

TOWN OF AMHERST  
Planning Board

December 6, 2023

**APPROVED**

1 In attendance at Town Hall: Arnie Rosenblatt – Chair, Tracie Adams, Chris Yates, Bill  
2 Stoughton – Board of Selectmen Ex-Officio, Rob Clemens (alternate), Pam Coughlin (alternate),  
3 and Brian Cullen (alternate).

4  
5 Staff present: Nic Strong (Community Development Director), and Kristan Patenaude  
6 (Recording Secretary) (remote)

7  
8 Arnie Rosenblatt called the meeting to order at 7:00pm.

9  
10 *Rob Clemens sat for Cynthia Dokmo. Pam Coughlin sat for Tom Silvia. Brian Cullen sat for Tom*  
11 *Quinn.*

12  
13 **PUBLIC HEARING(S):**

- 14  
15 **1. CASE #: PZ17708-080923 – Riley Investment Properties, LLC c/o Tom Riley**  
16 **(Owner & Applicant); 125 NH Route 101A, PIN #: 002-035-001-C.** Non-Residential  
17 Site Plan. To amend the previous site plan approval for Phase C involving the  
18 construction of a 12,000 square foot single story retail building and propose a 2,400  
19 square foot single story drive-thru only café. *Zoned Commercial. Continued*  
20 *from November 1, 2023.*

21  
22 Arnie Rosenblatt read and opened the case. He explained that the Board previously heard this  
23 case twice and deferred it until now largely at the request of an abutter who had raised concerns  
24 with respect to the impact on his business due to traffic. Since then, the Board has received  
25 additional materials, including materials from the abutter.

26  
27 Sam Foisie, Meridian Land Services representing the applicant, explained that this item was  
28 continued from the last Planning Board meeting essentially to give the abutter more time to  
29 review two traffic memos. An additional memo has also since been provided. The applicant has  
30 had internal discussions for reevaluating the traffic patterns internal to the site. The applicant has  
31 added an inbound turn at the eastern entrance, allowing traffic to make it to the parking area  
32 without having to go through the kiosk lane. Striping has also been added to avoid any conflict  
33 from one way traffic to two-way traffic. Pavement markings for the drive through lanes have  
34 been extended and identify which ones are the drive through lanes. Pavement markings have also  
35 been extended to channelize the drive through toward the pickup window. Several traffic  
36 engineers have had input on these plans. Additionally, the applicant heard concerns regarding the  
37 traffic along the internal drive and signage has been added stating, “do not block traffic.” The  
38 abutter’s report does indicate that those signs could be clearer to not block the driveway and the  
39 applicant is happy to change the verbiage if the Board so chooses. An additional sign has been  
40 added encouraging patrons traveling southbound to exit right, in order to lessen the amount of  
41 traffic volume on the reverse access drive.

42  
43 Sam Foisie noted that Nic Strong, Community Development Director, pointed out that the  
44 driveway permit filed by the applicant was not the correct one. She was correct, and the applicant

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45 has since reached out to DOT to update that traffic permit. DOT responded that the two separate  
46 driveway permits are definitely related and would likely be used by this proposed use. The  
47 applicant can update the second permit as it relates to the proposed site, which it has, and there  
48 may be some small updates required (line striping updates). Sam Foisie stated that, while he  
49 cannot guess which updates the DOT will require, his prediction is that the existing markings  
50 have faded, and DOT will ask for these to be restriped.

51  
52 Regarding other state permitting, Sam Foisie stated that the applicant has received comment  
53 from State Alteration of Terrain (AoT) and is prepared to resubmit following this meeting. The  
54 applicant hopes to receive conditional approval from the Board, with the condition that an AoT  
55 permit, and updated DOT permit are provided. The applicant has provided three traffic memos,  
56 which essentially all say the same thing, that there is no adverse impact caused by this proposed  
57 project. He suggested that the Board first hear from the abutter's traffic engineer and then from  
58 the applicant's.

59  
60 Arnie Rosenblatt stated that he would like to hear questions from the Board at this time.

61  
62 Tracie Adams stated that she appreciates the changes made by the applicant. She asked about the  
63 applicant's proposal for traffic to turn right from the site towards the Goodwill store. Sam Foisie  
64 stated that this will take traffic through the Goodwill's parking lot and out the nearby access  
65 drive. Tracie Adams asked about traffic queuing coming from the Taco Bell/KFC. Sam Foisie  
66 stated that the Taco Bell is designed to have a bypass lane that circumvents the other sites. This  
67 is similar to the Dunkin' Donuts. Signage could be created to circumvent this area.

68  
69 Kim Hazarvartian, P.E., with TEPP LLC, stated that the site has queue storage for 34 vehicles  
70 and 27 parking spaces with no inside seating. This allows for up to 60 vehicles being stored on  
71 the site. He stated that he has never heard of so much queue storage and parking on a site like  
72 this. The queuing all fits on the site and will not affect the other nearby sites. If the other sites are  
73 having operational issues and spill over, that is separate from this proposal. This site will be self-  
74 contained. Tracie Adams stated that she has visited the Pressed Café site in Nashua and is  
75 familiar with how that site is run. This seems to have a larger scale amount of queuing available  
76 and the amount of parking available seems very reasonable, if not oversized a bit.

77  
78 Chris Yates asked if the property next door is owned by the same person. Sam Foisie stated that  
79 it is not. Chris Yates stated that the traffic studies did not answer the overall concerns of some  
80 Board members regarding the traffic flow in and out of the site. There does seem to be plenty of  
81 space for queuing once on the site, but the concern is as the traffic funnels in and out. Sam Foisie  
82 stated that the westerly entrance is one of the first entrances into the site. The queuing would run  
83 from Dunkin' Donuts into the intersection, well beyond the applicant's driveway before it  
84 becomes an issue. He stated that he does not believe it is natural for vehicles to block driveways,  
85 but it is natural for them to queue along the access drive. Chris Yates stated that, post COVID, he  
86 sees people block roads or parking spots all the time. Sam Foisie stated that, other than signage,  
87 the applicant cannot control the operations of the other nearby sites.

88

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89 Bill Stoughton stated that Keach Nordstrom had further comments since the last meeting dealing  
90 with stormwater management and agreement for maintenance. He noted that the Staff Report  
91 contains a draft condition precedent which states that the applicant will obtain verification from  
92 the Town Engineer that the plans and stormwater management plan are acceptable. He asked if  
93 the applicant is agreeable to this. Sam Foisie noted that this maintenance may be handled by the  
94 association in charge of these parcels, but the applicant is willing to sign off to make sure this is  
95 acceptable with the Town Engineer.

96  
97 Bill Stoughton asked who owns the access road between Dunkin' Donuts and the applicant's site.  
98 Sam Foisie explained that this is privately owned by the condominium association. Bill  
99 Stoughton stated that he is trying to understand the Town's interest in this road. He understands  
100 that there needs to be emergency access for safety purposes, but otherwise this may be more of a  
101 private matter for the parties to work out. He stated that he has reviewed the traffic reports and  
102 agrees with the design. There does seem to be more than ample storage on site.

103  
104 Bill Stoughton asked the applicant for an appropriate marker for active and substantial  
105 development and substantial completion. Sam Foisie stated that, in order to stay consistent with  
106 other past projects, he would recommend stormwater for the active and substantial development  
107 and a completed topcoat of pavement for the substantial completion. Bill Stoughton stated that  
108 he believes the active and substantial items should be completed within 24 months. Sam Foisie  
109 agreed.

110  
111 In response to a question from Rob Clemens, Sam Foisie stated that it is unclear what an existing  
112 monitoring well is there for, and the applicant would agree to abandon it, but is also willing to  
113 relocate it elsewhere on the site. PFAS will not be removed from the site, as it is a fill site. As  
114 this site was already developed, there is an existing stormwater basin, and the site was previously  
115 disturbed, there is not much more that can be done to deal with the PFAS on the site.

116  
117 Pam Coughlin and Brian Cullen had no questions at this time.

118  
119 Attorney Tom Pappas, representing Andrade Management Group, explained that the focus is  
120 whether the traffic that will be generated by the proposed development will cause traffic  
121 problems in the area. The applicant has the burden to show that the proposed development will  
122 not cause traffic problems in the area, and his client believes that the applicant has failed to meet  
123 this burden. The applicant's traffic memos focus on the site itself, as opposed to the impact for  
124 surrounding businesses including Dunkin' Donuts, Taco Bell, and Goodwill. All three traffic  
125 memos fail to adequately consider the impact. The memos do not have sufficient data regarding  
126 impact. The memos fail to capture the vehicle traffic from the intersection and from the other  
127 businesses that use the access road. The data used is flawed. His client's memo provides traffic  
128 engineer comments. He showed the Board pictures taken at various times of day used to capture  
129 some of the current conditions of the area. Cars queue to go both into the Dunkin' Donuts and the  
130 Taco Bell, as well as the Goodwill, all via the shared access road. Regarding the Town's interest  
131 in this private way, originally when this site was first approved, this was not a through access  
132 road; it ended at the Taco Bell. Eventually, at the Town's request it was opened up and the public

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133 was allowed to travel along the access road. The town should have an interest in making sure that  
134 additional development does not cause problems on the access road, as it is now open to the  
135 public. The applicant did not give sufficient data or sufficient analysis of the impact along that  
136 access road. The access road is fairly narrow and busy during the peak hours being considered  
137 for the proposed development. The east entrance/exit to the proposed development is directly  
138 across the drive through for Taco Bell, and the west entrance/exit is very close to the drive  
139 through for the Dunkin' Donuts. This will lead to cars having difficulty accessing these areas  
140 while also queuing along the access road.

141  
142 Attorney Pappas addressed the items of concern within the three traffic memos from the  
143 applicant. He stated that his client believes the studies used the wrong ITE land use code. The  
144 memos discussed using the fast-food code and Attorney Pappas stated that his client's engineer  
145 believes that the code for coffee-related products is more applicable. There is a significant  
146 difference between the two, with one noting 100 trips per day, and the other noting 377 trips per  
147 day. The study also relies on the data from the Pressed Café in Nashua. As his client's engineer  
148 indicated, that is located in a different area than this proposed development and is not an  
149 appropriate comparison due to it being a different area and clientele. In addition, that data was  
150 only taken on one day in July during the week and one Saturday in July. This is not a  
151 representative or sufficient amount of data. The Nashua store is substantially different than the  
152 proposed store in Amherst, as it looks to be approximately half the size of the store proposed in  
153 Amherst. The Nashua store has one drive through lane and the proposed store has three drive  
154 through lanes. The Nashua store does not have outdoor seating and the proposed store does. The  
155 proposed store also has substantially more parking, as the Nashua store has 11 spots, and the  
156 proposed store has 37 spots. It appears that the new store expects substantially more customers  
157 and is thus not comparable to the Nashua store. The two additional traffic memos rely on the first  
158 memo. The second memo from TEPP LLC, made comparisons to an office building and a retail  
159 strip mall. This additional data is not relevant. The third memo from TF Moran just summarized  
160 the first two memos. All three memos missed the point, which is what this proposal will do to an  
161 already congested area. The abutting shopping center is not fully leased, and this would also  
162 bring additional traffic to the area.

163  
164 Arnie Rosenblatt stated that he would like the applicant to respond to those items. Before that, he  
165 would like the Board to ask questions of the abutter's representative.

166  
167 Pam Coughlin had no questions at this time.

168  
169 Brian Cullen asked if the pictures were selected because they showed the worst conditions on the  
170 site or if they are representative of what the current conditions are on the site. If it is the latter, he  
171 does not believe the conditions look too bad. Attorney Pappas stated that these were the pictures  
172 taken by Dunkin' Donuts' staff members and provided to him. He believes they are  
173 representative photos.

174  
175 Rob Clemens asked if the abutter is recommending any solutions regarding the access way.  
176 Attorney Pappas stated that the Condominium Association has three members, the owner of the

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177 Dunkin' Donuts, and Tom Riley, principal managing partner Riley Investment Properties, LLC,  
178 through his ownership of the Taco Bell/KFC, and this proposed site. Attorney Pappas stated that  
179 his client's engineer's view is that the necessary data and analysis is needed in order to determine  
180 if there is a solution. His client has not collected that data and it is not his burden to do so. His  
181 client's engineer has indicated where the data was short and made some suggestions regarding  
182 how to collect data and which analysis to use in order to address the problem.

183  
184 Bill Stoughton suggested that the Board could require that all queuing for each individual  
185 business in this area occur on the sites and not in the access way. Kevin Andrade, Andrade  
186 Management Group, explained that the Taco Bell/KFC queues into the access way at all times.  
187 Attorney Pappas stated that it is unclear if the Board can condition this on a private road. Bill  
188 Stoughton stated that, if the Board made this a condition of approval of this application, the  
189 Condominium Association could then decide whether or not to adopt it or abandon the project.  
190 He explained that the prohibition would be equal for each lot. Attorney Pappas noted that all  
191 three lots have equal rights to the access road. It is unclear if the condominium declaration would  
192 allow for this.

193  
194 Chris Yates stated that the abutter appears to be acknowledging that there is an existing issue on  
195 these sites. 2/3 of the businesses are owned by Tom Riley. This sounds like a condominium issue  
196 that the owners should start considering how to solve. This is an existing issue for the existing  
197 businesses to consider. Attorney Pappas asked if it is appropriate planning for the Town to make  
198 an existing problem worse by approving a development knowing that it could aggravate this  
199 existing issue, especially when the Town asked for the public to be able to use the access road.  
200 This is a policy decision for the Board to make. Chris Yates stated that the pass-through lanes  
201 were designed on the two existing businesses for people to use and queue in the parking area.  
202 These likely need to have signage to that effect. Also, traffic patterns have changed in the past 20  
203 years since these two businesses were built and this needs to be considered. Attorney Pappas  
204 stated that he believes Taco Bell/KFC needs to be able to queue onto the access road. Kevin  
205 Andrade agreed that he has never seen this business queue into its parking area.

206  
207 Tracie Adams stated that she does not have any problems with the on-campus traffic. The  
208 pictures shown are representative of what she previously expressed concern about.

209  
210 Arnie Rosenblatt asked the abutter if the queuing appears to be an issue offsite, but not within the  
211 proposed Pressed Café site. Attorney Pappas agreed that this is what was represented by his  
212 client's engineer.

213  
214 Arnie Rosenblatt asked if the abutter believes that the Town should not approve this proposal  
215 because there is an existing traffic problem for the businesses in this area and allowing this  
216 proposal would exacerbate this due to additional traffic from Pressed Café. Attorney Pappas  
217 stated this is clearly a congested area. Currently, people are able to queue for Dunkin' Donuts  
218 and queue for Taco Bell and queue for Goodwill. This area is certainly not ideal, but it is not a  
219 disaster. His client believes that adding a Pressed Café to this area will create a serious problem.

220

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221 Arnie Rosenblatt stated that the abutter's engineer does not seem to offer an opinion that the  
222 proposed Pressed Café will not work, but instead seems to be critiquing the applicant's traffic  
223 reports. Attorney Pappas agreed that the engineer reserved judgment until different data is  
224 obtained and properly analyzed using a different methodology.

225  
226 Kevin Andrade stated that the KFC/Taco Bell has an area to stack the queue on the site, but they  
227 do not because it is not a two-way area. Drivers would have to access this parking lot through the  
228 Dunkin' Donuts site.

229  
230 Arnie Rosenblatt asked the applicant to comment specifically on the comments made by the  
231 abutter's team. He asked the applicant team to comment on if they agree that more data is needed  
232 in order to reach a determination. He also asked if the applicant has a view regarding the impact  
233 of the traffic pattern outside the immediate proposed Pressed Café site. He asked if a  
234 representative from Pressed Café has been able to review the information from the abutter.  
235 Attorney Andy Sullivan, of Sullivan Law Office, representing the applicant, noted that some of  
236 the external aspects may be due to the way the site is being used currently that was not  
237 necessarily planned for. Everyone seems to agree that these will likely not be issues that will  
238 affect the site internally.

239  
240 Andrew Arsenault, 35 New England Business Center Drive in Andover, MA, representing  
241 Vanasse & Associates, Incorporated (VAI), explained that, for the initial trip generation, he  
242 could not find a perfect land use code match to create an informed decision, so he used the  
243 Nashua site as a comparison. He noted that Nashua is a drive through only site that does have  
244 two drive through lanes. In review of the photos from the abutter, specifically the November 13<sup>th</sup>  
245 7:20 AM photo, there is a driver of a pickup truck stopping short of blocking the intersection. He  
246 only noticed two photos in which there appeared to be some blocking occurring.

247  
248 Kim Hazarvartian, P.E., stated that he does not believe additional analysis is needed. The site is  
249 self-contained. Regarding trip generation, he reviewed the closest Institute of Transportation  
250 Engineers Land Use Code and what Pressed Café anticipates for operations. The trip generation  
251 estimates were bumped up a bit based on that information. The number mentioned of 300 trips  
252 per day is not realistic and he would dismiss anything outside of the data reviewed specific to  
253 Pressed Café. Regarding the activity on the access road, it is possible to access the Pressed Café  
254 site through the intersection without using the access road at all. Regarding the signal at that  
255 intersection, the number of trips being added is small enough when considering the number of  
256 signal cycles per hour and the number of lanes on each of the approaches, to not make a huge  
257 impact. His comfort level with the information at hand has not changed based on the information  
258 the abutter provided.

259  
260 Bill Stoughton stated that he does not have any questions but does not yet feel that Arnie  
261 Rosenblatt's questions have been answered. The concern seems to be the queuing on the access  
262 road. Sam Foisie stated that one suggestion could be striping out intersections that should not be  
263 blocked. The applicant does not have the ability to fix the other site plans but does have the  
264 ability to do as much as possible to indicate to vehicles that they should not and cannot block the

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265 nearby intersections. If vehicles can access the applicant's site without blocking other businesses,  
266 it is not causing an adverse impact. Large square striping with big bold letters and directional  
267 guidance can be included in this area. The Board's focus should be on public safety and  
268 convenience secondarily. This does not seem to be a concern regarding public safety. The  
269 applicant could include signage and striping, in order to help with convenience.

270  
271 Bill Stoughton asked Sam Foisie's thoughts on not allowing queuing within the access road for  
272 any of the associated businesses. Sam Foisie stated that this condition would help the applicant,  
273 as all queuing will be kept on the site, but he is unclear if that would open up the overall property  
274 to litigation from Dunkin' Donuts. He would prefer a different solution.

275  
276 Tom Riley stated that this is not a convenience issue, and he believes he has done all he can do  
277 on behalf of the applicant. He will work to make the site flow better, including any signage  
278 necessary.

279  
280 There were no questions from any other Board members at this time.

281  
282 Arnie Rosenblatt stated that everyone on the Board wants to act as efficiently as possible for the  
283 sake of both the applicant and abutters. While it is true that this application which significantly  
284 reduced the square footage of the proposed building has taken several meetings, this is due to the  
285 fact that there is an abutter who is vigorously opposing it. The abutter is entitled to this. There  
286 are also issues with regard to traffic around the site. Pressed Café is successful, so it will see a lot  
287 of traffic.

288  
289 In response to a question from Arnie Rosenblatt, Sam Foisie stated that it is the applicant's  
290 position that the traffic outside the immediate site, while it might get worse from this proposal,  
291 will not pose a danger to the public. The applicant also believes that there is adequate data in  
292 order to reach this conclusion. Additional data, as proposed by the abutter, would not change the  
293 site plan as designed.

294  
295 Attorney Pappas stated that the VAI memo first criticized the ITE Code because it is not apples  
296 to apples and then did not rely on it but instead relied on the Nashua store. His client identified a  
297 code that was more applicable. The Nashua store is not a comparable store and does not provide  
298 comparable data. There has not been sufficient trip generation data produced for the Board to  
299 make an informed decision. More data needs to be collected and analyzed. This is why the Board  
300 does not have the information it needs in order to make a decision. Regarding the entrances for  
301 the proposed development, these will come onto the access road opposite the Taco Bell entrance  
302 and very close to the Dunkin' Donuts entrance. This will also impact Goodwill. This will create a  
303 potential public safety problem as vehicles will access three or four establishments in different  
304 locations all at the same time. This is not a wide access road. Without knowing the extent of the  
305 increased traffic level, the extent of the safety issue cannot be determined. If the traffic is  
306 substantially more than the Nashua store generates, it may be enough to create a public safety  
307 issue. Dunkin' Donuts owns its site and is one of the three members of the condominium  
308 association, but the Town has its own interest to consider in this site. The proposed site plan is

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309 different than the office building previously proposed for the site and generates different traffic  
310 patterns and amount of traffic. The Town needs to weigh in on the traffic issue and the safety  
311 issue. He agreed that a condition for the onus to be placed on the condominium association to not  
312 allow any blocking of the access way is likely not the best choice.

313  
314 Arnie Rosenblatt asked for a final comment from the applicant. The applicant's team thanked the  
315 Board, noting all the information had been submitted and it was now up to the Board to make its  
316 decision.

317  
318 Bill Stoughton thanked the applicant and the abutter for the quality and professionalism of the  
319 presentations. He stated that he was inclined to approve this. He listened carefully to the  
320 abutter's concerns and believes there is enough data at hand to make a decision. The central issue  
321 that has concerned Board members is the queuing along the shared private road. The entrance  
322 and at least one of the exits to the applicant's lot is at the very edge of the road. If the traffic can  
323 get into the Pressed Cafe location, it has no impact on the queuing, and thus he is prepared to  
324 approve this.

325  
326 Tracie Adams stated that she is not as concerned about the Dunkin' Donuts entry, but still has  
327 some concerns regarding the exit in front of Taco Bell going towards Goodwill. She stated that  
328 she is  $\frac{3}{4}$  of the way toward making a decision. Arnie Rosenblatt asked if any additional  
329 information would help to make the determination. Bill Stoughton stated that he did not see the  
330 need for the left turn at this location. The traffic could circulate within the lot and go back out to  
331 the entrance as was originally proposed to avoid the queue altogether. Chris Yates expressed  
332 concern with the safety of the left hand turn to get people into the site.

333  
334 Brian Cullen stated that this is a private issue between parties who will hopefully be able to work  
335 out any of the concerns with signage or other matters.

336  
337 **Bill Stoughton moved to approve CASE #: PZ17708-080923 for Riley Investment**  
338 **Properties LLC, for the above cited Non-Residential Site Plan Review of Map 2, Lot**  
339 **35-1-C, 125 New Hampshire Route 101A, for the construction of a 2,400 square foot**  
340 **single-story drive through café and other associated site improvements, with the**  
341 **conditions set forth in the Staff Report and with the following additional comments**  
342 **and condition**

- 343  
344
- 345 • **Condition Precedent #3, submission of approved plans and permits, to add**  
346 **State driveway permits to that list.**
  - 347 • **To assess impact fees in Condition Subsequent #4 at the Retail rate.**
  - 348 • **To set active and substantial completion at 24 months and trigger that based**  
349 **on commencement of installation of stormwater best management practices**  
350 **and define substantial completion as the installation of the finished coat of**  
**pavement in the parking area.**

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- 351                   • **Condition #3, submission of a maintenance security for landscaping for one**  
352                   **year from installation, to add that the required securities are to be provided**  
353                   **prior to site disturbance and pre-construction meeting.**  
354

355                   **Seconded by Chris Yates.**

356                   **Vote: 6-0-0 motion carried unanimously.**  
357

358                   The Board reviewed its Findings of Fact:  
359

360                   Application Description

361                   Case #PZ17708-080923, Riley Investment Properties, LLC, c/o Tom Riley, 125 NH Route  
362                   101A, Map 2 Lot 35-1-C, Non-Residential Site Plan to amend the previous site plan approval for  
363                   Phase C involving construction of a 12,000 square foot single story retail building and propose a  
364                   2,400 square foot single story drive-thru only café.  
365

366                   The Staff Report's description and chronology is adopted into the record by the Board as a  
367                   portion of the Findings of Fact and can be referred to for any further details that are needed.  
368

369                   Application Compliance

370                   Per Section 3.1 F., the Planning Board was provided the application documents, and they were  
371                   reviewed, and it was determined the application was sufficiently complete to proceed with  
372                   consideration by the Board per RSA 676:4. I. (b).  
373

374                   Land Use Requirements

375                   Per the Zoning Ordinance Section 4.7, the proposed land use meets the existing land use  
376                   permitted in the Commercial Zoning District.  
377

378                   Compliance with Regulations

379                   General Standards 2.1 requirements were achieved to the satisfaction of the Board, specifically  
380                   2.2.1 traffic circulation and access, including adequacy of adjacent streets, entrances and exits,  
381                   traffic flow, sight distances, curb cuts, turning lanes, and existing or recommended traffic  
382                   signalization.  
383

384                   The Board was presented with several professional traffic studies and reviews by the applicant  
385                   and by the owner of the Dunkin Donuts which abuts this application site. In addition, town staff  
386                   members have had discussions with the State DOT official to clarify and address relevant  
387                   concerns.  
388

389                   The Board acknowledges and has carefully studied the traffic concerns raised by the  
390                   abutter. Based on all the professional traffic reports and the discussion during the public  
391                   hearings, the Board was satisfied the applicant has adequately addressed the traffic concerns  
392                   relevant to the town in its proposed plan. In particular the Board accepts the ITE Land Use Code  
393                   used in the applicant's traffic analyses as appropriate based on the factual presentations regarding  
394                   the planned use of the site. The Board also accepts the applicant's use of the Nashua site as a

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395 relevant comparison for the proposed location. In making this finding, the Board recognizes that  
396 the onsite queuing and parking capacity proposed by the applicant provides ample margin to the  
397 anticipated traffic. The Board has also carefully considered the other traffic concerns raised by  
398 the abutter and finds none warrants alterations or rejection of the proposed plan.  
399

400 Section 6.1 Parking Area requirements in relation to landscaping islands and plantings are met to  
401 the satisfaction of the Board.  
402

403 Section 7.1 Outdoor Lighting is now superseded by the Outdoor Lighting and Glare Ordinance,  
404 3.20. The applicant demonstrated that the requirements were met particularly in relation to light  
405 remaining on the site.  
406

407 Section 8.1 Parking Space requirements were calculated and deemed to comply with the  
408 regulations for a commercial use.  
409

410 Section 12.1 the Architectural Design Standards' purposes are achieved to the satisfaction of the  
411 Board.  
412

413 The Board notes that the abutting Dunkin Donuts' owner raised numerous concerns regarding the  
414 competition from the applicant's proposed business. Whether or not such concerns are  
415 warranted, matters of business competition are not something that this Board evaluates, and  
416 decisions will not be made based on those concerns.  
417

418 Environmental Requirements

419 Per Section 2.1.7, environmental factors such as pollution, noise, odor, and protection of natural  
420 land features were evaluated, and it was determined that adequate provisions were made.  
421

422 Per Section 2.1.8, the landscape plan was found to be in keeping with the general character of the  
423 surrounding area.  
424

425 Per Section 5.1, the purposes of the Landscaping section, protecting, enhancing, and promoting  
426 economic, ecological, and aesthetically pleasing landscaping that improves safety and positively  
427 impacts stormwater quality and quantity is achieved to the satisfaction of the Board.  
428

429 Waivers

430 The following waiver(s) were requested by the applicant(s):

431 Section 6.2 A. Adjacent Buildings, a waiver request was granted for relief from the minimum 10'  
432 deep area with trees and shrubs around the building sides with public access, to allow for the  
433 drive-thru food pickup window.  
434

435 Section 5.1 under Landscaping Standards, the applicant requested a waiver for relief from the  
436 requirement for the landscape plan to be provided and endorsed by a licensed landscape  
437 architect. The landscape plan was prepared, and it was noted that the landscaper had

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438 successfully completed landscaping plans in Amherst and her career began before the adoption  
439 of the licensing requirement and the waiver was granted.

440

441 Stormwater Management

442 General Standards 2.1.5. stormwater drainage was addressed in the Stormwater Management  
443 Report. The report was reviewed, and it was determined that the Stormwater Management and  
444 Erosion and Sediment Control Plans met the Town's requirements.

445

446 Conditions

447 The applicant acknowledges the conditions precedent and conditions subsequent in the Staff  
448 Report as well as any additions from the Planning Board are required.

449

450 Summary

451 The Planning Board finds that with the conditions imposed on the approval, the application  
452 meets the spirit and intent of the Ordinances and Regulations.

453

454 **Tracie Adams moved to approve the Findings of Fact, as presented. Seconded by**  
455 **Chris Yates.**

456 **Vote: 6-0-0 motion carried unanimously.**

457

458 **2. Public Hearing on Proposed Zoning Ordinance Amendments. See separate notice.**

459

460 Arnie Rosenblatt noted that these items have been heard by the Board previously. He noted that  
461 this is a public hearing on the proposed amendments.

462

463 Nic Strong presented each proposed amendment and Arnie Rosenblatt asked for comment on  
464 each.

465

466 Proposed Amendment #1

467 *To amend Article IV, Zoning Regulations, Section 4.9 Industrial Zone, to delete the 80' height*  
468 *allowance for uninhabited structures and require all structures in the district to be a maximum*  
469 *of 50' in height*

470

471 Steve Nelson, 9 Beacon Lane, commended the Board for the proposal of this amendment. He  
472 stated that he believes it is critical to help maintain the rural nature of the Town. The southern  
473 end of the Town has typically been industrial in nature. This should be a residential Town with  
474 some industrial items in it and lowering the allowed height will make sure that large buildings  
475 that increase traffic are not encouraged in Town.

476

477 **Bill Stoughton moved to advance the first proposed Zoning Ordinance Amendment**  
478 **change to the ballot. Seconded by Chris Yates.**

479 **Vote: 6-0-0 motion carried unanimously.**

480

481 Proposed Amendment #2

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482 *To amend Article IV, Zoning Regulations, Section 4.3 D.3., Residential/Rural Zone, to add the*  
483 *word "either" to the first line of the last sentence.*

484

485 There was no public comment.

486

487 **Bill Stoughton moved to advance the second proposed Zoning Ordinance**  
488 **Amendment change to the ballot. Seconded by Chris Yates.**

489 **Vote: 6-0-0 motion carried unanimously.**

490

491 Regarding the third amendment for floodplain language, Nic Strong explained that Town  
492 Counsel reviewed this and noticed that there were two sections that referred to the parking of  
493 recreational vehicles, one of which had been updated and the other one was missed. He thus  
494 suggested that both needed to read the same and the State Floodplain Coordinator agreed with  
495 that. The proposal would be to change Section N to have the same language as in Section E. This  
496 will require a second public hearing for the third proposed amendment.

497

498 There was no public comment.

499

500 **Bill Stoughton moved to amend the proposed Zoning Ordinance amendment, as**  
501 **stated by Nic Strong, and schedule for a second public hearing on January 3, 2024,**  
502 **at 7pm at Town Hall. Seconded by Chris Yates.**

503 **Vote: 6-0-0 motion carried unanimously.**

504

505 Proposed Amendment #4

506 *To amend Article IX, Definitions, Section 9.1 Meaning of Certain Words, Wetland(s), to update*  
507 *the citations to reference documents, Vernal Pool, Vernal Pool --Primary Vernal Pool*  
508 *Indicators, and Vernal Pool --Secondary Vernal Pool Indicators to reference the correct NH*  
509 *Administrative Rules; and Article IV, Zoning Regulations, Section 4.11 Wetland and Watershed*  
510 *Conservation District, to amend Section 4.11 F., District Boundaries, to include language moved*  
511 *from the definition of Wetland(s) describing the Town's wetland classifications and the method*  
512 *for classification of wetlands that extend over property lines, to include language moved from*  
513 *the definition of Vernal Pool Tiers describing how to identify Tier One and Tier Two vernal*  
514 *pools, and to refer to the definitions section.*

515

516 **Bill Stoughton moved to advance the fourth proposed Zoning Ordinance**  
517 **Amendment change to the ballot. Seconded by Chris Yates.**

518 **Vote: 6-0-0 motion carried unanimously.**

519

520 Nic Strong explained that the last amendment is a housekeeping amendment. During preparation  
521 it became apparent that some items were more than housekeeping and they needed substantive  
522 discussion in the future. The amendment was thus amended to remove some of those items for  
523 the Board to work on them next year.

524

525 Proposed Amendment #5

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526 *This housekeeping amendment would amend Article IV Zoning Regulations, Section*  
527 *4.4 Northern Transitional Zone, Section 4.4 B.9. Permitted Uses to delete #9 Other Development*  
528 *and renumber existing #10 as #9; and to change all references from Accessory Apartments to*  
529 *Accessory Dwelling Units in Sections 3.5 Accessory Apartments, Section 4.3 Residential/Rural*  
530 *Zone, 4.3 A.10., Section 4.4 Northern Transitional Zone, newly numbered, 4.4 B.9., Section 4.5*  
531 *Northern Rural Zone, 4.5 B.9., Section 4.7 Commercial Zone, 4.7 A.9., Section 4.8 Limited*  
532 *Commercial Zone, 4.8 A.12., Section 4.14 Workforce Housing, 4.14 E.2.b., and Article IX*  
533 *Definitions, Section 9.1 Meaning of Certain Words.*

534

535 **Bill Stoughton moved to advance the proposed housekeeping Zoning Ordinance**  
536 **Amendment change to the ballot. Seconded by Tracie Adams.**

537 **Vote: 6-0-0 motion carried unanimously.**

538

539 Nic Strong noted that the timeframe for submitting petitions to change the Zoning Ordinance is  
540 November 13 through December 13. Following that timeframe, the Planning Board has to meet  
541 to schedule the petitions at a public hearing. The Board may need to schedule a meeting on the  
542 20<sup>th</sup> if petitions are received to get them on the ballot.

543

544 **Planning Board review pursuant to RSA 41:14-a for the acquisition or sale of land by the**  
545 **Town on the following properties: Map 3 Lots 60-2 & 60-3; and Map 25 Lots 28 & 29**

546

547 Bill Stoughton explained that the Board has two matters that have to go through the RSA 41:14-a  
548 process, which is the same process used when purchasing conservation land. One of these is to  
549 accept the donation of an easement over land. The old B&M rail bed continues through a number  
550 of lots in Town, and crosses Boston Post Road. A goal of the Bicycle & Pedestrian Advisory  
551 Committee and the Town is to acquire rights in this area to create a multipurpose trail over the  
552 entire length of the rail bed which stretches from the northern border of the Town with Bedford  
553 to Route 101A. Chris and Judy Shenk have generously donated a trail easement along the section  
554 of the rail bed that crosses their property, as well as temporary access easements, allowing  
555 people to get from Boston Post Road onto the segment, and a drainage easement.

556

557 **Bill Stoughton moved to advise the Board of Selectmen that the Planning Board is in**  
558 **favor of this acquisition. Seconded by Tracie Adams.**

559 **Vote: 6-0-0 motion carried unanimously.**

560

561 Bill Stoughton stated that the next items deals with two parcels down at Baboosic Lake at  
562 Washer Cove Road and the extension of Washer Cove Road. The two lots in question are  
563 currently Town owned and the proposal is to sell them to the Houveners who occupy a nearby  
564 house. This is in connection with the resolution of a potential claim by the Houveners regarding  
565 a community septic system failure last year when sewage backed up onto their lot. In resolution,  
566 one of the things that was agreed upon was that the Town would sell these two lots to the  
567 Houveners at the assessed price. These lots are basically not buildable. Most of each lot is  
568 covered by the 100-year floodplain and frequently floods. The interest of the Houveners is that

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569 their existing dock is located adjacent to the shoreline of the Town land. One of the two lots was  
570 tax deeded and does not require the RSA 41:14-a process, but the other does.

571

572 **Bill Stoughton moved that the Planning Board recommend the transaction for Lot**  
573 **25-28 and Lot 25-29. Seconded by Chris Yates.**

574 **Vote: 6-0-0 motion carried unanimously.**

575

576 **OTHER BUSINESS:**

577

578 **3. Regional Impact:**

579 a. **CASE #: PZ18270-120523 – PKM Properties, LLC; 10 Howe Drive, PIN #: 002-**  
580 **034-007.** Non-Residential Site Plan Review Amendment. To depict changes to the  
581 approved plan to lower the site and reduce the pavement for a 24,680 s.f. building:  
582 21,160 s.f. warehouse and 3,520 s.f. office. *Zoned Industrial.*

583

584 **Bill Stoughton moved that there is regional impact to Nashua, Merrimack, Milford,**  
585 **and Hollis. Seconded by Tracie Adams.**

586 **Vote: 6-0-0 motion carried unanimously.**

587

588 b. **CASE #: PZ18271-120523 – Vonderosa Properties LLC (Owners & Applicants);**  
589 **County & Upham Road, PIN #: 004-145-000.** Subdivision Application. To  
590 subdivide Tax Map 4 Lot 145 into five (5) residential lots. *Zoned Residential Rural.*

591

592 **Tracie Adams moved that there is regional impact to Mont Vernon and Merrimack,**  
593 **as previously noted. Seconded by Chris Yates.**

594 **Vote: 6-0-0 motion carried unanimously.**

595

596 c. **CASE #: PZ18272-120523 – Vonderosa Properties LLC (Owners & Applicants);**  
597 **Cricket Corner & Upham Road, PIN #: 004-116-000.** Subdivision Application. To  
598 subdivide Tax Map 4 Lot 116 into nine (9) residential lots. *Zoned Residential Rural.*

599

600 **Tracie Adams moved that there is regional impact to Mont Vernon and Merrimack,**  
601 **as previously noted. Seconded by Chris Yates.**

602 **Vote: 6-0-0 motion carried unanimously.**

603

604 d. **CASE #: PZ18273-120523 – Vonderosa Properties, LLC (Owners & Applicants);**  
605 **County, Upham & Spring Road, PIN #: 004-118-000, 004-119-000 & 004-121-000**  
606 **& 006-102-000.** Subdivision Application. To subdivide Tax Map 4 Lots 118, 119 &  
607 121, and Tax Map 6 Lot 102 into seven (7) conservation lots and thirty-seven (37)  
608 residential lots. *Zoned Residential Rural.*

609

610 **Tracie Adams moved that there is regional impact to Mont Vernon and Merrimack,**  
611 **as previously noted. Seconded by Chris Yates.**

612 **Vote: 6-0-0 motion carried unanimously.**

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613

614

4. Notice of receipt pursuant to RSA 676:18, IV., of Boundary Plan, Tax Map 24 Lot 58, 3 Hillside Avenue, for informational purposes only.

615

616

617

Arnie Rosenblatt noted that the Board was in receipt of this item.

618

619

5. Minutes: November 1, 2023

620

621

**Tracie Adams moved to approve the minutes of November 1, 2023, as presented.**

622

**Seconded by Bill Stoughton.**

623

**Vote: 6-0-0 motion carried unanimously.**

624

625

6. Any other business that may come before the Board.

626

Arnie Rosenblatt noted that Nic Strong will not be available if the Board has to schedule a meeting on December 20<sup>th</sup>. She is having shoulder surgery and will be out of the office for a while.

627

628

629

630

Tracie Adams noted that the Village Streets Study Committee, which she served as the Chair of, has finished its work. The Committee met with the Board of Selectmen for a final time and turned in an action plan which will be part of the next steps, including finishing the design engineering and the grant application in order to try to get additional grant funding for work to improve the Village streets. The Board thanked Tracie Adams and the Committee for its work.

631

632

633

634

635

636

**Bill Stoughton moved to adjourn the meeting at 8:56pm. Seconded by Tracie Adams.**

637

638

**Vote: 6-0-0 motion carried unanimously.**

639

640

Respectfully submitted,

641

Kristan Patenaude

642

643

Minutes approved: