

**City of Keene**  
**New Hampshire**

**PLANNING BOARD**  
**MEETING MINUTES**

**Monday, July 25, 2022**

**6:30 PM**

**Council Chambers,  
City Hall**

**Members Present:**

Pamela Russell-Slack, Chair  
David Orgaz, Vice Chair  
Mayor George S. Hansel  
Councilor Michael Remy  
Emily Lavigne-Bernier  
Armando Rangel  
Harold Farrington  
Roberta Mastrogiovanni  
Kenneth Kost, Alternate

**Staff Present:**

Jesse Rounds, Community Development  
Director  
Mari Brunner, Senior Planner

**Members Not Present:**

Gail Somers, Alternate  
Tammy Adams, Alternate

**I) Call to Order – Roll Call**

Chair Russell-Slack called the meeting to order at 6:30 PM and a roll call was taken.

**II) Minutes of Previous Meeting – June 27, 2022**

Harold Farrington offered the following corrections:

- Line 92 – add the word “a” before month
- Line 288 – replace the word “one” with “wood” at the end of the sentence
- Line 591 – the name should be “Fuller School” not Fuller Street
- Line 610 – the word “park” at the end of the sentence
- Line 627 – add the word “is” before “going”
- Line 647 - add the word “to” before “runoff”
- Line 678 – add the word “is” after “logging”
- Line 679 – should read “an intent to cut”
- Line 728 – correct the spelling of Mr. Kost’s name

A motion was made by Mayor George Hansel that the Planning Board approve the June 27, 2022 meeting minutes as amended. The motion was seconded by Councilor Remy and was unanimously approved.

### III) Extension Request

- 1) **SPR-423, Modification #4 – Site Plan – Corning Specialty Materials, 69 & 0 Island St – Applicant Leighton A. White Inc., on behalf of owner Island Mill Realty Group, proposes to install electrical equipment and modify the parking on the properties located at 69 Island St (TMP# 583- 010-000-000-000) and 0 Island St (TMP# 582-048-000-000-000). These combined parcels are 9.2-ac in size and are located in the Commerce District.**

Operations Manager, Kevin Miller, stated that Corning is requesting an extension to the deadline to satisfy their conditions of approval because they have not been able to meet the condition related to the parking lease agreement between the City of Keene and the landlord. The parties are still in negotiation regarding the parking spaces between the bike trail and the parking lot.

The Chair asked for staff comments. Senior Planner, Mari Brunner, stated that this is the first extension request to meet the conditions of approval for this project. The Planning Board regulations specify that the Board may grant a first extension, if the Applicant demonstrates the need for an extension and provides an update on the nature of the project and its status. She indicated that because this is a first extension request and the Applicant has provided a status update on the project and the explained need for the extension, City Staff feels that the extension requirements have been met.

A motion was made by Mayor George Hansel to grant a six-month extension to the timeframe to meet the conditions of approval for site plan application for SPR-423, Modification #4. The motion was seconded by Councilor Michael Remy and was unanimously approved.

The Chair asked to move up the item regarding Staff Updates. The Board did not have an objection to this change.

### IV) Staff Updates

#### a. **Overview of Administrative & Minor Project approvals issued from January-June 2022**

Ms. Brunner explained that the Administrative Planning Applications approved by the Community Development Director and the Minor Projects approved by the Minor Project Review Committee between January-June 2022 are included in the Board's packet. She asked that any questions about these approvals be directed to the Community Development Department. Ms. Brunner noted that the Board has granted authority to the Minor Project Review Committee to approve site plans and to Planning Staff for administrative planning approvals.

Ms. Brunner went on to say that the second update from City Staff is regarding a Supreme Court Decision that was issued last week - *George Stergiou v. City of Dover*. She indicated that the reason for raising this issue is because the Board is going to see a slight change to language for motions to reflect

the new interpretation of state law regarding conditional approvals. Ms. Brunner stated that the City Attorney will be at the Planning Board meeting next month to provide legal advice on this item.

**V) Boundary Line Adjustment**

**S-06-22 – Boundary Line Adjustment – 1 Ralston St & 0 Emerald St - Applicant Nancy Sheldon, on behalf of owners Shalldu Ltd., the City of Keene, and Braden Property Holdings, LLC proposes a lot line adjustment between the 0.39-ac property at 1 Ralston St (TMP #583-032-000-000-000), the 0.73-ac property at 0 Emerald St (TMP #583-033-001-000-000), and the 0.37-ac property at 19 Ralston St (TMP #583-031-000-000-000) to accommodate the purchase of a 0.11-ac parcel known as a “railroad spur” from the City of Keene to be incorporated into the 1 Ralston St and 19 Ralston St properties. The properties are located in the Downtown Growth District.**

**A. Board Determination of Completeness**

Community Development Director, Jesse Rounds, stated that the Applicant has requested exemptions from providing a grading plan, landscaping plan, lighting plan, and technical reports. After reviewing this request, staff have determined that exempting the Applicant from submitting this information would have no bearing on the merits of the application and recommend that the Board accept this application as “complete.”

A motion was made by Mayor George Hansel to recommend the Board accept application, S-06-22, as complete. The motion was seconded by Councilor Michael Remy and was unanimously approved.

**B. Public Hearing**

Wendy Pelletier of Cardinal Surveying, representing one of the property owners Shalldu Ltd, referred to a plan showing Emerald Street, the Center of Keene, Ralston Street, a warehouse building, and the Brayden Printing property. She noted that the parcel owned by the City was shown in blue and also referred to where the current entrance to the rail trail is located. She referred to the Railroad Spur, which Shalldu Ltd is looking to purchase from the City of Keene. Once the purchase is complete, Shalldu Ltd will be selling a small portion of the property to Brayden Printing, so their building and parking area will be on one parcel, which will help provide access to their rear parking lot from Davis Street.

Staff comments were next. The Community Development Director addressed the issue of encroachments and indicated that staff recommends the submittal of easement documents for review by the City Attorney be included as a condition of approval. There is no new development proposed, hence there will no impacts to traffic, access management, surface waters, or wetlands.

The Chair asked for public comment next. With no comments from the public, the Chair closed the public hearing.

**C. Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board approve S-06-22, as shown on the plan identified as “Boundary Line Adjustment Lots 583-032-000, 583- 033-001 & 583-031-000 1

Ralston Street & Emerald Street Keene, NH 03431” prepared by Cardinal Surveying & Land Planning at a scale of 1”=20’, dated July 12, 2022, with the following conditions prior to the signature of the Planning Board Chair:

1. Owner’s signature appears on the plan.
2. Submittal of a draft easement document, which shall be subject to review by the City Attorney.

The motion was seconded by Councilor Michael Remy and was unanimously approved.

## **V. Continued Public Hearing**

- 1) **S-04-22 – Conservation Residential Development Subdivision & SPR-04-22 – Site Plan – 0 Drummer Road** – Applicant and owner Christopher Farris proposes to subdivide the 13.1-ac parcel located at 0 Drummer Rd (TMP #515-015-000-000-000) into 6 lots and construct 5 multifamily buildings. Four of the lots are proposed to be developed into 5-unit multifamily residences, one lot is proposed to be developed as a 6-unit multifamily residence, and the remaining lot would be conserved as open space. The developable lots are proposed to have access from Timberlane Dr via a shared private driveway and vary in size from 0.3 to 1.2 acres. The open space lot is 9.5 acres. Waivers are requested from Section 25.10.8.B.2 of the Land Development Code regarding the requirement to prepare a survey that shows all metes and bounds of the revised parcels, Section 20.14.3.D regarding the requirement that all off-street parking be located to the side or rear of buildings, and Section 19.3.5.A.3.a regarding the requirement that all structures be accessed from interior streets. The site is in the Low Density District.

### **A. Public Hearing**

Applicant and property owner, Christopher Farris, addressed the Board first and stated that he understands that this agenda item will be continued; however, he stated that he would like to get the Board’s input on the new proposed architectural elevations. Mr. Farris called the Board’s attention to a rendering and explained that the new roof being proposed has a gable element to it. He indicated that the decks would be similar to the width shown on the prior plan and the color scheme would be grey and white. Mr. Farris also referred to two letters submitted by Fieldstone Land Consultants, both of which are dated July 11, 2022. He referred to a wetland area at the bottom of this site where all wetlands from the surrounding neighborhood drain into. He referred to language from Fieldstone Land Consultants in the letter regarding stormwater, which stated that, “... *As part of the site plan application, we submitted a Stormwater Management Report, which included an outline of how stormwater will be handled and the correlating Hydro-CAD models. The drainage systems are designed to treat stormwater and reduce the rate of runoff during rainfall events. This is done by modeling how water flows off the site in the pre-development condition and designing the stormwater systems to match or decrease these amounts of rainwater in the post-development condition. The model takes into account the surface conditions of the land, where the pre-development land is woods and the post-development land is a combination of pavement, grass lawns, and building roofs. These models are completed for three storm events; the 2-Year, 10-Year and 50-Year. These are the storm events that must be modeled if a project requires an Alteration of Terrain permit with the New Hampshire Department of Environmental Services (NHDES).*

*This project is under the threshold and does not require an Alteration of Terrain permit, however, the stormwater systems are designed to these same state standards...*

With reference to traffic, the Fieldstone Land Consultants states that, "...there would be an increase of 5-6 vehicles/hour to the north of the intersection and 5-7 vehicles/hour to the south of the intersection..." Mr. Farris felt that any new construction is most likely going to have an increase to traffic and did not feel that this is a high traffic area.

Mr. Kost asked for the location of the AC units. Mr. Farris stated they would be located on the ground, perhaps to the rear of the site.

Staff comments were next. Ms. Brunner stated that at the last meeting, there were concerns raised by abutters regarding traffic & parking, architecture & visual appearance, and drainage & runoff. Since the last meeting, the Applicant has submitted new information and Planning Staff followed up with the engineering department to see if they had concerns with drainage, runoff, and traffic.

With reference to drainage & stormwater management, Planning Staff confirmed with Engineering Staff that the Applicant has exceeded the City standards when it comes to demonstrating that the proposed development will not increase runoff volume or velocity from the site. As designed, if it is built and maintained properly it will result in a decrease of runoff leaving the site. This is because the detention basin has been designed to hold water and slowly infiltrate it into the ground. They also use a 50-year storm event where the City only requires a 25-year storm event. As result, this standard appears to have been met.

With respect to screening, there is no new information that has been received; however, given the concerns raised by abutters as to the visual impact of this development – staff continues to recommend that a no cut buffer be placed over the 30-foot vegetative buffer between the road and the development. This is already shown on the plan, but this is an added assurance that if the buffer were to be cut down in the future, the City could require the Applicant to replant it.

Lighting – At the last meeting, staff noted that lighting cut sheets had not been submitted, so they could not determine if the Lighting Standards had been met. Since that meeting, cut sheets for a different light fixture have been submitted and they meet the Planning Board's Lighting Standards.

With respect to traffic and access management, Ms. Brunner apologized for not including the letter from Fieldstone Land Consultants in the agenda packet. She indicated that she had discussed this issue with City staff, who explained that the City's requirement is a 200 foot all season safe sight distance at any access point. Engineering Staff felt that this location exceeds that requirement and noted that this road has no barriers when someone pulls out.

Another concern raised at the last meeting was overflow and on street parking. Ms. Brunner noted that the Board does not have a standard for parking and stated that the amount of parking a developer is required to provide is outlined in the zoning ordinance. According to the zoning ordinance, the requirement is two spaces per dwelling unit and this requirement has been met. With respect to overflow parking and parking on the street, this is regulated under Chapter 94 Article 3 of City Code, which falls under the purview of City Council. This section prohibits on street parking that would obstruct the

movement of traffic in travel lanes and also prohibits parking in a public right-of-way where the wheel of a parked vehicle is behind painted lines in the roadway. Based on staff's understanding of this section, parking could occur on the opposite side of Timberlane Drive (the side that does not have the sidewalk), as there seems to be space for a car to park on the shoulder of the road without impeding the travel way.

In regards to architecture and visual appearance, the Applicant has submitted a revised design concept for the front façade in an attempt to address some of the concerns raised by the Board at the last meeting. Ms. Brunner stated that at this time, staff still does not have the necessary information to determine whether the proposed buildings are in compliance with the two story maximum height requirement in the Low Density District.

Ms. Brunner stated that another item has come to staff's attention today. During a meeting with the City Attorney, Planning Staff realized that there is an issue with zoning compliance with this application. Prior to the adoption of the Land Development Code, the Conservation Residential Development (CRD) subdivision option was reviewed through the Conditional Use Permit (CUP) application process. Conditional Use Permits live in the zoning ordinance. With the Land Development Code, staff thought it would be simpler to make it a subdivision application; however, but when that change was made, the connection between the zoning ordinance and subdivision regulations was "broken". At the present time, the uses that are allowed in the CRD subdivision regulations are not reflected in the zoning ordinance. Staff considers this to be a glitch that needs to be fixed before this application can be approved. This is entirely staff's fault and an ordinance has been submitted to fix this issue. The ordinance process takes a minimum of two months. Until this is completed, the Board cannot act on this application; however, with the Applicant's approval this application will need to be continued.

Councilor Remy asked what the resolution for the two-story height requirement and parking issue was. Ms. Brunner stated that in talking to the Applicant, it looks like the Applicant has met the two-story requirement, they just have to submit documentation. There are still some minor changes to grading that need to be completed so that the lower parking level meets the definition of a "basement," which would not count toward the two-story height limit.

Ms. Lavigne-Bernier referred to drainage and asked if the standard for drainage has been met by the Applicant. She also asked for clarification as to what "built well and maintained properly" meant. Ms. Brunner stated that ensuring the drainage was "built properly" would be handled through site inspection during the construction process. With respect to maintenance, this would be the responsibility of the Home Owner's Association. The City would also be requiring documentation of an easement. From that point, if it is not maintained properly, it would be a complaint-driven process.

The Chair asked for public comment next.

Ms. Teresa Quigley of 9 Drummer Road was the first speaker. Ms. Quigley stated that she has concerns with respect to drainage and questioned asked who will be responsible for this in the future when abutter basements start flooding. She indicated that she challenges the adequacy of the water and traffic studies that have been completed. She also expressed concern about Fuller School being at capacity with 25 extra families potentially being introduced into the school system. Chair Russell-Slack noted that as a Planning Board, they have no say about the school system.

Mr. Mark Van Saun of 62 Meetinghouse Road addressed the Board next. Mr. Van Saun noted whether it is the CRD regulations or the Land Development Code, 35 feet is the maximum height. He stated that he felt that the basement does not look like it is below grade, but added that he understands that this item is still being clarified.

With reference to traffic, Mr. Van Saun stated that staff had indicated that parking could be permitted on the shoulder of the road. He explained that at the present time on Timberlane Drive, there are two traffic lanes, but noted that he did not feel that the shoulder had adequate room for parking. He also added that there is no parking permitted on Timberlane Drive or Meetinghouse Road between November 1 and the end of April for snow removal purposes. He felt that trying to accommodate overflow parking on Timberlane Drive is not feasible. Mr. Van Saun added that with the way Timberlane Drive and Meetinghouse Road are laid out at the present time, you cannot pass if there is a car parked on the shoulder of the road.

Mr. Dave Ploppert of 10 Drummer Road asked for clarification on water flow and waste water. He questioned whether this was based on two people per unit. In response, Ms. Brunner stated that the sewer flow calculations were done based on two bedrooms per unit with a total of 26 units. Each building has five units with one building having six units (26 units with two bedrooms each). Ms. Brunner stated that she wasn't sure whether it was assumed there would be two people per unit or two bedrooms per unit. Ms. Brunner stated she will follow up with Engineering Staff on this item.

Dr. Paul Koutras of 59 Meetinghouse Road was the next speaker. Dr. Koutras stated everyone agrees that we need housing in Keene, but felt that there are appropriate ways to do this depending on where you live in Keene. He stated that this is an apartment complex in a region surrounded by single-family dwellings. Dr. Koutras felt that this type of development is more suited for the center of Keene and felt that this development was an eye sore. He said that he would not have an issue, if these were single-family dwellings or even duplexes.

Dr. Koutras further stated this is large concentration of people for this neighborhood. There would be approximately 50 cars exiting through one point of egress on to Timberlane Drive. He referred to the traffic study that was done which averages approximately eight cars per hour. He indicated traffic between 2:00 AM to 3:00 AM is not his concern, but more during peak hours from 7:00 AM to 9:00 AM when people take kids to school or go to work. He also noted that Timberlane Drive can be very icy during winter months. Dr. Koutras stated that he is also concerned about increasing the population by 50% without any enhancement to existing infrastructure.

Mr. Charles Ferrando of 83 Timberlane Drive began referring to pictures shared by Nate Carbone, which show the stream behind his property during normal water levels. He referred to a picture of a culvert that he has seen overflow in the past. He also referred to a picture taken last August after a rainstorm where that stream was nearly overflowing. He stated that these pictures show the concerns of people who live on Drummer Hill and Drummer Road. He stated that studies that are being referred to, but those studies are overriding what people who live in these neighborhoods have experienced. Mr. Ferrando stated he is a member of the Goose Pond Subcommittee and has walked some of these trails and the committee is discussing how to get water off these trails due to erosion. The trailhead on Drummer Road is going to need maintenance due to how wet it is getting.

Mr. Ferrando went on to say that in regards to parking, the additional spaces are not adequate for overflow parking. In addition, even if people can pull over to the opposite side of Timberlane Drive for parking, this won't be possible in the winter due to snow and also felt there is the possibility cars will park in a manner where the sidewalk will be blocked.

Mr. Ferrando referred to pages 56 and 57 of the Office of Strategic Initiatives "Planning Board Handbook" (chapter 5), which indicates that the Planning Board should assess whether existing schools can accommodate the anticipated increase or whether expanded transportation services or whether additional classrooms will be necessary. He felt that this was something that needs to be considered as this is per the State.

Mr. Ferrando went on to talk about water usage – as per the same document – 100 new dwelling units may draw 40,000-50,000 gallons of water per day and the document indicates that the Planning Board should determine the effect of this increased use on municipal and private supply and on groundwater wells. He noted that this would mean on a daily basis 10,000-12,000 gallons of water would have to come out of the water cistern and asked if staff knows if the cistern would be able to handle this. Chair Russell-Slack asked for staff's response to this question. Ms. Brunner stated with respect to water supply there is sufficient water supply per the Engineering Department. With respect to impact on the school system, the City does have a standard as it pertains to scattered and premature development geared towards development happening in the outskirts of the City. In this instance, it is in-fill development and the City does not have a standard with respect to in-fill development and its impact on the school system.

Mr. Ferrando went on to say the streams in this neighborhood are always quite wet and the catch basin is always full of ice.

Mr. Ferrando compared the Applicant's traffic study to what the State has outlined. The State has outlined that for 100 dwelling units about 200 trips per day can be expected. He said that he felt what is stated in the Applicant's report seems to be rather low. He went on to say that he does not question the integrity of the report, but the reports that have been presented are intended to favor the Applicant and if the Board does not address some of these issues, such as traffic, water, and parking, the neighborhood could face some issues. He added that he is not against development and if this was four or five homes he would not be opposed to it. Mr. Ferrando felt that what is being proposed is too much for this area and is not in keeping with the character of this neighborhood.

Chair Russell-Slack reminded the public that the Board makes its decision based on the 13 Development Standards. The Board relies on staff to provide that information and each person on the Board makes a decision based on the information he or she receives.

With no further comment, the Chair closed the public hearing.

### **B. Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board continue the public hearing for S-04-22 SPR-04-22 to the September 26, 2022 Planning Board meeting.



The motion was seconded by Councilor Michael Remy and was unanimously approved.

## **VI. Public Hearings**

- 1) **SPR-898, Modification #1 – Site Plan – EVS Metal Addition, 50 Optical Ave - Applicant Brickstone Land Use Consultants, on behalf of owner, 50 Optical Avenue LLC, proposes to construct a 25,200 sf addition on the existing 28,932 sf building on the property located at 50 Optical Ave (TMP #241-007-000). The site is 4.94 ac in size and is located in the Industrial District.**

### **A. Board Determination of Completeness**

Community Development Director, Jesse Rounds, stated that the Applicant has requested exemptions from submitting a traffic analysis, soil analysis, historic evaluation, screening analysis, and architectural and visual appearance analysis. After reviewing each request, staff has determined that exempting the Applicant from submitting this information would have no bearing on the merits of the application and recommends that the Planning Board grant these exemptions and accept the application as “complete.”

A motion was made by Mayor George Hansel to recommend that the Board accept application SPR-898, Modification #1 as complete. The motion was seconded by Councilor Michael Remy and was unanimously approved.

### **B. Public Hearing**

Mr. Jim Phippard of Brickstone Land Use Consultants addressed the Board on behalf of EVS Metal. He noted that the Applicant’s site is located on the east side of Keene in the Industrial Park at 50 Optical Avenue. With reference to a plan, Mr. Phippard stated that across from this site is Mountain Corporation, to the northeast is Sunset Tool, and to the north is Samson Manufacturing. The current site is approximately 28,000 square feet in size and the Applicant is proposing to add 25,200 square feet of additional space to the rear of the site. This would be manufacturing and warehouse space. The existing office space to the front is not changing with this proposal.

The existing parking lot will be removed and moved to the east side and will contain 56 new spaces. The office area has existing parking spaces. During the site visit, there were questions about cars parking in the grassy area to the north side of the site. The Applicant will be discontinuing this practice and that area will be restored with loam and seed.

Mr. Phippard stated that this site is serviced by City water and sewer, which will be extended to the new area. The new addition will also be sprinkled.

With respect to drainage, Mr. Phippard stated that a series of four test pits were completed and as expected it has clean soil with no groundwater to a depth of seven feet, which is ideal for an infiltration system. The new runoff from the roof and the parking area will be collected on site and drained to the east of the parking area into an infiltration basin system that is designed for a 25-year storm

It was further stated the Applicant is looking to add 20 more employees. The business currently operates with two employee shifts from 6:00 am to 2:30 pm five days a week and 2:30 pm to 1:00 am four days a week. Any additional employees will be arriving at 6:00 am or 2:30 pm, which is off peak hours and hence the additional traffic won't have an impact on the safety and capacity of Optical Avenue and Route 101.

Mr. Phippard noted that the two existing curb cuts will remain. The Fire Department requested that the Applicant submit a plan that shows an adequate turning radius for emergency vehicles and this plan has been submitted to Planning Staff.

In regards to lighting, Mr. Phippard stated that wall-mounted lights will be installed 15 feet above the ground and there will be 20 foot light poles with full cut off LED fixtures. When the lighting is on, the lighting level will be about 1.5 footcandles. After 1:00 am, lighting levels will be reduced by 50%.

Mr. Phippard went on to explain that the landscaping plan was revised. He explained that parking spaces at the northeast corner were eliminated and a striped area to the north was also eliminated. Landscape islands have been added to those areas instead. The northeast corner is about 300 square feet in size, although the recommended size is a minimum of 95 square feet, and the area to the north is close to 700 square feet in size. There will be four trees in the large area and two in the smaller area. Mr. Phippard stated that this parking lot does not resemble a retail parking area where long medians can be provided with trees planted. Medians protect trees, however, when trees are dispersed throughout the site they are not protected due to snow plowing, snow being piled onto them etc. Snow will be plowed to the north and south ends of this parking lot. As a result, Mr. Phippard explained that he is proposing this layout for landscaping, as it will do the best job of protecting those trees and will meet the intent of the regulations.

Mr. Phippard explained that 30 feet of trees are being preserved along the southern and eastern boundaries to screen the site from the public right-of-way and adjacent uses, as well as the newly planted trees. There will be rooftop units on the new building and those will be screened as well.

There will be no impact to wetlands, as there are no wetlands on this site.

In regards to architecture and visual appearance, Mr. Phippard explained that the new building will match the appearance of the existing building. He referred to an elevation of the existing building facing the south, which shows that the existing office area is finished with brick and the existing manufacturing area is made concrete CMU block painted white. He explained that the new portion of the building will be 28 feet higher than the existing building. There will be louvers added for air handling and it will be a flat roof. This concluded Mr. Phippard's presentation.

Staff comments were next. Mr. Rounds addressed the Board and stated that the Applicant's presentation was thorough, but stated that he wanted to address landscaping. He indicated that the Planning Board regulations specify that, "*more than 50% of the required parking lot landscaping shall be in continuous landscape strips or in large planting islands at a minimum of 95 square feet located entirely within the paved area of the parking lot to break up the visual impact of the parking area.*" Section 9.4.5 of the LDC states that the, "*Planning Board may approve an alternative design for interior landscaping of parking lots as part of the site plan review, if they determine the proposed design generally meets the*

*intent of this article.*” If the Applicant decides not to provide interior landscaping or provides a landscape plan that in the opinion of the Board does not meet the intent of the zoning ordinance, a variance would be required from the Zoning Board of Adjustment.

Chair Russell-Slack stated that she has visited this site and cannot see where this property fits into the ordinance and asked whether this is something the Board needs to look into. Ms. Brunner stated that this would be a modification to the Land Development Code. She indicated that at the present time, an Applicant can request a waiver from this requirement from the Planning Board and noted that it can be requested at the same meeting at which the site plan is being reviewed. With parking regulations being located in the zoning ordinance, it complicates situations like this. Staff is going to see if a provision can be added to the LDC that would allow an Applicant to obtain a waiver versus a variance when they are coming before the Board for an alternate parking lot landscaping design. For tonight, it is up to the Board to decide whether or not this proposed design meets the intent of this standard.

The Chair stated that she would like to approve the plan as presented by Mr. Phippard. Chair Russell-Slack noted that the asphalt goes right up to the building and on the opposite side is a wooded area. She stated that she felt adding trees in the middle of this lot is just not going to work. She asked Mr. Phippard to show the Board the area on the plan to which she was referring. Mr. Phippard pointed to the area where the pavement meets the building. The area right outside the building is being used for storage so as not to take up space inside the building. He added that the ordinance makes sense the way it is written; however, it does not fit this type of facility.

Mr. Farrington felt that this site was adequately screened from the road, as this road is not used by the public too much and he did not feel there was an issue with the trees.

Mr. Kost felt that if more trees were added, the parking lot might be expanded into the drainage area and he noted that with this design there is less pavement on the site. He felt that the tree line provides a solid screen and stated that he was in favor of what was being proposed.

Vice-Chair Orgaz stated that he too agreed with what is being proposed.

The Chair asked for public comment. With no comment from the public, the Chair closed the public hearing.

Councilor Remy thanked the Applicant for bringing development to this area and for adding jobs to the City. He felt that it was a great use of this property.

### **C. Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board approve SPR-898, Mod. 1, as shown on the plan identified as “EVS Metal Addition 50 Optical Avenue, Keene, New Hampshire” prepared by SVE Associates and Brickstone Land Consultants at a scale of 1”=30’, dated June 15, 2022 and last revised July 6, 2022 and the architectural elevations prepared by DB Architects LLC at a scale of 1/16”=1’, dated June 13, 2022 with the following conditions prior to the signature of the Planning Board Chair:

1. Owner's signature appears on the plan.
2. Submittal of security for landscaping, sedimentation and erosion control, and "as built" plans in a form and amount acceptable to the City Engineer.

The motion was seconded by Councilor Michael Remy and was unanimously approved.

- 2) **EXP-01-22 & CUHP-01-22 – Earth Excavation Permit & Hillside Protection Conditional Use Permit – 0 Rt 9 – Applicant TFMoran Inc., on behalf of owner G2 Holdings LLC, proposes to operate a gravel pit on the undeveloped property located at 0 Rt 9 (TMP# 215-007-000-000-000). A Hillside Protection Conditional Use Permit is requested for impacts to steep slopes. Waivers are requested from the following sections of Article 24 of the Land Development Code: 24.3.1.A (200' public ROW setback), 24.3.1.C (150' access driveway setback), 24.3.1.D (surface water resource setbacks), 24.3.4 & 24.3.5 (Groundwater Quantity & Quality Baseline Measurements), 24.3.13 (Maximum Excavation Area), and 24.3.15.D (Annual Noise Monitoring). The site is 84.71 acres in size and is located in the Rural District.**

#### **A. Public Hearing**

Mr. Jeff Kevan of TFMoran addressed the Board and explained that they had previously requested a continuance for this project. The owner however, had started work and when the developer was made aware of this, they informed NHDES as to what was going on. An application had been filed with NHDES, which then had to be amended. The developer met with staff on site and reviewed some stabilization options. He asked for this item to be continued until the next meeting so that some of the outstanding issues can be resolved.

The Chair asked for public comment. With no comment from the public, the Chair closed the public hearing.

#### **B. Board Discussion and Action**

A motion was made by Mayor George Hansel that the Planning Board continue the public hearing for EXP-01-22 & CUHP-01-22 to the August 22<sup>nd</sup> Planning Board meeting.

The motion was seconded by Councilor Michael Remy and was unanimously approved.

### **VII. Updates to the Planning Board Rules of Procedure**

Ms. Brunner addressed the Board and explained that the Rules of Procedure included in the Board's packet were last updated in 1990. She explained that the requirements in the State Statute for Planning Board rules of procedure are minimal, but the one requirement is that, "*The rules of procedure shall include when and how an alternate may participate in meetings of the land use board.*"

Ms. Brunner began with the topic of "*Authority, Adoption, & Amendment.*" She indicated that currently the Rules of Procedure indicate where the authority comes from in the RSA, but don't outline the

process for adoption or the process for amendment. Hence, staff is proposing to add more clarification for the process.

With respect to “*Membership*,” the current Rules of Procedure indicate that there are nine members and five are needed for a quorum; however, there is no mention of alternate members, terms, or how vacancies will be filled. There is the mention of a Chair and Vice Chair, who are elected by majority vote in January. What is being proposed is to be a little more specific. The proposed changes align with a requirement in the RSA, which states that there has to be nine members, one of which has to be the Mayor or their designee, one of which has to be an administrative official, a City Councilor, and six regular members consisting of Keene residents. They have to serve three-year terms and you can have up to five alternates. Vacancies can be filled by appointment from the Mayor for the remainder of the term for the position being filled

There is also a change proposed to the position of Officers, including the Chair and Vice-Chair, who should be elected at the first regular meeting of the calendar year.

Chair Russell-Slack clarified that if someone filled a vacancy for the unexpired balance of a term whether that would count toward their term. Ms. Brunner stated she will get clarification on this item for the Chair.

Ms. Brunner next addressed “*Steering Committee & Subcommittees*.” At the present time, the Planning Board has a Steering Committee which is comprised of the Chair, Vice-Chair and a third member elected by the Board. The role of the Steering Committee is to conduct monthly meetings with staff to review the agenda and determine if there is going to be a site visit. The current Rules of Procedure don’t address the Steering Committee, hence it has now been added. In addition, a section on “*Subcommittees*” has been added which states that the Board can vote to create a subcommittee for a specific purpose. The subcommittee would be a public body and would be advisory to the Planning Board.

Ms. Brunner stated that “*Meetings*” is the largest section in the Rules of Procedure. Currently, the language states that regular meetings will be held on the 4th Monday of month, although other meetings may be held as needed. Ms. Brunner explained that the Roberts Rules of Order will cover anything that is not covered under the Rules of Procedure. The current Rules of Procedure also refer to “*Executive Sessions*,” which used to be in City Code but no longer exist. This is not relevant anymore, but what is relevant is something called “*Non-Public Sessions*,” which is covered under RSA 91-A:3, which is part of the Right to Know Law.

Ms. Brunner noted that with reference to “*Agenda*,” the current Rules of Procedure indicate that an agenda will be, “*prepared by Planning Director, but may be amended by Board during meeting.*” Staff is proposing that, “*The meeting agenda shall be prepared by the Community Development Director or their designee (‘Director’) in consultation with the Steering Committee or the Chair, although the Board shall retain the right to adjust that agenda during the course of its meeting.*”

Mayor Hansel asked why it says, “*may be amended by Board during the meeting.*” He asked whether the Board would not have to vote to suspend the rules to modify the agenda. The Mayor did not feel this language was necessary as there were provisions in the Rules to allow for changes to the Agenda or you

can suspend the Rules. He also felt that the Chair has the authority to move things up or down on an agenda. Ms. Brunner stated that language can be removed, in which case the section would read as follows: *“The meeting agenda shall be prepared by the Community Development Director or their designee (‘Director’) in consultation with the Steering Committee or the Chair. Items to be placed on the agenda must be received by the Director a minimum of five business days prior to the scheduled meeting. No subject matter that is not on the agenda shall be discussed at the meeting, but shall be referenced under New Business and shall be placed on the agenda for discussion at the next regular meeting.”*

Ms. Brunner addressed the topic of “*Quorum*” next. The current Rules of Procedure refer to the requirement to have five members but alternates are not mentioned. The proposed language refers to the requirement to have five members and specifies that alternates can be designated by the Chair to act in the place of an absent or disqualified member. This section also states that *“Unless the appointed alternate member becomes unable to continue to participate, the alternate member so appointed should continue to serve in the place of the absent regular member if a matter under consideration by the Board extends over multiple meetings, and/or until that matter has been completed.”*

The Mayor felt the language, *“Alternates should continue to serve in the place of a regular member if business extends over multiple meetings,”* should be deleted, as he did not want this to be the expectation for a Petitioner. Councilor Remy felt this language was a good suggestion for Best Practice. He suggested perhaps adding the words, *“at the discretion of the Chair”* at the end of that sentence. Councilor Remy asked if the language is not included in the Rules of Procedure, is the Board allowed to excuse a regular member because they were not in attendance when a public hearing was first opened. Ms. Brunner stated she would seek clarification from the City Attorney on this item. Ms. Lavigne-Bernier stated she would not feel comfortable sitting in on an application, if an alternate had been at a prior meeting listening to all testimony and would respect the Chair’s authority to say that the alternate was a voting member over her.

Ms. Brunner addressed “*Remote Participation*” next. She indicated that the current Rules of Procedure do not address this item. Staff is proposing the following language: *“A Board Member may participate by telephone or other electronic communication (‘remotely’) with the approval of the Board when the member’s attendance is not reasonably practical and the reason for the absence is stated in the minutes, the remote member states where they are physically located, and who is present in the location with them. All participants, including the public, must be able to hear, read, and discern the meeting of discussion. Members participating remotely may vote, but shall not count toward quorum. All votes must be taken by roll call. The presiding officer shall be physically present at the meeting location as specified in the meeting notice.”* Ms. Brunner explained the last portion indicates the person who is the Chair of the meeting has to be physically present and cannot attend remotely. Remote participation has been the Board’s practice since after the emergency order was lifted after COVID, when there was the option of hybrid meeting participation where there had to be a quorum physically present at City Hall with some members participating remotely.

Ms. Brunner stated that the “*Order of Business*” is not currently addressed under the existing Rules of Procedure. The general “*Order of Business*” has been added to the Rules of Procedure to address this and will be ordered as follows: *“1. Call to order 2. Roll call of attendance 3. Acceptance of minutes 4.*

*Non-binding consultations, application reviews public hearings, discussions, & decisions 5. Reports and other business, including advice and consideration 6. Adjournment”*

Councilor Remy noted the Board usually has a New Business section in the agenda. Ms. Brunner indicated New Business can be added before Adjournment.

Ms. Brunner went on to say that under the “*Presiding Officer*,” section of the existing Rules of Procedure, there is nothing to address what should be done in the event that both the Chair and Vice-Chair are unable to be present. Staff is proposing that, “*If both the Chair or the Vice-Chair are not present and a quorum is present, the members present shall elect a temporary chair until the Chair or Vice-Chair joins the meeting.*”

Councilor Remy stated the language “*until the presiding officer appears*,” is confusing and felt that it should be changed to, “*until the Chair or the Vice-Chair appears.*”

Ms. Brunner stated that “*Right of Floor*” is another item not addressed in the current Rules of Procedure. This refers to the conduct at meeting such as “*Presiding officer (chair) controls the meeting • All comments go through the chair. • Comments must be related to the question under debate. • Comments shall not be personal in nature and may not impugn motives of any individual’s vote. • Chair shall act on all proper motions for which there is a second.*”

*Motions, Voting, & Conflict of Interest* – Ms. Brunner stated the current Rules of Procedure don’t address motions at all. Staff is proposing the following: “*Motions – if duly seconded, will carry by a majority vote unless otherwise specified.*” For a “*Tie Vote – motion shall be deemed defeated.*”

*Conflict of Interest* – Ms. Brunner explained that the Planning Board is a quasi-judicial Board and any time a member has a direct personal or pecuniary interest in the outcome, which differs from the interest of other citizens, or if that member would be disqualified for any cause to act as a juror in the trial of the same matter in any action at law, then a Board member should be recusing themselves. If there is uncertainty, it should be brought to the Board before a public hearing is opened and then the Board can take an advisory vote as to the recusal. If a member is disqualified, the Chair shall designate an alternate to act in the member’s place.

Ms. Brunner explained that the current Rules of Procedure say that the Planning Director is responsible for taking the minutes and keeping them. It says that “*official minutes are in writing and reviewed and voted on by the Board*,” but does not say specify how they should be filed. There is also reference to tape recordings being for convenience only, and a requirement that they should be retained for three years. City Staff is proposing that minutes be taken in accordance with RSA 91-A:2, which states that, “*• Official minutes are in writing and reviewed and voted on by the Board. • Filed with City Clerk • Recordings are for convenience only (not official)*” (deleted the reference to tape recording). Staff did not feel it was necessity to add a timeframe to retain the recordings, especially because they are for convenience only. Ms. Brunner added that this is standard across other Boards and Committees in the City. The Chair asked that staff clarify with the City Attorney as to whether the recordings need to be retained to not. Ms. Brunner stated that the City Attorney did not feel there needed to be a timeframe to retain the recordings because it is only for the convenience of the minute taker. The Chair asked for clarification from the Attorney.

*Electronic Communication* – The current Rules of Procedure do not address this issue. The updated Rules of Procedure propose that standard language be brought in from other Rules of Procedure related to email and other communication among Board members or between the Board and staff liaisons. Electronic Communication should only be used for the transmittal of administrative information and should not to be used to discuss the content of an application on the agenda outside of a public hearing.

*Board Conduct* – The current Rules of Procedure state that, “*Members shall use caution in entering into any discussion of a project other than at a meeting • Members shall not accept information (calls, packets), unless at a meeting • Information to the Board shall be provided through the Planning Department*”

Staff did not feel that the current language which states that a, “*Quorum of Board members shall not meet outside a regular meeting to discuss matters before the Board*” was necessary, as this topic is covered elsewhere in City Code.

Staff also didn’t feel that the language stating that, “*All deliberations (except Executive Session) shall be open to the public,*” was necessary, as it is also covered elsewhere in City Code.

*Coordination with Other Boards* – Current language states that the, “*Board shall meet with the Finance Committee to discuss CIP & Annual operating budget at least a year.*”  
“*Board shall review all zoning ordinance & map changes, and present comments to City Council*”.  
“*Board shall have at least one meeting per year with ZBA, Conservation Commission, Planning, Lands, & License Committee, & City Manager.*”

Ms. Brunner stated that even though this is a good practice, she had checked with the former Community Development Director about whether or not this was something that had been done and he stated it had not been a practice. As a result, to be more realistic staff is suggesting that the word “shall” be replaced with “may”.

The Mayor asked for clarification about how the Steering Committee meetings are handled. Ms. Brunner stated the Steering Committee is not considered a public body, as they only discuss administrative matters. She added that there is a section under the Rules of Procedure related to Steering Committee membership and role.

*Statutory Duties* – Ms. Brunner stated that after the 1990 Rules of Procedure were adopted, the City created a new process where zoning ordinance amendments were handled by the Joint Committee. The way it is written in the old Rules of Procedure, the Planning Board would review the proposed amendments and the Chair would then present the Board’s recommendations to the City Council. City Council would then hold a public hearing. Since then, the City has created a new process where the Joint Committee holds a public workshop and the recommendation from that workshop is sent to City Council. Staff updated the Rules of Procedure to reflect this process.

*Master Plan* – The existing Rules of Procedure state that the Master Plan should be updated every five years, with two sections addressed per year, and that it shall be retained in a notebook form. The Board would seek City Council review and adoption and hold a public hearing prior to adoption. Ms. Brunner



noted that the Master Plan was last updated in 2010 and was a comprehensive update of the entire document, not updates to stand alone chapters as the Board used to do. Staff is proposing is to review the Master Plan every five years and make best efforts to update every 10 years. The Board would work with Community Development, PLD, and City Manager to maintain a schedule to update the plan. The Board will also seek City Council review and adoption and shall hold a public hearing prior to adoption. Ms. Brunner stated this item is scheduled in the CIP for FY24.

*Capital Improvement Plan* – The rules currently state that the Board shall review the Capital Improvement Plan (CIP) annually and recommend revisions to City Council. The Board shall hold one meeting with Finance Committee to review the plan and the purpose of the review is to ensure that the CIP reflects the principals and priorities of the Master Plan. Ms. Brunner noted that City Council recently changed the CIP from an review annual process to a biannual review process where it will be reevaluated every two years. The Rules of Procedure have been updated to reflect this change and eliminate the requirement to hold a meeting with the Finance Committee, as this had not been happening. Instead, the Finance Director will be presenting the details of the CIP at a Planning Board meeting.

*Minor Project Review Committee* – This is a new technical review committee that was created as part of the Land Development Code. Under State Statute RSA 674:43(III), the Board has the authority to delegate site plan review authority to a committee of qualified personnel, such as staff. The duties of this committee are to hear and decide on minor site plan applications, to review and comment on proposed projects for site plan review or subdivision review prior to formal application submission, and to hear requests for extensions to minor site plan approvals.

With respect to membership, the Board has been appointing specific individuals from City Staff. In the instance of staff turnover, this process has caused some issues. Moving forward, the recommendation is instead to appoint a City Staff position, instead of a specific individual. The individuals being proposed to serve on the committee are as follows:

1. *Public Works Director or designee*
2. *Community Development Director or designee*
3. *Zoning Administrator or designee*
4. *Fire Chief or designee*
5. *Designee of City Manager.*

Councilor Remy clarified that the committee needs to consist of City staff and not members of the public. Ms. Brunner stated she will need to check into this. The Councilor stated he would like someone from the public to serve on this committee. It was indicated that City Staff serving on this committee is required per State Statute.

*Miscellaneous – Roberts Rules of Order govern points not covered* – Staff is suggesting having a clause that talks about Suspension of the Rules of Procedure, as long as it is not covered under State Law or City Ordinance. However, this requires a two thirds (2/3) vote. It also cannot affect the substantive rights of persons coming before the Board. Staff is also proposing to include a “*Severability Clause*,” if at some point a portion of the Rules of Procedure become invalid, then the entire document would not be invalidated. Currently, there is language that requires the Planning Director to present an annual budget

and work program to the Planning Board for review. Ms. Brunner stated that this has not been the practice and hence City Staff are proposing to delete this language.

Councilor Remy noted there is reference to three year terms. Staff suggested adding the language elected with reference to the three year term.

**IX. New Business**

None.

**X. Upcoming Dates of Interest – August 2022**

- Joint Committee of the Planning Board and PLD – August 8, 6:30 PM – it was indicated by staff there is a likelihood this meeting will be canceled but staff is working with the Chairs to see if one could be scheduled for August 15<sup>th</sup>.
- Planning Board Steering Committee – August 9, 11:00 AM
- Planning Board Site Visit – August 17, 8:00 AM – To Be Confirmed
- Planning Board Meeting – August 22, 6:30 PM

There being no further business, Chair Russell-Slack adjourned the meeting at 8:56 PM.

Respectfully submitted by,  
Krishni Pahl, Minute Taker

Reviewed and edited by,  
Mari Brunner, Senior Planner  
Megan Fortson, Planning Technician