

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 07, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice-Chair; David Nelson, Secretary; Brian Chirichiello, Town Council Representative; Randy Chase, Town Administrative Representative; David Granese, Andy Myers, Mark Connors, Members; Chris Feinauer, Richard Malaby, Alternates

Absent: Joseph Tremper, John Morrison

\*Denotes virtual attendance.

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

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

Mr. O'Connor took a moment to thank Mr. MacEachern for filling in for him the past few meetings, Mr. Nelson for his discussion during the workshop of the most recent legislative changes, and Mrs. Robidoux for the spreadsheet outlining those changes.

Mr. Feinauer was seated for Mr. Tremper.

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the August 17, 2022, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the August 17, 2022, meeting as written. The motion passed with all in favor.

The Board reviewed the workshop notes of August 24, 2022.

Motion by MacEachern, seconded by Nelson to approve the workshop notes of August 24, 2022, as amended. MacEachern, Feinauer, and Nelson voted in favor with Chase, Chiricheillo, Granese, Connors, Myers, and O'Connor abstained. It was noted there was not a quorum at that meeting, so the approval of the notes may not be necessary.

## Correspondence

Mr. Nelson advised the Board has an acknowledgement of receipt of a copy of the Board's Policy and Procedures to sign. That was passed among the members for any remaining signatures. The Board has also received notice of the rescheduled public information meeting with regard to Exit 4A. This will be held on September 22, 2022, at the West Running Brook Elementary School. The open house begins at 6 PM, with the informational session beginning at 7 PM.

## Other Business

### Traditional Business Overlay District, PID 29195, 32 West Broadway, Foundation Kitchen & Bar, Sign Review

Mr. Sioras advised the sign will replace the former Halligan Tavern sign. The new owner, Dan Mancini, is present if there are any questions. As the sign is in the Traditional Business Overlay District, the Board needs to review it. Staff recommends approval of the sign design.

Mr. MacEachern noted the sign replaces the previous sign that was the same color and size. The prior sign met the requirements. This is just a name change. Mr. Mancini advised the business should be open by the end of the year.

Motion by MacEachern, seconded by Granese, pursuant to the Town of Derry Zoning Ordinance, Article XII, Signs, Section 165-101.5, Traditional Business Overlay District, that the proposed sign for PID 29195, 32 West Broadway, meets the spirit and intent of the ordinance.

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

### Second Extension Request, The Grindhouse, PID 32025-003, 43.5 Crystal Avenue

Mr. Sioras explained the Board approved the site plan in October of 2021. Given the current supply chain issues and costs of material, the applicant is requesting an additional 12 months on the approval. Mr. MacEachern stated the request seems reasonable given the supply chain issues. Mr. Connors noted normally the extensions are requested for six months. Would this mean the applicant could not request another extension? Mr. Sioras said the applicant can always ask for an additional extension and it would be at the Board's discretion to approve it or not. The Board has approved a two-and-a-half-year extension before for Hannaford during the recession, so it is not unheard of.

Motion by MacEachern, seconded by Granese to grant a twelve-month extension to the approval granted on October 20, 2021, for a site plan for The Grindhouse, PID 32025-003, 43.5 Crystal Avenue. The new expiration date will be October 20, 2023.

Chase, Granese, Chirichiello, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted in favor, and the motion passed.
---

### Planning Director Updates – Chairman Updates

None.

Mr. O'Connor advised he was claiming Chair's prerogative and would take items out of order on the agenda. The conceptual discussion for Humphrey Road will take place after the public hearing.

### **Public Hearing**

**Promised Land Survey/Timothy Peloquin  
(Owner: Hyla Brook Land Holdings, LLC)  
PID 03110, 140 Rockingham Road  
Acceptance/Review, Site Plan  
12,681 square foot wedding venue**

Mr. Sioras provided the following staff report. The purpose of this site plan is for a 12,681 square foot wedding venue located in the General Commercial III district. A variance was granted unanimously by the ZBA on March 04, 2021, to allow the wedding venue and accessory uses. All town departments have reviewed and signed the plan with the exception of the Conservation Commission Chairman. There are several waiver requests outlined in the letter dated August 22, 2022, from Granite Engineering. The NH DES Alteration of Terrain and NH DOT Driveway permit are pending. Staff recommends approval of the waiver requests and the site plan application. There is a letter from abutter Hugh Lee that will be read into the record. Another abutter, Scott Davidson representing the McGrade family, also sent correspondence to the Board. The engineering team will speak to those inquiries.

Tim Peloquin, Promised Land Survey, and Brent Cole, Granite Engineering presented. Also present were Jeff Merritt of Granite Engineering, and the owner, Kim Livesey. Mr. Peloquin explained Hyla Brook is a Robert Frost poem themed wedding venue. The property was purchased two years ago by Ms. Livesey, and she is fulfilling her dream of operating a wedding venue from the property. Mr. Cole will speak to the design criteria used. They have received initial comments with regard to the AoT permit, which were fairly benign. The NH DOT comments are also easily addressed. There are some waiver requests. There are no wetland impacts as a result of this project. The building rendering is contained within the plan set so the Board members can see what the facility will look like.

Mr. Cole advised the property is located at 140 Rockingham Road. This is a 9.4 acre parcel located in the General Commercial III zone. Wetlands flank the southern side of the property as the natural grade pitches north to south. There is an existing foundation on the property near Route 28 at the location of the former home. There is also an old well and driveway. The former driveway will be removed. The well and foundation will remain. The intent is to

construct a two story, 12,681 square foot building, which will hold a maximum of 180 guests. The wedding facility is named Hyla Brook. The site is accessed from a 500-foot driveway off Rockingham Road. The entrance to the driveway will be 30 feet wide with granite curbing. There will be a monument sign, with flowers and plantings to enhance the entrance. There will be a small gravel road beside the driveway to the right for guests to access the old foundation which will be enhanced for photo opportunities. The driveway leads to the building which will have a drop off area for guests, in an area of brick pavers. The parking lot has 98 parking spaces to the north of the building. There are handicap parking spaces near the building and the dumpster is located to the east. A future phase is planned for the site. The intent would be to add cabins to the site for the bridal party and some guests. This would be a convenience for the bridal party. The future phase is not part of this application, as it is part of a ten-to-20-year plan which would require additional approval.

Mr. Cole explained there will be a sidewalk surrounding the building to be constructed of brick pavers. Halfway up the driveway is an access drive that leads to the below grade garage which will be used to store the maintenance equipment. The equipment stored in this garage will only be used for the venue and not for any off-site landscaping.

There is a robust drainage system with two surface sand filters, which are low impact design compliant. The drainage plan has gone through review at the AoT and DOT level, by the Town's Engineer, and the Town's outside review engineer. There were no hard comments to be addressed. They have measures in place to treat, mitigate, and recharge the stormwater. The site will be connected to municipal water and will have onsite septic, underground utilities, and propane.

With regard to lighting, the plan shows the driveway will be lit by dark sky compliant, downward facing, LED lighting. The lights are in place to assist during nighttime events. The parking lot is well lit, but the light does not spill to any other property with significant light. The landscape plan shows a mix of shade trees, coniferous trees, and shrubs. The intent is to supplement with perennials and the meadows to enhance the property. The open fields have been designated. Ms. Livesey's business will be based on the look of the venue, and landscaping will be maintained.

The application does proffer several waiver requests. Derry regulations require access drives to be held to roadway construction standards. They are requesting waivers from the vertical and horizontal curvature requirements and vertical granite curbing. The access drive will not see the volume or speeds found on town roads, so they designed it as a driveway. There are grade changes, and the cost is a factor. The review engineer had no exception to the waiver requests. The fourth waiver has to do with landscape islands in the parking lot area. There is a section of the parking lot in the east that does not contain landscaped islands. The regulation requires that any place there are 20 or more parking spaces, there needs to be a landscaped island. When in discussion with the Fire Department, it was noted they could not get apparatus around the parking lot if the islands were in place. They are proposing to stripe the parking lot instead and have over supplemented with plantings elsewhere. They do meet the internal greenspace requirement to make up for the lack of landscaped islands.

Mr. Cole stated he would address the letters from the abutters at the direction of the Chairman. Mr. O'Connor stated he would like the letters to be addressed after public comment has concluded. Mr. Cole added he has met with staff multiple times to discuss the project. Tonight, they are presenting the application and looking for the Board's consideration.

Kim Livesey, Hyla Brook Land Holdings, LLC, explained she designed the venue to be in keeping with the Robert Frost Farm. She lives locally in an adjacent town and fell in love with the property. She has a vision for what it can be, which would be a modern farmhouse wedding venue. The building is a white, board and batten building, with a black metal roof and black windows. Features reminiscent of Robert Frost's poems will found around the farm estate. Her vision would be that as one enters the driveway, they will travel up a tree lined driveway to the modern farmhouse exterior which will contain a beautiful interior. There will be a lot of outdoor space for the guests for ceremonies and cocktail hours. Her hope is that guests will utilize the interior. All exterior noise will be stopped at 10:00 p.m., and the facility will be fully insulated to prevent any noise from inside the facility traveling outside.

Motion by MacEachern, seconded by Chirichiello, to accept jurisdiction of the site plan before the Board for Promised Land Survey (Owner: Hyla Brook Land Holdings, LLC), PID 03110, 140 Rockingham Road.

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

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

Chase, Granese, Chirichiello, MacEachern, Connors, Feinauer, Myers, Nelson, and O'Connor voted no, stating the proposal does not meet the requirements of regional impact. The motion failed.

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.

Mr. MacEachern read the following correspondence received from abutters into the record. Copies of each correspondence has been placed in the file.

From Scott Davidson, September 06, 2022

We have reviewed the site plan and have some concerns. Please see the attached for discussion on Wednesday. 1. The septic tanks and leaching field is at the highest level of the property which puts it above the McGrade lot. If this septic system fails or is compromised in anyway there doesn't appear to be any protections to prevent the McGrade lot from being contaminated. 2. Stormwater runoff from the new parking lot also appears to be a big concern of overwhelming the existing McGrade leaching field adjacent to the property. There is no catch basin, stormwater control, or test pits on the south side of the new driveway or parking lot.

From Hugh Lee, dated September 06, 2022.

As an immediate abutter to the proposed development, and owner of Tax Map 3, Lot 110-1 (Lot 03110-001), I request that the Planning Board consider my comments as set forth below, inasmuch as I will be unable to attend the hearing on September 7<sup>th</sup>.

While I support the concept of the proposed development, it should be noted that the proposed commercial development of the Hyla Brook Wedding Venue abuts Lot 03110-001 which is zoned residential. The utility and value of Lot 03110-001 could be negatively impacted by levels of lighting, noise, and hours of operation not contemplated by the uses allowed in Zone GCIII. To address these issues, it is the prerogative of the Planning Board to impose limiting conditions on the granting of site plan approval.

As an initial matter I note that the applicant has included on multiple plans (pages 1,3,5,7,9,11,20) a designated wetland area on Lot 03110-001. I have spoken with the engineer, Jeffrey Merritt, and he indicated the designation of wetlands on Lot 03110-001 was inadvertent and not required for the Hyla Brook project. Therefore, it is requested that the area designated wetlands as shown on Lot 03110-001 be removed from all plans prior to Planning Board approval.

Additionally, I spoke with Jeffrey Merritt about the planted buffer, adjacent to Lot 03110-001, as shown on the plans (page 20) and suggested that it be composed of coniferous trees, rather than deciduous trees, to which he seemed amenable. While the proposed plans show that only a small area of the site is to be cleared to the boundary of Lot 03110-001, as sometimes occurs, additional existing vegetation may be inadvertently cleared or otherwise destroyed leaving an unbuffered zoning district boundary (see LDCR Section 170-64,C., (3)). Therefore, it is requested that the Planning Board include the following, or similar, approval condition on the plans: A planted buffer zone, at least 20 feet wide, shall be installed and maintained on Lot 03110, along the boundaries of Lot 03110-001 in all areas where the presently existing vegetation no longer exists. Said buffer zone shall be composed of at least two offset rows of coniferous trees (as specified in the planting schedule), spaced not more than 12 feet apart.

As a former member and chairman of the Planning Board I am impressed by the high quality and thoroughness exhibited by Granite Engineering in its Site Plan package. I wish the applicant the utmost success with the proposed Hyla Brook Wedding Venue project. Thank you for your kind consideration and time in this matter.

Dale Smith, Trustee, 144 Rockingham Road, advised his property is the triangle piece that juts into Featherbed Lane (Parcel 03111). He has a concern for how the wetland drainage will affect his lot. He would like the engineer to address that question. He has some wetlands on his parcel and hopes that the wetland will not be increased or affected by runoff from this project. He would not want anything to negatively affect the wetland on his property that would preclude him from developing it to its full potential at some point in the future.

Scott Davidson, 138 Rockingham Road, wished to expand on his emailed correspondence. He concurred with the statement that the plan set was well executed by the engineering team. His main concern is the drainage coming on their lot (Parcel 05090-001) would be near their existing leach field. The septic system for Hyla Brook is at the high point of the property. If the system failed or was not constructed properly, that would be a concern. The wetlands are protected but

he does not see protection from parking lot stormwater that would run toward their lot. He inquired why the plan does not appear to have any protection for their property with catch basins or other mitigation. Mr. O'Connor asked if there is any runoff onto the McGrade property now from 140 Rockingham. Mr. Davidson said there is not. However, the Hyla Brook property is currently covered with trees. There will be different conditions on the lot once the parking lot is constructed; there will not be as much vegetation or trees. The plan does show a retaining wall which will be required to build the septic up, but he is concerned. Of additional concern is the proximity of the new driveway to the old driveway. Was there any consideration to utilizing Featherbed Lane as the main entrance? He wishes the applicant the best in this venture but wants to protect 138 Rockingham Road as best they can.

Bill Smith, 161 Rockingham Road, stated he owns Rockingham Acres which is across the street from this project. This is a beautiful project, and he is excited to see it. Will there be an additional volume of water coming across Rockingham Road in the culvert that exits onto his property? The culvert pipe does run under the greenhouse and that is a concern if there is an additional volume of water.

Alan Griffin, 1 Frost Road, stated there is a passing zone on Route 28 that begins at Lawrence Road and goes by the entrance to the project. This is a double passing zone and people travel 40 MPH. He has a concern that someone using the venue might have an accident. What will be done to mitigate the traffic speeds? Has DOT been approached to perhaps eliminate the passing zone or to lower the speed in this area? This looks like a nice project, and he would like to see that people are kept safe. He does have a concern about noise created from traffic -at times it is very loud.

Mary-Reeta McGrade, 138 Rockingham Road, stated at this time, there are trees that abut the property. In the winter, the trees will lose their leaves. What will buffer her home from the lights along the new driveway? What will be done to protect their privacy?

Tom Mauzy, 146 Rockingham Road, is concerned about the noise. Weddings can be boisterous events. There also has been no mention of the use of Featherbed Lane, which impacts him the most. Will the project use that road or leave it alone? If cottages are added in the future, they would be closer to Featherbed Lane. He hopes there is no access to the property from Featherbed Lane.

There was no further public comment.

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

Mr. O'Connor said he wanted to discuss why the Conservation Commission did not sign the plan. He did watch the August 08, 2022, meeting of the Conservation Commission. The Conservation Commission has seven full time members and 4 alternates. Four people voted that evening, and it was a tie vote with regard to signing the plan. That made the motion null. Two key issues were noted during that meeting. Conservation Commission members thought a wetland could potentially be on the other side of the stone wall on private property. Two

members wanted Mr. Peloquin to map the wetland, which would have been trespassing. That would have been in violation of the law. Mr. Peloquin explained to the Commission members that he reviewed the GIS, other properties and plans, and the soils, which included soil type 140D and 446B, which are well drained soils. That means that water would not pool in the soil. Mr. Peloquin also offered a 25 foot no cut buffer along the wetland. The Conservation Commission also discussed the Bradford Pear trees proposed along the driveway, and Commission members wanted it noted the tree is an invasive species, which it is not. It is a non-native species to New Hampshire. Given his past experience as the former Chairman of the Environment and Agricultural Committee at the State House, and a Board member of the UNH Cooperative Extension, working with the Foresters for the last ten years, he is familiar with this area. The Conservation Commission Chair did try to explain to the Commission that Mr. Peloquin was correct. The Commission members did not offer an alternative or solution to the Pear tree. Mr. O'Connor noted the Bradford Pear has been banned in several states, mostly because of liability. The limbs have a tendency to fall off, which could cause potential damage to vehicles or pedestrians. He would suggest an American Red Bud as an alternative. The Red Bud has the same growth cycle, has edible buds, and is attractive to pollinators. He would not mandate a change to the Red Buds but offers it as a suggestion.

Mr. O'Connor wanted to note the Conservation Commission is advisory board. It has no legal standing with regard to land use. He believed the Commission member was out of its jurisdiction when discussing landscaping. Years ago, the commission was granted signatory status for TRC signature. The Conservation Commission has stepped outside its jurisdiction. The Conservation Commission Chair did try to explain this to the members. The issues noted are why the Conservation Chair did not sign the plan.

Mr. Peloquin stated the applicant has requested a waiver from the Conservation Commission signature. There are no impacts to the wetland as a result of this project. They are providing a 25 no cut buffer around the wetland, which is not required by the regulations. They are protecting the wetland. Several of the Conservation Commission members were hung up on the easterly wetland setback which is shown on Sheet 2. The wetland to the east is listed as 13,535 square feet, which is .31 acres. There is a wetland close to Route 28 that is 48,131 square feet in size, or 1.1 acres. The ordinance states there shall be a 75-foot wetland buffer for wetlands larger than one contiguous acre. The setback applies to buildings. The setback is 30 feet if the wetland is less than one contiguous acre. The smaller wetland is located near sloped land, covered with an invasive species jungle. One can't see what is happening with the wetland. The Conservation Commission member wanted proof the wetland did or did not continue. Mr. Peloquin stated he reviewed the available data to see if the wetland could continue and based on his findings would not deem there to be a wetland in that abutting property. This is why they are asking for that particular waiver.

With regard to Featherbed Lane, in this area, the road was discontinued by Town vote in 1967. The discontinued road is shown on Sheet 2. This is not a public way and is owned to the center of the road by the abutter on either side of it. With regard to the passing zone on Route 28, Mr. Peloquin applauded Mr. Mauzy's concern. That will be brought to the attention of NH DOT during the final review with them. Safe passage is important to the applicant, and they will ask NH DOT to see if they will re-consider eliminating the passing zone here. Mr. Cole stated they



have submitted to NH DOT for the driveway permit. DOT stresses safety and they made sure they met the appropriate sight distance. It is important to the applicant to ensure the driveway be a safe point of access. He feels the entrance is safe and NH DOT has not raised a concern.

With regard to the stormwater related comments, Mr. Cole stated his job is to make sure stormwater is mitigated. They report to the AoT, DOT, Town Engineer, and the outside review engineer. They must reduce the peak flow rate that currently leaves the property. They have analyzed the southern property line and analyzed the culvert that crosses Route 28 to ensure the flows are reduced. For the abutter who was concerned that the wetland may grow, he does not feel that will be an issue as they have to reduce the peak flow rates. Mr. Lee had spoken with Mr. Merritt in his office and asked for two things. They will remove the wetland noted on Mr. Lee's property from all plan sheets and will install a coniferous buffer along Mr. Lee's property line. Mr. MacEachern stated the Board can make that a condition of approval.

With regard to the comments relating to the McGrade lot and buffering the lights along the driveway during the winter months, this is not the peak time for events, so traffic will be reduced. The regulations require they prove the lighting will not cross the property lines and they have shown that on the photometric plan. He does not feel light will spill across the property line. The septic system is shown on Sheet 7. Water runs perpendicular to the topographic contours which are shown as the dashed lines. The septic will be to the left on a hill. They will need to pump up to the septic. The McGrade property is lower in grade but is not down gradient of the septic system. The septic will flow north to south toward the direction of the wetland, not the McGrade property. There is a natural swale that runs along the property line between Parcel 03110 and the McGrade's and it keeps the stormwater off of each other's property. They are putting the stormwater into a ditch that runs parallel to the driveway. He feels the concern is relieved as there is no chance for stormwater or septic to compromise the McGrade property. Mr. Davidson's property is technically a little bit uphill of the Hyla Brook property and Mr. Cole did not feel erosion control was required as there is no concern of erosion to the McGrade's property.

Mr. Peloquin spoke to the noise issue. Guests will move indoors by 10:00 p.m. and they will abide by local law. Ms. Livesey wants to be a good neighbor. Mr. Cole added the property is large, wooded, and that particular abutter is a significant distance away. Mr. Sioras noted for the record, the ZBA placed a condition on the variance approval that all outdoor activity must cease by 10:00 p.m. Mr. MacEachern believed the ZBA was not in a position to impose hours of operation as that was a Planning Board function. Mr. Peloquin stated the applicant will still move guest indoors at 10:00 p.m.

Mr. Connors believed the location of wetlands was available as they are mapped or show up on Google Maps. He thought it looked like the wetland in question could continue. The regulation is present to protect the wetland. How are wetlands protected if one can't look at the adjoining property? The note states this was a non-issue as the building is 75 feet away. Mr. Peloquin stated it was felt to be a non-issue because even if there should have been a 30 foot wetland setback, the building was outside of the setback. The corner of the building is 75 feet away. Wetland mapping is a science that involves reviewing hydrology, soils, and plant life. Not all

properties are mapped, and wetlands cannot be identified with Google Earth; they need to be evaluated on the ground.

Mr. Nelson noted the traffic summary stated the business is seasonal between May and October. Why would people not go to this venue in the winter? Mr. Peloquin believed people would use the venue during the winter months and there will likely be February 14 weddings held there. The traffic will likely be lighter during those months. Mr. Nelson asked if lighter traffic would invalidate the traffic study. Mr. Peloquin stated it would not as Mr. Pernaw looked at peak traffic. Mr. Nelson commented Note 8 on page 3 of the Wright-Pierce review mentions the discussions back and forth between the applicant's engineer and Fish & Game. There is mention of Semplis catch basins. He feels this is still an open issue. Will the applicant move forward with the Fish & Game suggestion or the Town staff request? Whatever the decision, it should be noted on the plan.

Mr. Cole explained this is a new, ongoing, and delicate situation that has come up with Fish & Game and concerns endangered species. Fish & Game has Best Management Practices it would like to promote but those practices are contrary to the Town regulations that are in place to ensure stormwater standard compliance with the US EPA MS4 permit. The town has pre-treatment requirements that must be met before water can enter the town drainage system. Fish & Game has some stormwater practices, and they are currently working with the Town Engineer to see what practices can be approved within the MS4 permit. They are working with Fish & Game on a final compromise. He believes they will be able to come to an agreement.

Mr. MacEachern wished to discuss the hours of operation. He believed the premises would be used primarily on Friday and Saturday nights with some use during the weekdays. He suggested outside hours ending at 10:00 p.m. on the weekdays and 11:00 p.m. on the weekends. There would be no restriction on the indoor hours, but he felt it was reasonable to place restrictions on the exterior hours to address the noise concern. He stressed that was his opinion and would be interested in the opinion of the other Board members. Ms. Livesey said she would be amenable to those hours but wants to be respectful of the neighbors. Mr. Nelson was not certain the ZBA did not have the right to place conditions such as hours of operation when granting a variance. He felt it would be more conservative to stay with the 10:00 p.m. restriction. Mr. Connors did not feel it was the purview of the Board to tell a business what hours it could or could not be open. Mr. MacEachern stated the Board had the right to impose conditions on when noise could be made out of doors; he was not suggesting curtailing the indoor hours of operation. Mr. Myers felt it was reasonable to set limits on the noise with hours of operation at 10 p.m. during the week and 11 p.m. on the weekend for exterior activities, to include Friday. Mr. Sioras noted the Board did set a condition on the Siragusa site plan with respect to hours of operation because the outdoor tent was adjacent to the Fairways and is an open concept.

Mr. MacEachern said the light issue was addressed and he was comfortable that since the lights would be downward facing, they would not go onto the neighbor's property.

Mr. Connors recalled the TRC notes mention the future cottages. Are there plans for any other buildings on the property? Mr. Cole said they wanted to be fully transparent with the Board. They showed the proposed 5 cottages on the northeast corner of Sheet 1. The cottages are not

part of this application. If Ms. Livesey decides to move forward with them, they would come back to the Board and the ZBA for approval. They wanted to express the full future intent for the site. Mr. Connors noted the Fire Department wanted hydrants available for future planning; was that on the plan? Mr. Cole said they are showing a hydrant in that area, and they have provided stubs for future utilities. Mr. Connors asked if there will be a second business on the site. Mrs. Robidoux said no, and that issue was addressed. Mr. Connors asked if there were any traffic improvements proposed, such as turn lanes? This a high-speed area. Are they just proposing the driveway? For weddings, people will be entering and leaving the site all at the same time. He understands any decisions of that type are up to NH DOT. Turn lanes are not warranted.

Mr. Feinauer agreed exterior hours of operation could be Friday and Saturday, no later than 11 p.m. outside, with Sunday through Thursday exterior hours ending at 10 p.m.

Mr. Sioras advised the State of NH DOT has funding available through the Highway Safety Improvement grant program. They look for areas of high accident rates, or where long-term solutions are required. The State is looking at the intersection of Route 28 and Lawrence Road. At some point, the State will look at this area. This would be similar to the improvements made at Route 28 and Kilrea Road and the new light at English Range and Scobie Pond Road. The initial study of the Lawrence Road intersection has been completed and the town will see improvements, likely with a traffic light, at the intersection someday.

Mr. L'Heureux said there are a number of waiver requests relating to road geometry. Overall, the project is close to the regulations but a little off in some areas. This is not a detriment to drivers since it is for periodic use. DPW does not have an issue with the requests as the construction details are structurally close to town road standards with regard to drainage, gravels and pavement, etc. It will meet need and look aesthetically pleasing. The drainage proposal is well thought out. The issue is with the requirement to remove some of the sumps. It is important to keep the stormwater clean before the flow enters the detention ponds to ensure the life of the system and to be in compliance with the MS4 permit. He would like the Board to consider adding a condition of approval to the plan such that the applicant adds 6" of underdrain in the cut areas of the access drive.

Mr. Connors asked if the access aligns with Messy Mikes/Rockingham Acres. Mr. L'Heureux said it is near that entrance.

Mr. Nelson cited an annotation in the State Statute, RSA 674:33, Powers of Zoning Board of Adjustment, which states in part, the ZBA may attach reasonable conditions to a variance. "While the statute contains no expressed provision permitting conditions to be attached to a variance, a Board of Adjustment was given broad powers and could make 'such order or decision as ought to be made'. This language was inclusive enough to authorize the power to attach reasonable conditions to granting of variances."

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-26.14, Vertical Granite Curbing, to allow bituminous curbing along the 500-foot driveway in an area
---

where drainage is conveyed to a closed drainage system, rather than vertical granite curbing (VGC). This project does not construct a new roadway or subdivision and VGC would add considerable cost to the project. VGC will be used at the entrance to the site. The waiver would continue to promote closed drainage and the conveyance of the stormwater. 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. Discussion followed.

Mr. Connors inquired if the Board needed to provide a specific distance for the lack of VGC. Mr. MacEachern felt it was noted on the plan. Mr. L'Heureux stated he did not need a specific distance spelled out for field inspections.

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

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-26.A.15, Table of Geometric Standards, to not require compliance with the Typical Roadway Cross-Section, specifically vertical curb requirements related to K values, maximum street grades, and minimum centerline radius. There are significant grade changes from the street to the center/rear of the parcel where the building is proposed. The Board will allow a street grade to be more than the 6% maximum, but not be greater than 8%, which will greatly reduce the amount of cuts and fills required on the site for the driveway. After review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Discussion followed.

Mr. Connors noted the waiver is for the driveway, but the body of the finding speaks to streets. Does that need to be changed? Consensus was it did not.

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

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-26.C., Vertical Alignment of Streets, to not require the driveway to meet street construction standards as the driveway does not include vertical curves at each change in grade and has a grade in excess of 6%. The site has significant grade changes from the street to the rear of the lot where the building is to be located. The effect of the waiver is to minimize the volume of cuts on the property. 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.

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

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-61.A.34, Conservation Commission Chair signature, to not require the signature of the Conservation Commission in the TRC signature block as the Board affirms the wetland setback requirement is 35 feet and the building will be located more than 75 feet from any wetland. 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. Discussion followed.

Mr. Nelson confirmed the LDCR makes the TRC signatures mandatory. Mr. Sioras stated that particular section says there shall be a signature block and notes who shall sign the plan. Mr. Connors asked why, if the Conservation Commission has no real authority, does it say “shall” in the regulations. That should probably be changed. Also, does the wetland setback need to be waived? It does not. Mr. Peloquin noted the wetland setback is 30 not 35. Mr. Nelson and Mr. Granese accepted the friendly amendment to change the motion to reflect 30 feet as the wetland setback requirement.

Chase, Granese, Chirichiello, MacEachern, Connors, Feinauer, Myers, Nelson, and O’Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to approve a waiver from LDCR Section 170-63.A.7, Landscape Islands in Groupings of 20 parking spaces, to not require landscaped islands in the parking lot to ensure safe circulation of fire apparatus around the parking lots. The installation of landscaped islands would interfere with circulation of the fire apparatus and the applicant is proposing painted islands for two of the proposed islands. Appropriate landscaping in excess of 8% where the minimum required is 5% is provided throughout the parking lot to enhance the landscaping in that area. After review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Discussion followed.

Mr. Connors believed raised landscape islands are in place to prevent people from parking where they should not. Is there any concern that people will park on the striped areas, which would compromise the reason for the waiver? Mr. Cole said they are reducing the width of the painted islands to four feet to prevent that.

Chase, Granese, Chirichiello, MacEachern, Connors, Feinauer, Myers, Nelson, and O’Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to find pursuant to LDCR Section 170-85, that the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the General Commercial III district and meets a Medium High level of compliance as outlined in Section 170-84.

Chase, Granese, Chirichiello, MacEachern, Connors, Feinauer, Myers, Nelson, and O’Connor voted in favor and the motion passed.

Mr. MacEachern thanked the applicant for covering the spirit and intent of the Robert Frost Farm in the design. Mr. Nelson stated the design is excellent and felt the design exceeded the regulations; he applauded that.

Mr. MacEachern noted the following findings of fact.

The Board finds the proposed plan provides safe and efficient vehicular and pedestrian access, and the design and construction of the driveways and walkways are adequate to accommodate the anticipated volume of traffic proposed by the development.

The Board finds the proposed parking plan is adequate for the site, and meets the parking density requirements for the use.

The Board finds the landscape plan meets the intent of the regulations and a residential landscape buffer along the driveway has been provided for the abutting residential uses.

The Board finds the stormwater management as proposed is designed to control the post development runoff so that it does not exceed predevelopment runoff.

The Board finds the utility construction standards are met, the applicant is proposing to connect to municipal water and the property has a sufficient number of hydrants for the proposed use.

The Board finds exterior lighting, solid waste storage and snow storage provisions, and erosion and sediment control provisions are adequate.

Motion by MacEachern, seconded by Chirichiello to agree with the above noted findings of fact. Discussion followed.

Mr. Connors said the Board, by agreeing, is stating the findings of fact are true. With regard to vehicular access, NH DOT has not approved the driveway permit yet. If the Board agrees to the statement there is safe and efficient vehicular access, is the Board putting the town in jeopardy? Mr. MacEachern believed it could be noted in the conditions of approval. Mr. Nelson stated in making a finding of fact, the board is relying on the information presented during the hearing. The Board may not have 100% certainty on any item. Mr. Connors wondered if the Board should have the NH DOT approval before rendering a decision. Mr. Peloquin stated they have a recommendation from NH DOT who did not see an issue.

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

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

1. Comply with the Wright-Pierce report dated September 02, 2022
2. Subject to owner's signature

3. If not already completed, modify the detail, and include specifications for the sleeved water main across Rockingham Road.
4. Include a granite bound on Sheet 2 (property survey) at the southernmost corner of the lot along Rockingham Road.
5. Widen the separation (shown on Sheet 9) between the water main and underground utilities to a minimum of 5 feet.
6. Ensure there is at least 2 feet of cover over the drainage pipe near CB #2A/headwall #2B and between DMH #3B/headwall #2
7. Subject to on-site inspection by the Town's engineer
8. Establish escrow for the setting of bounds or certify the bounds have been set
9. Establish appropriate escrow as required to complete the project
10. Note approved waiver (s) on the plan
11. Proposed signage shall have administrative review by the Planning Board prior to the issuance of a sign permit.
12. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-61.C
13. Subject to receipt of applicable state or local permits relating to the project.
14. Conditions precedent shall be met within 6 months.
15. Remove the area designated as wetland on Parcel 03110-001 from the plans
16. A planted buffer zone, at least 20 feet wide, shall be installed and maintained on Parcel 03110 along the boundaries of Parcel 03110-001, in all areas where the presently existing vegetation no longer exists. Said buffer zone shall be composed of at least two offset rows of coniferous trees (as specified in the planting schedule), spaced not more than 12 feet apart.
17. Note appropriate findings with regard to Note 8, on page 3/3 of the Wright Pierce report dated September 02, 2022.
18. Reference any changes to the road plan once discussions with NH DOT have been finalized.
19. External hours of operation between Sunday and Thursday shall end at 10:00 p.m. Exterior hours of operation on Friday and Saturday shall end at 11:00 p.m. and all guests shall move indoors.
20. Add 6" of underdrain to the excavated area of the cut section of the access drive.

Discussion followed.

Mr. Connors asked, since the business was seasonal, if the "green sno-pro" wording should be on the plan. Mr. Peloquin confirmed this is not a seasonal use. Board members and staff advised the Green Sno Pro requirement is now in the LDCR.

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

Mr. MacEachern commented this is a good project for Derry and appreciated the effort to maintain the spirit of the Robert Frost Farm.

Mr. Granese departed the meeting at 8:48 p.m. He noted he did review the conceptual plan and has no issues at this time. He will reserve his comments until the Board sees a formal application. Mr. Malaby was seated for Mr. Granese.

**Conceptual Discussion, Development Proposal  
PID 05062, 05063, 05064, 05065-001  
1, 2, 3 & 4 Humphrey Road  
West Running Brook District**

Mr. Sioras explained the Board has seen various concepts for these parcels. The applicant has made a change in the proposed design of the project. Staff has had several discussions with the developer and his team. Mr. O'Connor reminded all present that the discussion this evening is non-binding, and comments from the Board are intended to lead the developer in the right direction.

Attorney John Cronin and Shayne Gendron of Edward N. Hebert Associates presented for the applicants. The applicants, Dr. Tim Butterfield and Sharon Butterfield, were present in the audience. Also present were Peter Zohdi and Melissa Runde of Edward N. Hebert Associates, Jason Plourde of VHB, and Lee Berard, of Berard Martel Architecture.

Attorney Cronin stated the applicant has been before the Board a few times and wants to make sure the project fits the vision of the zoning, as well as regulatory items such as drainage, etc., so that it can be approved and built. He agreed the applicant would rather hear from the Board now, than to present a final application and find they have moved in the wrong direction.

This is a new, mixed-use district. The project is comprised of two sections which is divided by Humphrey Road. The intent is to construct a 22,000 square foot commercial building on the southern lot. That has not changed. There has been some interest from prospective tenants in placing a test kitchen or a brew pub in the building, but there are no concrete plans. This is a separate parcel, but it is being designed in collaboration with the lot on the north, to fit in with the village feel.

The northern lots comprise 10.5 acres and will be anchored by a one-story restaurant pad, and a 5,600 square foot building. The mixed-use building to the front has been discussed with the Board previously. It is scaled to step back to a larger, residential building. The mixed-use building is a 16,000 square foot, three story building, with commercial/retail flex space on the first floor and residential above. The units can be divided into 7 or 8 two thousand square foot spaces, or larger, depending on the need. Lee Berard and his team have tweaked the architectural design to give it ridges, soffits, vents, and interesting architectural detail that everyone seemed to be interested in last time. The large residential building was previously shown as a five-story building. There were concerns about the height and scope of that building. They have reduced the size to four stories and unit numbers to 64 units. It still coincides with the grades from Route 28. The grade runs north/south. The building will have about 50 underground parking spaces to accommodate the residential parking. The building will have a central core containing the amenities. The building could be constructed in phases as they are



not sure what will happen with the market conditions. He would expect the developer may do it all once. They could build the northern wing and central core, occupy it, and then build the second half. It would have been easier to run the building east to west but protecting the view as one looked north on Route 28 has been a staff and Board concern. The townhomes are laid out to give a village feel behind the building. A 6 unit building and a 5-unit building transition out to a village lane which leads to a gazebo at the end. This area anchors the pedestrian trail which comes from the south side of the parcel and the bike trail which runs along the north. There is an abundance of green area on this site. The intention is to add a pickle ball court, community garden and dog park. Bike racks will be closer to the buildings and there will also be internal bike storage available in the larger building.

With regard to drainage, originally the plan proposed an arch system with drainage being carried to the southern lot for absorption purposes. Staff explained arches are prohibited in Derry's regulations and the applicant wants to make sure they can get to net zero stormwater coming off the northern lot. This is why they shrunk the size of the building so that they could provide a drainage area. Jason Plourde can speak to the traffic impacts. He has been working with NH DOT for the past year to get Humphrey Road aligned with Route 28. The main access to the sites will be off Humphrey Road. Both sites will have right turn in and right turn out lanes off Route 28. NH DOT is reviewing this now and the development teams feels it will work.

With regard to taxes and school impact, Attorney Cronin advised they consulted with Mark Fougere on the impact numbers. Mr. Fougere looked at the impacts of the project. There has been a decline in public school enrollment. This project is looked at as a small generator and it is anticipated it will add 4-7 students per 100 units. These units are being designed to attract young professionals and downsizers. Based on \$200,000 per unit and \$150 per square foot – not including land – construction cost is anticipated to be around \$35,000,000. That generates an estimated tax revenue of around \$700,000 per year.

Attorney Cronin stated the Butterfields have lived in town, on this property, for a long time and have been very active in the community. They would like to see this project come to realization. There has been some interest in moving the historic home elsewhere.

Mr. MacEachern thanked the development team for spending time on the plans. The Board can see the changes that have been made. The configuration of the townhomes is considerably different. He liked the look of the corridor and the field. Attorney Cronin explained that change came about in part because of changing market conditions. He mentioned the popularity of the Hackett Hill development in Manchester, and the townhome project on the golf course in Pembroke. Mr. MacEachern appreciated the changes to the middle building, the architectural design changes, and the changes that show the village concept they had talked about. He encouraged the developer to stay on this path and feels the plan should move forward.

The applicant presented a video rendering of the project, which the Board members viewed.

Mr. Nelson asked for confirmation there had been no change to the southern parcel. Attorney Cronin stated just the drainage changed. The layout remains the same. Mr. Nelson noted the residential building to the north has been scaled back. How did the height and width change?

Attorney Cronin explained the unit count has been decreased from 72 to 64 units. Mr. Nelson noted the number of townhomes has increased from 18 to 40. Are they smaller in size? Mr. Gendron said they are larger than previously shown. The buildings are on a 1000 square foot pad and will be two stories, with a total of 2200 square feet. Each will have a two-car garage, and two parking spaces outside. Elevators will be a construction option. Attorney Cronin confirmed these changes were based on market conditions, layout, engineering, attempting to gain the village feel, and they also wanted continuity on the site.

Mr. Connors said he was glad the building has been made smaller, and confirmed the plan set provided for this evening does not have any of the recent changes; it was provided for comparison purposes only. The parking area has changed significantly, but there has only been a difference of 8, in the total number of units. What has changed with that? Mr. Gendron stated the front building has had some changes; they lost some units in that building to make the parking work on this site. The big building previously had a lot of parking around it, but that created an issue in treating the stormwater. They needed more greenspace as they could not use an underground chambered system. Therefore, they moved to the townhouse unit configuration. There is 42% greenspace between the two parcels. They needed net zero peak runoff on the two parcels. Previously they relied on the southern parcel to treat the stormwater but the two lots need to stand on their own with regard to contaminant treatment and net zero increase in peak flow. The front building has a different apartment configuration and there are only 30 units, so there is less parking on the northern parcel. Mr. Connors stated he is looking forward to seeing that configuration and wanted to confirm there is still underground parking in the middle building. Mr. Gendron stated they are still working on the configuration internally, but it may be that each unit gets one space inside and one outside. The final plans will have the updated parking calculation. Mr. Connors asked if there are any factors the Board should be aware of with the increase in the number of townhomes – things like setbacks, etc. Mr. Gendron stated they created more greenspace by reducing the number of parking spaces around the center building. They created a larger buffer to the wetland. Mr. Connors asked if it is anticipated there will be a large number of waiver requests for this project. Mr. Gendron believe the previous plan would have required more waiver requests. This plan is more in keeping with the regulations. Mr. Connors advised the project dead ends to the rear in the hammerhead which is not allowed in the West Running Brook district. That will need to be discussed with the Fire Department. Mr. Gendron stated they met with Fire Prevention and were provided the Fire Department specifications. Mr. Connors hoped the bike path connected to the park located behind the project; will it be open for public use? Mr. Gendron said the walking trail, gazebo, and site amenities are not open to the public. The bike path leads to the Don Ball Park and is open to the public, and they are currently in discussion with the school to determine how to separate the project from the bike path. There is a possibility they will add a fence along the property line. Mr. Connors stated he would like to see sidewalks along Route 28; kids walk to school on this road, and it is not safe without a sidewalk. He understands that at this time, the sidewalk would not really lead anywhere, but it might later. Mr. Gendron advised NH DOT does not want to see a sidewalk on the state road.

Mr. Chirichiello confirmed the townhomes will be about 2200 square feet, with 2 bedrooms each. He liked the bike path and felt the mix of uses on the project worked. Would the units be rented or sold? Attorney Cronin stated that has not yet been decided. They are being designed

and built so that they could be sold as condominiums. Initially, they might be rented. They can create a condo document where the building numbers are included or excluded as necessary. Mr. Chiricheillo remarked the townhouse market is very active at present.

Mr. O'Connor recalled at a previous conceptual discussion, there had been mention of phasing the construction so that the commercial was constructed first. Is that still on track? Attorney Cronin said they will work on the phasing if required with the final application. Mr. O'Connor asked if there are any plans to have studio apartments? Attorney Cronin stated the assumption is the units will be 2 bedrooms, but once in the design phase, they could accommodate one bedroom and studio apartments if the town was looking for more diversity in the apartment make up. Mr. O'Connor asked that the snow storage areas be considered. Mr. Gendron will add those to the submission plan. Mr. O'Connor inquired about the mixed-use building to the front. How will loading docks be accommodated since they would be in the view of the other residential units. Mr. Gendron stated they have reduced the amount of pavement on this site as much as possible, but they need spaces. He does not anticipate loading docks for the mixed-use building. They have added loading areas for the larger, middle building. With regard to outside storage of personal vehicles such as boats or trailers, Attorney Cronin was sure there would be conditions attached to any approval as he believed the Board would not want to see that in this district. If this was a condition of approval, upon the creation of any condominium documents, restrictions would be included. They are open to a condition of approval that restricts outside storage.

Mr. O'Connor noted the gable peak is at 69' in height. How does that fit in with the height of the Robert Frost Farm? Mr. Sioras said staff will look at that and the height of the Robert Frost Farm will be confirmed and discussed during TRC.

Mr. Connors noted there is only one dumpster pad shown on the plan and there should be consideration for refuse storage. He wondered if a financial analysis would be prepared for this project, similar to the one prepared for Keystone. Mr. Sioras advised staff can forward a copy of the Keystone analysis to the applicant.

Mr. L'Heureux appreciated the applicant has been trying to work within the requirements for the stormwater management portion of the plan. He understands it is difficult when the land slopes in one direction. He has a few ideas on how to help manage that, such as coordinating a pond or perforated pipe, and there are other underground storage options that don't involve arches.

Mr. Connors asked if the Board will be reviewing two separate applications for the north and south sides of the project or will this be presented as one application. Attorney Cronin believed it would be two separate applications, presented at the same time.

Mr. MacEachern stated the Board is not voting on anything this evening but felt the Board members should each indicate their feelings about the project. Personally, he feels the applicant should present two applications, at the same time. He would like to see this concept move forward and the applicant work with staff.

Mr. Chase felt this concept was much better than what was previously proposed. He would like to see it move forward. Mr. Malaby had no objections to the concept as presented. Mr.

Chiricheillo would like to see this move forward; it is what the Board wanted to see. Mr. Feinauer had no objections to the concept as presented. Mr. Connors appreciated the larger building in the middle has been downsized and the buildings appear to be aesthetically pleasing. He would still like to see a story removed from the building, but the applicant did take the previous comments to heart and worked with them. Mr. Myers likes this concept and that the mixed-use building is smaller. He likes the bike path, connections near the school, and walkways. He feels this will be good for the town. Mr. Nelson said on a conceptual level, this is fine. Mr. O'Connor recalled ten or so years ago during the transitions of the General Commercial district, there had been discussions with this applicant about placing a mixed-use project on this property. He likes what he sees and will look forward to a formal application.

There was no further business before the Board.

Motion by MacEachern, seconded by Chiricheillo to adjourn.

All members voted in favor and the meeting stood adjourned at 9:32 p.m.

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

\_\_\_\_\_  
Secretary

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