homes will utilize residential sprinkler systems.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-25.A.2 to allow the property line to be located at various angles rather than substantially at right angles to the street, 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.

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

Motion by MacEachern, seconded by Bartkiewicz, to grant a waiver from LDCR Section 170-26.B, HISS mapping, as after review of the waiver request, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Connors, MacEachern, Bartkiewicz, Chirichiello, and O'Connor voted in favor. Chase voted no, stating he felt the one lot needed HISS mapping; Granese voted no as he also believed HISS mapping should be required for the one lot. The motion passed in the affirmative.

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: subject to owner's signature; subject to 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; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24.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, Driveway etc.); add a note to the plan indicating the Alyssa Drive cul de sac will remain in place as it exists for this new subdivision; a Drainage Easement shall be prepared by the applicant and reviewed by the Town of Derry legal counsel, the cost of that review shall be borne by the applicant and the Drainage Easement shall be recorded at the Registry of Deeds and noted on the plan; the above conditions shall be met within six months; submission of appropriate recording fees, payable to Rockingham County Registry of Deeds {this includes the \$25.00 LCHIP fee, and the recording fees for the mylar and notice of decision}; add details for the culvert elevations for the new driveways on Alyssa Drive.

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

Mr. Granese noted there was no discussion on the motion, but he wants to make sure that the elevation points are provided, the driveways will not flood, and that there are no adverse effects on the abutter at 24 Alyssa. Mr. Peloquin agreed and will ensure that the Engineering Department approves the changes with regard to those items prior to any discussion.

Second Public Hearing – to AMEND Article VI, 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. O'Connor stated he wanted to bring the Board's attention a piece of this proposed amendment that appeared to have not been forwarded with the rest of the drafts. In the Architectural Design Regulations, amendments had been proposed to create a new Section 170-84.b and proposed extensive revisions to Section 170-86.1. Personally, he could not vote on this district knowing that these amendments need to be completed and that there have not been discussions on those amendments since December of 2018 when they were first brought forward.

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

There was no public comment.

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

Mr. O'Connor had comments with regard to the West Running Brook District. FEMA is in the process of updating the 100 year flood plain maps. This update may adversely affect this area. Only a portion of the census tract designated for the Opportunity Zone is in this district. Mr. Chirichiello commented some of the parcels in this new district are in the Opportunity Zone; the Opportunity Zone exists regardless of the underlying zoning on the lots.

Mr. Connors remarked on Mr. O'Connor's concerns. He reiterated the comments with regard to the Opportunity Zone. The Architectural Design details are in the Land Development Control Regulations, not the Zoning Ordinance. The Board can review those amendments and deal with them separate from the Zoning amendments. The Architectural Design regulations are not mentioned by section; the Zoning Ordinance just stated the developments need to be in accord with the LDCRs. He does not see a reason to hold up the Zoning amendment while the Board works on the LDCR.

Mr. Sioras stated the specific sections of the LDCR are not cited in the West Running Brook District. The proposed amendments to the LDCR were presented this evening to the Board as correspondence. A workshop can be scheduled for August 07; it would not take long to review the proposed amendment and the Board can move it forward to public hearing. Unlike the Zoning Ordinance, changes to the LDCR do not require Town Council approval and take effect immediately. The zoning amendment only references the Architectural Design Regulations and this can move forward with the zoning amendments.

Per discussion at the last hearing, on page 6 of the Zoning amendment, the staff has included the requested changes. This was the language with regard to preexisting, non-conforming uses. Mr. Sioras advised staff would recommend moving the new section "L" to #19 under permitted uses and then renumbering the existing #19 to #20. This makes it more clear that the preexisting non-conforming use is allowed to expand and addresses Mr. Smith's concern. This would be an editorial change, so it would not require an additional public hearing and not hold up the approval process. Additionally, a few members questioned whether prohibited uses should be listed. Staff requested an opinion from legal counsel, which has been provided to the Board. The attorney has stated it is best to not list the prohibited uses.

Mr. Sioras stated staff had received a request to clarify some of the permitted uses. "Retail Sales Establishment" does not include Sexually Oriented Businesses. Sexually Oriented Businesses are only allowed in the General Commercial zone and in a very limited area of town. Storage Warehouse Facilities are not permitted in the West Running Brook District as self-storage is now its own definition and does not fall under "warehouse". Car sales are not allowed in this district and are not considered retail sales establishments. Mr. Connor felt with the proposed changes, any existing uses were covered and would be grandfathered. Mr. Sioras confirmed and stated staff is recommending the Board move forward on the zoning amendment.

Mr. MacEachern commented a few meetings ago, there was a clause that spoke to the number of housing units that would be allowed. Mr. Sioras explained that wording was removed at the advice of counsel during the legal review. There is no minimum and the developments would be done on a case by case basis; residential must be part of mixed use. The density will vary by lot based on the topography of the lot. Mr. MacEachern felt there should be some limits; having nothing in place concerns him. It leaves the planning of the development potentially up to the ZBA which is very concerning. Mr. Sioras referred the Board to Section H.1; the Planning Board determines the number of dwelling units. It is also recommended that individual projects come to the Planning Board for a consult so that the number can be hashed out. Mr. MacEachern said in other zones, we limit lots on water and sewer to 30,000 square feet per dwelling unit. He does not want to tax the systems. Why did the Board not come up with a calculation, similar to the other districts? Other than that, the elements of the proposal are good, but there is no framework for housing density. It would be up to the sitting Board to figure out where the dwellings could go on the lot. Mr. Sioras referred to page 4, Section H, Numbers 2 and 3. This touches on the density limits; the average density shall not be lower than that found in the Low Density Residential (LDR) district. LDR has a three acre minimum per dwelling unit. When this was drafted, it was with the intent to limit this type of development. Mr. Chirichiello felt the way the document was worded, the Planning Board determines the number of units on a case by

case basis, so there is no need for an applicant to go to the ZBA to ask for more density. Mr. MacEachern stressed without a formula, he felt the wording opened the Board up to liability if it treats developers differently.

Mrs. Robidoux stated the ZBA only has a say on the permitted uses in the zone; not on the rest of the document.

Mr. O'Connor said he just heard Mr. Sioras say the density is based on the three acres, and all the lots in this zone are small.

Mr. Connors noted any housing has to be part of mixed use; it cannot be a standalone residential development. The calculation can't be done until they know what the developer wants to develop. This was discussed by the Board previously and the Board said they did not want to see 25 homes on a lot; they wanted to meet the lowest density residential so that the area can be protected.

Mr. Granese stated under Section H.1, the Board determines the number of dwelling units but felt there needed to be further clarification on #19. The way he read it, any provision in the ordinance could go the ZBA for a variance. He understands the Planning Board is required to provide input on ZBA decisions in this district, but the Planning Board can't tell the ZBA what to do. Mr. Sioras stated number 19 only refers to Permitted Uses. The paragraph was drafted by the attorney with that specific goal in mind. Mr. Granese felt that included multifamily and single family residential.

Mrs. Robidoux stated everything else in the ordinance is by Conditional Use Permit. Items such as frontage, yard depths, phasing, and design standards are under the Planning Board's purview. It cannot go to the ZBA; the only thing the ZBA has any purview over would be uses if someone chose to do that. Because of the requirement that an applicant has to come to the Planning Board for a conceptual discussion before they go to TRC, the Planning Board has the opportunity to say it is not sure about specific uses for specific reasons and can have that discussion with the applicant. This allows the Board an opportunity maybe avoid some of the uses the Board does not want to see and perhaps convince the applicant to go a different way before they get too far into engineering the plan. This gives the Board a little more control and "teeth". That was the whole purpose of making sure the ordinance was under a Conditional Use Permit. Staff wanted the entire ordinance for West Running Brook to be by Conditional Use Permit, but the attorney said legally the town could not and that is why he wrote #19. She is hearing a concern from the Board that anything in this ordinance can be appealed to the ZBA; it cannot. The Planning Board will have some say if an applicant goes to the ZBA for a use variance. Mr. O'Connor is correct, the ZBA may listen to the input or not, but the Board has that opportunity.

Mr. Connors felt there was enough control in place and the Planning Board can work with the ZBA. By requiring the Planning Board provide input to the ZBA prior to reviewing a case, it might be that the ZBA can make a better decision as it will have more information before it as it deliberates. The ZBA typically gets an application before the Planning Board sees it and

therefore may be making decisions without all the information it might need to make an informed decision that has the potential to bind other Boards.

Mr. MacEachern asked Mr. Sioras to calculate the number of dwelling units that would be allowed at 2 Island Pond or 120 Rockingham Road. Mr. Sioras said there could not be single family residential and he believed 11 units would be allowed on the 40 acres at 120 Rockingham Road. Mr. MacEachern noted that because dwelling units would need to be part of a mixed use development, there might be a small office building and no more than 12 dwelling units. Mr. Sioras said as a comparison, the Board just approved a 6 unit, 2 bedroom townhouse project on Maple Street. On 2 Island Pond, the former Grandview Flea Market lot which totals around 22 acres, it might be possible to get 6 units. This is a very unique zone.

Mr. MacEachern commented any type of development can occur; the most any development could have would be between 8-12 dwelling units. The Board cannot allow apartment buildings so it may be condominiums or townhouses. Mr. Connors noted the Board also controls the phasing of the development and can insist the commercial portion be constructed prior to residential. Mr. MacEachern noted cul de sacs are prohibited for the most part in this ordinance but two points of entry are required for each development. It is possible on some lots, there may not be able to be more than one. He believed the Fire Department liked the cul de sacs so that they can turn their trucks around. Mr. Chase stated instead of one road with a cul de sac, the Department would rather see two points of entry if the lot can allow it. In these types of layouts there are parking lot areas for the commercial and residential uses that are tied together. Having them all together allows for the egress the Fire Department desires, which is better than a cul de sac.

Mr. Connor said with the smaller lots there may be a need to combine properties; it would be important to avoid chopped up lots.

Mr. Sioras noted the Fire Department requested new driveway criteria a few years ago, so there are requirements in the LDCR. The Fire Department reviews all plans at TRC and signs off that there is proper access to the lot.

Mr. O'Connor asked with regard to the next steps. Mr. Sioras suggested moving forward on the zoning amendment this evening. In two weeks, the Board can hold a workshop on the proposed amendments to the Architectural Design Regulations. The legal questions have been answered and staff recommends this moves forward.

Mr. MacEachern asked if the Board should wait until the full members were seated. Mr. Connors did not believe so as at any given meeting, members might be absent. Mr. Sioras said the Board can move forward with the vote. The changes suggested today should be voted upon by the Board so that the record is clear. This would be moving Section 165-32.4.L to 165-32.4.B.19 and renumbering the remainder of that section.

Motion by MacEachern, seconded by Granese to move Section 165-32.4.L to 165-32.4.B.19, and to renumber the remainder of that section. The motion passed with all in favor.
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Mr. Connors confirmed if the Board voted in favor of the amendments this evening, the document would be forwarded to Town Council, and the Board will move forward on the architectural design elements. If the Board votes no on the proposal, what happens? Can it come back to the Board? Mr. MacEachern said the Board can continue to discuss it. Four of the regular members are not here this evening. The Board could delay the vote to August 07. Mr. Connors said there is no guarantee all full members would be seated at that meeting.

Motion by Connors, seconded by Chirichiello to move forward with proposed amendment to AMEND Article VI, 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 and move this forward to Town Council for its review and approval.

Connors, Bartkiewicz, Chase, Chirichiello and Granese voted in favor. O'Connor voted no, citing there are no dimensional standards, he is concerned the Board is setting legal precedence, and the Board will be continually in Court. He has attended many Law Lectures and it appears contrary to the Master Plan, the Board appears to be creating a Village District in an area that many say has a lot of small lots. MacEachern abstained as he was concerned with the comments made by O'Connor. The motion passed by a vote of 5-1-1.

Mr. Chirichiello noted Mr. O'Connor's concerns can be brought up at the Town Council public hearing on this matter.

There was no further business before the Board.

Motion by Granese, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:17 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____