

Amend the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-32.4.1.B, Design Standards for All Areas, Buffer Zones

Buffer Zones. ~~A vegetated buffer of at least 100 feet shall be provided between Residential Areas and adjacent zones.~~ The Planning Board will recommend a buffer zone on a per project basis during the conceptual phase. The Planning Board may utilize LDCR Section 170 when determining buffering to protect abutting residential uses.

Policy & Procedure, Amendment to Address Regional Impact

Mr. Sioras advised the Regional Impact recommendation has been provided in proposed changes to the Board's Policy and Procedures. There will need to be two readings on those proposed changes. Tonight, is the first reading by the Board. Mr. Nelson advised he was hoping to have the process outlined in the Regional Impact staff memo inserted into the Policy & Procedures. Mrs. Robidoux stated she would do that and then the document can come back for another first reading at the next meeting.

Planning Director Updates

Mr. Sioras explained the first Regional Impact recommendation has been provided this evening following the newer process. Staff has reviewed the criteria used to determine Regional Impact and feels the site plan application for Starbucks at 68 Crystal Avenue does not meet the criteria. Staff recommends the Board find the project does not have Regional Impact. The Board would formally vote on the matter during the public hearing later this evening.

Schedule Public Hearing - Amend the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-32.4.1.B, Design Standards for all Areas, Buffer Zones

Motion by MacEachern, seconded by Granese to schedule a public hearing on March 16, 2022, to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-32.4.1.B, Design Standards for All Areas, Buffer Zones.

Granese, Chirichiello, MacEachern, Tremper, Connors, Nelson, and O'Connor voted in favor and the motion passed. Mr. Granese noted he would discuss his concerns and comments at the public hearing.

Public Hearing

Alrig, USA

(Owner: Blue Seal Feeds, Inc.)

PID 35018, 68 Crystal Avenue

Acceptance/Review, Site Plan

2,100 SF retail building – Starbucks

Mr. Sioras provided the following staff report. The owner of the property is Blue Seal Feeds, Inc. and is being purchased by Alrig, USA. The purpose of the plan is to redevelop the property to construct a Starbucks restaurant with a drive-through. The existing Blue Seal Feed store will be demolished. The property is located in the General Commercial District. All town departments have reviewed and signed the plan. There is a waiver request letter dated February

the day on the home page of the Town of Derry website. The Grind will offer snacks and beverages.

Several Board members have terms expiring at the end of March: Mr. Granese, Mr. Clapp, and Mr. Hultgren. If they wish to continue with the Board, they will need to apply online to be considered.

On March 2nd, the Board will hold a workshop to discuss the residential zoning density requirements at the request of Mr. Chase.

NH Business and Economic Affairs under the Office of Planning and Development, is offering a webinar on February 17 regarding housing supply and trends in New Hampshire. Currently, the State is in arrears about 14,000 housing units. He suggests the members sign up for the webinar. If they can't attend during the time scheduled, a link to the recording will be provided. At this time the State has a bill, SB 400, moving through the legislature. If passed, this law will have a significant impact on the Planning Board.

Workshop

Workshop #2 – To discuss an amendment to Article VI, District Provisions, Section 165-32.4, West Running Brook District, Subsection 1, Design Standards for all Areas, Streetscape, B. Buffer Zones (postponed from January 19, 2022)

Mr. Sioras stated the workshop is a two step process. The Board has a handout with the suggested wording that has been previously discussed. The Board asked staff to meet with Mr. Chase who volunteered. They did that and looked at some of the parcels to see what could work as a buffer and what would not work. They have provided samples of a small, medium, and large lot, applying the different buffer requirements. Mr. Chase will discuss it further, but it does not appear there can be a one size fits all solution. The Board can then decide which of the draft wording works best in real word situations.

Mr. Chase said he had a good discussion with staff while looking at the attached maps. For several of the lots in the district, a one hundred foot buffer would eliminate any development at all on the lot; on one lot, it left a small sliver in the middle to develop. Realistically, setting a buffer at 100 feet is not feasible. In looking at how buffers are handled in the rest of the town, the LDCR has standards in place. Lots also have side and rear setbacks. In other projects around town, such as those on the corner of Fordway and Kendall Pond, or Magnolia, the buffers are decent. This zone proposed connectivity to other areas of town, but on the other hand, imposes a 100 foot buffer. What does the Board really want? There are seven options for wording before the Board this evening. In his opinion, rather than stating a specific number of feet for the buffer, the Board should utilize the LDCR. This district requires a conceptual review, and the Board can look at the need for a buffer at that point. If one lot is proposing heavy commercial use abutting a residence, then the Boad can say it would like to see specific buffering for that use. If there is a natural buffer in place, leave it; why interfere with what is there? There are wetlands on some of the lots and other lots have elevation issues. If residential use is abutting

residential use, there is no need for a buffer, and there should be connectivity. If there is residential use abutting commercial use, then there should be a buffer of some type. The Board can set a maximum buffer for commercial uses abutting residential uses, such as up to 50 feet, so that the buffer isolates and protects the residential use. In the examples provided, if 78 and 82 Rockingham Road were combined and developed, with the need for the front setback, there is a very limited area for development. The lots, beginning at the corner of Bedard Avenue and heading east around the corner to the existing Cal's Custom – those lots are shallow. A 100 foot buffer would eliminate about 1/3 of the lot area and limit what could be done on the lots. In the example for the larger parcel, 120 Rockingham Road, known as the Smith property, the buffer does not have that much of an effect; but that is a 40 acre parcel. The land behind the Smith lot is conservation and it also abuts the Robert Frost Farm. The former Grandview Flea Market site (Taylor property), 2 Island Pond Road, is about 20 acres in size. The buffer does not infringe on that lot badly either, but those are the only two lots in the entire zone that would not have major impacts if a buffer were imposed. The lots on Humphrey Road and the Siragusa lots would be impacted by a buffer. For the Siragusa's, if there was a 100 foot buffer, the pavilion last approved by the Board would have been eliminated. The LDCR language has worked well for buffers in the rest of the zones. During conceptual discussions, the Board can look at the buffers on a case by case basis based on how the project is laid out on the lot, and impose a buffer as needed. He did not feel residential uses needed to be buffered from each other. As the Town is looking for connectivity, he did not believe connectivity should be interrupted with a hard line buffer.

Mr. O'Connor recalled that is how they tried to design the zone. He recalled Mr. Nelson had mentioned previously that given the topography on some of the lots, there might be cases where there would be a natural buffer.

Mr. Nelson noted there are districts in town where a buffer is established by the regulations; typically, where zoning districts abut each other. His opinion is in a village concept, the uses should be mixed all together. He feels there is conflict with the statements. The Board wants a village experience, a high level of mixed use, and connectivity, but the Board seems to want to erect barriers. He does not feel fixed buffers belong in this kind of creative village experience district. Buffers are to mitigate impacts and they can be imposed as necessary to mitigate effects from light, traffic or noise. He felt the abutters should tell the Board of potential impacts, and then the Board can mitigate the impacts. Fixed buffers in this district would be a bad idea.

Mr. Connors asked when the meeting with staff was called as he did not recall being notified of the meeting. This is an issue he has raised often. Mr. O'Connor said it was discussed at the last meeting; the goal was to discuss the tiered buffering discussed on Jan 05. Mr. Connors said he would have liked to have been involved; was there a date set and notice given? Mr. O'Connor said Mr. Chase was directed to meet with Planning staff and bring suggestions back to the Board. No other Board member offered. Mr. Connors recalled that it was said some of the smaller lots would not be developed unless they were combined with other lots in order to be developed as mixed use. Now those smaller lots are being used as examples. The concept he pushed for with regard to the buffer was to have the buffer between existing residential zones and the brand new zone where the existing neighborhoods may be affected by some of the larger lots. The buffers shown in the examples do not affect many lots. These examples have obviously been done to

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sell a problem. A hundred feet may be significant, he agrees with that. There are spots where the projects the Board has seen may be against existing, long term residential use. The original idea for the zone was for small residential and for the people in those units to frequent the retail in the zone. The Board is seeing concepts for large box apartments; this is not a real village. He wants to protect three or four areas. He is surprised that an example for the affect of the buffer was not provided for 109 Rockingham Road. There would not have been a 100 foot buffer in certain areas of the lots in the district. Several of the lots in the district have bowls. The idea was that building in the bowl would not affect a neighborhood but building on ledge would. It was supposed to be a vegetated buffer between mixed use and existing residential use. It would be on certain parts of the lot, not wrapped around the entire lot as depicted in the examples. That is selling a concept that is not there. He would like something in there so that developers know not to go right up against the lot line. With regard to connectivity, there can be paths between vegetated buffers and the woods. He does not want to see parking lots and buildings against the lots of long-time residents and neighborhoods that are not going away. Mr. O'Connor said he agreed there might not be a need for a buffer around the entire lot line.

Mr. MacEachern explained the last time the Board met, he asked staff to meet with Mr. Chase as Mr. Chase had discussed a potential tier structure for the buffer at the end of the January 05 meeting. The tiering concept has morphed because it can be difficult to do it on a lot by lot basis. He considered Mr. Nelsons' comments and believes that based on the natural configuration of some of the lots that there is a need for something for the whole district. He does not want to see a parking lot against a lot line either, adjacent to an existing residence. If it were a residential use against a residential use and then commercial in the middle of the lot, that would be fine. In other districts there is a 15 foot side yard setback, so he is 30 feet from his neighbor. In a village concept, a townhome next to an existing residence is okay; this is what it is all over Derry and in the downtown. The Board has the ability to make a decision based on particular factors. If a parking lot is proposed against a property line abutting a residence, it might be, in that case, a 50 foot buffer is required with some arborvitae in between.

MacEachern suggested the following wording, "The buffer shall be determined by the Planning Board on a per project basis, utilizing the LDCR. No buffer shall exceed 50 feet, unless there is a natural buffer in existence." After discussion, the wording was amended to add "during the conceptual process", and "no constructed buffer" in place of a natural buffer.

Mr. Sioras took a moment to express his disappointment with Mr. Connors' comments with regard to staff. He and Mrs. Robidoux are staff to the Planning Board. Staff was charged by the Chairman and the Board to come up with examples of the buffer and suggested wording. The wording is what the Board discussed during the last workshop. Staff did not arbitrarily pick three lots. They did not use the lots that have already been under discussion; the Board has seen those, and they are currently in the design phase and can't be discussed because the Board will see them later this year. The lots in the example were chosen because there is no development proposed for them yet and the Board wanted to see the impact a buffer might have on development. Staff chose 120 Rockingham Road, 2 Island Pond, and 78 and 82 Rockingham Road. 78 Rockingham Road is on the market right now. A buffer of 50 and 100 feet were applied to the lots. The 100 foot buffer is in the regulations today. He is very familiar with the lots in this district and during his tenure with the town, which is more than 30 years, he has been

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on a lot of them, and he has walked the three that were provided in the examples. 120 Rockingham Road has conservation land behind it and the Robert Frost Farm to one side. 2 Island Pond Road is the second largest lot in the district and has a residential zone behind it. 78 Rockingham Road is on the market; it is small and vacant. The rest of the lots in the district are smaller lots or have natural buffers on them, such as a 150 foot prime wetland buffer. Staff was asked to create the maps and did so. This was not something staff did on its own. Mr. Sioras apologized for his forceful comments.

Mr. Connors stated his comments were more as to why staff chose to ignore that there is already a 100 foot buffer that is supposed to be in place for the lots the Board has seen conceptually, and staff did not mention there should be a buffer when the concepts were before the Board. On those projects, the Board saw development up to the property line. He questioned the fact that when the concept for 109 Rockingham Road was before the Board, he mentioned there should have been a 100 foot buffer in place and everyone seemed surprised. Then it was discovered that wording had been missed when the zone was created and now the Board is amending the existing wording. He feels buffers only need to be against residential areas; buffers don't need to be between existing lots in the zone. He walked the Board members through his suggested buffer areas as depicted on the map he had provided to the Chair. 2 Island Pond Road should be buffered to the rear and a buffer should be in place for the trailer park. The Butterfield lot does not need a buffer to the school, only to the rear. The Fairways may need a buffer along their property line, but he did not think multifamily use needed to be buffered. 109 Rockingham Road needs a buffer to the residential area to the back. He is concerned about that area; he lives in that area. He would like to see good development on that lot. The lots along Rockingham Road heading towards Route 28 should have buffers to protect the residents behind them in the residential zone. The three lots along the road will not be sold or redeveloped; he has already spoken with those neighbors and assured them their residential use is grandfathered. Mr. Connors did not want to make it easy for a developer to drop an apartment building on the smaller lots if they were purchased and combined. This was all commercial land and he did not feel the original intent had been to turn the area into high density residential, which is what they are seeing in the concepts. He felt there is less impact than is depicted in the examples provided by staff. He feels the map he provided shows the true impacts. Existing neighborhoods deserve a buffer from the larger apartment buildings and three story townhouses. The Board should be deciding based on reality and what they told the residents the Board would do in this zone. Mr. O'Connor noted each project is different and will be looked at individually. The project designs can evolve after the conceptual discussion with the Board.

Mr. Nelson wanted to confirm Mr. Connors' point. This is a new, innovative, mixed use development area. Prior to that, many of the lots were in a commercial zone. He noted Mr. Connors felt the people in the residential zone deserved protection from this new district. Mr. Nelson asked if the Board thought that meant more protection than there would have been if the lots had remained commercial and then been developed with a large multistory commercial project. He believed he was hearing this was to be a village district with mixed uses close to each other, but the grandfathered residential uses should be excluded from the village experience to the point where the residents find it impactful. Mr. Connors said the district was sold to the Board as having less residential and more commercial with each lot its own village. That is not what the Board has been seeing.

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Mr. Nelson stated the visions of a Board when a zone is drafted is often not what gets proposed; that is the risk with urban planning. That is a separate issue from the buffer for incumbent residential properties.

Mr. O'Connor reminded the Board that this is a mixed use district rather than a village district, which has different statutory requirements, however, some of the concepts that have been before the Board look like a village.

Mr. Connors questioned the fact that when the concept for 109 Rockingham Road and other projects were before the Board, the developers did not look at the fact that there should have been a 100 foot buffer in place. Doesn't the developer have a responsibility to follow the regulations in place at the time? Will the projects that have been before the Board be held to the 100 foot buffer? Mr. O'Connor advised this zone is approved by conditional use and a developer can ask for a waiver. The conceptual discussions are non-binding on both sides. Mr. Connors felt there are only a few lots that will impact existing neighborhoods and the Board should protect those neighborhoods into the future. He questioned if the Board did itself a disfavor as there are not enough restrictions in the zone.

Mr. Clapp commented this zone allows for waivers and what the Board decides today can be waived in the future.

Mr. MacEachern said he has been listening to what has been said and has slightly revised his previous suggestion for the wording. He feels the amendment addresses the comments made this evening.

Motion by MacEachern to move forward with the following wording: "Buffer Zone. The buffer zone will be determined by the Planning Board on a per project basis during the conceptual phase. The Planning Board may utilize the LDCR with no constructed buffer to exceed fifty feet."

Mr. MacEachern believed that covered the existence of a natural buffer and the fifty foot distance discussed at the previous workshop. It also allows the Planning Board to be flexible, based on the make up of the project and where the uses are located. Mr. O'Connor asked if the Board needs to define "constructed buffer". Mrs. Robidoux suggested citing the appropriate section in the LDCR, Section 170-64. Mr. Connors did not believe this zone had to comply to the LDCR. Mrs. Robidoux stated every project that comes before the Board in this zone needs to meet the regulations in the LDCR. Mr. MacEachern suggested amending the wording to "...utilize the LDCR, Section 170-64 with no man-made buffer to exceed 50 feet."

Mr. Connors asked why would the buffer not exceed 50 feet? What are the setbacks in this zone? Mrs. Robidoux stated there are setbacks applicable to this zone, but she did not have the Zoning Ordinance in front of her to reference them. Mr. MacEachern stated elsewhere in town the distance between homes in some cases is 30 feet; in the previous workshop they discussed a 50 foot buffer. Mr. Connors recalled previous concepts had structures within 15 feet of the property line; he would like to know where the structures can be placed in this zone. Mr.

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MacEachern said the Board can determine at the concept phase what the distance should be between structures.

Mr. Nelson noted procedurally, there had not been a second to Mr. MacEachern's motion and the Board should not be discussing the motion.

Motion is seconded by Nelson. Discussion followed.

Mr. Nelson said he recollected all dimensional requirements are found in the Zoning Ordinance. Construction standards and minor buffering standards are in the LDCR. Mr. MacEachern said this district has a 100 foot buffer requirement and his proposed language amends that. Mr. Nelson supported that.

Mr. Chase advised the following setbacks apply to the West Running Brook District: minimum lot area is none; front setback is 50 feet, side and rear setbacks are as agreed to by the Planning Board but are not to be less than 10 feet. The setback to a building on an abutting property is a minimum of 30 feet.

Mr. MacEachern said he would leave it up to the pleasure of the Board if they would like to specifically reference the requirements in LDCR Section 170-64 (Buffers) and a buffer not to exceed 50 feet.

Mr. Sioras apologized for some of his previous comments; staff is doing the best it can for the Board and is being critiqued for their efforts. The wording in this zone is written to be flexible on purpose because each project will be very different. He provided an example of how the wording of a regulation can negatively affect the people the regulation is supposed to protect. Requirements in the Zoning Ordinance cannot be waived by the Board. At one time the Ordinance stated if an Industrial zone or industrial use abutted a residential use, there had to be a buffer of a certain number of trees, a certain number of rows and a certain type of vegetation. When American Excavating located on Madden Road, the area to the right where the business is now located was all woods. Because of the wording in the Zoning Ordinance, American Excavation had to cut down the trees that had provided a thick, natural buffer and create a buffer of three rows of trees that was not as dense. The Board learned from that experience and now allows the use of an existing natural buffer, that can be enhanced. In the West Running Brook zone, a standard buffer cannot be applied to all of the lots. Prime wetlands can provide a natural buffer as well. As projects come in, neighbors can request a specific buffer as needed. The Board should be allowed flexibility in the wording to be able to do that.

Mr. Connors said this zone has a 10 foot setback. Buffering was placed in the regulations so that an existing residential use did not have to look out their window directly at a large building. He had suggested a 100 foot buffer to provide protection from that. The buffer was never intended to go around the perimeter of the entire property as depicted in the examples. At what point can the abutters provide comment? By the time the project gets back to the Board from the conceptual discussion, it is already designed, and a lot of money has been invested. The only real teeth in the regulation is the 10 foot setback and by the time the abutter speaks at a public hearing, the only thing they can ask for is a few trees or a fence.

MacEachern said the Board can determine at the concept phase what the distance should be between structures.

Mr. Nelson noted procedurally, there had not been a second to Mr. MacEachern's motion and the Board should not be discussing the motion.

Motion is seconded by Nelson. Discussion followed.

Mr. Nelson said he recollected all dimensional requirements are found in the Zoning Ordinance. Construction standards and minor buffering standards are in the LDCR. Mr. MacEachern said this district has a 100 foot buffer requirement and his proposed language amends that. Mr. Nelson supported that.

Mr. Chase advised the following setbacks apply to the West Running Brook District: minimum lot area is none; front setback is 50 feet, side and rear setbacks are as agreed to by the Planning Board but are not to be less than 10 feet. The setback to a building on an abutting property is a minimum of 30 feet.

Mr. MacEachern said he would leave it up to the pleasure of the Board if they would like to specifically reference the requirements in LDCR Section 170-64 (Buffers) and a buffer not to exceed 50 feet.

Mr. Sioras apologized for some of his previous comments; staff is doing the best it can for the Board and is being critiqued for their efforts. The wording in this zone is written to be flexible on purpose because each project will be very different. He provided an example of how the wording of a regulation can negatively affect the people the regulation is supposed to protect. Requirements in the Zoning Ordinance cannot be waived by the Board. At one time the Ordinance stated if an Industrial zone or industrial use abutted a residential use, there had to be a buffer of a certain number of trees, a certain number of rows and a certain type of vegetation. When American Excavating located on Madden Road, the area to the right where the business is now located was all woods. Because of the wording in the Zoning Ordinance, American Excavation had to cut down the trees that had provided a thick, natural buffer and create a buffer of three rows of trees that was not as dense. The Board learned from that experience and now allows the use of an existing natural buffer, that can be enhanced. In the West Running Brook zone, a standard buffer cannot be applied to all of the lots. Prime wetlands can provide a natural buffer as well. As projects come in, neighbors can request a specific buffer as needed. The Board should be allowed flexibility in the wording to be able to do that.

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Mr. Clapp asked if there had been a lot of feedback from residents during the public hearing when this zone was created; what were their main concerns? Mr. MacEachern did not recall a lot of residents speaking at the hearing. Mr. Connors there were four. He stated Mrs. Howe had stated she was in favor of the village concept but concerned her home would be removed. She was assured she was grandfathered. A gentleman on Winter Hill was not in favor, and Tracey Zysk had concerns about increased traffic. The abutters were all assured this would be a small village like district. He believes that people will come out to speak when the plans come forward before the Board, but that is late in the process.

Mr. MacEachern said there has been positive feedback on several of the concepts the Board has seen, and this change is about the zone as a whole. The Board should not be focusing on one piece of property. Mr. MacEachern reminded the Board this zone came about to implement goals in the Master Plans and was researched and proposed by Economic Development and Planning staff. He will amend the wording to not state 170-64 and leave it at Chapter 170.

Motion by MacEachern to amend the proposed wording to, "Buffer Zones. The Planning Board will determine a buffer zone on a per project basis during the conceptual phase. The Planning Board may utilize the LDCR Section 170 with no man-made buffer to exceed 50 feet." Motion is seconded by Nelson. Discussion followed.

Mr. Nelson noted the Board can't make a determination outside of a public hearing. It would be unlawful, so the Board can't determine a buffer during the concept stage. Mr. MacEachern suggested changing the wording per the friendly amendment to 'The Planning Board will recommend a buffer zone on a per project basis. The Planning Board may utilize LDCR 170, with no man-made buffer to exceed fifty feet.' Mr. Connors stated the requirement should not have a 50 foot distance; that limits it to less than fifty feet. Mr. MacEachern stated it was worded that way so that if there was a natural buffer, it can be exceeded. Mr. Connors felt the not to exceed fifty feet should be removed if the Board was not willing to have a buffer of a specific depth. Mr. Nelson added if abutters are concerned about impacts and request reasonable and lawful mitigation, the Board should do that. There may be cases where a 75 foot buffer is appropriate for mitigation. The Board should hear the testimony, assess the impact, devise a plan to protect the abutters and exercise its quasi-judicial responsibility in good faith. He suggests removing the 'shall not exceed 50 foot' distance. Mr. Connors said if there is no minimum, once one project builds to within 10 feet of the property line, it sets precedence.

Mrs. Robidoux asked what the buffer was intended to protect. If it is abutting residential uses, then the wording should say that; the Board needs to protect itself. The Board does not want to run into the situation where there is a commercial use on the property and then because of the wording, the Board has to impose a buffer between that and the residential use on the same property. That is a concern Mr. Chase had expressed earlier. The buffer should not be imposed against zoning districts. Mr. Connors asked if each project is looked at individually, why wouldn't the Board impose a buffer between this and abutting zones. Mrs. Robidoux said if the wording specifically says residential zones, then the Board is only buffering against those zones. There are residences in other zones. The Board wants to protect existing residential uses; not zoning districts. Mrs. Robidoux recalled Mr. Connors has repeatedly asked for protection for

Mr. Clapp asked if there had been a lot of feedback from residents during the public hearing when this zone was created; what were their main concerns? Mr. MacEachern did not recall a lot of residents speaking at the hearing. Mr. Connors there were four. He stated Mrs. Howe had stated she was in favor of the village concept but concerned her home would be removed. She was assured she was grandfathered. A gentleman on Winter Hill was not in favor, and Tracey Zysk had concerns about increased traffic. The abutters were all assured this would be a small village like district. He believes that people will come out to speak when the plans come forward before the Board, but that is late in the process.

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Motion by MacEachern to amend the proposed wording to, "Buffer Zones. The Planning Board will determine a buffer zone on a per project basis during the conceptual phase. The Planning Board may utilize the LDCR Section 170 with no man-made buffer to exceed 50 feet." Motion is seconded by Nelson. Discussion followed.

Mr. Nelson noted the Board can't make a determination outside of a public hearing. It would be unlawful, so the Board can't determine a buffer during the concept stage. Mr. MacEachern suggested changing the wording per the friendly amendment to "The Planning Board will recommend a buffer zone on a per project basis. The Planning Board may utilize LDCR 170, with no man-made buffer to exceed fifty feet." Mr. Connors stated the requirement should not have a 50 foot distance; that limits it to less than fifty feet. Mr. MacEachern stated it was worded that way so that if there was a natural buffer, it can be exceeded. Mr. Connors felt the not to exceed fifty feet should be removed if the Board was not willing to have a buffer of a specific depth. Mr. Nelson added if abutters are concerned about impacts and request reasonable and lawful mitigation, the Board should do that. There may be cases where a 75 foot buffer is appropriate for mitigation. The Board should hear the testimony, assess the impact, devise a plan to protect the abutters and exercise its quasi-judicial responsibility in good faith. He suggests removing the 'shall not exceed 50 foot' distance. Mr. Connors said if there is no minimum, once one project builds to within 10 feet of the property line, it sets precedence.

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neighboring residential uses; that is what is being suggested. Mr. Connors if there are no minimums for the buffer, it does not protect anyone. He felt the only real teeth was the ten foot setback. He felt there should be a buffer between anything in the WRB and what is around it.

Motion by MacEachern to move forward with the following wording: "Buffer Zones. The Planning Board will recommend a buffer zone on a per project basis during the conceptual phase. The Planning Board may utilize LDCR Section 170 when determining buffering to protect abutting residential uses." Motion is seconded by Connors.

Chase, MacEachern, Hultgren, Clapp, Nelson and O'Connor voted in favor; Connors voted no as he feels there should be specific buffer, and Tremper abstained. Motion passes.

The amended wording will be provided to the Board at the next meeting and the Board will then move forward to the public hearing process.

Board Member Comments

Mr. O'Connor wanted to mention to the Board that as it moves forward with its discussions about housing in New Hampshire, Volume II of the current Master Plan has a lot of information relative to housing stock in Derry. The State of New Hampshire is proposing a massive change to how zoning is handled in New Hampshire and there is a push toward statewide zoning. He urged the Board members to read the Legislative Bulletins provided by the New Hampshire Municipal Association as that publication reviews what is happening in the Legislature.

Mr. Connors noted Mr. O'Connor has already mentioned Bike to Work Day and wanted to add parking is available in the Abbott Court lot for those that telecommute – The Grind has offered use of their Café for telecommuters that day.

He also suggests the Board review the impacts the proposed Rail Trail expansion may have, specifically on the three lots where the trail is now proposed to cross. The original design had a straight pedestrian tunnel under the road. The lots impacted by the trail may in the future have a 10 foot paved path with associated aprons going across the lots that could be developed commercially. He believes the new configuration will severely impact the potential to develop those lots commercially because the trail will impede access to the lots and would like the Board to look at them. Mr. MacEachern said the subcommittee was going to wait to do that. Changing the zoning on those lots will not change Exit 4A or where the State is going to put the bike path. Mr. O'Connor added the end result of the funding will not be known for several months yet. Mr. Connors stated those three lots have homes on them but eventually, they will be developed commercially (likely a plaza) once the intersection is constructed. If NH DOT moves forward with the alternative trail configuration, this will affect the ability of those lots to be developed. He would like to have a say in that from a Derry planning perspective.

Mr. Chase noted the Board is planning to review the density on residential lots in March. He had his eyes opened with respect to the true definition of 'workforce' housing when he watched one of the seminars on it. His previous notion of what workforce housing was, is not what it really

neighboring residential uses; that is what is being suggested. Mr. Connors if there are no minimums for the buffer, it does not protect anyone. He felt the only real teeth was the ten foot setback. He felt there should be a buffer between anything in the WRB and what is around it.

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Chase, MacEachern, Hultgren, Clapp, Nelson and O'Connor voted in favor; Connors voted no as he feels there should be specific buffer, and Tremper abstained. Motion passes.

The amended wording will be provided to the Board at the next meeting and the Board will then move forward to the public hearing process.

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5. Note approved waiver (s) on the plan
6. Correct the Parcel ID number (noted on the cover sheet as Map 6, Lot 86-1/Robert Locke/Katherine Woods) to Map 6, Lot 86-13
7. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-24.C
8. Subject to receipt of applicable state or local permits relating to the project (i.e., AoT, Wetland, Building Department, Fire Department, Water/Wastewater, Driveway, etc.)
9. Conditions precedent shall be met within 6 months.
10. 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.]

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

Workshop

Workshop #1 – To discuss an amendment to Article VI, District Provisions, Section 165-32.4, West Running Brook District, Subsection 1, Design Standards for all Areas, Streetscape, B. Buffer Zones

Mr. O'Connor advised the Board is holding a workshop to correct an error found in the Ordinance. A review of the minutes found the wording the Board intended did not become part of what is currently approved. The proposed change is as follows:

Buffer Zones. A vegetated buffer of at least 100 feet shall be provided between Residential Areas **Zones** and adjacent **non-residential** zones.

Mr. Sioras stated the proposed change is found on page 5 of the workshop packet. The Board can see what was supposed to be approved. This would require a 100 foot buffer between various zones. The projects that are currently in the pipeline are aware and that they will need to comply with any changes made to the existing wording.

Mr. Connor said the idea was when the mixed use zone was built it would be with retail and commercial uses on the lots. Some lots are located between residential lots or abut residential neighborhoods. The intent of the wording is to put a 100 foot buffer between new development in the West Running Brook District and the existing neighborhoods. That was specifically stated during the meeting on June 05, 2019. West Running Brook District is a non-residential zone; not a residential zone. If it is a residential zone, then the wording 'non-residential' should be struck. There needs to be a 100 foot buffer between residents and the new lots in the West Running Brook zone.

Mr. Chase remembers the discussion. When it was brought up, he believed they were discussing the larger lots such as the Smith lot on Route 28 and the former fleamarket lot. At the time, he thought there might be more heavy commercial development on those lots. A 100 foot buffer on the smaller lots is detrimental and limits what they can do, especially if the lots are surrounded on three sides by residential. The Board has seen the concepts for development in this area and what has been happening in other municipalities. As much as he would like to see it, Derry will not get intense commercial development in this district. He feels the smaller lots surrounded by existing residential would have a detriment if the Board imposed the 100 foot buffer. That should be eliminated or scaled back. There are three places buffers are mentioned in the West Running Brook district: the regulation refers to the LDCR for buffers; there is a 50 foot buffer along the property line with the Robert Frost Farm, and this particular regulation says there is a 100 foot buffer everywhere else in the zone. He believes they have gone a little bit too far with this, and he was part of that initial discussion that came up with it. 100 feet is too much. He felt the 100 foot buffer should be dropped or fall back to what is in the LDCR and discuss it during conceptual review. The other option is to modify it to the point where it won't be a detriment to the smaller lots.

Mr. O'Connor felt the original intent was to change it to the 100 foot buffer between residential and non-residential zones. Is the West Running Brook District a residential zone or commercial zone? He feels it is more of an innovative zone. Mr. Connors said since he initiated the request for a 100 foot buffer, he wanted it clarified in the record. The lots on Rockingham Road were in the zone when the Board discussed the 100 foot buffer. It came up because of his concern about the smaller lots. 'Non-residential' was not there originally and now he believes the Board wants the buffer removed because it will affect what has been presented to the Board for a concept. This was supposed to protect the adjacent neighbors who have been there for years. These were commercial lots. The intent was not to have larger apartments; it was to have a smaller, mixed use village. He is not in favor of the larger buildings and the majority of the developers are using the Board's regulations to shove larger apartments on the town. He feels the 100 foot buffer should be in place and is against changing the wording. The Board can vote project by project and can waive the buffer if requested to do so; however, any Board member that votes to do that should own it and be on record that they voted to waive the buffer. He personally lobbied for this zone in his neighborhood because he thought it was a good idea. Now, the neighbors are going to be adversely affected by what the Board is doing. Mr. O'Connor stated when the district was developed, it was developed as an innovative zone and the intent was to ensure the Planning Board could control the development and not the ZBA.

Mr. Sioras noted this is a historic area. The West Running Brook is in the area; Robert Frost wrote many of his poem about this area and the Brook. The zone was created to look at the district differently than other zones. He read the purpose of the West Running Brook district into the record. "To retain the unique character that differs from the other commercial districts within the Town of Derry, given the district's location in the historic West Running Brook area. It is intended the character of the area be retained through judicial use of strict architectural design regulations and lot sizing requirements. The district encourages a mix of land uses, including residential, small scale retail/commercial, recreation and conservation in close proximity to one another in a neighborhood. This preserves the working landscape and protects environmental resources."

Mr. Connors agreed this is a unique zone and noted the purpose specifically states this is a commercial zone. The intent was not to have dense residential in what was supposed to be a village. According to the presentation to the Town Council last evening and his own research, the town is poised to add an additional 500-700 apartments. There are 13,000 housing units right now and of that, 5,000 are apartments. The town will be adding 5% more apartments within a year. The Board can vote on each plan but this was a district that was argued for months. The Board needs to look 20 years into the future. There may be a need for housing now, but there is not another baby boom and those units may be sitting empty in 20 years.

Mr. Chirichiello stated he is a real estate agent, but he is also a Rockingham County Commissioner. The County can't hire 75 nurses and 20 correctional officers because there is no housing for the new employees. There is a major housing shortage in New Hampshire. If Derry steps up to the plate to do it where other communities will not, he does not believe it will create a glut. He does not believe that these units will sit empty if they are built.

Mr. Connors said the apartments proposed in this district are not affordable; they are market rate. Mr. Chirichiello said as a Realtor, he can state there is a major housing crisis; the businesses in the State of NH can't hire help because there is no housing for employees.

Mr. MacEachern said he would echo to some extent what has been said. He did recall discussion from representatives at Parkland stating they can't hire nurses and doctors to expand and fill the current need; people need a place to live. Several businesses are looking to house people. There is a need for housing in Derry. Tuscan Village in Salem is full, and those units are listed at more than market rate. Derry is not looking to charge the Tuscan rates, but the units proposed so far are quality units. He would prefer not to see all five of the lots developed with five story apartment buildings either, but if it is allowed in the zone, then it can be in the zone based on the regulations that were passed. He was thrilled with the first few concepts the Board reviewed; they were conceptually what the Board had envisioned with residential mixed use and commercial. He would like to see more retail in the village concept. If the outer rim of a lot is developed as residential with commercial in the middle, then the 100 foot buffer should not apply. If there is commercial on the outer rim, then there is a need for a buffer to protect the abutting residential use.

Mr. Connor said he is not against the West Running Brook District. The buffer was specifically put in place because it was a unique zone. He feels that because the developers are pressing for development, pressure has been put on staff and maybe some Board members to change the regulations; the Board is moving beyond the original intent of the zone. He would like to keep 'non residential' out of it and change it to 'zones'.

Mr. Nelson stated planners follow visions and community profiles and envision things that entrepreneurs don't always embrace. That is the nature of land development. The Planning Board is a quasi-judicial body. Landowners have strict constitutional rights to develop, and the Board needs to be careful. Boards set rules for the developers to follow. The wording may be a bit too loose in this district for his taste. A village means many things are built together, cheek by jowl; for example, the Benjamin Chase Mill next to a farm or in Manchester, the Amoskeag

mills next to the millworker housing. He feels a buffer is in place to protect the existing single family homes from what might happen in this multi-use district. But a strict buffer flies in the face of the village concept. There can't be an innovative, vibrant village, and standalone traditional residential zoning. The Board needs to apply the rules as written, fairly. The Board needs to be clear as to what the goal is in this district.

Mrs. Robidoux suggested amending the current wording to read, "A vegetated buffer shall be provided between non residential uses and abutting residential zones." Mr. Connors said his issue with that is a developer could just propose a 6 foot arborvitae as the buffer. Mrs. Robidoux felt it would be appropriate at the conceptual discussion to tell the developer that in a particular case, a row of 6 foot arborvitae is not going to be an adequate buffer, and that the developer will need to work with the existing vegetation and topography. She also has a concern that the regulations state there is only a 50 foot buffer to protect the Robert Frost Farm which is one of the town jewels. In this area, the regulation calls for a 100 foot buffer; that is unjust. If there is a 100 foot buffer anywhere, it should be along the Robert Frost Farm. Part of the reason there are conceptual discussions in this area is so that the Board has the opportunity to say for this particular project, the buffer needs to be beefed up. The Board has that ability. She believes the 100 foot buffer is too much.

Mr. Clapp stated he did go back and watch the prior meetings and can see Mr. Connor's point. It is clear the Board wanted a buffer between the residential and other mixed uses. He needs more time to understand the implications of a 100 foot buffer, but wanted to articulate that the intent stated by Mr. Connors was correct based on his review of the prior meetings.

Mr. Connors said this proposed amendment stood out like a sore thumb. It was evident what had happened because the plan had already come in for a concept. He had mentioned during one meeting that part of the development could not happen because of the need for the buffer. Then in a short period of time, this amendment was brought forward. He feels this proposal is for the benefit of one project. The other projects abut either schools, wetlands, or commercial property, so they don't have an issues with their buffers. His interpretation is the Robert Frost Farm would now have a 100 foot buffer based on this buffer language. He feels this is spot zoning.

Mr. O'Connor stated this proposed amendment has nothing to do with any project. He went back and read all the material relating to the development of the West Running Brook district and he saw the wording in the approved ordinance did not match what was stated the wording should be based on the minutes of the meeting. That is the *only* reason the Board is bringing this amendment forward: to correct an error made in 2019 before any projects came before the Board.

Mr. Chase said the amendment has nothing to do with the projects and it affects more than one lot. The lots on Humphrey, Route 28, and Island Pond all abut residential areas which is why he originally said there should be a 100 foot buffer. He thought there would be more intense commercial development on those lots. In two years, the development landscape has changed. Thirteen floors of the Brady Sullivan building in Manchester are being converted to residential. He does not like the development trends, but feels the 100 foot buffer is too much. He is not seeing what he thought the town would see happen in the West Running Brook District. At the

time, he thought the 100 foot buffer would be okay, but two years later, in retrospect, he does not feel the same way. Mr. Nelson and Mr. MacEachern have made good points. The way the regulations are written, the word "zone" is not in there. It is possible that if applied exactly as written, lots could be bisected with buffer zones, depending on where the residential and commercial development is placed on the site. The wording today says 'area' not 'zone'. He agrees with Mr. Nelson. The 100 foot buffer is too much.

Mr. Connors suggested since the buffer for the Robert Frost Farm is 50 feet, then the buffer here could be 50 feet which would at least be consistent. The wording 'non-residential' can be left out. The Board can vote on each project as it comes and waive the buffer on a project if requested to do so. The Board had agreed at the time that even though the wording for the district was loose, the Board had a common vision, and they were going to stick to it. They have not done that. He acknowledged that the lots won't all be commercial, and the town may end up with a glut of residential units.

Mr. O'Connor suggested hearing from a few more members of the Board and then moving this discussion to the next meeting so that people have time to think about it.

Mr. Hultgren noted that he had not heard a recommendation as to what dimension the buffer should be, other than it should not be 100 feet or maybe it should be 50 feet. He would agree 100 feet is too much, but what is the right number.

Mrs. Robidoux wanted to reiterate when the changes were being discussed for this zone, she missed this particular change. This was her error as she did not get it into the final document that went to the Board for public hearing. Mr. O'Connor was correct in bringing it forward. The error was unintentional; there were a lot of changes made to the wording of this district as it was formulated.

Mr. Granese agreed with Mrs. Robidoux, Mr. MacEachern, and Mr. Chase and agreed with Mr. O'Connor that the discussion should be continued to another meeting or two. As a Board, the members need to work together.

Mr. Chase said there had been some good suggestions for potential wording. He suggested utilizing a formula such as lots under 10 acres would have a 20 foot buffer; lots under 40 acres could have a 40 foot buffer, etc., so that larger lots with more intense development would provide greater protection to the existing neighborhoods, and if the lot was smaller, with less intense development they can be more productive.

Mr. Connors said he would be okay with a 50 foot buffer since 'non residential' was supposed to be in the wording. The buffer regulation was put in for a reason. Mr. MacEachern suggested the Board come back to this discussion in two weeks so that the members can think about it. He is struggling with the potential for a ring of residential on the outer edges of the property, and then what happens with the commercial in the middle? In a typical residential zone, the side setback is 15 feet. The Board needs to be careful because some buildings may have residential and commercial uses in them. If commercial uses are next to residential uses, that would be a

different distance than residential to residential. Currently, there are multifamily residential buildings with a 20 foot buffer to a single family neighborhood elsewhere in town.

If there is mixed use with residential on the outer rim, then that would be residential use abutting residential use. If there is a business next to a residential use, then there should be a buffer. The larger concern is that the developers are proposing hundreds of apartments which is not what the Board had expected.

Mr. L'Heureux said he notes the effect of the buffers on development when he is performing the site inspections. He suggested the Board look at the natural buffer condition and the changes in elevation on each site. It cannot be one size fits all, but there needs to be parameters. Each use should be considered. He would suggest being more flexible based on the proposed uses, plan by plan.

Board Member Comments

Mr. Chase noted the workshop to discuss potential changes to the three acre minimum lot size requirement is scheduled for the next meeting. He will not be able to attend. As he brought the change forward, he would request the workshop be rescheduled. Mr. Sioras said it can be moved to the first agenda in February.

Mr. Connors had comments relative to the pedestrian crossing for the bike trail on the Exit 4A corridor. The NH DOT has proposed a different configuration than the pedestrian tunnel. The new proposed route traverses three house lots on the south side of Folsom Road. He is aware the Gateway Subcommittee is looking at this area with the intent of proposing zoning amendments. The rail trail puts 2500 users per day in this area; those numbers will increase. He is concerned that the proposed trail will negatively impact lots that could be considered prime development lots once the Exit 4A corridor is complete. If those lots are developed commercially, there could be pedestrian conflicts. He suggested moving the zoning amendments forward sooner rather than later so that the State has to take the amendments into consideration.

Mr. MacEachern advised the subcommittee has not made any determination about changes to the south side of Folsom Road. The area was looked at a few years ago and the determination at that time was to focus on the north side and the lots that were just moved into the Industrial VI zone. The subcommittee is waiting on the final plans for the Exit 4A corridor. There are many questions about how to handle the south side of the road because the properties are small and any changes cannot occur to just the frontage lots; the lots are not deep enough. The only way lots on the south side of Folsom will be developed is if the lots are combined. Anything other than residential use there affects the entire neighborhood. The intent would not be to rezone just three lots.

There was no further business before the Board.