

## **LONDONDERRY, NH PLANNING BOARD MINUTES OF THE MEETING OF MAY 4, 2022, AT THE MOOSE HILL COUNCIL CHAMBERS**

### **I. CALL TO ORDER**

Members Present: Art Rugg, Chair; Al Sypek, Vice Chair; Jake Butler, Secretary; Lynn Wiles, Assistant Secretary; Jeff Penta, member; Giovanni Verani, Ex-Officio - Town Manager (arrived at 7:03 p.m.); Ann Chiampa, member; Deb Paul, Town Council Ex-officio; Jason Knights, alternate member; and Ted Combes, alternate member (arrived at 7:07 p.m.)

Also Present: Town Planner Mailloux; Associate Planner Laura Gandia; and Beth Morrison, Recording Secretary

Chairman Rugg called the meeting to order at 7:00 PM, explained the exit and emergency procedures, and began with the Pledge of Allegiance.

### **II. ADMINISTRATIVE BOARD WORK**

#### **A. APPROVAL OF MINUTES:**

**Member A. Sypek made a motion to approve the minutes of April 6, 2022, as presented.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

**Member A. Sypek made a motion to approve the minutes of April 13, 2022, as presented.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

#### **B. REGIONAL IMPACT DETERMINATIONS: Town Planner Mailloux informed the Board that she had no projects for their consideration this evening.**

#### **C. Discussion with Town Staff:**

Chairman Rugg informed the Board and public that Town Planner Mailloux has accepted a new job working for the Federal Aviation Authority and her last day will be May 13, 2022. He thanked her for all the great work that she has done for Londonderry. D. Paul informed the Board that the Energy Committee meeting on

May 19, 2022, at 7:00 p.m., will have someone speaking about the electric car charging stations.

**III. Old Business -n/a**

**IV. New Business**

A. Public hearing on an application to modify the existing conditions of approval of a previously approved site plan, 213 Rockingham Road, Map 15 Lot 23-1, Zoned C-I & RTE 28 POD, Gagne Family Trust (Owner & Applicant)

Chairman Rugg read the case into the record. Town Planner Mailloux informed the Board that there are no outstanding checklist items and Staff recommends the application be accepted as complete.

**A. Sypek made a motion to accept the application as complete per Staff Recommendation Memorandum dated May 4, 2022.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the 65-day time clock has started. Thomas Hildreth, Esq., from McLane Middleton, 900 Elm Street, P.O. Box 326, Manchester, NH addressed the Board. Jared Gott, from The Dubai Group, 136 Harvey Road, Bldg B101, Londonderry, NH, was also in attendance. G. Verani recused himself from this application. T. Hildreth told the Board that this site plan was approved in October of 2021, with the condition that the applicant obtain an easement from the adjacent property owner for a small section of sewer pipe that appears to cross the corner of the abutter's lot. He added that they do not know for certain where the sewer pipe is located, but out of an abundance of caution the sewer line has been illustrated to cross a small corner of the adjacent lot on the plans. He explained that they are requesting the condition related to the sewer pipe be removed as a condition of approval. He read from his letter, Exhibit 1, to the Board, which is attached hereto.

Chairman Rugg opened the discussion up to the Board. Town Planner Mailloux gave the Board some background noting that on October 6, 2021, the Planning Board granted conditional approval of a site plan for a change of use and a 672 SF building addition at 213 Rockingham Road. She went on stating that of the conditions of approval of that site plan was to obtain an easement from the abutting property owner for the existing sewer line that crosses the abutting parcel. She explained that it is Staff's understanding that the abutting property owner has not agreed to grant an easement to allow for maintenance of the existing sewer. She said that based on the information available to date, Staff recommends that the Planning Board modify the conditions of approval to eliminate the requirement for the applicant to obtain a sewer easement from the abutting property owner. She

said that typically Staff would like this easement to be recorded so that there is a formal agreement in place, but acknowledges the easement by necessity, as it is an existing sewer line. A. Chiampa asked where the handicap parking spots are on the plan. Town Planner Mailloux replied that there is no change to the plan, noting that they have the required handicap parking spots. L. Wiles asked if there is any liability to the Town with this request. Town Planner Mailloux responded that it would not, as this is an existing sewer line, and there is nothing in the site plan to modify the sewer line. She added that it would be a civil matter. T. Combes asked where the sewer line is on the property as he cannot see it with the GIS. T. Hildreth showed him a handwritten field card that was created when the sewer line was created. Town Planner Mailloux reviewed the GIS illustrating where the sewer line crosses into the abutting parcel.

Chairman Rugg asked for public input and there was none.

**A. Sypek made a motion to modify the October 6, 2021, conditional approval of the site plan amendment for a change of use from an existing spa to a professional office, and for a 672 SF building addition and associated site improvements, 213 Rockingham Road, Map 15 Lot 23-1, Zoned C-I & RTE 28 POD, Gagne Family Trust (Owner & Applicant) by deleting precedent condition #5 relative to the sewer easement.**

**J. Butler seconded the motion.**

**The motion was granted, 7-0-0. The Chair voted in the affirmative.**

B. Public hearing on an application for formal review of a condominium conversion at 350 Mammoth Road, Map 9 Lot 22-1, Zoned AR-1, Daniel R. Howes (Owner & Applicant)

Chairman Rugg read the case into the record. G. Verani came back to the Board. Town Planner Mailloux informed the Board that there are no outstanding checklist items and Staff recommends the application be accepted as complete.

**A. Sypek made a motion to accept the application as complete per Staff Recommendation Memorandum dated May 4, 2022.**

**J. Penta seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the 65-day time clock has started. Craig Francisco, P.E., from Bedford Design Consultants, 592 Harvey Road, Londonderry, NH, addressed the Board. C. Francisco told the Board that this is a simple condominium conversion of an existing duplex. He noted that they have state subdivision approval and all required permits.

Chairman Rugg opened up the discussion to the Board. Town Planner Mailloux reviewed the remaining items with the Board noting that Staff recommends approval. (J. Butler left at 7:24 p.m. to 7:25 p.m.)

Chairman Rugg asked for public input.

CSR Realty Trust, 12 Bancroft Road, abutting property owner, addressed the Board. He asked if they can build on any common area. Chairman Rugg replied that they cannot.

Chairman Rugg brought the discussion back to the Board as there was no further public comment.

**A. Sypek made a motion to grant conditional approval of the condominium conversion plan for 350 Mammoth Road, Map 9, Lot 22-1, Zoned AR-1, Daniel R. Howes (Owner & Applicant), in accordance with plans prepared by Bedford Design Consultants, dated March 8, 2022, last revised April 13, 2022, with the precedent conditions to be fulfilled within two years and prior to plan signature, and general and subsequent conditions of approval to be fulfilled as noted in the Staff Recommendation Memorandum, dated May 4, 2022.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

"Applicant", herein, refers to the property owner, business owner, or organization submitting this application and to his/its agents, successors, and assigns.

### **PRECEDENT CONDITIONS**

All of the precedent conditions below must be met by the Applicant, at the expense of the Applicant, prior to certification of the plans by the Planning Board. Certification of the plans is required prior to commencement of any site work, any construction on the site or issuance of a building permit.

1. The Owner's signature shall be provided on the plans.
2. The proposed Map and Lot numbers be verified with Assessing and updated on the plan if necessary.
3. An executed copy of the condominium declaration and by-laws shall be provided to be recorded at the Rockingham County Registry of Deeds, concurrent with the recording of the plans.

4. The Applicant shall provide a digital copy of the complete final plan to the Town prior to plan signature by the Planning Board in accordance with Section 2.05.n of the Subdivision Regulations.

5. The Applicant shall provide checks for LCHIP and recording fees, made payable to the Rockingham County Registry of Deeds.

6. The Applicant shall note all general and subsequent conditions on the plan sheet to be recorded.

7. Final planning review.

**PLEASE NOTE** – If these conditions are not met within two (2) years of the meeting at which the Planning Board grants approval, the Board's approval will be considered to have lapsed and re-submission of the application will be required. See RSA 674:39 on vesting.

### **GENERAL AND SUBSEQUENT CONDITIONS**

All of the conditions below are attached to this approval.

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.

2. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project (that were not received prior to certification of the plans). Contact the Building Division at extension 115 regarding building permits.

C. Public hearing on an application for a Conditional Use Permit per Londonderry Zoning Ordinance section 6.3.11.C and Use Table 4.1.2 to allow a 6,000 SF convenience store with drive through, and gas station with 16 fueling stations and 3 diesel fueling stations in the Route 28 Performance Overlay District, 174 Rockingham Road, Map 15 Lot 61, Zoned C-II and RTE 28 Performance Overlay District and 178 Rockingham Road, Map 15 Lot 61-7, Zoned C-II and RTE 28 POD, 2V Londonderry, LLC & 2V Londonderry West, LLC (Owners) and New Sunset Realty (Applicant)

Chairman Rugg read the case into the record. Town Planner Mailloux informed the Board that there are no outstanding checklist items and Staff recommends the application be accepted as complete.

**A. Sypek made a motion to accept the application as complete per Staff Recommendation Memorandum dated May 4, 2022.**



**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the 65-day time clock has started. Ari Pollack, Esq. at Gallagher, Callahan and Gartrell, 214 North Main Street, Concord, NH and Jeff Kevan, P.E. from TF Moran Inc., 48 Constitution Drive, Bedford, NH addressed the Board. A. Pollack explained that they are here requesting a Conditional Use Permit (CUP) be granted to pursue a site plan for a business use of motor vehicle station. He went on stating that a portion of the two properties, specifically Lot 61, was granted the same CUP that they are requesting tonight in July of 2019. He noted that the previously granted CUP lead to site plan approval for a mixed-use concept of a convenience store/fueling area and financial institution. He discussed that the concept has changed to expand the fueling station and eliminate the financial institution use. He added that the CUP would pursue the service station on both parcels, which would eliminate the site plan that was approved for the financial institution. He told the Board that the reasoning for the CUP is the same as it was in 2019, which is that the site can be professionally designed in a manner that complies with the performance criteria and sections related to the CUP. He reviewed the CUP plan dated March 15, 2022, Exhibit 2, with the Board, which is attached hereto. He acknowledged that that they will still be asking for waivers to the setbacks, landscaping, etc., as they feel it is a better layout for the property than the proposed CUP plan. He pointed that the use does comply with Section 6.7.7.2, in terms of promoting high quality commercial development within the performance corridor, serves public convenience and public interest by offering passerby traffic and destination traffic transportation and arterial corridor needs for both vehicles and truck refueling. He stated that the property is reasonably suited for transportation services, as it can be designed for fuel storage tanks, fuel dispensing islands, stormwater management, and ground water protection that will be spread across both parcels this time. He remarked that after their conceptual meeting with the Heritage Commission last month that they have details to work out related to site layout, vehicle and pedestrian flow, building elevation, architecture and signage. He admitted that they know they have work to do and this is the first step in the process.

Chairman Rugg opened up the discussion to the Board. Town Planner Mailloux informed the Board that this is the first step in their site plan process. She pointed out that the CUP plan meets the dimensional criteria of the zoning ordinance, but there are issues with traffic and parking that need to be addressed. She added that the Board has the impact analysis and traffic study, which will be discussed in more detail during the site plan process. A. Chiampa asked for the direction of the traffic flow at the north corner. J. Kevan reviewed the CUP plan noting the traffic circulation. A. Pollack interjected that they are not here to hash out the traffic at this point. A. Chiampa asked if they anticipate any problems with pedestrians crossing two lanes and the gas pump area if they park on the side of the store. J. Kevan responded that most people would park in the front to go into the store, but most gas stations have customers walking in between pumps to get to the store. A. Chiampa noted that the pedestrians might have more of a safety concern. A.

Pollack mentioned that he did not think there would be a problem as it is a slow speed area when exiting the fueling islands. A. Chiampa commented that the parking spaces are supposed to be 20 feet long, not 18 feet long. Town Planner Mailloux stated that this would be discussed at the next step of the process if the CUP is granted. A. Chiampa asked for a summary of the traffic study, specifically the late afternoon traffic. J. Kevan replied that an updated traffic study was performed for this application, noting that they took away the traffic for the bank and added the traffic for the diesel pumps. He explained that they will do a full traffic study and go through the New Hampshire Department of Transportation (NHDOT) and the town's review process. A. Chiampa voiced her concern regarding traffic in this area. D. Paul voiced a concern asking them to consider updating the tanks. She echoed A. Chiampa's concern regarding traffic in this area. She asked if they thought about having any electric vehicle charging stations. A. Pollack responded that they can take a look at this, but stated that he does not know if people making a quick stop at a convenience store would charge their car. D. Paul asked if they thought about using solar on the roof to make it net zero. A. Pollack answered that she brought this up last time and they will look into this. D. Paul suggested removing the islands, as that might help give them more space. Town Planner Mailloux noted that regulations require the internal green space, but it could be that with the site design they might ask for waivers on internal green space. Chairman Rugg talked about electric vehicle charging stations and how the state is looking into this. J. Kevan reiterated that the applicant is considering electric charging stations. J. Penta asked for more clarity on the impact analysis and the financial implications. J. Kevan replied that they have not specifically compared the economic difference between the two plans. He went on stating that the fiscal impact specifically looks at if there is going to be a burden to the town with the CUP. He commented that the rough assessed value of the property is \$850,000 with a tax revenue of \$15,000 to \$18,000. He added that this will not have a negative impact on surrounding property values, as it will be adding jobs. J. Penta asked if this proposal would provide more services than the last site plan. A. Pollack replied that he did not know if the comparison of old to new is relevant, but thought the offering of diesel services and more full-fledged fueling stations can be argued to be more appealing than another bank, which could be replaced by mobile banking services. J. Penta read from the criteria asking what the public need or convenience would be for this CUP. A. Pollack answered that the public can get food, gas or use the rest rooms, which are all services by the passerby traffic in the area. J. Knights expressed his opinion that he was hoping that there would be something other than another gas station. He added that he has a concern regarding a left-hand turn going towards the highway during peak traffic times. T. Combes asked about snow storage. J. Kevan said that there is very little room for snow storage on the site and most of it would be taken off site.

Chairman Rugg asked for public input.

Ray Breslin, Three Gary Drive, addressed the Board. R. Breslin commented that this looks like a lot for this parcel. He asked if there was a traffic light at Symmes Drive. J. Kevan replied that there is. R. Breslin voiced his concern regarding 18-wheeler trucks circulation through the site. Chairman Rugg mentioned that they are still

working on this. R. Breslin asked how many lanes there are on Route 28 and if there is a median strip. J. Kevan replied that there is an island and a left-hand turn into the site. He went on stating that you can take a left into the site or go to the signal and turn onto Symmes Drive to get into the site. R. Breslin asked if this is how the 18-wheeler trucks would get into the site. J. Kevan reviewed where the trucks come in. Town Planner Mailloux pointed out that this will be worked out during the site plan process with the traffic analysis and input from NHDOT. R. Breslin commented that NHDOT might not approve this. J. Kevan replied that they previously got approval from NHDOT and had improvements on Rockingham Road as well.

Chairman Rugg brought the discussion back to the Board as there was no further public comment.

**A. Sypek made a motion to approve the Applicant's request for a Conditional Use Permit to allow the use of a 6,000 square foot convenience store with drive through and gas station with 16 fueling stations and 3 diesel fueling stations at 174 & 178 Rockingham Road, Map 15 Lots 61 and 61-7, Zoned C-II and RTE 28 POD, 2V Londonderry, LLC & 2V Londonderry West, LLC (Owners) New Sunset Realty (Applicant) in accordance with the CUP submittal materials provided by TF Moran, Inc, dated April 14, 2022.**

**J. Penta seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

D. Public hearing on an application for a Conditional Use Permit for 64,137 SF of temporary wetland impacts and 102,025 SF of buffer impacts for work within the Conservation Overlay District for the proposed replacement and removal of transmission line structures along the existing Transmission Line Right of Way (ROW) for the 380 and 326 Transmission Line Structure Replacement Project, Public Service Company of New Hampshire d/b/a Eversource Energy (Applicant)

Chairman Rugg read the case into the record. Town Planner Mailloux informed the Board that there are no outstanding checklist items and Staff recommends the application be accepted as complete.

**A. Sypek made a motion to accept the application as complete per Staff Recommendation Memorandum dated May 4, 2022.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the 65-day time clock has started. Conor Madison, from



GZA, Geoenvironmental Inc., 5 Commerce Park North, Bedford, NH, and Kurt Nelson, from Eversource, 13 Legends Drive, Hooksett, NH, addressed the Board. Lydia Morton from Eversource Project Services was also in attendance. C. Madison told the Board that this a structure replacement program for the 326 and 380 transmission lines. He noted that they will submit a wetlands permit, called a statutory permit by notification, later this month for this project. He explained that they are replacing 15 structures and completely removing one. He said that they are proposing work off nine different roads, not clearing any trees or widening any right-of-ways. He explained that the construction will be adhering to the 2019 Best Management Practice (BMP) manual, which includes installing erosion control, clean timber matting and regulatory monitoring of the site. He mentioned that they work with the New Hampshire Fish & Game (NHFG) and The Natural Heritage Bureau for any rare and endangered species, of which they provide the BMPs. He noted that they are still coordinating with NHFG for BMPs. He said that they are also filing an Alteration of Terrain (AOT) permit with the state as well. He pointed out that they would like to start the project in June of 2022.

Chairman Rugg opened the discussion up to the Board. Town Planner Mailloux informed the Board that the applicant has requested a CUP to allow a permitted use in the Conservation Overlay District. She explained that Eversource Energy seeks to do work within the Conservation Overlay District relating to replacement of existing transmission line structures in the utility ROW. She pointed out that the Conservation Commission has recommended approval of the CUP. A. Chiampa asked if would have any effect on Route I-93. K. Nelson replied that it will not affect I-93. A. Chiampa asked if the right-of-way is larger in Londonderry. K. Nelson replied that the Scobie Pond substation is the largest hub in New Hampshire. J. Penta asked what applications need to be all set before the project starts. C. Madison replied that they will need the wetland permit, which is a permit by notification, AOT permit and permits from NHDOT. J. Penta asked how long the project might take. K. Nelson gave a rough estimate of the time frame stating that they would be into the spring of 2023. He added that they have been delayed developing some BMPs with NHFG regarding rare turtle concerns. J. Penta asked what they do to clean up after the project is completed. K. Nelson replied that they are obligated to have adequately stabilized and restored any land disturbance areas. He said that they are improving access and right-of-way corridors with gravel. A. Sypek asked what kind of replacement structures they are using. K. Nelson replied that they are replacing in-kind structures. A. Sypek complimented their use of mats. K. Nelson stated that they have good luck with restoration. J. Knights asked for the life span of the structures. K. Nelson replied 70 years. J. Knights asked how that compares to wood. K. Nelson replied that the wood structure can last about 30 years to 40 years. He said that the pole is weathered steel with a coating to prevent any erosion issues. T. Combes asked for the timeline of structures 1, 2, 3, 4, 5, 6, 7 8 or 9. L. Morton stated that Eversource will notify abutters by mail and attempt to go door-to-door for the abutters that will be most affected by the work. T. Combes asked again for the timing of construction. C. Madison replied that they do not know at this point. T. Combes asked if they do construction during the winter. L. Morton replied that they have set timeframes regionally, so there will not be any impacts to the grid, noting they are somewhat

limited in the summer and winter time. Chairman Rugg asked if they use social media to notify people/towns. L. Morton replied that they do not. Town Planner Mailloux informed the Board that the community relations person will notify the Town when work is going to be done. She said that the Town will then post this to the website, Twitter, etc.

Chairman Rugg asked for public input.

Marge Badois, Chair of Conservation Commission, said that they have no concerns and already presented to the Commission with no objections or concerns.

Ray Breslin, Three Gary Drive, addressed the Board. R. Breslin asked if the project was to replace laminated poles. K. Nelson replied that this particular project is to replace solid wood poles. He added that there was another project that was replacing laminated poles. R. Breslin asked if the poles run through Londonderry. K. Nelson replied that it does run through Londonderry. R. Breslin asked about woodpeckers damaging the poles. K. Nelson responded that it can be a contributing factor to the wood poles, but the laminated structures were found to be defective. R. Breslin asked what the benefit would be for Londonderry, as the energy is distributed to Massachusetts, and has little benefit for New Hampshire. K. Nelson answered that every time infrastructure is put in there is tax revenue. R. Breslin asked where the money is coming from. K. Nelson replied that this is being paid for by rate payers. He said that they are a publicly traded company and reviewed the bill process. R. Breslin asked who owns the poles. K. Nelson replied that Eversource owns the poles.

John Laferriere, 331 Mammoth, addressed the Board. J. Laferriere asked if the fence for the abutting property at 333 Mammoth could be addressed as it was not installed properly. L. Morton asked for his contact information to set up a site visit.

Chairman Rugg brought the discussion back to the Board as there was no further public comment.

**A. Sypek made a motion to grant approval of the Conditional Use Permit (CUP) for 64,137 SF of temporary wetland impact and 102,025 SF of buffer impact within the Conservation Overlay District for the proposed replacement of transmission line structures along the existing Transmission Line Right of Way (ROW), Public Service Company of New Hampshire d/b/a Eversource Energy (Applicant).**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

E. Public hearing on an application for formal review of a site plan for the construction of a 7,200 SF warehouse and wholesale building and associated site improvements, Three Enterprise Drive, Map 15 Lot 62-3, Zoned C-II, 3

**Enterprise Drive, LLC (Owner & Applicant)**

Chairman Rugg read the case into the record. Town Planner Mailloux informed the Board that the applicant has requested a continuance to work with Staff to continue to address the comments from last week's meeting at the Conservation Commission.

**A. Sypek made a motion to continue the public hearing on an application for formal review of a site plan for the construction of a 7,200 SF warehouse and wholesale building and associated site improvements, Three Enterprise Drive, Map 15 Lot 62-3, Zoned C-II, 3 Enterprise Drive, LLC (Owner & Applicant) until June 1, 2022.**

**J. Butler seconded the motion.**

**The motion was granted, 7-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the application is continued until June 1, 2022, at 7 p.m., and this would be the only formal public notice.

F. Public hearing on an application for formal review of a site plan for a trucking terminal and associated site improvements, 15 Rockingham Road, Map 13 Lot 99, Zoned C-II, Alfred, Jr. & Nicole Pittore (Owners) and Pittore Bros. Paving (Applicant)

Chairman Rugg read the case into the record. Town Planner Mailloux informed the Board that the applicant has requested a continuance to continue to work with staff until June 1, 2022.

**A. Sypek made a motion to continue the public hearing on an application for formal review of a site plan for a trucking terminal and associated site improvements, 15 Rockingham Road, Map 13 Lot 99, Zoned C-II, Alfred, Jr. & Nicole Pittore (Owners) and Pittore Bros. Paving (Applicant) until June 1, 2022.**

**J. Butler seconded the motion.**

**The motion was granted, 8-0-0. The Chair voted in the affirmative.**

Chairman Rugg noted that the application is continued until June 1, 2022, at 7 p.m., and this would be the only formal public notice.

**V. Other**

**VI. Adjournment**

**Member A. Sypek made a motion to adjourn the meeting at approximately 8:40 p.m. Seconded by J. Penta.**

**The motion was granted, 8-0-0.**

**The meeting adjourned at approximately 8:40 PM.**

These minutes were prepared by Beth Morrison.

Respectfully Submitted,

\_\_\_\_\_  
Name: Jake Butler

\_\_\_\_\_  
Title: Secretary

These minutes were accepted and approved on June 1, 2022, by a motion made by  
A. Sypek and seconded by J Butler.

## **STAFF RECOMMENDATION**

**To:** Planning Board

**Date:** May 4, 2022

**From:** Colleen P. Mailloux, AICP, Town Planner

John R. Trottier, PE, Director of Engineering & Environmental Services

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**Application:** Application for modification to the conditions of approval of a site plan for a change of use and building addition, 213 Rockingham Road, Map 15 Lot 23-1, Zoned C-I & RTE 28 POD, Gagne Family Trust (Owner & Applicant)

- **Completeness:** There are no outstanding checklist items and Staff recommends that the application be accepted as complete.
- **Background:** On October 6, 2021, the Planning Board granted Conditional Approval of a site plan for a change of use and a 672 square foot building addition at 213 Rockingham Road. One of the conditions of approval of that site plan was to obtain an easement from the abutting property owner for the existing sewer line that crosses the abutting parcel. It is Staff's understanding that the abutting property owner has not agreed to grant an easement to allow for maintenance of the existing sewer.
- **Recommendation:** Based on the information available to date, Staff recommends that the Planning Board modify the conditions of approval to eliminate the requirement for the applicant to obtain a sewer easement from the abutting property owner.

**Board Action Required:** Motion to modify the October 6, 2021 conditional approval of the site plan amendment for a change of use from an existing spa to a professional office, and for a 672 SF building addition and associated site improvements, 213 Rockingham Road, Map 15 Lot 23-1, Zoned C-I & RTE 28 POD, Gagne Family Trust (Owner & Applicant) by deleting precedent condition #5 relative to the sewer easement.



## **STAFF RECOMMENDATION**

**To:** Planning Board

**Date:** May 4, 2022

**From:** Colleen P. Mailloux, AICP, Town Planner

John R. Trottier, PE, Director of Engineering & Environmental Services

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**Application:** Application for formal review of a condominium conversion of 350 Mammoth Road, Map 9 Lot 22-1, Zoned AR-1, Daniel R. Howes, LLC (Owner & Applicant)

- Completeness: There are no outstanding checklist items. Staff recommends that the Application be accepted as complete.

*Board Action Required:* **Motion to Accept the Application as Complete per Staff's Recommendation Memorandum dated May 4, 2022.**

- Waivers: No waivers are being requested for this project.
- Recommendation: Based on the information available to date, Staff recommends that the Planning Board **CONDITIONALLY APPROVE** this application with the Notice of Decision to read substantially as follows:

*Board Action Required:* **Motion to grant conditional approval of the condominium conversion plan for 350 Mammoth Road, Map 9, Lot 22-1, Zoned AR-1, Daniel R. Howes (Owner & Applicant), in accordance with plans prepared by Bedford Design Consultants, dated March 8, 2022, last revised April 13, 2022, with the precedent conditions to be fulfilled within two years and prior to plan signature, and general and subsequent conditions of approval to be fulfilled as noted in the Staff Recommendation Memorandum, dated May 4, 2022.**

“Applicant”, herein, refers to the property owner, business owner, or organization submitting this application and to his/its agents, successors, and assigns.

### **PRECEDENT CONDITIONS**

All of the precedent conditions below must be met by the Applicant, at the expense of the Applicant, prior to certification of the plans by the Planning Board. Certification of the plans is required prior to commencement of any site work, any construction on the site or issuance of a building permit.

1. The Owner’s signature shall be provided on the plans.
2. The proposed Map and Lot numbers be verified with Assessing and updated on the plan if necessary.
3. An executed copy of the condominium declaration and by-laws shall be provided to be recorded at the Rockingham County Registry of Deeds, concurrent with the recording of the plans.

4. The Applicant shall provide a digital copy of the complete final plan to the Town prior to plan signature by the Planning Board in accordance with Section 2.05.n of the Subdivision Regulations.
5. The Applicant shall provide checks for LCHIP and recording fees, made payable to the Rockingham County Registry of Deeds.
6. The Applicant shall note all general and subsequent conditions on the plan sheet to be recorded.
7. Final planning review.

**PLEASE NOTE –** If these conditions are not met within two (2) years of the meeting at which the Planning Board grants approval, the Board's approval will be considered to have lapsed and re-submission of the application will be required. See RSA 674:39 on vesting.

**GENERAL AND SUBSEQUENT CONDITIONS**

All of the conditions below are attached to this approval.

1. All of the documentation submitted in the application package by the applicant and any requirements imposed by other agencies are part of this approval unless otherwise updated, revised, clarified in some manner, or superseded in full or in part. In the case of conflicting information between documents, the most recent documentation and this notice herein shall generally be determining.
2. It is the responsibility of the applicant to obtain all other local, state, and federal permits, licenses, and approvals which may be required as part of this project (that were not received prior to certification of the plans). Contact the Building Division at extension 115 regarding building permits.

## STAFF RECOMMENDATION

**To:** Planning Board

**Date:** May 4, 2022

**From:** Colleen P. Mailloux, AICP, Town Planner

John R. Trottier, PE, Director of Engineering & Environmental Services

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**Application:** Application for formal review of conditional use permit per Londonderry Zoning Ordinance Section 6.3.11.C and Use Table 4.1.2 to allow a 6,000 square foot convenience store with drive through and (gas station with 16 fueling stations and 3 diesel fueling stations 174 & 178 Rockingham Road, Map 15 Lots 61 and 61-7, Zoned C-II and RTE 28 POD, 2V Londonderry, LLC & 2V Londonderry West LLC (Owners) and New Sunset Realty (Applicant)

- Completeness: There are no outstanding checklist items and Staff recommends the Board accept this application as complete.

Board Action Required: Motion to accept the application as complete per the Staff Recommendation memorandum dated May 4, 2022.

- Conditional Use Permit: The Applicant is requesting a Conditional Use Permit to allow the use of a station with 16 fueling stations and three diesel fueling stations and a 6,000 SF convenience store with a drive thru in the Route 28 Performance Overlay Zone. These uses are permitted in the underlying C-II Zone, however they are only permitted by Conditional Use Permit in the Performance Overlay District.

In order for the Planning Board to grant a conditional use permit in the Performance Overlay District, the Applicant must demonstrate compliance with Sections 6.2 and 6.3.11 of the Zoning Ordinance.

The relevant sections of the Zoning Ordinance are attached.

- Recommendation: Should the Planning Board determine that the application has demonstrated compliance with Sections 6.2 and 6.3.11.E of the Zoning Ordinance, the following motion for approval can be used:

Board Action Required: **Motion to approve the Applicant's request for a Conditional Use Permit to allow the use of a 6,000 square foot convenience store with drive through and gas station with 16 fueling stations and 3 diesel fueling stations at 174 & 178 Rockingham Road, Map 15 Lots 61 and 61-7, Zoned C-II and RTE 28 POD, 2V Londonderry, LLC & 2V Londonderry West, LLC (Owners) New Sunset Realty (Applicant) in accordance with the CUP submittal materials provided by TF Moran, Inc, dated April 14, 2022.**

## 6 CONDITIONAL USE PERMITS

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### 6.1 Authority

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As provided for in RSA 674:21, Innovative Land Use Control, this Section of the Zoning Ordinance shall provide for the granting of conditional use permits, by the Planning Board, as follows:

- A. The Planning Board shall then vote either to approve a conditional use permit as presented, approve it with conditions, or deny it.
- B. Prior to the granting of any conditional use permit, the applicant may be required to submit a performance security in a form acceptable to the Planning Board, depending on the scale of the proposed use. The security shall be submitted in a form and amount with surety and conditions satisfactory to the Planning Board to ensure that the construction will be carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.
- C. The applicant may also be assessed reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications, reviews by the Town's legal counsel, and any third party consultant as may be required by the Planning Board per Section 2.01 d of the Site Plan Regulations.

### 6.2 General Criteria

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The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit:

- A. Granting of the application would meet some public need or convenience.
- B. Granting of the application is in the public interest.
- C. The property in question is reasonably suited for the use requested.
- D. The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties.
- E. The traffic generated by the proposed use is consistent with the identified function, capacity, and level of service of transportation facilities serving the community
- F. There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion.

Additional Conditional Use Permit procedures and requirements may be found within the specific criteria of Section 6.3.

### 6.3 Specific Criteria

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#### 6.3.1 Inclusionary (Workforce) Housing

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(Also refer to Section 5.7 Inclusionary (Workforce) Housing)

In addition to the general criteria of Section 6.2, the following criteria shall be used by the Planning Board in the evaluation of Conditional Use Permits for Inclusionary Housing, including Workforce Housing projects:

- A. General:



3. The applicant may also be assessed reasonable fees to cover the cost of other special investigative studies and for the review of documents required by particular applications, reviews by the Town's legal counsel, and any third party consultant as may be required by the Planning Board per Section 2.01d of the Site Plan Regulations.

**E. The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit in the performance overlay district. The applicant shall demonstrate that:**

1. All performance criteria outlined in **Section 4.6.7.7**, as applicable to the application have been met;
2. The proposed use is consistent with the purpose and intent of the performance overlay district, **Section 4.6.7.2**.
3. Granting of the application would meet some public need or convenience;
4. Granting of the application is in the public interest;
5. The property in question is reasonably suited for the use requested, and the design of the site represents to the extent practicable preservation of natural resources, open space, and does not create a hazard to surface or underground water resources.

## **6.4 Conditional Use Permit Procedure**

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- A. Prior to issuance of a Building Permit, the applicant shall acquire a Conditional Use Permit as well as any other necessary Planning Board approvals. A Conditional Use Permit shall be issued only if the development complies with all of the requirements of Section 5.7.4. The Planning Board may also condition its approval on additional reasonable conditions necessary to accomplish the objectives of this section or of the most recently adopted Master Plan, Zoning Ordinance, or any other federal, state, Town resolution, regulation, or law.
- B. Where Site Plan or Subdivision approval is required, applications for Conditional Use Permits (CUP) shall be submitted as part of the Site Plan application in accordance with the following procedures:
  1. It is recommended that all projects requiring a CUP conduct a preliminary meeting with staff prior to review by the Design Review Committee and the Town's Review Consultant. The purpose of the preliminary meeting shall be to provide guidance on the design of the proposed plan.
  2. The applicant will then develop the proposed plan to a point at which the plan is eligible for Design Review.
  3. The application will then begin Pre-Application Design Review, which will include the Conditional Use Permit Review outlined in this section, and in accordance with the other applicable procedures adopted by the Planning Board.
  4. Unless otherwise addressed in this ordinance, all applications shall meet those requirements set forth in the relevant sections of the Subdivision & Site Plan Regulations of the Town of Londonderry.
- C. The conditional use permit shall clearly set forth all conditions of approval and shall clearly list all plans, drawings and other submittals that are part of the approval. Everything shown or otherwise indicated on a plan or submittal that is listed on the conditional use permit shall be considered to be a condition of approval. Construction shall not deviate from the stated conditions without approval of the modification by the Planning Board.





1. The Planning Board shall consider the standards included in **Section 4.6.6.7** as well as the other standards set forth in this ordinance and in the site plan and subdivision regulations when reviewing development impacts assessments

#### **4.6.6.9 Pre-Existing (Non-Conforming) Uses, Lots, and Structures**

- A. Notwithstanding other provisions of **Section 4.6.6**, the construction of additions and expansions to pre-existing structures and uses shall be permitted within the pod, governed by the standards of the underlying zoning district, provided that:
  1. The use or structure lawfully existed prior to the adoption of the POD by the Town Council;
  2. The proposed construction conforms to all other applicable ordinances and regulations of the Town of Londonderry; and
  3. The structure or use continues in its present use, and does not constitute a change of use.
- B. Notwithstanding other provisions of **Section 4.6.6**, lots of less than 3 acres in size within the POD shall be governed by the standards of the underlying zoning district, provided that:
  1. The lot lawfully existed prior to the adoption of the POD by the Town Council; and
  2. Any proposed construction conforms to all other applicable ordinances and regulations of the Town of Londonderry.

#### **4.6.7 Performance Overlay District - Route 28 Corridor**

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##### **4.6.7.1 Authority**

The Section is enacted in pursuant to [RSA 674:21](#), innovative land use controls, which provides the statutory authority for the Town of Londonderry to provide intensity and use incentives, impact zoning, performance standards, and the ability for the Planning Board to grant conditional use permits. The Planning Board shall be solely responsible for the interpretation and administration of this ordinance, including the granting of all conditional use permits relative thereto. Any decision made by the Planning Board under this performance overlay district ordinance may be appealed directly to superior court in the same manner provided by [RSA 677:15](#).

##### **4.6.7.2 Purpose and Intent - Route 28 Corridor**

- A. Because the Town of Londonderry has experienced an increase in development along the Town's main traffic corridors and anticipates such growth will likely continue, (including the widening of Interstate 93, and industrial development south of the Manchester Airport), because said development will generate growth related impacts (increased traffic congestion, infrastructure requirements, demand for public services, reduced aesthetics, etc.) Utilizing the corridors, because traditional zoning techniques may not produce the type of development envisioned by the community through recent surveys and public outreach:
  1. Guide the form of business development to occur in keeping with community objectives for compatible, appropriate development;
  2. Tune regulatory systems to encourage businesses to more efficiently use the circulation system;
  3. Regulating development to ensure that it can be supported by planned infrastructure, taking into consideration that required infrastructure must be appropriate to the context and must be supportive of environmental and community character concerns; and



4. Include consideration of impact upon natural and cultural resources in review of development proposals

The Town hereby adopts this overlay district to guide the development of land through the use of performance standards, incentives for quality development, and impact assessments to ensure the desired development pattern along the major traffic corridors of Londonderry.

**B. The purpose of the Route 28 Performance Overlay District is:**

1. To minimize adverse traffic impacts on the corridors and surrounding local roadways;
2. To promote and attract high quality, diverse, and sustainable economic development within the district by utilizing performance standards and flexibility and providing for development that preserves appropriate open space and builds upon the landscaping design, and visual character standards of the Town's Site Plan Regulations;
3. To minimize negative impacts to the environment such as water quality, air quality, prevention of noise pollution, light pollution, and to other important natural and cultural resources.
4. To protect the remaining aquifers within the Town of Londonderry.
5. To provide an appropriate mix of uses for the areas abutting the natural complex formed by areas such as the Musquash Conservation Area, Kendall Pond area, Scobie Pond area, the Litchfield State Forest, etc.

#### **4.6.7.3 District Defined – Route 28 Corridor**

- A. The performance overlay district shall be described as including the lots identified on the “Performance Overlay Zone” Map and specifically as follows:
1. **On Tax Map 15:** 21, 21-1, 22, 22-1, 23, 23-1, 23-2, 25, 25-1, 26, 27, 28, 60-2, 60-2, 61, 61-2, 61-4, 61-5, 61-7, 61-8, 63, 65-2, 66, 66-1, 67, 68, 69, 70-1, 70, 71, 124, 125, 126, 127, 128, 133, 134, 136, 137, 146, 147, 148, 149, 150, 153, 154, 155, 156, 157
- B. The term “overlay district” means a zoning district superimposed on one or more established zoning districts to impose supplemental requirements, restrictions, and performance standards on uses in the district.

#### **4.6.7.4 Conflicts with underlying zoning standards**

See [Section 4.6.6.4](#).

#### **4.6.7.5 Uses Permitted**

See [Section 4.6.6.5](#).

#### **4.6.7.6 Conditional Use Permits**

All uses permitted by conditional use permit in the performance overlay district are subject to site plan review by the Planning Board. Prior to Planning Board approval of a conditional use permit, the applicant must demonstrate that it meets the general criteria for a Conditional Use Permit of [Section 6.2](#), and the Specific Criteria of [Section 6.3.11](#), Route 28 Performance Overlay District.

## **STAFF RECOMMENDATION**

**To:** Planning Board

**Date:** May 4, 2022

**From:** Colleen P. Mailloux, AICP, Town Planner

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**Application:** Application for a Conditional Use Permit (CUP) for 64,137 SF of temporary wetland impact and 102,025 SF of buffer impact for the proposed replacement and removal of transmission line structures along the existing Transmission Line Right of Way (ROW) for the 380 and 326 Transmission Line Structure Replacement Project, Public Service Company of New Hampshire d/b/a Eversource Energy (Applicant)

- **Completeness:** Staff recommends the Conditional Use Permit application be accepted as complete.

**Board Action Required:** Motion to accept the application as complete per Staff's Recommendation Memorandum dated May 4, 2022.

- **Conditional Use Permit:** The applicant is requesting a Conditional Use Permit (CUP) per Londonderry Zoning Ordinance Section 4.6.1.4.A.1.
  1. The Applicant has requested a Conditional Use Permit to allow a permitted use in the Conservation Overlay District. Eversource Energy seeks to do work within the Conservation Overlay District relating to replacement of existing transmission line structures in the utility ROW. The Conservation Commission has recommended approval of the CUP.
- **Recommendation:** Based on the information available to date, Staff recommends that the Planning Board APPROVE the CUP with the Notice of Decision to read substantially as follows:

**Board Action Required:** Motion to grant approval of the Conditional Use Permit (CUP) for 64,137 SF of temporary wetland impact and 102,025 SF of buffer impact within the Conservation Overlay District for the proposed replacement of transmission line structures along the existing Transmission Line Right of Way (ROW), Public Service Company of New Hampshire d/b/a Eversource Energy (Applicant).