

The Planning Board for the Town of Derry held a public meeting on Monday, October 13, 2014, at 6:30 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Marc Flattes, Lori Davison, Alternates

Absent: Frank Bartkiewicz; John O'Connor, Jim MacEachern, Darrell Park; Jan Choiniere; Ann Alongi

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator

Mr. Granese called the meeting to order at 6:53 p.m., as a quorum was now present. The meeting began with a salute to the flag. Mr. Granese noted emergency exits, the location of meeting materials and introduced the Board members and staff.

Mr. Flattes was seated for Mr. Park

Ms. Davison was seated for Mr. Bartkiewicz

Escrow

#14-18

Project Name: Mixed Use Development Site Plan

Developer: Route 28 Custom, LLC

Escrow Account: Route 28 Custom, LLC

Escrow Type: Letter of Credit

Parcel ID/Location: 03035-001, 230 Rockingham Road

The request is to approve Release #2 in the amount of \$45,100.80 for the above noted project. The amount to retain is zero. This is the final release.

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

Minutes

The Board reviewed the minutes of the September 17, 2014, meeting. Mr. Chase had previously brought one correction to the attention of the Clerk.

Motion by Flattes, seconded by Fairbanks to approve the minutes of the September 17, 2014, meeting. The motion passed with Davison abstained.

Correspondence

None

Other BusinessRequest to extend approval – Hannaford Bros.

Mr. Sioras advised the Hannaford is requesting a six month extension on the conditions of approval granted for the Hannaford To Go site plan. The company needs more time to move forward with the project. Corporate has been working on other sites and will be working on the Derry site in the near future. This is the first request.

Motion by Flattes to grant a six month extension on the conditional approval granted to Hannaford Bros., seconded by Davison. [New expiration date will be April 16, 2014]

Chase, Fairbanks, Davison, Flattes and Granese voted in favor and the motion passed.

Other

Mr. Sioras reminded the Board that there will be a meeting this Wednesday, October 15, 2014, and it will be held in the Cable TV Studio.

Public Hearing

**James Taylor and Aaron Hill
PID 24037, 19 Kendall Pond Road
Review, Multifamily Site Plan
Continued from August 20, 2014**

Mr. Sioras provided the following staff report. The Board continued this plan after the first hearing and held a site walk which was attended by the applicant and neighbors. There are four waiver requests. Staff supports two of the waivers. Mr. Mitchell is present this evening to provide an update on the changes to the plan since the last hearing and can answer the questions that were raised at the site walk.

Mr. Granese noted that the Board has before it revised plans which must be accepted before the Board can move forward.

Motion by Fairbanks to accept the revised plans under the jurisdiction of the Board, seconded by Flattes.

Chase, Fairbanks, Davison, Flattes, and Granese voted in favor and the motion passed.

Mr. Mitchell provided the following update. On August 20th, the Board continued the public hearing for this plan. There was a site walk on September 6th attended by the Board and abutters. The plans have been reviewed by VHB, and they have finished the revisions required by that review. The remaining items are those that would be handled post approval. They have added notes to the plan regarding the percentage of green space and impervious area, and have met those requirements. They have supplied a study with regard to school and fiscal impacts on the town and the Board should have copies of that study. The study was performed by Russ Thibeault of Applied Economic Research. In this case, the school enrollments are decreasing and the housing stock numbers are increasing. The increase in housing stock is not occurring at the same rate that the student numbers are decreasing, therefore, there are fewer students per household than there have been in the last ten years. They are anticipating 0.17 students per apartment, which would equate to approximately 3-5 students for the project. The amount of increase in enrollment is less than 1/10th of a percent. The addition of 18 units would result in an increase of 0.14% in the number of housing units in Derry which does not significantly increase Derry's housing stock. Mr. Thibeault feels this project will have an imperceptible effect.

With regard to traffic, the analysis performed indicates there will be eleven vehicle trips at peak with seven leaving the site and four vehicles entering the site. This is a slightly more than 1% percent increase in traffic on Kendall Pond Road.

They have added notes to the plan since the site walk. The height of the existing building (to be razed) is at elevation 302. The proposed height of the flat roof will be at elevation 304.5, so it will be 2 ½ feet higher than the existing building at the flat roof. The peak of the home next door at 4 Magnolia is at elevation 306.1. Across the street at 1 Magnolia, the peak of the roof is at elevation 307.8 which is higher than the proposed flat roof. There are some architectural additions to the proposed roof; some are functional, others are aesthetic. The functional addition, which is the door leading to the roof from inside the building, will be 11 feet higher than the flat roof so will be at elevation 315. The aesthetic architectural elements are less than that. The Board should have a copy before them of what the building will look like. The peaks take away from the flat roof. The colors are indicative of what should be there: there will be clapboard (gray), shingles (darker green) and, he believes, stucco (lighter green).

The items identified in the VHB report have all been addressed and technically, they have done what needs to be done. They would ask the Board to consider conditional approval. Also present this evening with the two owners of the project is Attorney Daniel Muller, Jr., of Cronin, Bisson & Zalinsky. He would like an opportunity to address the Board.

Attorney Muller advised he had been asked to look at questions that arose during the prior hearing regarding the use of the property, the height of the structure and the size of the building. Multifamily use is allowed in the zone. It is well established law that this Board cannot look at the appropriateness of the use when considering the application. That is a zoning issue and outside the purview of this Board's jurisdiction. By statute, height, number of stories, density and size are also outside of the jurisdiction of the Board; this is per RSA 674:16. The ordinance outlines the maximum allowable height, building length, and density based on the size of the lot. His client's perspective is this project is under what is allowed by the Ordinance. There was a

suggestion that the Board can use the Architectural Regulations to limit the size of the building. Case law, *Town of Seabrook v. Trossi Corp* (1970), which dealt with lot size, says the Board can't do that. To his knowledge, nothing has been brought up about the architectural design and if the Board would like something changed, that could be discussed. From a zoning standpoint, they believe what has been proposed meets the regulations. They do not believe this Board can amend things after the fact. This plan is under the current regulations and meets those regulations.

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

Barry Drago, 1 Magnolia and Daria Mlynarski, 7 Magnolia, spoke to the Board. Mr. Drago thanked the Board for being here on a Monday. They have met as a neighborhood. During the site walk, several questions were raised that he has not heard answered, specifically, buildable area versus non buildable area. Space has been set aside for green space and that area juts behind four or five houses. They would like the Board to review that. Is there a formula in the town for that? That land is not buildable and has wetland. There is also a variance request that has to do with a retaining wall in that area that should be discussed. With regard to the traffic study, they have not seen it; they don't know when it was done. All of those who attended the site walk saw what happens on Kendall Pond Road. Supposedly traffic has decreased according to the study, but he feels traffic has increased. The day of the site walk, they saw the people on the rail trail almost get hit. When this building is added to the neighborhood it is going to affect traffic. Is the study relevant to the area and is it a recent study? Mrs. Mlynarski noted the traffic study only discussed the impact on Kendall Pond Road. It did not include the impacts to other neighborhoods or streets. There will also be a population issue and she did not hear what the impacts will be on surrounding neighborhoods.

Mr. Drago asked if there will be future traffic lights or sidewalks installed at or near the intersection. If so, now might be the time to consider that. He does not know how many variances or waivers the applicant needs for this project. They also need to know what will happen with the retaining wall, parking lot and the dumpster area and the buffer between this site and 4 Magnolia. He was under the impression they wanted to reduce the required width of the buffer. There is also an issue of overhead versus underground electric. He also questions what will happen to the existing fence along Magnolia. There was no plan to address that and no plan for landscaping on the Magnolia side of the project. They also have issues with access to Magnolia, specifically the public egress walkway. The renters will piggy back across Magnolia to get to the rail trail, avoiding Kendall Pond Road. Mrs. Mlynarski said the applicant did not speak to which school the children would attend from this project and whether or not that would result in their children being redistricted. They are on the line between the Grinnell and South Range School districts.

Mr. Drago had questions about the elevation study. It may be very accurate but when looking at the size of the proposed building, at elevation 304 it will look more like it is at elevation 500. It will not be a single family home. He is sure it will be a beautiful building but the size does not make sense. Regarding the buffer between the building and Magnolia, there is no plan to address

it and it needs to be addressed. The Fire Department had said there can't be trees. He does not know why they can't have landscaping on the Magnolia side of the project; it does not make sense.

Mr. Drago has heard that the town has 44% single family residential and 56% rental property and the builder has said there is a need for more rental stock. How does that make sense? 44% of the residents are carrying the tax burden. The building owner will pay taxes but we should not be paying more taxes. He knows the town is trying to get relief from taxes for the residents. He does not feel the town needs more rental units. Mrs. Mlynarski added there are more rental units slated to go up.

Mr. Drago said he was uncomfortable with the waiver requests. Mrs. Mlynarski stated access to their street is a big concern for the residents. She understands that children need to be able to access the bus stop at Magnolia but it [the walkway] is a link to their densely populated neighborhood. Mr. Drago commented Attorney Muller cited a Seabrook case that took place in 1970. It may be on the books but he does not see how that is relevant in 2014, in Derry. He is asking the Board to look at the waivers and buffers. The Board needs to look at the impact this development will have on 20+ houses in their neighborhood. This will impact their property values, where their kids play, and who comes in and out of their neighborhood.

Mrs. Mlynarski did not feel the applicant would need all of the waivers if they were building per the regulations and it fit on the lot. It is one thing to be zoned but another to ask for all the waivers; that shows they are trying to make it fit on the lot.

Dennis and Sarah Steinhoff, 4 Magnolia, also had concerns. Mr. Steinhoff discussed the height of the proposed building relative to his home. The top 12-15 feet of his home is attic space. At elevation 293 (the second floor of the proposed building) people would be looking at their windows, backyard and pool. This does not make them feel comfortable. Mrs. Steinhoff said this project will have a major impact on them. She does not believe anyone comprehends the effect this will have on her family. They have worked with the applicant on the privacy fencing and landscaping and they appreciate that. There is not enough fencing and landscaping in the world to make an 18 unit apartment building noninvasive to her home when placed in such close proximity. Mr. Taylor asked at the last meeting what was in place in the Ordinance to protect him. She would like to know what is in place to protect her and her family from this situation. If the plan does not move forward the way the developer intends, the developer will lose money, but her house will lose value as soon as this building goes up. This is their home and their investment. She does not believe anyone would like to buy a house with an apartment building next to it on the end of a cul de sac. The developer can try to sell their opinion that the development fits into the area. It doesn't. But the Board has seen the area for themselves; there is no way an 18 unit apartment building belongs at the end of a cul de sac. When this area was zoned, the area across Kendall Pond was an open area; the area has changed. She wishes that fact would be respected and their families taken into consideration. Sometimes, business needs to be pushed aside and the right thing done. She stated she took it upon herself to call around to several apartment complexes in town to see what is available. Fairways has a 5% vacancy, which equates to about 45 open apartments; Derry Country Club Estates had 5 open; and Aladdin Village has one. That is 50 open apartments and there are condominiums in town she

has not mentioned. Dozens of independent apartments are available for rental. Derry is not lacking rental units and aesthetically, Derry does not need any more apartment buildings. It has been said you can't choose your neighbors, but you can choose your neighborhood and they chose to build here because it was a quiet, family oriented, cul de sac neighborhood. If they had chosen to build in an area with a large apartment building next to it, they would have built somewhere else.

Mr. Kapadia, 6 Magnolia, said the applicant's property extends behind their home. The plan shows a picnic spot. The road goes to nowhere and dead ends behind their home. There is nothing to prevent people from walking off the path onto their property. There is no fence to prevent this. The land extends along the back of three to four properties on Magnolia with nothing in place to protect them. Mrs. Kapadia expressed the same concerns and asked if there is anything the developer will do to protect them.

Lawrence Flammia, 25 Magnolia, advised that the previous owners of 6 Magnolia sold the property as soon as they knew there was a plan for an apartment building; the neighbors who just spoke to the Board just moved into the neighborhood. He stated the neighbors did not receive a copy of the revised plans and have had no time to review them. He asked for further clarification of the height of the proposed building in relation to those around it.

Mr. Mitchell said from the parking garage level (which is the lowest grade) to the flat roof is 39 feet. There is an additional 9 feet to the peak, with 2 more feet to the tallest peak. The majority of the building is eleven feet less. The eaves are 30 feet off the ground for the majority of the building. The highest point of the building is 50 feet.

Mr. Flammia reiterated the neighbors did not get a revised plan until this evening. There is also a lot of land on the parcel, about 1.94 acres, but there is about 400 feet or so that goes behind Magnolia that is not buildable land. He would like more information on the buildable land area. He knows they are asking for waivers on all four sides of the building. He does not know why they are asking for the four waivers. He feels the spirit of the neighborhood will be ruined if this is built. He can't imagine being Mrs. Steinhoff, walking into her backyard and looking up at a 50 foot monstrosity, thirty feet from her property.

Shereen Hawkesworth, 24 Magnolia, said Mr. Hill and Mr. Taylor have come into the meeting with their attorney and state they have done their due diligence but she feels their data is not quantifiable. Six years ago, she petitioned to have the bus pick up her son at their home because she could not walk him to the bus stop. The School Board and bus company denied that request stating it was not safe for the bus to pull out onto Kendall Pond from Magnolia. It is interesting to her that the traffic flow is not more of a concern. This project will be on the corner of Kendall Pond and Magnolia at a bend in the road. She feels the traffic number discussed (11) is ridiculous and the practicality of the studies need to be taken into consideration. She is upset this project has been strategically placed so that Magnolia Lane becomes part of the package: it is a cute cul de sac neighborhood with access to the rail trail. The people renting will be able to have free amenities; it is not free for the residents on Magnolia. This is a lifestyle the residents on Magnolia are fighting for. This is personal for them; their investments will not be what they anticipated and the safety of their children is at risk because of the revolving door of renters

being introduced to their neighborhood. The developers are planning for a future; she is planning for today to make sure her family is safe. Why do twenty-four families need to be impacted by the ambition of two people? The neighbor's rights are not considered and the dynamic of the neighborhood is changing. They are going to have to make adjustments; she understands that.

David Hawkesworth felt valid concerns had been raised this evening. The Board has asked the applicant to address several items which they have not addressed. They did not state the buildable area on the lot. He understands the walkway to Magnolia was placed there so that people would have a safe place to exit the building, but they can exit the building and go to the parking lot. The picnic area is not shown and there is no fence. This project is a retirement plan for the owners. Their home is an investment. They picked this neighborhood. This building will not look nice from where they are sitting.

Joseph Midolo, 16 Magnolia, echoes the comments made by Mr. Drago and Mr. Flammia. He wants to know what is the buildable area of the 1.94 acres. Behind his house, he could not cut a few trees or change the flow of water behind his house. He received a visit from the Code Enforcement Officer. The applicant wants to cut a path along the area. How does that not affect the environmental impact of area? How will the project affect the runoff into the stream; there will now be a parking lot. He does not see how Environmental does not get involved at that point.

There was no further public comment.

Motion by Flattes, seconded by Chase to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.

Mr. L'Heureux had several items to be addressed. The VHB memorandum noted (Item #27) that the slope for the northern sewer service appears to exceed 13-% and may be excessive. They will need to modify the slope to 10% and the town does not allow chimneys per the Sewer Ordinance. There also needs to be more clarification on the drainage summary (Item 44) with regard to the Seasonal High Water Table. He does not see what has been changed with regard to the trench drain. Item 8 talks about the mountable curb across the driveway entrance. He did not discuss this with the engineer of record. He did ask for spot elevations along the edge of the road. They want to be able to maintain the flow of water to the catch basin. He does not recall discussing the curb or seeing the curb in the initial plans. They also need to meet the requirement of 3% or less slope off road the road so there is a smooth transition at the entrance.

Mr. Mitchell said they can address the comment relative to the chimney and provide clarification regarding the Seasonal High Water Table. The Conservation Commission requested the mountable curb. They did not want water going down the road into the parking lot. VHB did not recommend mountable curb. The last submission to VHB modified that detail and they are maintaining a gutter line along Kendall Pond to keep the water off the driveway. That can be discussed further. Mr. L'Heureux said he would not recommend mountable curb. That detail needs to be added to the plan and he will need elevations at the entryway and on each side of the

access for the high spots and then carry it back down into the driveway. The water will still flow and meet the spirit of what the Conservation Commission wants, but they don't need a blunt curb at the entrance to the road.

Mr. Fairbanks noted the applicant's representative has stated that everything is within the Ordinance and requirements, so then why is the Board entertaining waivers. Secondly a sitting member of the Board has submitted information to the Board that he does not feel the Board should be considering. This is opinion; there is no legal basis for the comments. Why is this in the packets? Mr. Granese explained the Board member submitted the information and it is now in the record. Because of the material he submitted, the member cannot vote on the application and will need to abstain from voting on the plan. He noted there are five sitting members tonight. This has been explained to the Board member.

Mr. Fairbanks asked for further explanation of the land behind Magnolia. He knows that the Board discussed this during the site walk. He wished the Board could consider buildable area versus total lot area, but it cannot because the regulations go by total lot area.

Mr. Mitchell said there is a finger of land that goes out behind the properties on Magnolia. There is a proposed walking trail that ends with picnic tables. There will not be a fire pit or gazebo. There is a pond and a sluiceway in the area. It is not meant to be anything other than a walking or sitting area. They will not clear here other than in the area of the picnic table. The intent is for passive recreation. Mr. Fairbanks asked if it would be appropriate for the Board to ask for a fence. Mr. Mitchell said he was aware the walking trail would be discussed, although he did not attend the site walk. It is not impossible to do some sort of buffer or fence. It does affect three lots. 16 Magnolia is further down and not affected. They can perhaps do something for privacy but sometimes a fence looks worse than nothing. Mr. Fairbanks said he would like to ask the three abutters if they would want a fence.

Mr. Granese confirmed the walking path dead ended and does not go through any wetland. At the site walk, there had been some discussion about places for people to go. Is there a need for that in that specific area? His concern is that it is out of the way and could invite illicit activities. Mr. Mitchell said they need to supply a recreation area and have done so along with a play area. They don't want to create a bad situation but because of the brook and pond, thought this was a good option for walking throughout the day. Mr. Granese said he could understand that but is aware of what can happen. It is too bad this area could not be closer to the building. Mr. Mitchell said they could consider extending the sidewalk on Magnolia to the rail trail. He knows the abutters do not want people on Magnolia Lane, but it would keep people off Kendall Pond Road. Mr. Granese asked if the walkway from the proposed building would bring people from the parking lot into the walking path. Mr. Mitchell said people can access the walking trail from either the parking lot or the other walkway. Mr. Granese asked if someone could walk down Magnolia, onto the walkway and then get to the walking trail. They could, but it is private property and there will be apartments facing the walkway.

Mr. Granese asked when the traffic study was done. The report references counts from 2012. Mr. Mitchell said he was sent counts from 2014; the total counts are from 2012; Southern New Hampshire Planning conducted the counts and Steve Pernaw did the additional work. Southern

New Hampshire Planning provided the background data which was studied by Mr. Pernaw. He reviewed the work as a traffic engineer to determine potential impacts. Because there was a minimal amount of impact, in Mr. Pernaw's opinion, they did not perform a new traffic study. They have information from 2012 and 2014 in their traffic memorandum. Mr. Fairbanks noted it appears the traffic counts from 2012 to 2014 have decreased.

Mr. Granese asked Mr. Mitchell to go over the key points that have changed from the original plan to this revised plan. Mr. Mitchell said the main difference is that they have a better detail of the walking path. The layout of the building and parking lot are consistent. They have added technical items from the VHB review. They had originally proposed a dumpster location but the owners have now opted to propose barrel pick up. There was an issue that a full size truck could not access the site to pick up the dumpster, so they will now have an enclosed, shielded trash enclosure. They had a fence going all the way down the lot line and from what he understood to be the conversations with the abutters, the fence had kicked into the abutters property. The Conservation Commission wanted the fence to go straight down the property line. That has been revised after a discussion with the abutter.

Mr. Fairbanks asked what is happening with the fence along Magnolia. Mr. Mitchell said that is open for discussion. The current fence will come down; it is in disrepair and is in the right of way. They had the option to put a fence there but a concern is that the Fire Department did not want street trees there. They are willing to put in a fence and some landscaping to break up the view so long as that is okay with the Fire Department and they can stay out of the right of way. Mr. Chase said he agreed with James Kersten's position and he would not want to see anything growing taller than the second floor balcony. There are some buildings in town the Fire Department cannot access with the ladder truck because of the tree growth. The parking lot is too close to the building so the Fire Department would access the building from Magnolia or Kendall Pond. Tall trees would be detrimental to their effort. He does believe something should be here; maybe something that is short. Mr. Mitchell stated at this time there are no trees proposed.

Mr. Sioras advised that staff discussed the issue of the trees and agrees with Firefighter Kersten, but he feels a compromise can be made. Tall trees don't need to be there but there are trees that don't grow tall; there needs to be more than rhododendrons there. That was his reason for not supporting the waiver. Trees along the streetscape will help. There should be a compromise. Mr. Sioras also noted he raised some questions in the field. He agrees the walking path might invite trouble and there might be a better way to meet the requirement for open space which is 15% of the overall square footage of the lot. They meet the regulations for passive recreation which is based on the overall site. Perhaps they can do something along the walking path with a combination of fencing and landscaping. Mr. Sioras noted there are some calculations on the plan where the wetlands have been deducted from the overall acreage. He asked Mr. Mitchell to please explain that. The total parcel is 1.94 acres. Note 11 states there is 1.2 acres of non-wet land. Is that how they calculated the density? Mr. Mitchell said they calculated density based on the gross acreage; that is detailed in Note 7. Note 11 speaks to the green space calculation. They are required to have 33% of the total post development non wet area for green space. This equals 39% of the site. The non wetland area came into the calculation for green space, not the density calculation.

Mr. Sioras asked where does the school bus pick up school age children who live on Magnolia. They are picked up at the intersection of Magnolia and Kendall Pond.

Mr. Granese advised Mr. O'Connor could not attend the meeting this evening but had forwarded some questions. Will there be second and third floor balconies facing the Steinhoff residence at 4 Magnolia? Mr. Mitchell said yes. Mr. Granese noted Mr. O'Connor had asked if the balconies could be moved on the second and third floor to not overlook 4 Magnolia. Mr. Mitchell said that would necessitate a significant change to the style of the units. The owners have spoken to the abutters and discussed fencing and landscaping, and he thought they were doing things that were positive. As far as people looking out their windows at other properties, he was unaware this was an issue but it may be something they could consider. Mr. Granese recalled the issue was brought up at the site walk. Mr. O'Connor had also mentioned that he would like to see a Green Pro certified salt applicator used at the site. Mr. Mitchell said a note could be added to the plan; the Conservation Commission had already requested that no sodium chloride be used on the site.

Mr. Granese asked how long is the walking trail from the parking lot. Mr. Mitchell thought it was about 180 feet from the back of the parking lot. Mr. Granese asked what the owners thought about adding a fence along the walking trail so that people can't exit the area into the backyards or go any further than the picnic table area. Mr. Mitchell said they might be able to do something within 200 feet of the corner. They can put something so that nothing can go behind 4 and 6 Magnolia; they might be able to truncate the area. Mr. Granese confirmed the applicant would be willing to enclose the walking trail and recreation area with a fence. Mr. Mitchell said they could not go along the edge of wetland. They could go along the property lines behind the first two houses on their side of Magnolia.

Mr. Fairbanks noted 33% of the gross lot must be green space (Section 170-64.A.3), that would be 33% of 1.94 acres or 86,000 square feet. His question has been how does recreation area differ from green space. Recreation space is required to be 15%, and that calculation uses the whole lot area to calculate the amount. Mr. Mitchell said 33% of the total area is 27,000 SF. Impervious area (note 12) is 19,000 SF. The balance is 64,000 SF of non-paved, non-roof area, so they are okay.

Mr. Granese asked if there are any issues conforming to Mr. L'Heureux's requests. Mr. Mitchell said there are none; he understands what Mr. L'Heureux is asking for and can do that. He added that a few comments have been made about what school the children would attend and his understanding is that they will attend South Range School.

Mr. Granese noted there are four waiver requests. He asked Mr. Mitchell to explain why they need the waivers. The first one is from Section 170-63.A.8, Parking. Mr. Mitchell said 5% of the interior parking area is to be landscaped; the second is that an island is required to be put in if there are more than 20 parking spots. They looked at putting a paved island to one side to help keep the look of the parking lot. They feel this regulation is intended for parking lots of a much larger size so that the parking lots can be broken up with trees and landscaping. This parking lot is below the road grade and bends. People passing by won't necessarily see the parking lot because it is so far below grade. Instead of islands, they put landscaping along the building and along the outskirts of the parking lot. If they need to do the 5% they will do an island, but it will

affect the number of parking spaces. This would necessitate decreasing the number of bedrooms but it would not decrease the number of units in the building. He confirmed they have enough parking spaces to meet the requirements.

Mr. Granese asked with regard to the waiver from underground utilities. Mr. Mitchell said there is an existing pole on the east side of Kendall Pond Road. PSNH can run a line from the pole to the corner of the building rather than putting a pole on their side of the street and going underground, or digging up Kendall Pond Road. PSNH said they would provide access from the existing pole.

Mr. Granese asked about the waiver from Section 170-64B, the 15 foot tree strip. Mr. Mitchell said the Fire Department did not want the trees there so that they can swing the ladder truck. They will have a 15% landscaped area, but there will not be trees every fifty feet. They will have shrubbery that is no taller than four to five feet tall. Mr. Granese asked if they could adhere to the regulation by planting smaller trees. Mr. Mitchell said they could do it with stunted trees but would need to verify that with the Fire Department first. Mr. Granese confirmed with Mr. Chase that it would not cause an issue if they planted trees that do not grow taller than 8 to 10 feet tall. Mr. Chase said he would not want to see anything taller than 15 feet at the maximum at maturity. Mr. Granese noted the buffer is a huge issue and he wants to make sure the regulations are followed. Mr. Mitchell said they would not want to agree to anything that is found later to be too tall.

Mr. Chase asked Mr. L'Heureux his opinion on the underground utility waiver. Mr. L'Heureux said the regulations require utilities to be underground. He does not feel it is a hardship to put in the underground utilities. Mr. Chase asked if there was a preference as to whether the underground utility came in from the north or south side of Kendall Pond Road. Mr. L'Heureux said his department had no preference but the applicant would need to restore the road with an inlay.

Mr. Sioras advised the Board has accepted jurisdiction of the plan, and would need to vote separately on each of the waivers; the motion should be made in the affirmative.

Motion by Fairbanks, seconded by Chase to grant a waiver from Section 170-63.A.7 requiring a curbed landscape bed, 10 feet in width between groupings of 20 or more parking spaces.

Chase voted no. The parking lot area does not go around the building and is a large surface even though it will be below road grade. The ordinance is clear on why this should be there. Fairbanks and Davison voted no for the same reason. Flattes abstained. Granese voted no for the reasons stated by Chase, adding that they need to look at what was done for the parking; the regulations are set forth because of what has been done in the past and he does not see how the waiver can be granted. The motion failed and the waiver was not granted.

Motion by Fairbanks, seconded by Chase to grant a waiver from Section 170-63A.8 requiring a minimum percentage of the interior area of any parking area and aisle as interior green space as the lot has only 25 spaces with eleven on one side and fourteen on the other and the land slopes and bends slightly in the middle. After review of the waiver request, the Board finds that

specific circumstances relative to the plan, or conditions of land in such plan, indicate the waiver will properly carry out the spirit and intent of the ordinance. Discussion followed.

Ms. Davison asked for further explanation of how the land sloping and bending necessitates this waiver. Mr. Mitchell said when a parking lot is level with the road, if there are more than 20 parking spaces, it makes sense to break up the expanse of pavement with trees and islands. In this case, the parking lot has a different character because it is below grade level and is not as visible as others might be at grade.

Chase voted no, for the same reasons stated for the previous waiver. If he voted yes, there would be a barren strip there and he felt there needed to be plantings. Fairbanks and Davison voted no for the same reasons. Flattes abstained. Granese voted no for the same reasons, adding that he felt this parking lot should be constructed per the regulations. The motion failed and the waiver was not granted.

Motion by Fairbanks, seconded by Chase to grant a waiver from Section 170-64B requiring a fifteen foot street strip running parallel to the frontage of the lot as after review of the waiver request, the board finds that strict conformity to the regulation would posed an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulation. Discussion followed.

Mr. Fairbanks asked if this waiver did not pass, can the addition of mature trees no taller than a certain height be added as a condition of approval. Mr. Granese said yes.

Chase voted no. He feels there needs to be some buffer in that area; the size of the trees can be worked out later. Fairbanks voted no. He felt the request was less to do with hardship for the applicant and more to deal with public safety. If the Board limits the height of the trees they will be able to meet the public safety need. Davison voted no as she felt there needed to be a buffer and the alternative plan discussed was a better option. Flattes abstained. Granese voted no for the same reason, he felt they could have suggested shorter trees to meet the regulation. The motion failed and the waiver was not granted.

Motion by Fairbanks, seconded by Chase to grant a waiver from Section 170-66C, requiring all proposed utilities to be underground as after review of the waiver request, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulation. Discussion followed.

Ms. Davison asked if the utilities were buried and the public way had to be dug up, how long would residents traveling Kendall Pond Road be inconvenienced. Mr. L'Heureux said it may take a day to excavate and a day for the mill and inlay. Mr. Chase asked if there was anything that said where the line needs to come from. The options seem to be dig up the road or add a pole on their land then go underground. Who regulates it? Mr. L'Heureux said the Town would need to approve the pole location and ensure it did not obstruct sight distance. Mr. Chase thought an option could be to run the line over Kendall Pond Road from the existing pole to a new pole and then go underground.

Chase voted yes. Fairbanks voted no, he felt the utilities needed to be underground and would not like to see them go overhead above Kendall Pond Road. Davison voted yes. Flattes abstained. Granese voted no; he felt the regulation was in place for a reason. The motion failed at deadlock and the waiver was not granted.

Mr. Sioras confirmed when a vote is deadlocked, the motion fails. Mr. Fairbanks began to read a motion to grant conditional approval and Attorney Muller asked for permission to speak to the Board. Mr. Granese granted permission.

Attorney Muller stated in light of the denial of the waivers, the applicant will need to modify the plan. Before the Board decides on the merits, they would look to continue the hearing to allow for modifications to the plan. They will grant an extension to the 65 day time limit to the extent necessary.

Mr. Sioras did not feel this was an unreasonable request as the plan will need to be revised. The Board can vote to continue the plan to a date certain and the Board must also vote to extend the 65 day clock, which is reasonable in this case. That should occur first. The Board would not vote on conditional approval of the plan until they came back. Mr. Fairbanks withdrew his motion. Mr. Granese felt there should be something in writing from the applicant, to keep the record clean, with regard to waiving the 65 day clock.

Attorney Muller stated his clients are willing to waive the limitation set forth in RSA 676:4, and to grant an extension to the 65 days to allow for further consideration of the application on its merits.

Motion by Fairbanks to go beyond the 65 days as requested by the applicant, seconded by Davison.

Chase, Fairbanks, Davison, and Granese voted in favor; Flattes abstained. The motion passed.

Mr. Sioras stated the agendas are booked for November and he would recommend placing this plan on the December 3rd agenda. Mr. Mitchell said they can get the information back to Public Works, the Fire Department, and staff prior to that date. Mr. Sioras also asked that the applicant verify with the school district which school children would attend. Mr. Taylor stated he had an email from the Superintendent stating the children would attend South Range School. Mr. Sioras asked that the email be forwarded to the Planning Office.

Motion by Fairbanks to continue the public hearing for 19 Kendall Pond Road to December 3, 2014. Abutters will not be re-notified. Chase seconded the motion. Discussion followed.

Mr. Granese inquired if the applicant understood the issues that the Board would like to see addressed at the next meeting. Mr. Fairbanks asked if the applicant was clear on the marching directions for the land that extends behind Magnolia. Mr. Mitchell said he will discuss the items with his client. A fence was brought up as a possibility and it was not indicated that would be a

bad idea, and they will discuss the buffer from the neighborhood. Mr. Granese said he would look for more than what they have so far proposed.

Chase, Fairbanks, Davison and Granese voted in favor; Flattes abstained. The motion carried.
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Workshop

Discussion regarding proposed changes to the Central Business District: height restrictions, residential buffers, and parking requirements.

Mr. Granese advised the Board would be discussing the height. Mr. Fairbanks liked the idea of not exceeding 10% of the height of any building within a certain circumference. Mr. Chase thought it was possible in the downtown to have taller buildings because of the topography of the land. He did not think a 5 story building in the downtown was outrageous. Mr. Chase confirmed the Board would be reviewing the entire Central Business District as a whole.

Mr. Chase asked why is single family residential a permitted use in the Central Business District. They don't belong there. Ms. Davison asked if there should be any residential. Mr. Fairbanks noted this district allows mixed use. Mr. Granese said someone could tear down a building and put up a single family residence. The Board agreed. Ms. Davison commented business and residential uses conflict in many instances. Mr. Flattes asked what happens if someone owns a single family house but uses it for a business and something happens to the building; are they grandfathered and can now build a single family house. Board members confirmed if they removed single family as a permitted use, no one could build one unless it existed as that use on the lot today. Mr. Granese said the Board was talking about detached single family, not mixed use.

Mr. Fairbanks asked for the definition of an Indoor Recreational Facility. Mr. Chase read the definition from the Ordinance. The Board agreed that use likely should stay as a permitted use but thought Car Wash should be removed. Ms. Davison thought anything that would require multiple curb cuts on Broadway should probably not be allowed. Mr. Sioras advised many of the permitted uses are things that have been on the books since the zoning was written. It was noted "sale of travel accommodation" was really travel agent and that could have its own listing. The Board looked at Bus Depot and discussed the pros and cons of Bus Depot as a use. There could be a possibility of a small bus depot in town, but there is not room in the downtown for a large transit station. It is also unlikely there would be a major hub as there is a bus depot right off Exit 4 in Londonderry. Since there could be a small kiosk, the Board opted to leave the use in the ordinance. The Board also suggested looking at different terms to define the same thing rather than "bus depot". Mr. Granese talked about Uber hub. Uber is a smart phone application that connects riders with drivers. It works similar to a taxi service; people call for a driver and are picked up at specific locations. It was similar to Livery Service. The Board felt the definition of 'bus depot' could be refined to include Uber hubs. Mr. Flattes thought that people could use the Uber hubs so that they did not need to drive themselves to the restaurants in the downtown. Ms. Davison said the town should want to draw commercial traffic to the downtown and make it a pleasant pedestrian experience. People don't want to be dodging busses. She could see limiting

drive through restaurants in the downtown. Limiting curb cuts enhances the downtown experience.

The Board looked at 165-33B.6.a – “density of new construction shall not exceed 18 dwelling units per acre.” The Board felt the allowable density should be changed. Mr. Chase suggested 12 units per acre. Mr. Sioras noted the apartment buildings on Railroad Avenue have 24 units. Mr. Granese suggested eight, noting there could be more than three stories if the use is mixed with retail. The ordinance really does not address four floors or more other than residential is prohibited below the second floor. Mr. Fairbanks asked for the dimensions of a city lot. City lots are more like half an acre. Mr. Chase discussed the Bradford Hotel lot (35 West Broadway) and the density on that lot. Mr. Flattes noted parking is an issue in the downtown. Mr. Chase said some of the buildings in the downtown take up the entire lot. Mr. Flattes said he would like to see 8 units per acre. Mr. Chase thought the density needed to be changed from “per acre” and would like the Board to consider adding office to the second floor with residential above. Mr. Granese noted the Board needs to also look at the height of the buildings. The Board discussed the TBOD which runs along the frontage of Broadway; the building height is limited in the TBOD to 60 feet, which is fairly tall given the scale of buildings along Broadway; a building could be six stories. Mr. Fairbanks recalled the Board has discussed the potential height of buildings near Abbott Court. There should be the ability to allow the buildings to be around the height of the buildings on Broadway when viewed from the street. Ms. Davison said she would not want to see one high tower sticking up in the middle of a block. Mr. Fairbanks said he would like to see a percentage of the average height. Mrs. Robidoux noted that the spire on the Marion Garrish Center is fairly tall; Mr. Chase added the First Parish Church steeple is also tall. Mr. Flattes asked if the Board could separate the Abbott Court lot from the rest. Mr. Chase said they could not; the Board also needs to be very careful with wording so that nothing is left open to interpretation; future Boards might interpret something in a way this Board did not intend. They need to make sure whatever they decide on is fair. Mr. Fairbanks confirmed that spires and clock towers would not be included in the height computation because they are not included in the appropriate definition.

Mr. Fairbanks said the reason he liked the no taller than 10-15% of buildings within a certain circumference is that it will allow people below grade to have taller buildings, but on Broadway, the buildings are limited. Mr. Sioras noted the proposed change on page 4 of the handout. The proposed change is to state no building in the district can exceed the average height of other buildings within a 500 foot radius. The Code Enforcement Officer had concerns with the distance.

Mr. Chase advised a city block is $1/20^{\text{th}}$ of a mile. 5260 square feet divided by 20 is 263 feet of frontage for a city block. Mr. Fairbanks suggested making the circumference distance 250 feet; this would make it about a city block in each direction. The Board agreed.

Brian Chirichiello, 6 Rollins Street, asked why the Board would want to eliminate single family residential as a use in the Central Business District. There are many single family homes in the district; half of Rollins Street is single family. If any of those owners wanted to add onto their homes, they could not do that. That is a problem. He understands what the Board wants to do. Mr. Chase said the town would not want to see a single family residence at the Oliver Block (27

West Broadway) or the Whitney Block (13 West Broadway). Mr. Chirichiello said many of the homes have been in existence since the 1900s. They would not be able to add a small family room. Mr. Sioras said they could go to the ZBA and request a variance for an expansion of a non-conforming use. Mr. Chirichiello said there may be a creative way to get around this.

Mr. Granese asked if they could add in wording that pre-existing single family in effect as of the date of the change would be considered legal conforming uses. Mr. Chirichiello did not want to make people go to the Zoning Board and thought people might combine lots in the downtown to be able to build what they want. Mr. Fairbanks felt the regulations in the TBOD could also be beefed up. Mr. Chirichiello said it is easy to move zone lines or decrease them.

Mr. Fairbanks noted the Board needs to discuss the buffer requirements; that will likely be its own meeting. Currently there is only one regulation that covers every type of commercial or industrial development that abuts residential. He agrees with Mr. Mackey's comments on the draft that the current regulation is too restrictive. Mr. Chase said the area and dimensional requirements in this zone are not conducive to the downtown. Many lots are not even 50 feet wide, so the owners would have an issue meeting regulations if anything happened to the current building on the lot. Mr. Granese asked if it was possible to get the dimensions for the lots in the downtown. Mrs. Robidoux said it was. Mr. Chase felt the Board needed to come up with language that allowed existing lots to remain as they are.

Mr. Flattes commented if there was a fire in the downtown, the owners should be able to reconstruct in the same footprint. Mr. Chase cautioned that the regulations state if more than 50% of the building is a loss, the new structure needs to conform to today's regulations. Mr. Sioras reviewed Section 165-104 of the Zoning Ordinance dealing with non-conforming uses and structures; the regulation offers certain protections within a time frame. This section is included per the state RSAs. He also noted that in the GCII zone, there is a section that states "natural expansion of valid pre-existing, non-conforming uses existing as of the adoption of this amendment, as provide in Article XIII of this ordinance, by NH Statute, and by relevant case law would be continued in this district." Something similar could be written in here.

Mr. Chase said the Oliver Block is well outside of that regulation as it has been vacant for eight years or more, and he is not sure it has 30,000 square feet. Mr. Sioras felt Mr. Chirichiello had raised some valid points.

Mrs. Robidoux suggested forming a subcommittee to work on revisions to the CBD; there is a lot of work to be done on it. It might be more efficient for a subcommittee of three to work on it with staff and then bring the proposed changes back to the Board. Mr. Granese and the other Board members agreed and asked that an email be sent to the members in the morning to see if anyone was interested.

There was no further business before the Board.

Motion by Chase, seconded by Davison to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:27 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____