

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 21, 2024, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room, with a virtual option.

Members present: John O'Connor, Chair, David Nelson, Vice Chair, Andy Myers, Secretary, Randy Chase, Town Administrator's Representative, Dave Granese, Town Council Liaison, Dan Healey, Richard Malaby, Chris Feinauer, Bryan Fishman, Members.

Absent: Jim MacEachern, John Morrison, Member.

Also present: George Sioras, Planning Director; Mark L'Heureux, Town Engineering Coordinator, Lisa Carvalho, Planning Clerk\*

\*Denotes virtual attendance.

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag.

### **Minutes**

The Board reviewed the minutes of the February 7, 2024, meeting.

Motion by Granese seconded by Nelson to approve the minutes as amended of the February 7, 2024, meeting.  
All in Favor: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes.  
The motion passed.

### **Correspondence**

There is no Correspondence.

### **Other Business**

#### **Capital Improvement Plan – FY 2030**

Mr. Sioras stated The Planning Board reviews the 6-year Capital Improvement Plan annually. The Plan is presented by the Town Administrator with Staff input. The Plan will then go to the Town Council in Public Hearing during the Budget process. Mr. Sioras yielded to David Caron, Town Administrator, Town of Derry, and Mark Fleischer, CFO, Town of Derry.

Mr. Caron stated that as the Planning Board received the Plan at this meeting, if there are any questions or concerns, the Planning Board may direct those questions to Mr. Sioras. If warranted, Mr. Caron and Mr. Fleischer will return to the Planning Board and address those issues.

Mr. Caron stated that the legal basis for the Capitol Improvement Plan requires a CIP in the Town. Typically, it is the Planning Board that coordinates the development of the plan. Our Town Charter delegates that responsibility to the office of the Town Administrator to present the plan. The Plan has no legal basis. It is a financial planning tool used to look forward at least 6 years to see where large capital expenses may occur. This includes equipment and infrastructure improvements for the community. All departments submit to the CFO. Mr. Fleischer reviews the plan in meetings with all departments. A draft plan is reviewed per the Charter. It is then presented to the Planning Board for input. It will then be submitted to the Town Council at their meeting on April 2, 2024. By Charter, the Town Council must approve the Plan, with or without modifications, by June 1 of the fiscal year.

The funding structure is such that all of our wastewater funds are self-funded, as they are paid either through Federal or State grants. They have reviewed some ARPA funding in the past. The balance of the expenses are paid from the wastewater rates.

Cable is the same. We receive an annual grant from Comcast, our cable provider. The balance of the projects are funded through franchise fees received from the cable customers.

Most of our general fund capital projects are funded through our capital reserve programs. Until several years ago they were totally replenished through any surplus funds we had at the end of the year. This is not the optimal way to fund those projects. We have approximately \$1,500,000.00 for our capital reserve fund every year to keep the plan solvent. We had \$0.00 from the tax base. We built the capital reserve to \$300,000.00. Last year, the Town Council added \$350,000.00. Of the \$1,500,000.00, \$650,000.00 is funded from the Property Tax base and \$850,000.00 is from surplus, if it is available.

The \$1,500,000.00 is a target that the Town has had in place for the past 7 years. This Plan will be urging the Town Council to increase that funding by \$75,000.00 this year and then increase it by 2.5% annually thereafter. Inflation had affected our buying power for equipment, services and apparatus. The FY24 Budget includes a \$650,000.00 appropriation to the reserve fund to bring the total to \$1,500,000.00.

There are other major expenses which are funded in the budget, but separate. These are our \$1,500,000.00 Road Program and we pay lease payments on Police cruisers through the Operating budget.

We found several years ago that economic conditions and policy decisions restricted the amount of equipment we were able to secure. We had caught up in the last 7 years, and then inflation arrived. Although we are purchasing equipment at a slower pace, the costs are the same due to inflationary pressures.

We have provided the Board with a synopsis of recommended investments. There are 2 significant changes from last year's Plan. The fire tower has gone down considerably since funding and beginning construction on the Central Fire Station. This project is approximately \$20,000,000.00.

The larger change is Water and has increased significantly to \$40,000,000.00. The main driver is a \$33,000,000.00 project on Phase 2 the Southern NH Regional Water Project. There are many PFAS and MBTE issues in the southern tier. The Southern NH Regional Water Project wanted to purchase water from Manchester Water Works and Derry is in the way. We have received many grants, with no expenses to the Derry taxpayers or the Derry rate payers, to extend water lines throughout the community, primarily on route 28 south. This will deliver water from Manchester to Salem, continuing to Plaistow, Windham, Atkinson, and Hampstead. The original design was to deliver 1,000,000 gallons of water per day. Phase 2 is projected to increase the delivery of water to 3,100,000 gallons of water per day. This will require infrastructure improvements in Derry such as additional pumps, water tanks and pipe size.

The Planning Board typically requests a review of the Town debt. State law allows an increase of up to 3% of Town evaluation as equalized by the State. There is a difference between what we can borrow and what we can pay back on the tax cap. Our current Town assessment is approximately \$4,800,000,000.00. Equalized by the State brings it to \$5,200,000,000.00, which translates into the Town could issue \$1,500,000.00 in debt under State law. Our current debt fund is \$26,000,000.00 showing that we are using 17% of our debt capacity. That is broken down into the Central Fire Station project and some culvert replacements. This is approximately \$17,000,000.00 outstanding. The general fund projects are \$22,000,000.00 to \$26,000,000.00 outstanding. There are some for water systems and wastewater. There is also an outstanding TIF bond for the project on Manchester Road, with a balance of \$1,680,000.00.

There is a statutory debt limit for water. This can be raised to 10%. The current debt level is approximately \$1,230,000.00. However, the Town Council approved several different projects a year and a half ago. This is an additional debt of approximately \$4,800,000.00. The Town Council went ahead with that project, recognizing that there were some ARPA funds. These were issued through the State revolving loan fund. Those rates are lower than the market rates.

There is no limit to the amount that the Town can bond on wastewater debt, as long as it is included and waived by the governing council. The current wastewater debt is approximately \$1,200,000.00.

Other debt is the Derry Commerce Corridor. This was associated with the Walmart project on Manchester Road. This debt is down to \$1,680,000.00, which is 2.55% of the assessment base. That is not a statutory limit, but a point of information. Mr. Fleischer had that debt refinanced 3 years ago, at 1.6% for 10 years.

The major projects for FY25: There are no large equipment purchases with the Fire Department, but looking at a Gator, some battery powered rescue tools, which we hope to receive through an assistance for firefighting grant, which is a federal program. We updated our breathing apparatus and patient lift assist (lifting the stretcher into the ambulance) through that program. This will hopefully stabilize our Workmen's Compensation costs. We will look into replacing our cardiac monitors and respiratory ventilators.

We are looking into replacing some DPW vehicles. The tractor is over 10 years old. We use most of our rolling stock for at least 10 years. Our fire engines last for about 12 years and ladder trucks for 15-18 years.

We had a 4 year program at \$25,000.00 per year to upgrade the traffic signals in town. That project has been completed. We are now looking to replace that with a program for \$50,000.00 per year to address the sidewalks in the community. We expect to upgrade East Derry Road sidewalks this year. Regarding the road repairs to the cemetery, \$25,000.00 is usually invested every other year.

There is a trailer storage facility. We haul our solid waste to Haverhill, MA. There was a failure on the facility this year and will look into replacing it.

There will be improvements to the Town office and Media Lab. There will be funds to support our FM radio station, remote production and editing systems.

We will replace the excavator. We budget approximately \$600,000.00 per year for water main upgrades. We are looking to replace some sewer force main for \$650M (?). There is a large expense predicted for lagoon systems 1 and 2 that need to be realigned. Lagoon 3 has been out of service for several years, however, given the current anticipated demand, we will be restoring Lagoon 3.

We try to keep the impact on the financial summary somewhat level. The tax impact can change, but our initial review shows the impact hovering between \$1.20 and \$1.30 of the overall tax rate of \$5.94. By keeping this program level, not only is it predictable over a multiple year period but does not adversely affect the tax cap approved by the taxpayers.

Mr. O'Connor reminded the Board to direct their questions to Mr. Sioras and be mindful not to Reply All, as this would be a violation of 91A.

Mr. Nelson noted that similar to last year's presentation, the total for all capital projects footer line is frontloaded slightly. Mr. Caron explained last year that there was some catch up. It would seem we are still in that mode. He requested additional comments from Mr. Caron.

Mr. Caron replied that we have extended the life of our rolling stock. He will review the line in question but stated that the Lagoon project will inflate the bottom line. Equipment is flat line at this point.

Mr. Nelson stated that while the actual plan is 6 years, he recalled a 30 year plan and inquired whether this was still done, even on an informal basis, or has it been discontinued.

Mr. Caron referred to the capital reserve schedules within the plan, pointing out that they are out 6-12 years. We want to avoid "falling off the cliff" at year 7. We are always extending further out. We use a Master Plan as a guide for looking further out. We have addressed the Central Fire Station project, with most of our public works facilities and this building are in great shape. We have addressed water and wastewater. We will have to look at the Police Department down

the line. We will have to make improvements to the other 3 fire stations. We have money in the plan for a review study of the conditions of the fire stations. Once we are aware of improvements that need to be made and arrive at a cost, we can make sure that the tax impact is level across the board.

Mr. O'Connor asked if the percentage of the interest rates on the bonds are capped or variable.

Mr. Fleischer responded that they are capped. As the bonds go on, sometimes the interest rates go up slightly toward the end, and the principal payment goes up as well.

Mr. Caron stated that when we issue the bonds, we know what the interest rate is going to be. Within the workings of the finance market, we issued \$20,000,000.00 in bonds for the fire station and culvert. The Town must pay back \$17,800,000.00, he believes, because we receive a premium. He is not sure how the financial markets work, but viewing the statement shows we are paying a 4-5% interest rate. The actual interest rate for the 25 year bond was 3.66%. This is a frontloaded premium. We now issue our bonds to the NH Municipal Bond Bank. We used to issue them ourselves. Alone we are a AA3 rating, one notch below a AAA rating, as is the Bond Bank. It did not make sense to incur the local cost of bond counsel and bond advisor. The offset is that going with the Bond Bank, they will not refinance a bond until it matures in 10 years.

Mr. O'Connor referred to the water project from Manchester NH, inquiring if this is separate funding or from capital reserve.

Mr. Caron replied that the State considers this a Town project. There is a process through the engineers where we bid and obtain a grant as reimbursement. We received a wheeling charge. We receive \$1.00 for every 100 cubic feet that is wheeled from Manchester to Salem. Those moneys used to go to the water fund. Now, 50% goes to the water fund with the remainder used for capital purposes.

Mr. Fleischer confirmed that we received up to \$250,000.00 this year.

Mr. Caron stated that this is at 1,000,000 gallons. When it jumps to 3,000,000 gallons in Phase 2, it will be a significant revenue increase for the Town.

Mr. O'Connor asked if there are any allocations for future funding for Gateway.

Mr. Caron responded that we currently have no debt with the Gateway TIF, nor do we have any plans concrete enough to be in the CIP. The Gateway TIF was an extension of the Ash Street TIF District. We foresee 3 major purposes. First, we will have to upgrade the staff on the truck with this year's budget as we are not maintaining 2 lanes, but 6 lanes through that corridor. Second, is intermodal transportation. We have funds there to finish the Rail Trail from north of the corridor to the Londonderry line. We believe that will be in line for a CMAQ Grant through the NH Department of Transportation. Our cost will be 20%. We are planning on 100% in the event that we do not receive that grant. Third, under State law, once a project is completed, all State agencies have first dibs on claiming State land, referring to the State purchased land on the north side of Folsom Road. If the State does not claim it, then the Town is offered the land. We

are recommending to the Town Council to have the Town buy that land and then investigate combining some of the lots and working with private partnership to redevelop the north side of Folsom Road.

Mr. O'Connor asked if there was any funding earmarked to upgrade our IT systems.

Mr. Caron replied that we are in very good shape, and this is reviewed every year. There is a separate capital reserve fund if IT equipment and security.

Mr. O'Connor asked if there was any funding earmarked for electric vehicles.

Mr. Caron replied that we are replacing the Police Captain's vehicle this year. We looked at an EV and the numbers did not work for us. We looked at hybrids for this year, but Ford could not guarantee delivery. We will proceed with gas powered vehicles this year and review in 3 years. Mr. Caron believes that we are looking at EV for Inspection vehicles this year, as a test case.

### **Planning Director/Chairman Updates**

Mr. Sioras gave a reminder that Planning Board terms are available. There is one full vacancy. Mark Connors and John O'Connor seats expire March 31, 2024. Visit Town of Derry NH or contact Sheila Bodenrader, Executive Secretary to the Town Administrator. This also applies also to the Board members who want to move up to a full membership. The Town Council will make those appointments at their last meeting of March. New terms begin April 1, 2024.

### **Public Hearing**

#### **A public hearing to discuss Corner Post Restorations, LLC, PID 29011, 24 Jefferson Street, Subdivision Plan, 3 lots (Continuation)**

Mr. Sioras stated the purpose of the plan is for a three-lot subdivision plan located in the Medium-High Density Residential II District. There is an existing house on the parcel. The current owners have renovated a deteriorating property and have done a great job. The subdivision plan is proposing two new additional house lots for single family only. All Town departments have reviewed and signed the plan. There are no waivers. NHDES State subdivision has been obtained, copy on file. State subdivision has approved, copy on file. Staff would recommend approval of the subdivision application.

Mr. Sioras reached out to the Londonderry Planning Department. Kellie Caron, Assistant Town Manager and Director of Economic Development for the Town of Londonderry, responded via email, copy provided to the Board. This email states that the minutes of October 4, 2023, planning board meeting accurately reflect the Londonderry Planning Board's position regarding the Jefferson Street subdivision. The town has no objection. Mr. Sioras stated that this will address the Regional Impact, which, therefore, there would be none.

Rob Degan of S&H Land Services, representing the owners, was recognized.

Mr. Degan stated that there is one waiver request for overhead utilities.

Mr. Sioras stated that the waiver request was not made in writing but is on the plan, which is acceptable.

Mr. Degan stated that there is an existing house on the property. The land is in both Derry and Londonderry NH. We are proposing 2 new lots. Both will meet the requirements of a lot in Derry. The land that is in Londonderry will be appended to the last lot in Derry. It is not a separate lot. There will be septic systems and public water.

Motion to open the public hearing by Granese, seconded by Nelson.

All in Favor: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

The **Public Hearing** is now open.

There were no online or public requests.

Motion to close the public hearing by Granese, seconded by Nelson.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

The **Public Hearing** is now closed.

Mr. Sioras stated the vote for Regional Impact was on hold until proof from Londonderry was obtained. Based on this, there is NO Regional Impact.

### **Finding of Facts**

The Board finds the proposed plan does not alter the existing conditions, which would affect access to the lots, ensuring the health, safety and welfare of the neighborhood remains unchanged as a result of the three lot subdivision plan.

Motion to agree with the above noted findings of fact by Granese, seconded by Nelson.

All in Favor: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Mr. Degan stated that one waiver is requested for overhead utilities with the justification that all the houses on the street already have overhead utilities and the poles are accessible. This is Note #13 on the plan.

**Grant Waivers**

Motion by Granese, seconded by Myers, to grant waiver LDCR Section 170-66.C of the Town of Derry Land Development Control Regulations to permit overhead utilities where underground would otherwise be required.

After review of the waiver requests 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.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes. The motion passed.

**Approve pursuant to**

Motion by Granese, seconded by Nelson, to approve pursuant to RSA 676:4 III – Expedited Review, with the following conditions:

1. Subject to owner's signature.
2. Subject to on-site inspection by the Town Engineer.
3. Establish escrow for the setting of bounds or certify the bounds have been set.
4. Establish appropriate escrow as required to complete the project.
5. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and complies with LDCR Section 170-24-14.C
6. Conditions precedent shall be met within six months.
7. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. (This includes the \$25.00 LCHIP fee, recording fees for the mylar and the Notice of Decision.
8. Subject to Public Works/Mark L'Heureux email dated February 9, 2024, that a copy of the turnaround easement for the last lot be submitted to DPW for review.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes. The motion passed.

The waiver was submitted in writing.

**A public hearing to discuss 256 Investment Associates, LLC., PID 31043, 56 Crystal Avenue, Site Plan Review, (Common Man Roadside)**

Mr. Sioras stated that they would like to make an amendment to extend the footprint approximately 250 feet. This does not affect the site in any way.

Mr. Nelson stated that the Planning Department has an electronic copy of the revised plan. A printed copy of the revised plan was not provided to the Board at this meeting. The electronic copy was reviewed.



Motion to accept the revised plan as presented by Granese, seconded by Nelson.  
Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor  
vote Yes. The motion passed.

Mr. Sioras stated the purpose of the site plan is to raze the existing quick service restaurant, Wendy's, and redevelop the site for a proposed retail motor fuel outlet, and a 5,225 sf sandwich shop/convenience store and a fueling area with 6 fuel dispenser islands. This property is in the General Commercial District. There are 5 waivers from Greenman-Pedersen, Inc. No State permits required. All town departments have reviewed and signed the plan. Staff recommends approval of the waivers and the site plan application.

Mr. Sioras complemented the engineers on a thorough, well done plan.

Ms. Nicole Duquette, of Greenman-Pedersen, Inc (GPI), Project Manager, was recognized.

Ms. Duquette stated that this is the former Wendy's property at the corner of Crystal and Manchester Avenues. It has been unused for some time. This is a 1.1 acre lot. We are proposing a Common Man Roadside retail motor outlet. The fueling area will have a canopy overhead. We propose 22 parking spaces. There was the same outlet opened recently in Epsom, NH, on the Epsom Circle. This building in the same prototype. It was found to be more efficient behind the counter to have 5 more feet in depth the building. There are constraints at the site. It is a triangular property on 2 road frontages, more than any other side lot line. We have a 20 foot drainage easement that runs through the site, running along Crystal Avenue and then down towards the point of the lot. There is a 20 foot sewer easement on the other side of the fueling canopy. This made the site complicated.

Ms. Duquette is proposing, at the request of Mr. L'Heureux, to replace the existing 54" CMP pipe, the drainage main, that goes through the site, before beginning construction. We are replacing it with a 54" RCP pipe. We propose a significant sized drainage vault along the front of the existing Wendy's restaurant on Crystal Avenue. It has multiple culverts from the wetlands across the street and in both directions of Crystal Avenue. The vault will allow connection of those pipes, the existing inverting from offsite, combining with the outlet on the other side of the lot. The existing drainage vault along Manchester Avenue will also be replaced. The site currently has only catch basins directly into the existing drainage main that goes through the site. We are proposing to recharge the roof runoff from the building into an above ground infiltration basin toward the northwestern side of the property. There will be new deep-sump catch basins for the parking areas with oil/water separator hoods. Those will flow to an oil/water separator tank and a first defense hydrodynamic separators, to better treat the water. The outflows will go to the existing drainage main that goes through the site. There will be a slight decrease in flow rates with these improvements.

Ms. Duquette proposes a new water service to Manchester Avenue, behind the infiltration basin and a new sewer main. The sewer will have a grease trap for the kitchen waste with a domestic line. Electric and communications utilities will go underground to the pole along Crystal Avenue. Gas utilities will be a new connection to the line on Crystal Avenue. Erosion control

will be a fence around the property with a stabilized construction entrance and catch basin inlet control.

Signage on the property will comply with the Zoning Ordinance. There will be a sign on the corner of Crystal Avenue and Manchester Avenue, one on the canopy and one on the building.

The landscaping will be native and drought resistant. Trees and shrubs will be diverse to avert invasive insects. There will be perennial plantings as well.

The waivers are requested due to the constraints of the site regarding the mains. The employee parking is near the dumpster. We will keep the existing 7.5 foot pavement line along Crystal Avenue. The dumpster waiver is also affected by the constraints of the site. This ensures that the dumpster is not visible from Crystal Avenue.

Ms. Duquette stated that Brad Pernaw, of Common Man Roadside and Alex Baylis, the property owner, are in attendance to answer questions from the Board.

### **Accept Jurisdiction**

Motion by Granese, seconded by Nelson, to accept jurisdiction of site plan before the Board for 256 Investment Associates, LLC (Common Man Roadside) PID 31043, 56 Crystal Ave.  
Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes. The motion passed.

### **Determination of Regional Impact**

Motion by Granese, seconded by Nelson, pursuant to RSA 36:56, the Board finds the proposal as presented at this time meets the definition of a development of regional impact.  
Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote No, this is a small local project and DOES NOT meet the definition of a development of regional impact.

Motion to open the public hearing by Granese, seconded by Nelson.  
Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

The **Public Hearing** is now open.

There were no online requests.

Justin Tuminowski, abutter and owner of 11 Manchester Avenue in Derry, was recognized.

Mr. Tuminowski stated that this is the first time he has seen these plans and would like to know the visual and auditory impact on his property. Will there be fencing?

Ms. Kathleen Sullivan of 5 Concord Avenue in Derry was recognized.

Ms. Sullivan expressed her concerns regarding lighting and noise. Will the gas station have music? Will it be open 24 hours?

Mr. O'Connor stated it would be like the noise from Wendy's.

Ms. Sullivan stated that orders made through the drive thru could be heard.

Motion to close the public hearing by Granese, seconded by Nelson.

Roll Call Vote: Chase, Fishman, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. Mr. Healey vote No. The motion passed.

Mr. Healey asked to keep the public hearing open until public questions are answered, to accommodate for further public comment. Otherwise, they speak after the Public Hearing is closed.

Mr. O'Connor stated that this will be addressed at the first Planning Board meeting in April of 2024.

Mr. Granese voted yes, as the Board will allow further questions from the public if their question was not answered by the developer, after the Public Hearing is closed.

The **Public Hearing** is now closed.

Mr. Nelson commented that the Lighting plan is on the Table of Contents of the plan but is not in the plan set. Will the Board vote to accept additional information?

Ms. Duquette responded that she realized just before coming to this meeting that the copies sent to the Board did not include the lighting plan, however, it was included in the TRC package and in the VHB review.

Mr. L'Heureux stated that the Planning Department has received the Lighting Plan. The down lights have been very efficient at other sites.

Ms. Duquette showed the property line and stated that the canopy lights are a bit brighter than the rest of the lot. The plan shows a reduction in light. Light fixtures are dark sky approved and are directed into the site as required by Ordinance. The plan does not consider the street lighting on Manchester Avenue.

Ms. Duquette believes that 11 Manchester Avenue is on the parking lot side of the lot. This is where the dumpster is. The setback requirement waiver is not on that property line. The site plan is available online under the Agenda for the Planning Board meeting. Setbacks on the side are being met to the parking lot lot-line. The plantings around the dumpster will block the view for the abutter. The most greenspace is toward the abutter and will be seeded. There are no residential neighbors but if a fence would be required, Common Man will accommodate. The dumpster will be fenced, chain link with vinyl, with plantings around it.

Mr. Granese stated that the plan shows a fence around a trash enclosure.

Ms. Duquette responded in the affirmative.

Ms. Duquette stated that we do not propose a fence on the property line.

Ms. Duquette stated that the fueling portion of the site will be open 24/7. The market/deli will be open from 5:00 am to 11:00 pm. There is no drive thru. Music is played on the canopy, but the volume can be controlled to turn down.

Mr. Nelson asked if there is a designated snow storage area.

Ms. Duquette stated that there is snow storage along Crystal Avenue at the corner and along Manchester Avenue. As these are limited areas, there is a note on the plan saying that excess snow needs to be trucked offsite.

Mr. Nelson noted the architectural elevation rendering, will there be windows on right hand side of the building?

Ms. Duquette responded that the front façade will look similar. There will be an indent near the doors for the leg that we bumped out. The windows will stay in the same location. We are keeping the architectural elements; we are changing the depths of the jogs in the building. The overhang will be shorter than proposed, but in the same location.

Mr. Myers believes that the project will be an improvement for the lot and asked about the need for music/news/sound and if they insist, will it be kept very low.

Mr. Jeff Brenner, of 5 Concord Avenue, was recognized. He stated that he and his neighbors do not want any music or ads playing at all. Playing it from 9-5 is reasonable, but not at night.

Mr. Healey agreed with this point. He stated that he has not been to an Irving that had the sound turned down low.

Mr. O'Connor stated that a condition can be included in the Pursuant to. Derry does not have a noise ordinance.

Ms. Duquette stated that they are in a commercial area with the Haas Dental building between the lot and any residents. This is within the General Commercial District. There will be noise at all times of the day.

Mr. O'Connor asked if there was an agreement for parking with any of the abutting properties.

Ms. Duquette stated that there is no agreement. Abutting businesses will not be allowed to park on the site once their plan is built. There has been a verbal agreement to allow parking on the site before construction begins and this agreement will not continue. Hass Dental owns a northern parking lot and an area nearby for office administration parking.

Mr. Healey agrees with Mr. Myers' request and does not feel that we have addressed the noise issue but does not believe this is within the purview of the Planning Board regarding noise from a commercial space. Perhaps this is an issue for the Town Council.

Mr. Nelson stated that we have done so in the past. With outdoor wedding venues we have constricted the time of day that sound systems could be played, perhaps not on decibel levels. That much is perhaps within our purview.

Mr. Granese requested the hours of operation. Is the music being played 24 hours per day at your other locations?

Ms. Duquette responded in the affirmative.

Mr. Granese asked for the purpose of this music. Can it be shut off? Is it something you get money for?

Ms. Duquette stated that she did not know. This information would be in Irving's business plan.

Mr. Granese stated that because this is an open space this time of year, we are trying to be business friendly but consider our citizens as well. Can the music be shut off at a certain time in the evening?

Mr. Nelson asked if Irving is represented here and do the applicants bind their operations or is that separate?

Ms. Duquette stated that Irving will be a tenant of Common Man Roadside on this property.

Mr. Brad Pernaw of Common Man Roadside was recognized. Mr. Pernaw stated that Irving is a supplier of this site, not a tenant. We have full control over this site. We can control the noise and have not had issues in the past and do not see issues here. In relation to the abutters, if there are light or noise issues they will be rectified.

Mr. Brenner asked for a procedure if abutters are disturbed with light or noise.

Mr. O'Connor stated that we have Code Enforcement, and they abide by the State regulations, including zoning and land use regulations. If there was an issue, call and file a complaint. You may go the first and third Tuesday at the Town Council meeting and bring up your issues if they are not resolved.

Mr. Sioras suggested to Mr. Brenner to speak with Bob Mackey, the Code Enforcement Director, or with Mr. L'Heureux if there are any issues with noise. They will have a copy of the approved Site Plan and they will enforce the plan if necessary. We would contact the developer or the owner. There are mechanisms in place. We are trying to be fair to the developer and the residents. He believes they will be good neighbors. Mr. Sioras stated that this is a challenge at Staff and Board levels. We try to be respectful to both sides when a commercial site abuts a residential area.

Mr. Pernaw stated that we are owners and operators. This is our 4<sup>th</sup> or 5<sup>th</sup> store. We have a good team and we have not had this issue before and do not foresee a problem.

Mr. Myers stated that where they are asking for 5 waivers, can add a reasonable condition that there be no music playing from 11pm to 5am.

Mr. Nelson and Mr. O'Connor agreed to add the condition that the music be turned off from 11:00 pm to 5:00 am.

### **Grant Waivers**

Motion by Granese, seconded by Nelson, to grant waivers LDCR section 170-63 A.2 – to allow a reduction of the front parking setback from 15 feet to 7.5 feet.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Motion by Granese, seconded by Nelson, to Grant waiver LDCR section 170-63 A.8 – reduction in the internal landscaping from 5% to 3.7%

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Motion by Granese, seconded by Nelson to grant waiver LDCR section 170-64 B.1 - reduction of the number of street trees from 14 required to 6 proposed.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Motion by Granese, seconded by Nelson, to grant waiver LDCR section 170-64 B.4 – to allow the reduction of trees within landscaped islands from 3 required to 1 proposed.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Motion by Granese, seconded by Nelson, to grant waiver LDCR section 170-63 A.2 – to allow the dumpster within the front setback.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

Mr. Granese stated that normally the Board does not allow this, but he is voting yes based on the restrictions of the site.

After review of the waiver requests 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.

Motion by Granese, seconded by Nelson to the above review of waivers.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor, vote Yes. The motion passed.

### **Architectural Design Regulations**

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

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor. The motion passed.

### **Finding of Facts**

The Board finds the proposed plan does not alter the existing conditions, which would affect access to the lots, ensuring the health, safety and welfare of the neighborhood remains unchanged as a result of the site plan. The proposed development would allow for the ongoing redevelopment of the General Commercial District parcels along Crystal Avenue and help expand the town's tax base. The redevelopment project would provide replacing an existing vacant building with a new business venture located in Derry and providing employment opportunities.

Motion to agree with the above noted findings of fact by Granese, seconded by Nelson.

All in Favor: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes. The motion passed.

None rise online, no further public comment of comments from the Board.

### **Approve pursuant to**

Motion by Granese, seconded by Nelson, to approve pursuant to RSA 676:4 III – Completed Application, with the following conditions:

1. Subject to owner's signature.
2. Subject to on-site inspection by the Town Engineer.
3. Establish appropriate escrow as required to complete the project.
4. Subject to VHB engineering report.
5. Subject to Mark L'Heureux, Public Works, email dated February 9, 2024, regarding sewer and drainage easements.
6. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and complies with LDCR Section 170-24-14.C
7. Conditions precedent shall be met within six months.
8. Any public address system played at the pumps will be in operation only during the business hours of the store between the hours of 5:00 am and 11:00 pm.

Mr. Granese stated that Mr. Pernaw, as one of the owners, has stated during this meeting that he will be onsite and any abutters with issues may come directly to him, and those issues will be addressed with reasonable consideration.

Roll Call Vote: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes.  
The motion passed.

Mr. O'Connor stated that anyone with issues may contact the Zoning Board within 30 days.

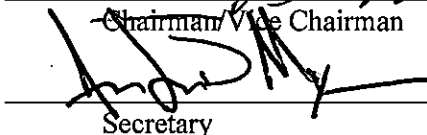
Mr. Nelson mentioned that the VHB report is not in our package. Was this a change in procedure?

Mr. Sioras has a copy in the file and there is no change in procedure.

Motion by Granese, seconded by Nelson, to adjourn.  
All in Favor: Chase, Fishman, Healey, Granese, Malaby, Feinauer, Myers, Nelson, O'Connor vote Yes. The motion passed and the meeting was adjourned at 8:40 p.m.

Approved by:

  
Chairman/Vice Chairman

  
Secretary

Approval date:

