

**TOWN OF BEDFORD**  
**January 24, 2022**  
**PLANNING BOARD**  
**MINUTES**

A meeting of the Bedford Planning Board was held on Monday, January 24, 2022, at the Bedford Meeting Room, 10 Meeting House Road, Bedford, NH. Present were: Mac McMahan (Chairman), Town Councilor Bill Duschatko (Vice Chairman), Priscilla Malcolm (Secretary), Hal Newberry, Charlie Fairman, Matt Sullivan, John Nelson (Alternate), Matthew Nichols (Alternate), and Becky Hebert (Planning Director)

**I. Call to Order and Roll Call:**

Chairman McMahan called the meeting to order at 7:00 p.m. Regular member Steve Clough and Alternate John Quintal were absent. Mr. Nichols was appointed to vote.

**II. Old Business & Continued Hearings:**

1. The Planning Board will conduct the second public hearing on proposed zoning amendments submitted by the Planning Board. The full text of the amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at [www.bedfordnh.org](http://www.bedfordnh.org).
2. **ER Bedford, LLC c/o Encore Retail, LLC (Applicant & Owner)** – Final review of the traffic impacts and final approval of the traffic study and off-site improvement plan, as a condition of approval for the November 8, 2021 Planning Board Approval for a mixed-use development at the Market and Main site, with 24,178 SF existing and 174,000 SF of additional development, including retail, restaurant, office and hotel uses, located at 125 South River Road, Lots 12-33, 12-33-1 & 12-33-2, Zoned PZ.

**III. New Business:**

1. **Amber Bedford Associates, LLC (Applicant & Owner)** – Request for Site Plan Amendment Approval and a waiver from Section 275-65(D) of the Zoning Ordinance for two dumpsters without the required landscape screening at 10 Iron Horse Drive, Lot 35-13, Zoned PZ.
2. **Riley Investment Properties, LLC (Applicant & Owner)** – Request for Site Plan Approval for a change of use to convert 10,300 SF of first floor office space to a commercial recreation use, located at 21 Commerce Park North, Lot 24-19, Zoned PZ.
3. The Planning Board will hold a Public Hearing on proposed amendments to the Land Development Control Regulations, Article 120 – Impact Fees, for adjustments to the School and Recreation fee amounts.

#### **IV. Concept Proposals and Other Business: None**

Ms. Hebert stated the new applications have been reviewed by staff and it is our recommendation that the applications are complete, the abutters have been notified, and it is the opinion of staff that none of the new applications pose a regional impact and would recommend that the Board accept the agenda and the new applications as complete.

**MOTION by Ms. Malcolm to accept the agenda as read. Vice Chairman Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.**

#### **Old Business & Continued Hearings:**

- 1. The Planning Board will conduct the second public hearing on proposed zoning amendments submitted by the Planning Board. The full text of the amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at [www.bedfordnh.org](http://www.bedfordnh.org).**

Chairman McMahan stated the question I would ask the Board what are your thoughts in covering both the solar zoning and then the detached accessory apartment and when those are covered, make a motion for both of them. There are three in all and the third one will be separate. Mr. Newberry stated my only thought is that I don't think proposed zoning amendments #1 and #2 are controversial so we could put them together. Chairman McMahan stated okay.

Ms. Hebert stated tonight is the second public hearing for proposed zoning amendments to be placed on the 2022 Town Ballot. At tonight's meeting the Board will discuss the amendments, hold a public hearing, hear testimony on the proposed amendments, and at the end of the hearing the Board will need to vote to approve any and all amendments proposed by the Planning Board to the Town Ballot. We have one amendment proposed by Citizens' Petition and the Planning Board will need to vote whether to support or not support the proposed amendment by Citizens' Petition. The amendment proposed by Citizens' Petition will be placed on the Town Ballot regardless of the Planning Board's recommendation.

Ms. Hebert stated the following two zoning amendments are proposed by the Planning Board.

- **Amendment #1 - Zoning for Solar** – is intended to address the use of solar and other renewable energy systems and to establish local standards for the siting and placement. The general purpose statement of the Zoning Ordinance (Section 275-3) supports incorporating zoning for solar energy systems

Ms. Hebert stated this zoning amendment establishes definitions for solar, including roof-mounted solar, ground-mounted solar and then divides the ground-mounted solar into three categories, which are small-scale, medium-scale and large-scale ground-mounted. And then the proposed amendment establishes a set of criteria for the construction of the various types of solar installations by clarifying within each zoning district in Bedford whether roof-mounted, small-scale ground-mounted, medium-scale or large-scale, would be permitted establishing the height

limits, the setbacks, the yard placement, and lot coverage requirements. It should be noted that roof-mounted solar energy systems are permitted in all districts.

Ms. Hebert continued at the last meeting the Board asked staff to add a section addressing glare, and this new Section g) has been added: *Glare - Solar energy systems shall be designed and located in order to prevent reflective glare toward inhabited buildings on adjacent properties and adjacent rights-of-way.* The zoning amendment also addresses abandonment and decommissioning and establishes a Table of Uses for solar within each zoning district. In Bedford you can see solar is, based on the size of installation, permitted by right. The – (dash) means it is not permitted or allowed by Conditional Use Permit.

Ms. Hebert stated the zoning is intended to clarify how solar has been interpreted as a use in our Zoning Ordinance clarifying that ground-mounted solar installations do need to meet the structural setback requirements and provide some clarity for people who are looking to install the various systems.

Chairman McMahan asked for comments or questions by the Board.

Mr. Newberry stated I would also like to point out that at the last meeting we also made an edit to the allowed height of a panel from 15 feet to 20 feet. Chairman McMahan stated that is right. It is in the literature for the proposed amendment.

Chairman McMahan opened the public hearing on Amendment #1. There were no public comments or questions. The public hearing was closed.

- **Amendment #2 - Detached Accessory Apartments** – is intended to allow the construction or conversion of existing accessory structures to detached accessory apartments in the Residential & Agricultural (RA) District, provided a Conditional Use Permit is approved by the Planning Board.

Ms. Hebert stated this is a zoning amendment intended to allow the construction of detached accessory apartments in the Residential Agricultural District only, provided that the Planning Board approves a Conditional Use Permit for the use. The zoning also sets ten criteria for the granting of the Conditional Use Permit that are specific to the design of the detached accessory apartment and also provides a definition for the detached accessory apartment.

Chairman McMahan asked for questions or comments from the Board. There were none.

Chairman McMahan opened the public hearing on Amendment #2. There were no public comments or questions. The public hearing was closed.

**MOTION by Ms. Malcolm that the Planning Board move proposed zoning Amendment #1 and proposed zoning Amendment #2 to the Town Ballot, as discussed. Vice Chairman Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.**

- **Amendment #3** is a citizens' petition intended to limit the size of medical clinics in the Performance Zone to not more than two stories, including below grade, with a total building size not to exceed 20,000 SF. The petition also seeks to amend permitted uses in the Performance Zone to specify that medical clinics are subject to the proposed footnote in Table 2, Table of Uses.

Bill Greiner, 12 Aspen Lane, stated Mr. Fairman brought up an interesting point last time so I am going to start by stating that I do not own any real estate, medical or otherwise, in the Performance Zone. The only real estate that I own outside of my own home is either on Route 101 or fairly close to Route 101 adjacent to Route 101.

Mr. Greiner stated the Performance Zone was established to maximize the tax revenue for the Town of Bedford, the intent of this zoning amendment is to make sure that Bedford maximizes tax revenues for the community within the Performance Zone and it still maintains the ability, of this Board, to grant waivers as you see fit based on what is in the best interest of the community, keeping in mind the purpose of the Performance Zone. As a taxpayer, I want to see the undeveloped property in the Performance Zone be developed in a manner best within the zoning and planning regulations, all for the maximization of tax revenue. This zoning amendment would not inhibit or prohibit the continued expansion into Bedford by independent and small medical clinics as has been the case for decades. It would prevent large medical conglomerates from setting up shop in Bedford who are coming here solely for the purpose of making substantial sums of money while raising their hands to avoid taxes or, as we heard two weeks ago in the case of Dartmouth Hitchcock, suing the Town of Bedford and suing the taxpayers.

Mr. Greiner continued southern New Hampshire has already started to see this happen. In Salem and in Dover, Mass General have taken hold coming across the border and in Nashua it has been Dartmouth Hitchcock. It gives these organizations and others, such as the Lahey Clinic, an opportunity to expand their footprint, make tens of millions of dollars in these communities but they don't want to pay their full fair share of city, town and school taxes like the rest of us. It would be one thing if our community was pushing them to come here and perform charitable care but that is not the case. They are not expanding, whether it be Mass General coming over the border or Dartmouth Hitchcock coming all the way down from the upper valley to Nashua and Bedford for charitable reasons. Why would they logically spend tens of millions of dollars only to give it away. What they are doing is expanding the empires that they have built, and they know exactly what communities to target. In the case of Mass General, their CEO, according to recent data, makes over \$6 million a year. Does it make sense for Mass General to come to Bedford and expand their operation to make more money? Of course, it does, but should we be subsidizing that and the payroll which has over a dozen of their executives making over seven figures a year for a "non-profit"? Should Bedford residents be excited that Dartmouth Hitchcock might want to build a mega-plex in Bedford, make tens of millions of dollars in profits, which would then go to support the salaries of their CEO, who makes seven figures a year, and their executives who make seven figures a year? You may hear from Dartmouth or Mass General or Lahey that they are not for profit and technically that is true, but aside from the massive compensation that they make for running the organization, consider this about Dartmouth, and this comes from the Concord Monitor. In fiscal year 2021 for the first nine months, Dartmouth earned \$37 million and their CFO, Dan Jantzen, said that they continued to be on the road to fiscal recovery. That's great, one, in a pandemic where a lot of elective procedures weren't even being done, and second, when one

earns \$37 million in nine months, in the real world we call that a profit, in their world they call it revenue and excessive expenses. It is cute semantics, but they are making money.

Mr. Greiner stated back to charity and the lawsuit that was filed by Dartmouth. In 2019 Bedford residents received charitable or non-reimbursed care of \$10,585 in all of New Hampshire, not just here in Bedford, that is it. That is not to say when it is all said and done they lost \$11,000 here in Bedford, that is just what they were unable to collect, in addition to the billion-plus of revenue that they did collect statewide. Again, they are not coming here to lose money, none of these organizations or others that I am not even thinking about, they are here to add revenue to their billion-plus dollar year operations and what better place to make money than Bedford. It is why we have been a great magnet in this community for great restaurants, shops, hotels, and other businesses. There is money to be made here in developing Bedford, no different from Dartmouth Hitchcock or Mass General's perspective, but keep in mind, as Elliot and CMC, they also have charitable care that they do, yet they pay all of their taxes in this community, and they have for years and years and years.

Mr. Greiner stated going back to the TIFF district; it was set up ironically because Dartmouth Hitchcock and CMC needed space ASAP and Bedford was not ready from an infrastructure standpoint. As I mentioned last time, the Town Council and School Board agreed to forego tax revenues in the TIFF district for new projects for ten years so that a bond could be floated that paid for it in order make these improvements yet it would not impact the taxpayer other than the taxpayers not receiving the revenue. Guess who is back looking, hoping the taxpayers will step up again, that is Dartmouth, but this time it is not for ten years, it is potentially forever.

Mr. Greiner stated let me just sum up by saying this, as a community we have not asked anyone to come here and provide charitable services to save the Town. If we did, that would be one thing, but that is not the case. We have not asked for the medical conglomerates to come here, if they do want to come here to make money, and we need to do what we can to preserve and protect our tax base in the Performance Zone and this amendment does that. If a future applicant, let's say one of these medical conglomerates comes to Bedford and says that they understand the zoning restrictions but they really want to build a mega-plex here and they understand the history of the Performance Zone and they understand the history of the TIFF district and in order to adhere to the spirit of what has driven tax growth in Bedford for over 30 years, they would be happy to agree to pay all of the town and school taxes on a development if they were granted a waiver and allowed to proceed, then I think it would be great for the community and I think this Board would think long and hard about that development. Everyone should grab an oar and start rowing, not just some of us.

Chairman McMahan asked for comments for questions from the Board.

Vice Chairman Duschatko stated you made a comment on Dartmouth's claim of charitable. Is this true charity or is this just a write-off of non-collectibles, bills? Mr. Greiner responded write-off of non-collectibles. Vice Chairman Duschatko asked so it is not like a sign as you walk into their office asking do you need charitable help, inquire here? Mr. Greiner responded no; it is bills that didn't get paid. In 2019 it is an aggregate of bills that didn't get paid for people that had a 03110 zip code but it could have been anywhere. It could have been at a clinic that they have up in Lebanon, it could have been over in New London, that was the aggregate of Bedford residents bills that were not collected by Dartmouth. Vice Chairman Duschatko asked but there is no evidence

of an outreach of charity in a sense to do something for XY in a community? Mr. Greiner responded no, and as I said, it is kind of the cost of doing business. If you were to ask CMC or Elliot, they would tell you that there is a certain amount that they don't collect either. One can call it a charity, I would call it uncollected business revenues, and I suspect the same is true of any medical provider.

Mr. Fairman stated there is a drive for Dartmouth Hitchcock and CMC to merge. I think it has been going on for some time but it has recently been revived. What do you think will go on with the CMC buildings in Washington Place if they become part of Dartmouth Hitchcock? Mr. Greiner responded if I am running that organization and I don't like paying taxes, and they don't, and Nashua will tell you that, other communities that they are in will tell you that, my goal is to not pay taxes and I can build whatever mega-plex I want without any restrictions. I can just come in and build it. I would build it and I would save seven figures a year in operating. The amount of money that we are talking about taxes that could be avoided, it is real money. It is real money in the school budget, it is real money in town, so if I am running that and I am allowed to do that and I don't really care about the community I am looking at my bottom line and how bonuses work and how we are going to end up at the end of the year, I am going to put everything that I can under one roof and not pay taxes. Mr. Fairman stated I am talking about the existing CMC building. Mr. Greiner responded I would build something, I put everything in piece by piece and, again, that is not the only place in town where CMC is. I believe they are in another building on the corner of Meeting House Road and Route 101. South River Road has some CMC practices that are in there, so I think that potentially could happen. I haven't heard that is going to happen, but, again, the MO is to build big. Look at what was done in Nashua at Exit 8. Dartmouth built really, really, really big and ask Nashua how that is working out for the tax percentage. It is not.

Chairman McMahan stated let me read something to the audience. 'This petition is intended to limit the size of medical clinics in the Performance Zone to not more than two stories, including below-grade with a total building size not to exceed 20,000 square feet.'

Chairman McMahan opened the public hearing.

Dr. Shirley Galucki, 377 North Amherst Road, stated I am an obstetrician/gynecologist and I work for Dartmouth Hitchcock, and I currently work at the specialty care building at the Bedford Medical Park. I have been serving in this community since 1993. I do care about our community, both as a health care professional and as a resident. I have delivered a lot of babies here in southern New Hampshire over the course of these years, but I think if the pandemic has shown us anything, it is really the importance about access to health care and also the importance of being part of a community. It truly benefits our community to provide more specialized care here in Bedford. It is good for Bedford residents because you will have access to a lot of care, so I think it is a win for our residents. As a Dartmouth Hitchcock clinician who has also been part of this community by living here, I know that being able to have access to world class health care services and things that we have access to by being associated with Dartmouth Hitchcock Medical Center also provides a win for both our neighbors and the rest of our residents. As an OB/GYN, I really am excited about the opportunity to hopefully offer more services for women and for children right here in our community and that we are going to be able to care for a lot more patients than we do right now. I feel that limiting health care services only hurts our community, not helps it. Thank you for your time.

Greg Soghikian, 12 Champagne Terrace, stated I have been a resident of Bedford for 29 years. I was on the curriculum committee for the high school before it was built, I have been the high school team physician since it opened and before that and was for about eight years. We moved our joint orthopedic practice to Bedford about 12 years ago from the Manchester area. When I came to town, the first thing that I was impressed by was the level of health care here in southern New Hampshire. I did my training at major hospitals around the country, including Mass General, and coming to southern New Hampshire I was happily surprised to find that there were really no services here that were not available to us that were available down at Mass General or in Boston, with exception of perhaps of some specialized tumor care. Over the last 29 years that has become even more true. We have no lack of access to health care in southern New Hampshire and certainly no lack of health care for every specialized process in the Bedford area and certainly within 15 minutes of this area. I don't really carry much weight to the argument that a Dartmouth has the ability to bring something here that we don't already have access to or makes it easier to access to what we already have. As a private business owner paying full taxes, having a large health care facility who has the ability to compete without paying full taxes, that is very concerning. From my point of view, I see absolutely no indication that there is a need in this area, or in Bedford specifically, for this type of facility. There may be in other communities, and I would then encourage Dartmouth to seek those other communities out, but I agree with Bill Greiner that the reason that they are seeking out this community is that it is a profitable place to work, and that is all I see.

Bob Heaps, 66 Colonel Daniels Drive, stated I have also been practicing and living here for over 20 years. I want to speak both as a taxpayer and a physician. As a taxpayer, the Performance Zone is a very limited area with a finite amount of space. I think the last thing we want to do is build out of this finite space property that is not going to be paying property taxes. This amendment doesn't limit mom-and-pop doctor offices and even if our lease expires and we want to look for another place, but it does limit a large merged entity from coming in to build a large medical center, and most of these entities, as they do in Salem, don't pay property tax. From a medical standpoint, New Hampshire has some of the highest rates of physicians per capita in the country. Usually in the top ten in most specialties that I can speak as an orthopedic surgeon, the American Academy of Orthopedic Surgeons list New Hampshire as the third most populated state as far as orthopedic surgeons per capita. So providing additional services, providing a need that is really not something that is going to be a needed in this town. I hope you will support the amendment.

Dr. Doug Goumas, 4 Three Corners Road, partner at New Hampshire Orthopedic Center, stated I am with Dr. Heaps and Dr. Soghikian. Both of my partners articulated their positions quite well. I am not going to say a lot because, again, it has already been spoken. I am a resident in Bedford for 22 years, I have four kids, my children have been through the public schools, not private schools, I grew up in a very blue collar town back in Connecticut so we really take pride in community and supporting the community and the public school system. The biggest thing is that I have always wanted to practice in a private practice setting. You have a little bit more control over your own destiny and my goal was always to take care of all of the people in my community and be part of that community, I have had a really great opportunity to do that. But I would like to say philosophically to stop those that might come down and build a large mega-plex and bring in a lot of doctors maybe from Lebanon and from wherever to kind of compete with the doctors that have been here for quite some time and compete with us really in an unfair playing field. We pay our taxes and to have a large conglomerate come down under the guise of need, which, again, as my partners have mentioned, there really isn't a need in terms of orthopedics. I find it quite

egregious based on kind of how I grew up and why I practice medicine in this community. I would like you to take that into consideration for the amendment.

Dan Sterling, 59 Pilgrim Drive, stated I also own my building at 2 Washington Place. I have been a plastic surgeon in the community for coming up on 18 years and in Bedford for 8 years. I just want to echo what my colleagues said about what I believe is the excellent quality of care and value that we already provide our patients here. Dr. Goumas mentioned community and the heart of community physicians is private physicians, not a mega-plex with a rotating cast of physicians. I think world class care already exists in this community, and I think it is very important for all of us to support private physicians. Seventy percent of the doctors in this country are already employed by hospital systems and they want to make it 100 percent, and I think that is very important for all of us to keep in mind. That being said, I feel very strongly about this, I think that there is excellent care and I don't think there is a lack of access.

Nick Vailas, 71 Sandy Pond Parkway, stated I have lived in Bedford for 31 years, I am the CEO of the Bedford Ambulatory Surgical Center that I founded 29 years ago. I am here to support the amendment. There is a bigger story here. We heard about the small hardware stores competing with the big box stores and how hard it is for them and often times in many communities the people who own these hardware stores, the small stores get displaced. These are people who are your little league coach or your CYO coach or people of the community. This is very similar but it is even more egregious. The advantage that a big mega-plex health complex, whether it is Mass General or Dartmouth Hitchcock, they get paid more for services and they don't pay taxes. Think about that. Think how hard it is for someone in private practice to compete with entities that get paid often times many more times than they do and they don't pay taxes. People that are providing the care to you are people within your community, and there is nothing better for a patient that has a relationship or a familiarity with a physician or the health care provider. In my opinion, in 40 years in health care, patients are better off with people in private practice, especially in the beginning. They are in relationships. Often times our physicians here are serving your community, they are covering football games, basketball games, Safe Sports Network, which you have probably heard about. It is supported by our physicians; they offer free first-rate athletic care. These are programs that are being offered from physicians within your community, who literally over time are handicapped in their ability to compete. Let's level the playing field. To Bill Greiner's point, let's all row together. We are not preventing Dartmouth Hitchcock from coming here, we just want them to pay their taxes. Thank you.

Erik Shessler stated I am a pediatrician that works for Dartmouth Hitchcock. I happen to work in the Bedford office in our permanent care office and have been the director of primary care for the Children's Hospital at Dartmouth. I want to talk a little bit about the types of services that aren't necessarily available widely in southern New Hampshire and kind of within the state, and a lot of that has to do with pediatric care, especially pediatric specialty care. CHAD, which is the Children's Hospital at Dartmouth, is the only full-service pediatric hospital within the state and the only one within this area that had kind of that academic component that goes along with it, so when we are thinking about families, we want to be able to provide that primary care within the community to be able to kind of connect that specialty care for those most vulnerable kids and their families within their primary care medical homes, working hand-in-hand to be able to achieve that is just better than what we can do in some other scenarios. This is something that is kind of unique. Currently it would allow us to improve the services that are in this area and to the communities. Our pediatricians work with families, work with the communities, work with the

sports teams, work with the schools, thinking about how to make sure we get kids back into schools and in the safest manner that we possibly can and continue to have those safe environments for everybody. My suggestion would be to oppose this amendment, and thank you for your time.

Mr. Sullivan asked in terms of medical buildings and facilities that are currently in the Performance Zone, are any of them larger than the 20,000 square feet as proposed in this amendment? Ms. Hebert replied yes; we do have several in town that are larger than 20,000 square feet and those existing medical office facilities would become preexisting uses if the zoning amendment passes and those land owners would need to seek a waiver from the Planning Board if they want to expand medical use in the future. Mr. Sullivan asked but they could stay there? Ms. Hebert responded they can stay there and can exist in their current state. Mr. Greiner stated Mr. Sullivan, you bring up an interesting point, which was the OB/GYN physician, which was the first one to be displaced. We heard from a couple of providers, the first physician, was one of the people that was displaced and where they were in a panic mode ten years ago and needed to find a place somewhere and they asked to come from Bedford, and that is how the TIFF district got started. If they wanted to move that practice out of that building and build a building, they would be able to build a building that would satisfy the practice that she has and be underneath this amendment. It would have no impact. I don't know the size and the space of the gentleman that just spoke is in, but anybody can build 20,000 square feet or less and you are not subject to this amendment. But if there is a grand scheme from Mass General or Dartmouth or somebody else to come here and build this mega-plex, and you are hearing loud and clear the importance of being a good community member, and that means paying your taxes, it means not suing a community because you don't want to pay a \$20,000 or \$30,000 tax bill when everybody else is, if you want to build that and you see that the regulations are tough, this Board has waiver ability, it doesn't need a variance, it is actually the easiest place to get exceptions to zoning and planning regulations. If you were listening loud and clear, come in like a good community member like all of the other folks are, offer to pay your fair share, and I would hope the Board would then listen and be responsive to that. That area of town is much too valuable to go in the other direction.

Mr. Nichols stated I want to go back to the 20,000 square feet. How did you arrive at that proposal as a number? I find it interesting because all of the existing, from my count, medical facilities that are there are already over that. What was the reasoning behind 20,000 square feet? Mr. Greiner responded I mentioned this last time. Any of those from New Hampshire Orthopedics that spoke, they could either stay where they are or they could decide that they don't want to be there and they could build their own building and move somewhere else. They are, I think, the largest independent private group in our region by far. Their space, plus for MRI's, are less space than 20,000 square feet. Manchester Urology, which is the other mega-group that is out there as a private group, when they have done modeling to see what they need it is under that. Most physicians' offices of primary care groups that you are used to have three or four doctors, 1,500 square foot a doctor, or 6,000 square feet, so that is three times what a normal primary care doctor would. It was enough to allow something reasonable, not a mega-plex.

Mr. Nichols stated for the gentlemen that were talking before, you mentioned colleagues. Are all of you colleagues? Dr. Sterling stated physicians are colleagues. We are all in the same community and have been for quite some time.

Chairman McMahan asked if there were any further comments from the public. There were none. The public hearing was closed.

Chairman McMahan stated we received 11 emails that were against this amendment, and they will be included in this file.

Ms. Hebert stated I just wanted to explain why I pulled the zoning map up. We have been talking about the Performance Zone, and for the folks in the audience and folks watching at home, the Performance Zone is the area in purple. It runs north to south along South River Road from the Manchester city line down to Bedford's border with Merrimack and it is bound on the east by the Merrimack River and to the west by the FE Everett Turnpike. It is a large area and is by far Bedford's largest commercial zoning district and most flexible zoning district.

Mr. Nichols asked did you say we received emails opposing this amendment? Chairman McMahan responded yes. Mr. Nichols stated I just wanted to make sure that we didn't miss out on it.

Mr. Newberry stated I heard some good points made from the public both for and against this, but to my mind what this really comes down to is basic preservation of the Performance Zone concept and purpose, which is to provide an area of tax base which supports the rest of the town. One of the other points that I have heard this evening, I think they are good points and in my mind that is what it comes down to. This does not prevent medical development but it does give the Town more control over medical development, and I think for those reasons I would be in support of this citizens' petition.

Mr. Fairman stated I have a question for Ms. Hebert and I think I know the answer to this. Why is this amendment only proposed for the Performance Zone and not the other commercial zones? Is there a reason for that? Ms. Hebert responded I did not write the petition or the zoning amendment, so I don't know the answer to that question. Mr. Fairman stated are medical facilities allowed in the commercial zones? Ms. Hebert responded medical facilities are permitted in the Commercial Zone. We currently already have a limitation on the size of buildings in the Commercial Zone to be not more than two floors and there is a size limitation per floor. We are already restricting the size of buildings in this pink area on the map, the commercial zone along Route 101 and there is a small area off from Meeting House Road, and medical uses would also be permitted in the Office District, shown in blue on the zoning map. Mr. Fairman asked so the answer is that there are some limitations on size already of buildings? Ms. Hebert responded yes. Mr. Fairman stated not to this extent but at least to some extent.

Mr. Fairman stated Mr. Chairman, I have had a hard time deciding on this zoning amendment. I have been very concerned. I am very concerned that this change will inhibit the development of good taxpaying office space, space that asking for a waiver is not automatic and people that are faced asking for a waiver may or may not decide to start the process. If we don't go for good taxpaying office space, we really are eliminating one of the few remaining opportunities for development of the Performance Zone. We have already eliminated apartments, there is very little chance beyond Market & Main for significant retail space, so I am concerned about that. On the other hand, I think there a lot of good arguments for it and one of the big ones that pushes me over the boundary into supporting the amendment is Dartmouth Hitchcock's opposition to it. I think that that says a lot to why we perhaps need this amendment. In the end, although I have had a hard time deciding, I will be voting to support the amendment.

**MOTION by Mr. Sullivan that the Planning Board support the citizens' petition zoning amendment on the upcoming ballot. Vice Chairman Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.**

Chairman McMahan stated for the members of the public who are still here. That motion just simply says that the Board does support it but it still will go on the ballot and the people will be the one that will make that decision. When residents vote on the ballot, they will see the Planning Board's recommendation, but it doesn't mean that it is a foregone conclusion. It is advice to the public but the public makes the decision. Ms. Hebert stated yes.

**2. ER Bedford, LLC c/o Encore Retail, LLC (Applicant & Owner) – Final review of the traffic impacts and final approval of the traffic study and off-site improvement plan, as a condition of approval for the November 8, 2021 Planning Board Approval for a mixed-use development at the Market and Main site, with 24,178 SF existing and 174,000 SF of additional development, including retail, restaurant, office and hotel uses, located at 125 South River Road, Lots 12-33, 12-33-1 & 12-33-2, Zoned PZ.**

Bob Duval of TF Moran was present to address this item on behalf of the applicant. In preparation for this meeting we submitted a final traffic study dated January 3, 2022 to the Town that has been reviewed by the Town's reviewer, Ms. Bousa of VHB, and I am going to read from her review of that. She says "The latest analysis in the traffic study address the comments previously provided by VHB." Basically what that is saying is that they agree with the traffic study. She is making a note about recommending some things in the traffic study that might make them better, which is reversing the phasing of the eastbound Kilton Road approach and reversing the phasing of the Meeting House Road eastbound. It is a technical adjustment that would be made to the signal operations, and we agree that these phasings can be made without detriment to the Town and it may even work better. We support that, and I would say that we are in entire agreement, ourselves and VHB, in regard to the traffic study.

Mr. Duval stated what Ms. Hebert has done in her staff report is she has sort of gone backwards in time and reviewed very succinctly the history of the project and where we are traffic-wise. In that is a list of the traffic mitigation that is already in place as everyone is well aware out there on the corridor, which was extensive. It included a new right-turn lane at the main intersection, timing adjustments to the entire corridor from Meeting House Road all the way up to Palomino that is in place and I think having a very significant positive effect, timing adjustments throughout the corridor, median islands at the Whole Foods right-in, right-out driveway, which has helped channelize traffic there more safely, modification to the Cold Stream Office Park both north and south driveways to provide a single point of access for left turns, which is also a beneficial improvement, Upjohn Street was milled, shimmed and overlaid with new pavement and a new sidewalk, new pedestrian crosswalk is installed at the main site intersection, a fair share roadway payment on top of that all totaling well over a million dollars, and that is all in place. What is being proposed as mitigation as a part of this final traffic study is new timing and phasing adjustments, which I just talked about, and that will with current traffic volumes and with approval of the project, further improve and mitigate the operation of the corridor.

Mr. Duval stated I would like to spend a little time going through the rest of Ms. Bousa's memo, and I think the best way to do that rather than just read the words, is show some slides that I have

prepared to illustrate what is being talked about in the rest of her memo. The first thing is just a comparison for a sake of context showing in blue what was previously approved for Market & Main site traffic and in green what is being proposed now. In round numbers what is being proposed now less trips in the PM peak, less trips in the Saturday peak than before, and by and large, as Ms. Bousa points out, there were some 300,000-odd square feet originally approved and now it is about 200,000 square feet, so a large part of that is just the downsizing of the development. What is posted now is a snapshot of overall levels of service, and you can see that the corridor, as a result of the TIF improvements and the recent improvements that were just completed as a result of Phase 1 of this project, are generally favorable. Kilton Road is pretty busy so that intersection and 2032 PM conditions will run at a D if this project is approved and built. These are build conditions. The green represents the build condition, the A represents what was approved previously. So it is a little bit better at Kilton Road and the current build condition then was originally approved but you will see actually on some of these, and you will see on others, some of these flip around and that is just because the intersection is on the cusp of a C or D or a D or an E, so minor changes in volumes will flip it. It doesn't mean it is substantially better, but I guess the point that I would like to emphasize is the health of the roadway in this corridor overall. D or better is considered acceptable, E is where you start approaching capacity and Kilton Road is at that point, as a result of back-on traffic and not as a result of the new development, which has only a marginal affect there. Posted now shows the same thing on a Saturday, Saturday being a lot of retail in this corridor. You can see things are a little more approaching capacity, where some B go to C and C go to B, but overall favorable levels of service. Vice Chairman Duschatko asked do you happen to know what time of day this picture was taken? I was looking at the parking lots of the Bedford Mall being basically empty and the Hannaford's area being filled. Mr. Duval stated it looks like the heavy shadow line is on the north side of the buildings, so I would say this is mid-day. I don't know if it is a Saturday or Sunday, it is a Google image. Ms. Hebert stated it looks like mid-day because the office parking lot is full.

Mr. Duval stated here we get into the comments that Ms. Bousa is making. She is just wanting the Board to understand what impacts will be like on this intersection. The first one here, this is the southbound left on a Saturday, which actually is the peak traffic into this site, what affect that will have on the southbound left. This shows 2032 conditions; 2032 is ten years out, ten years of continued growth at 1 percent per year, so there is a big growth in background traffic that you are seeing here. That results in the queues lengthening from what they are today. The 95<sup>th</sup> percentile queue is the one that is usually talked about in design of storage bays and so forth and that represents the length of the queue that is exceeded only 5 percent of the time. Ninety-five percent of the time it is that length or less, and remember these are peak hour conditions and in this case peak hour 10-year out conditions, and the peak hour in traffic analysis is really based on the peak 15 minutes within that hour. So there is a lot of conservatism built into a 95<sup>th</sup> percentile number; it is exceeded only 5 percent of the time in the peak 15 minutes of the peak hour and in this case, ten years out. Mr. Newberry stated I am missing something in this graphic. I am seeing two queues but they are in the northbound lane not the southbound lane. What am I missing? Mr. Duval responded what this is showing is the effect on the yellow lane, that is the length of the lane which is 275 feet to here as shown, and then the arrow is pointing backwards because the cars are backing up in that lane but it was just too much to put both of these bars in that lane or you wouldn't be able to read things. Mr. Newberry asked so what that is actually showing then is that the blue line at some points you will have potentially what may be two vehicles not able to get into that left-turn lane. Mr. Duval responded right, and that could cause some temporary blocking of the southbound lane, and the blue is the no-build case, which is current conditions, the green is the

build case and what that represents is actually the timing that is out there now is based on the original approval of 2017, which projected forward traffic conditions. The green is based on 2019 – 2020 counts so it is a more accurate representation of actual traffic out there, plus the impact of the build, so the signals are actually optimized to be working better and that is why the green is a little better than the blue. Mr. Newberry asked so the improvement is the result of timing signals in the area. Mr. Duval responded there were signal adjustments up and down the corridor. The whole corridor is coordinated so you can't say it is just this one is timed better. It has to do with progression along the whole corridor, but it is a result of timing improvements collapsing that queue a little bit. That is saying that the 95<sup>th</sup> queue is about one car over the line and that is on a Saturday where it is greater in the PM it's less, and the average queue, which is also another important number, is 225 feet which is this shorter arrowhead here. The blue represent was approved by this Board in 2017, so at that point, the Board understood that there might be another car beyond the end of the storage bay that would be there in future year peak hour conditions.

Mr. Duval stated the next slide is a similar slide and this is showing another area of concern, which has been the northbound queue and, again, the arrows are pointing south because the cars are backing up in that direction, the 95<sup>th</sup> queue is about 500 feet, which brings you about to the bridge so it doesn't really block anything other than Upjohn Street which is blocked in any event both in the original approval, which is identical in the build and approved condition, and the queue is another two cars longer in the 95<sup>th</sup> percentile. But in terms of average conditions, it is the same as what was previously approved by this Board at the 95<sup>th</sup> percentile, which just means there is a little more variability in these numbers, it extends a couple of cars more, but it clears every cycle and the level of service is favorable. Mr. Newberry asked does this assume Phase 2 is complete also? Mr. Duval responded these build queues are full-build. Mr. Newberry asked it would include the hotel and the office building? Mr. Duval responded including the hotel and the office build. We are calling it the traffic Phase 2, which is everything, it includes the hotel and the office. We didn't want to do separate analysis for Phase 2 plus the hotel, Phase 2 plus the office building, so it assumes full-build. It is not that we are afraid of work, but I should point out that even this one analysis the traffic report runs to 620 pages. There is a lot of intersections, a lot of analysis, so we don't want to cut the dust too fine.

Mr. Duval stated in this case here we are looking at the third area of concern, which is backing up along the ramp. In the original approval, this is the blue queue, we showed it about 1,000 feet long, full-build, which still worked because it didn't block the Route 101 westbound lane but it was substantially longer than what we have now. Part of this is because the queue detectors were put in as part of the first phase, so they are working now so what that does is that it triggers the signal to clear this if it does back up that far. As a practical matter, and I go through there a lot, I have not seen a stopped queue go back that far, I have never seen that. Generally speaking, what it is is a slowdown and a rolling queue that approaches this here as shown. There are three factors here: the first is that the queue detectors are working and the original model, which was done with a 5-year-old software program, it didn't model queue detectors very well, the new version does, so I think we are getting a more realistic evaluation of the length of that queue. Also, in the intervening time we had assumed there would be a lot more exit ramp traffic going to this development than is actually turn out, we are seeing more South River Road traffic entering and exiting than we are off ramp traffic exiting and entering, and in conjunction with VHB, we agreed that we should use the existing traffic patterns and apply the future trips more or less in proportion to what existing traffic is doing out there and that is showing less demand on the ramp and therefore less queuing. Two reasons in the other intersection the better optimization of the timing we are

getting a dramatic improvement here, which obviously DOT will be much more comfortable with this result than they were with the previous result but they did approve the previous result too in 2017.

Mr. Duval stated switching to the inside view here, the no-build condition shows the blue cars, which is basically length of queue, represented by little rectangular cars, backs up just about to the loading area of Trader Joe's, and the 2032 conditions, with maximum traffic out on South River Road, it will add two to three more cars to that queue and the loop here is adding another car to that queue and this back driveway, which also will be in full operation by then, is adding a couple of more cars to that. You can see that there is not significant difference between the build and no-build cases currently. Chairman McMahan asked did you make an assumption that people who are not going to take that far right-hand lane for a right-turn? In other words, did you worst case this then? Mr. Duval responded what happens is once the queue gets that long, it actually blocks this lane here, so this lane actually clears, this lane blocks, and right-turning traffic has to wait for the signal to change for this queue to clear for them to get in and get out. But the overall delay, evening accounting for that is favorable on that right-turn movement. Mr. Fairman asked what time is this one? Mr. Duval responded weekday PM. Mr. Fairman asked it is not Saturday? Mr. Duval responded where there is less traffic than on a Saturday. The other thing to remember is that right-turning traffic as shown, once I get used to the site, will realize that they also have a right-turn exit at the Whole Foods right-in, right-out, that if your destination is northbound, you are really better served to go that way than you are to go back through the signal. Mr. Newberry stated this is a 10-year out projection condition. Mr. Duval responded a 10-year out projection. Mr. Fairman stated I am very surprised by this one. I would have expected the internal traffic around The Friendly Toast to be considerably worse than just adding one more car with the hotel and everything else happening. It is what your study shows; I was just surprised. Mr. Duval stated remember this is PM, but to your point, the Saturday is not a lot worse, but you could see it as worse. The other thing that is happening too is that the center of gravity of the development, remember isn't just a gravel pit in full-build conditions, there is a large parking lot back there and there are other uses that are farther east and a lot of those people will be coming up this way on the north driveway and either making a right-turn out or a left-turn from there, so that takes some of the strain off from this here. Right now this is pretty much the only way out because even for people who do come up this way either from the Whole Foods side or from the parking in the rear, that is a better way to go. Mr. Fairman stated Saturday begins to show the queue I would more expect. Mr. Duval stated if you were to more conceptually considering this as really the main way out now, that queue and some of this queue and this queue would be what it would be under full-build conditions if that were the only way out. Mr. Fairman asked did you look at what Upjohn Street would look like at this point coming out? Mr. Duval responded there are some right-turns coming out of Upjohn Street and we did analyze it but we have not focused on it as a point of concern because it hasn't been identified as Ms. Bousa as a point of concern.

Mr. Duval stated that is just a visual depiction of the second page of Ms. Bousa's memo. As I pointed out, she has identified these issues. She wanted these issues to be brought to the Board's attention, that is on the second page of here memo, and I'm not going to go through them again because I think questions we have covered in enough detail. That brings us back to the first part of Ms. Bousa's memo, which is we at TF Moran and VHB are in agreement that the traffic will work, will work safely, will work effectively and the impacts are not significantly degrading the intersections as I have showed you in that first couple of slides comparing the LOS's, build and

no-build. Maybe equally significant is they are comparable to what this Board approved originally in a full build-out scenario.

Mr. Fairman stated thank you and great presentation. Just a comment on timing adjustments. Light timing is an ongoing effort. Is that right? It is not a difficult thing to do, it is not a major effort to change the timing, and in any major development like this, don't you expect that over maybe at the end of the year or whatever that there would be some correction in the timing. Mr. Duval responded yes, that is true. Busy corridors, like South Willow Street in Manchester for example, Brown Avenue, lots of others in this area, it is done almost on a routine basis and usually by complaint actually. Mr. Fairman stated on Route 101 they have made some changes this year, particularly at Meeting House Road, so my point is that the fact that there are some adjustments that will probably go on, it is not going to end today, as traffic dictates. Chairman McMahan stated Mr. Fairman asked a good point. There probably will be small, minor changes and in the agreement I believe is that Ms. Bousa and Mr. Duval will get together and then it will go back to staff for approval, so they won't be coming to the Planning Board for small things. Mr. Nelson stated just to kind of clarify that; every great plan usually survives the first day of reality, so to that end, once these buildings start to come online and we start to have the actual, I think it is in here, but maybe a little bit of color on how we will go back and look and monitor and continue to be in a position to modify it as we learn things and see peoples' behavior is different than the model let's say. Mr. Duval responded what usually happens with a development of this type, is that a timing plan is prepared that uses the opening year, you don't do a timing plan for ten years out, that is just a reference point, so you can see how traffic behaves over time, but for the opening year for which your counts are generally speaking within a couple of years old, so they shouldn't be as far off as these were because the timing plan that is out there now is based on 2015 counts, 2017 approval, 2015 counts, so it is actually seven years old. So it is not surprising that it is time for an update out there in that corridor. When this project is ready to open, there would be a new adjustment based on this data that would bring it forward five or six years. Then if there are follow-on phases, such as the hotel and the office, then typically the Town would ask us to review the new traffic with current counts and the fairly nominal impact of these added pieces, then there would be another adjustment. It is an ongoing process with a phased project, but typically the project sort of does all of the homework and offers up a timing plan to the community and then the community, which owns and operates the roadways, takes it from there. Ms. Hebert stated it is a set of engineered plans, the timing adjustments, and it is something that Mr. Duval's office would generate, the Town would review and approve, and a third-party contractor would implement those timing adjustments along the corridor. Mr. Nelson stated I appreciate that clarification. The important element of this is it is an evolving and learning approach and as reality in the model can come together that makes it more valuable.

Ms. Malcolm stated I was just wondering if you had plans at the moment to plan for changes seasonally. In the Christmas season the traffic pattern is going to be a little bit different, I would expect. Are you going to change the lights, the timing of the lights then, or do you have any plans to do that? Mr. Duval responded no, actually the timing sequence in this case is based on December counts, as is the plan that was provided originally in 2017. That is the purpose of the seasonal adjustment to traffic. You do your analysis for the worst case or the busiest month, which in this corridor is December. Ms. Malcolm stated I wasn't sure because we look at all of these pictures where we see stuff at the Market & Main development. Doesn't the driveway go through into the next shopping center? Mr. Duval responded out the back. Ms. Malcolm asked and ultimately feed into Kilton Road? Mr. Duval responded yes. In the analysis it was agreed, actually

at the first analysis and the first approval, that we wouldn't count traffic using that back driveway just to be conservative and make sure that all of the traffic was captured going in and out the front, but it did include Upjohn Street, the signal itself and the Whole Foods right-in, right-out, but none was assumed to go out the back. A lot of the trips that are going to and from Market & Main, I think are actually going to be generated by the apartments back there and people who need to go to one of the stores in the Bedford Mall and say I am also going to go to the sporting goods store at Encore, so there will be some back and forth. Ms. Hebert stated the signal adjustments will take into account the whole northern portion of the corridor. It doesn't stop at the driveway for Market & Main, it continues north all the way to Palomino Drive.

Chairman McMahan asked for comments or questions from the audience. There were none.

**MOTION by Ms. Malcolm that the Planning Board accept the results of the final traffic study and determine that the applicant has satisfied Condition #10 from the November 22, 2021 Site Plan approval for the Market & Main development, with the following precedent conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:**

- 1. The applicant shall provide a final off-site mitigation plan that includes the recommended signal timing and phasing plans for the build-out of the project, including operational results summary tables. The final plans and supporting calculations shall address the comments in the VHB review memo dated January 18, 2022, and shall be approved by the Public Works Director.**
- 2. The applicant shall provide a financial guarantee for the completion of the signal timing coordination and adjustments, in an amount to be approved by the Public Works Director.**

**Mr. Fairman duly seconded the motion. Vote taken - all in favor. Motion carried.**

#### **New Business:**

- 1. Amber Bedford Associates, LLC (Applicant & Owner) – Request for Site Plan Amendment Approval and a waiver from Section 275-65(D) of the Zoning Ordinance for two dumpsters without the required landscape screening at 10 Iron Horse Drive, Lot 35-13, Zoned PZ.**

Attorney Andrew Prolman of Prunier & Prolman was present to address this request for site plan amendment approval and waiver on behalf of the applicant.

Attorney Prolman stated we have a couple of proposed tweaks to the approved site plan. We have a very simple request for the Board tonight, and it occurred to me that as this building is used by tenants and tenants may be expanding their employees or maybe new tenants come in, I may be before you every couple of years to just tweak the plan a little bit and move things here and there, and that is exactly what I am doing. As the existing four tenants have moved into the site and are using the site, they have asked the owner if they could move around some dumpsters, and that is all we are really doing here tonight.

Attorney Prolman continued Eastern Automation, which is Tenant A, originally, we had a dumpster in this corner, and I took a drive by today and they actually have a table and chairs out there for lunches and what not, and I assume they didn't want a dumpster right next to where they go to have lunch. They are proposing to move that dumpster to within the loading dock area as shown on the posted plan, and that is one of the requests. There is another request for Tenant C, they find that they need an additional dumpster. They already have one dumpster tucked into the corner, as shown on the plan, they have requested of the owner if they could have another dumpster in this location, and, again, these dumpsters will be screened with fencing with the screened slats all around them. Our final request is to move this dumpster in the corner to push it to the other side of the drive aisle; if anyone has been out there, they haven't actually installed that, and it makes it much more accessible for the trucks, makes it much easier for the trucks to come and go, grab the dumpster and then back out. That is the request to the Board tonight.

Attorney Prolman stated the request comes with the waiver of the landscaping around the dumpsters. I will tell you that I think that request makes sense for the dumpsters located in the loading dock area, and I will tell you that I agree with Ms. Harris that the waiver request doesn't make sense for this dumpster area, it is all topsoil around this area, it doesn't cost a lot, so we would withdraw the waiver request. With respect to this particular dumpster, which is for Tenant D, and it is right on the Heritage Trail, and it make sense to screen that one and it is not hard to do. But we are requesting a waiver of landscaping within the dumpster just because it is all asphalt right now. There is some screening along Iron Horse Drive along here, and, again, it will be fenced in with the slats. That is the request to the Board.

Attorney Prolman stated if I may go further than that; right now we are requesting one dumpster right here, as indicated on the plan, for Tenant C, and as I took a drive to the site today, I noticed there are actually two dumpsters out there. I would ask the Board, would the Board entertain us to have a second dumpster right in this area, right next to each other for Tenant C? There is one out there today, it would be fenced in with the slats so we are trying to hide it as best we can. The need is there, these aren't large dumpsters, they are relatively small dumpsters, so if the Board is willing to add a second one right in here for Tenant C, we would appreciate that so we wouldn't have to come back. It is a minor deviation from the application, and if the Board doesn't feel like they can do that give what was presented, that is okay, I get it, but I am making that request to the Board tonight.

Ms. Malcolm asked are trucks going to have difficulty getting to those dumpsters because you have a loading dock there? Attorney Prolman responded they don't use that loading dock. Right in this area is kind of a canopy loading dock that they get to use, and then they also have access to the loading dock right in here as well. There are two overhead doors right here that they don't use anymore.

Vice Chairman Duschatko asked what is going to happen to the existing dumpster in the corner? Attorney Prolman responded that one stays. Vice Chairman Duschatko asked so they will have three? Attorney Prolman responded to be honest, that is fenced in with the slats and it appears that they are using it as a pallet dump, not so much a dumpster. Vice Chairman Duschatko asked would it help anybody if he does a quick recap of what is going on? The Board was good. Mr. Fairman asked they are adding a request to a report? How does that happen here; how do we document that by adding one more dumpster? Attorney Prolman stated I apologize for bringing this up today, it just occurred to us within the past hour. Mr. Fairman stated I don't have a problem with it, I just

want to know how we are going to make sure that we document it correctly. Ms. Hebert stated for the waiver, the request would be to allow for no landscape screening of the dumpsters proposed to be located in the existing loading dock areas as described by the applicant, and that would include the additional dumpster. And I would just like to consider it a larger dumpster enclosure and you would have two containers within one dumpster enclosure. Does that make sense? Attorney Prolman responded we would appreciate that.

Mr. Newberry stated the proposed location of the dumpster on the west side, where is the access to that? Attorney Prolman responded it is there today. Mr. Newberry stated I don't mean so much for removing the content as building the content. Where is the access from the tenant's perspective? Attorney Prolman responded there is a doorway in the corner of this loading dock area, as shown on the screen, they walk out, use the dumpster and walk back in. Mr. Newberry asked it will just be hand carried things that will be put into that dumpster? Attorney Prolman responded as are the other ones, this one in the loading dock area and the one for Tenant D.

Chairman McMahan asked for questions or comments from the public. There were none.

Mr. Newberry asked so we would add a condition to allow a second dumpster at the location for Tenant C? Ms. Hebert, does that meet our need? Ms. Hebert responded I think so.

**MOTION by Mr. Newberry that the Planning Board grant a waiver from the Bedford Zoning Ordinance to Section 275-65(D), to allow for no landscape screening of the dumpsters as proposed and described by the applicant, to be located in the existing loading dock area, because it is not practical under the circumstances and the dumpsters will be properly enclosed. Mr. Fairman duly seconded the motion. Vote taken - all in favor. Motion carried.**

**MOTION by that the Planning Board grant final site plan amendment approval for the relocation of two dumpsters and an additional three dumpsters, in accordance with the site plan by Granite Engineering, last revised December 28, 2021, with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:**

- 1. The Director of Public Works and the Planning Director shall determine that the applicant has addressed all remaining technical review comments to the Town's satisfaction.**
- 2. The Applicant shall submit any outstanding engineering review fees.**
- 3. In the event that the Planning Board approves the waiver, the plan shall be updated to list the waiver as approved.**
- 4. Dumpster enclosures shall be provided for all existing and proposed dumpsters.**
- 5. Prior to the issuance of a certificate of occupancy for the building, all site improvements depicted on the plan shall be completed.**
- 6. Approval to add a dumpster for Tenant C on the south side of the building.**
- 7. Landscape the dumpster for Tenant D, as approved by the Planning Director.**

**Vice Chairman Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.**

**2. Riley Investment Properties, LLC (Applicant & Owner) – Request for Site Plan Approval for a change of use to convert 10,300 SF of first floor office space to a commercial recreation use, located at 21 Commerce Park North, Lot 24-19, Zoned PZ.**

Chris Riley was present representing Riley Investment Properties, LLC. I am here before you tonight to do a simple change of use on an existing property. I think the staff report gave a pretty good summary in explanation of what we are trying to do. The facility in its current state utilizes recreational use, the other side was approved for office. What we are proposing is a change of use to allow for recreation on the entire building where it is a less intense use. There are no modifications to the site plan, other than a few note changes that staff had recommended, the simplest answer here is that this fell outside the size to allow for an administrative approval, so I am here before you to ask for the change of use at that site.

Mr. Riley continued the tenant that is going in is Red Line and Athletics. Like I said, it is similar to the existing use that is on the other side of the building. Red Line specializes in youth sports team training and they would occupy the remaining space in the building that is currently unoccupied.

Mr. Riley stated the good news is that we have people in Bedford who are starting to open businesses again and want to see the community out doing commerce, so that is a positive.

Mr. Fairman stated I want to comment on the great facility that opened up the gas station and how great it looks and the appearance and is a great addition. Well done. Mr. Riley responded thank you, Mr. Fairman. It has been very successful to date, and I think we filled a need that may have existed on the corridor. Thank you; I appreciate that.

Mr. Riley stated I will note, and Ms. Hebert can speak to it a little better, Jason Lopez from Keach-Nordstrom has submitted a site plan this afternoon that addressed most, if not all, of the comments as part of the approval should the Board elect to approve the application. A number of those items were addressed, and if they are addressed to your satisfaction, I would like that those items come off as conditions, if you feel like they have been met. Ms. Hebert responded I have not had a chance to review those plans in detail, I would keep them on, but I am sure they have been addressed. Mr. Riley stated I think we sent over all of the mylars and that is what addressed every one of those comments. The application is complete, the conditions filled and that is where we are at.

Mr. Nichols stated I just had a question on the parking. Would there be big events like on a Saturday that would fill the lot and then some? I am just trying to understand it. Mr. Riley responded it is my understanding that the group training classes are all scheduled, we exceed the parking requirements by almost 40 spots. I don't know how familiar you are with the spot, it is at the end of a street, Foster Place was just put in by the Town, it looks like a great addition, and now there is the option to put tenants on Commerce Park North to access the light on Technology Drive, which is a much safer way in and out. We have ample parking on the site, so even if there were overload periods, which are anticipated because everything is class based. Mr. Nichols stated that was part of my question. Is that going to be tournaments hosted there but it is a group classes kind of thing? Mr. Riley responded that is my understanding.

Chairman McMahan asked for comments or questions from the public. There were none.

**MOTION by that the Planning Board grant final approval of the site plan to convert 10,300 square feet of first floor office space to a commercial recreation use, in accordance with the site plan by Keach-Nordstrom Associates, last revised December 21, 2021, with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:**

- 1. The Director of Public Works and the Planning Director shall determine that the applicant has addressed all remaining technical review comments to the Town's satisfaction.**
- 2. The Utility and Propane Tank easement note shall be updated from Proposed to Existing.**
- 3. Note 2 shall be updated from "Northerly" to "Southerly" and from "10,600 square feet" to "10,300 square feet".**
- 4. Note 3 shall be updated for a required front setback of 1:2 per Section 275 - Table 3 of the Zoning Ordinance.**
- 5. Note 11 shall be updated to reflect the total parking spaces shown and striped on site.**
- 6. Prior to building permit issuance, building plans shall be reviewed and approved by the Fire Department to confirm existing fire alarm and sprinkler systems.**
- 7. Prior to the issuance of a Certificate of Occupancy, the sewer accessibility fee shall be paid, as applicable.**
- 8. Prior to the issuance of a Certificate of Occupancy, all site improvements depicted on the plan shall be completed.**

**Vice Chairman Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.**

Chairman McMahan stated Mr. Riley, I assume based on your input, any changes in signs that you put up will be in accordance with Bedford's standards. Mr. Riley responded that is correct.

- 3. The Planning Board will hold a Public Hearing on proposed amendments to the Land Development Control Regulations, Article 120 – Impact Fees, for adjustments to the School and Recreation fee amounts.**

Ms. Hebert stated tonight the Planning Board is going to hold a public hearing on the amendment of the Land Development Control Regulations Section 120 – Impact Fees. This is the section in the Land Development Control Regulations that address impact fees and sets the rate for the fee. The amendment has been drafted in accordance with our discussions at past meetings to reflect the updated fee amount based on recent school and recreation fee update studies that were prepared by BCM Planning, LLC.

Ms. Hebert stated for a little background on the impact fees; in 2021 the Town contracted with BCM Planning, a planning consultant, to update the Town's school and recreation impact fees.

Funding for this update is included annually in the Capital Improvements Program with the goal of updated and reviewing the fee every five to six years. The fees were first established and created by BCM Planning, LLC in 2001, updated in 2006 and again in 2015, and this represents the fourth report and update since the school and recreation fees were established. There was a recreation fee that pre-dated the BCM Planning studies but this is the fourth collective update to these fees. In Bedford the recreation and school impact fees are assessed for only new residential developments, the impact fee is a 1-time fee that is assessed when a new residential unit receives its Certificate of Occupancy and that includes single-family homes, multi-family dwellings, townhouses, accessory dwelling units, and manufactured housing units. In addition to separate use categories for the elderly housing age 55+ and age 62 and older, which are exempt for the school impact fee and the 62 and older and exempt for both the school and recreation impact fee. The elderly housing 55+ is exempt only if there are covenants restricting children from living within the development. Impact fees can only be collected for certain items and they need to be established within the provisions of State guidelines, RSA 674:21. The fees can only be used to recover what is calculated to be a development's proportionate share or cost of a capital improvement that was constructed in anticipation of new growth, and we need to calculate kind of what is the development's fair share contribution towards that additional facility need or expanded capacity, such as in our schools. The methodology for calculating the fees needs to be proportionate, needs to be based on a fair and rational method. Once fees are collected, the fees need to be used within six years or they need to be returned to the landowner with interest. The Zoning Ordinance provides the authority for the Planning Board to collect the fees and Section 120 of the Land Development Control Regulations sets the type of fee, references the various studies to establish the fees and also establishes the fee amount. The Land Development Control Regulations also provides for credits, so if there is an existing single-family home and it is being converted to a multi-family unit, the landowner would receive a credit based on the rate for the existing single-family home.

Ms. Hebert stated the school impact fee study itself included a very detailed analysis of Bedford's housing population, capital costs for schools and a study to determine the average school-age student per residential unit type. Bedford has a high average of school-age students per single-family dwelling unit at 0.62 school-age students per single-family dwelling. The report also shows that Bedford has a relatively low number of school-age students per multi-family dwelling type of 0.23 students per unit. These figures are consistent with the past studies. Bedford's relative school-age population per dwelling type hasn't fluctuated very much over the years. Some communities have seen a decline in enrollment and that is not the case with Bedford. In fact, we have a higher rate of students per single-family dwelling than surrounding communities, which attributes to the higher fee. The resulting fees from this 2015 study are higher than the former fee, and the current fee for a single-family home is \$6,922 and the newly calculated fee is \$9,148. This represents a 5.4 percent average annual increase since the fee was updated in 2015, and the increase can be contributed to the high replacement costs for the school itself and also the generally high rate of school-age student per dwelling unit in Bedford as compared with surrounding communities. Posted is a table that shows you Bedford's proposed fee and the current fees from surrounding communities and Bedford's current fees at the top line as shown.

Ms. Hebert continued the update also includes the recreation fee. The calculation for the recreation fee looks at Bedford's household populations and accepted recreational facility standards per capita, looks at average household size per dwelling type and the capital costs of the Town's recreation facilities and lands. The study includes two options for determining the value, one with

and one without land. The Town has been using the calculation, which includes land and I would recommend that we continue to use that calculation because Bedford has a very limited amount of land that can be used for recreation. You can see posted on the screen Bedford's existing fees along the top line as shown and the proposed fee with land. These fees are also increasing. Overall the fees are increasing but they are based on the same fair and rational method that the Town has been using since 2001 to calculate both the school and recreation fee, and these fees are defensible, fair, rational, and proportionate.

Ms. Hebert stated the impact fee report was presented to the Town Council on November 17, 2021 and the Bedford School Board was also invited to attend this meeting and a representative was present to ask questions and hear the presentation. The Council discussed both the recreation and school fees and recommended that the Planning Board adopt the fees as calculated in the update study. Tonight you are voting on whether to adopt these red-line changes in Section 120 of the Land Development Control Regulations and they are the updates to the Master Plan, the impact fee update referenced to the reports themselves and to adopt the new increased and updated fees for the school impact fee and the recreation impact fee.

Ms. Malcolm stated I would like a clarification. On the school impact fees there is a category for accessory dwelling units. Would that apply if Amendment #2 is passed by the Town where we have detached accessory apartments? Ms. Hebert responded yes. The accessory dwelling unit would include both attached and detached accessory apartments.

Mr. Fairman stated apparently it has never been a problem, but I just wonder on multi-family and this question was brought up earlier, should that not state per unit to make it clear and legally bound that that cost is per unit in the multi-family. I could see somebody arguing that I have a 4-unit building and this is my place, \$3,661, not four times that. Ms. Hebert responded that's a good idea. We can add that. Mr. Fairman stated it is in the description and add (per unit). Ms. Hebert replied maybe even in this category here we can say per unit, per unit because it is really per unit for all of the fees. Vice Chairman Duschatko stated do you want to extend that also to duplexes. Ms. Hebert replied yes. Mr. Fairman stated what she is saying is that you put it in the top because it applies to everything, even single-family, it is per unit. You could just add it on the top of the column like 'School Impact Fee (per unit) and Recreation Impact Fee (per unit). That solves the problem.

Vice Chairman Duschatko asked why does the accessory dwelling unit go down? Ms. Hebert replied because the number of school-age students has decreased. Vice Chairman Duschatko asked why wouldn't all of the others go down? Ms. Hebert replied decreased for that particular dwelling type. I don't believe there was the same amount of data when the report was developed in 2001. Vice Chairman Duschatko stated there is a problem with that logic. All of the other dwelling units go up and this is still a dwelling unit. Mr. Nichols stated townhouse goes down too. Mr. Nelson stated you are saying the number of those type of structures that have people located inside of them, that is what is driving that. Is that right? Ms. Hebert replied it is the number of school-age students, the rate of school-age students per dwelling type, for that structure type. Vice Chairman Duschatko stated the structure type that we currently have? Ms. Hebert responded for the accessory apartments. Vice Chairman Duschatko stated the other one is a decline too. We don't have many duplexes or accessory units that people living in them? Is that right? Ms. Hebert replied we do not. Vice Chairman Duschatko stated but if you are looking at the future and continue under the pressure of putting a larger number of lower cost units on the same property,

we may have a number of conversions, potentially, of single-family houses and duplexes with two young families. Mr. Nichols stated but they wouldn't be impacted by this fee because it is not new construction. Vice Chairman Duschatko stated conversion of single-family duplexes, or even building new ones. Ms. Hebert stated the calculated fee represents the highest rate the community can charge base on the calculation that is applied across all of the dwelling types, so I wouldn't advise adopting a fee higher than what is supported by the school and recreation update studies. Mr. Newberry stated the general understand that I got from looking at the backup information associated with this is that the same formulas are being used, what makes a different result is that the factors in that formula those values change, so the result of the calculation can change. Mr. Sullivan stated and Vice Chairman Duschatko, in your example of a single-family being converted to a duplex, actually in Section 120, it spells out the conversion math and that it actually would be a zero-dollar impact because the total impact of a single-family home is larger than the combined of a duplex. So it is the impact fee that had been previously been paid would offset the conversion. Vice Chairman Duschatko stated that bothers me because that is where you are going to have the potential increase in population. I just think there is something wrong with the logic. I am not sure what it is though. Ms. Hebert stated I think it is that by-and-large Bedford single-family homes are driving the school population. Vice Chairman Duschatko stated I understand. Looking at the future, we going to have this for five years. Is that right? Ms. Hebert responded we will review this again in five years. Vice Chairman Duschatko stated so we are going to be under a tremendous amount of pressure in the next five years to change our housing types and our zoning types. There are like 20 bills in the State House this year just addressing this. Ms. Hebert stated the accessory dwelling unit fee was just brought on in 2015, so it is a fairly new fee. The Town hasn't been charging a school and recreation impact fee for the accessory apartments. Vice Chairman Duschatko stated I am not sure there is any way around it, I just wanted to point it out. Ms. Hebert stated it is true. You see the single-family fee increasing significantly. Mr. Newberry stated I don't think these numbers can be supported if you are trying to include potential future forecasts. I think the numbers have to be supported by existing data. That is my read on it. Mr. Fairman stated I agree with that. Ms. Hebert stated absolutely. Mr. Fairman stated but on the surface, you would think a duplex cost would be half a single-family or close to it, rather than where it is at. On the other hand, perhaps there are less bedrooms in a duplex than what might be in a single-family home. That is kind of interesting. Vice Chairman Duschatko stated the two of them together could be more. You don't build many 2-deckers but there are a lot of 3-deckers around here and those are big units. That is okay. I just wanted to bring it up.

Chairman McMahan opened the public hearing on these proposed amendments to the Land Development Control Regulations.

Karen Simmons, 58 Birkdale Road, stated I am like some of the other people you heard from earlier tonight. I am not an attorney, I am not a doctor, but I have been in town almost 25 years. The reason I got interested in the impact fees was I am really concerned about the Town budget and about the adequacy of the Town facilities going forward. As you know, there are two ways to make your budget work. You decrease your expense or you increase your revenue. Thank you, Ms. Hebert, as she spent some time with me today answering some questions I had about this process. I apologize if my questions are not pertinent but it is what it is.

Ms. Simmons stated I have two big questions about this. The first one is we are only talking about school impact and recreation facility impact. There is nothing included in here that I can see for the impact on Police and Fire, the transfer station, administrative offices, that type of thing, and I

am just wondering if that has ever been considered or whether it could be considered. Ms. Hebert responded I can say that the additional fees for public safety, Police and Fire, the library, the transfer station, were considered in 2015 when the Town looked at updating the impact fees, and at the time there wasn't a clear plan in the Capital Improvements Program for the updating of the Police and Fire facilities and the library that would support an impact fee. The Town did review an impact fee for the transfer station and it ended up being a very low fee, and the Town felt that it was going to be more of an administrative task to collect and assess the fee and it was not one that was adopted. Councilor Duschatko may have something to add to that because he was also involved in that discussion back in 2015. Vice Chairman Duschatko stated I was pushing very hard to include all of those items and was basically led to the conclusion that it was set upon us by the regulations we have to live with, and unless we had some firm plans for particular expansion of these facilities, it would not be part of the Capital Improvement Program therefore probably not be allowed by the DRA, State of New Hampshire, to be assessed. As it has developed, we have had cursory discussions on looking at bringing it in since then. Again, it has been pretty much left to the fact that we had no firm plans to do it. Unfortunately, most of the theory behind the impact fee, as I understand it, and I could be mistaken here, is that it has to tie into some type of physical expansion. Say we had to expand by four policemen or four firefighters or four clerks in the Finance Department or whatever, it has to be tied into the physical side of things, and without having that physical part of it, we just weren't in a position to change the entire structure. It also would require a study very similar to the one that was conducted by our consultant but he would have to start from scratch, it would have to be a brand new study and probably would take a year or so to complete. There are a few communities that I am aware of that actually have done this. The one I am most familiar with is Candia, and I know it has taken a long time and I think there are some questions whether it was even worth the investment in trying to develop these fees with what they can get out of them. That is probably not the answer anybody wants to hear, but that is the way it is. Something that certainly should be considered going forward in any of our facilities or capital planning efforts that will, I can assure, going on continually from now on. That is all I can offer you is that we are well aware of it and we want to look at it in the future, but what has happened in the past is unfortunately history that we can't change.

Ms. Simmons stated my second questions/issue is that, and this kind of dove-tails to the discussion earlier tonight about the medical buildings. These fees are only assessed on residential dwelling, and as we were just talking about, it is new construction, changing a single-family to a multi-family, etc. I look at, and, again, thoroughly convinced that we need to do something about the Police and Fire sooner rather than later. I look at the nursing homes in town and I have been in town long enough that everybody thought that was great when they came in because they wouldn't increase the school population, however, that has a tremendous impact on the Fire Department and the Police Department. Much to my surprise I was informed that these facilities who are 501(c)(3)'s, in other words non-profits, they are not obligated to pay any property taxes. So something like Bowman Place and per the tax assessor's records, the building and the land that they have is valued over \$21 million. They haven't kicked in, except voluntarily, toward the cost of the equipment that we are going to need should we have to evacuate the residents in the case of an emergency. I am just suggesting, and I guess the same would hold true for these medical facilities that we are talking about, they definitely have a cost to the community and I would just suggest that we consider possibly looking into mandating impact fees for them or somehow finding a way to help them bear the burden of the cost that the rest of us are basically paying for. Vice Chairman Duschatko stated out of all of the nursing homes, the only one that falls into that category to my knowledge is Bowman Place. I think this came as a surprise to everybody. I am not sure

about what we heard earlier and I asked Mr. Greiner, I am not sure how they qualify for charitable deduction but I don't know enough about them and how they have it but they were able to get it through and fortunately at least we are getting something out of them in terms of the payment in lieu of taxes. It is a major problem, as we discussed earlier, of how do we deal with this type of thing. As a community, our hands are very tied by the State statutes and they allow for certain things that we can't do. The dealing with tax exemption and tax exempt properties is across the board and you wonder how many of these communities survive. I don't know how Concord survives in a reasonable sense with all of the tax free properties the State has over there. We are much better off than many of our communities. That is not a great answer, it is not the answer you want to hear, it is not the answer I want to give, but unfortunately until we change some general attitudes toward this in a major sense, we are sort of stuck with it. Anything you can come up with to help us change that type of thing would be greatly appreciated.

Ms. Simmons stated if I could just ask you to clarify. Are we restricted by State regulations from going forward with trying to do something like this? Vice Chairman Duschatko responded I really don't know. I would assume that we are, at least from the work that I have done, but that is totally my personal opinion, I am not a lawyer, I am not a tax lawyer, but from what I have read and understood, I think we have to deal with it at the State level before we can deal with it at a local level. You could work with our State representatives.

Ms. Simmons stated I would respectfully request that we look into how we could pursue this. Vice Chairman Duschatko responded I think you should bring that up to the Town Council. Ms. Simmons responded I will do that. Thank you very much. Chairman McMahan stated thank you for taking the time and expressing yourself. We need more of that in the town.

Mr. Fairman stated I am caught by surprise by Bowman Place, and as a Planning Board, should we have known that, should we have asked that question and would it have made any difference. It is something to think about going forward is to pursue that. We could certainly ask the question if they are going to be a non-profit or not, and I think that I would like to know, and this comes back to the hospital thing, if we were doing a waiver on a medical building, can we require a payment in lieu of taxes on a non-profit as a condition of approval. Vice Chairman Duschatko responded we can't require it; it has to be voluntary on the part of the taxpayer. We can use severe moral persuasion. It is not a great answer. Mr. Newberry stated I think to your concern, Mr. Fairman, nothing says that the Board has to grant the waiver. Mr. Fairman responded no, but if we felt that it was good and wanted to we can't require a payment in lieu of taxes, a pilot program, to be established agreed to with the Town beforehand. Mr. Newberry stated I would expect anyone coming in looking for a waiver to justify that waiver and justify that waiver in terms that is acceptable to the Board, and if they don't, they don't get the waiver. Vice Chairman Duschatko stated but I don't think you can tie it to payments. Mr. Newberry responded I am not arguing that you can, I am just saying that I would expect anyone coming in asking for any waiver to justify that waiver as to why it is the Town's interest to grant that waiver, and the Board has no requirement to approve or grant a waiver unless the Board is satisfied that it is in the best interest of the Town. Mr. Fairman stated I understand where you are going. Mr. Sullivan stated Mr. Fairman, your statement about asking about profit versus non-profit, the issue there is that it could come in and be a profit organization and then a few years later sell it to a non-profit. Mr. Fairman stated that is happening now, unfortunately. Ms. Hebert stated ownership is very fluid. Mr. Fairman stated in terms of asking the question of a place like Bowman Place coming in, you could ask that question is your structure profit or non-profit, and it might or might not have an effect on

some of our opinions. Ms. Hebert stated and projects get sold before they are even built sometimes. They get through the approval process and it is a different developer that is pulling the building permit and taking that Planning Board approval and constructing the project. It is a difficult topic to address at the planning level.

Chairman McMahan closed the public hearing.

Mr. Newberry stated the issues just raised I thought were very interesting. I agree with Vice Chairman Duschatko, I think they sound like things that the Town Council should be looking at, and I will note that in this staff memo it states that the Town Council has discussed the fees and recommended the fees be adopted as calculated in the updated study. But I think the issues that you raise are real issues that should be getting looked at, whether or not we as a community can come up with solutions that we think are satisfactory or not, I am not so sure about. I think they are issues that need to be looked at, if maybe not through an impact fee, addressed through some other mechanism. Vice Chairman Duschatko stated I think that is absolutely correct, and it is not only just Bedford that has to do it. This has to be done in every community. We have to really start looking at that one. It is a major problem. Chairman McMahan stated at least some of us are better informed about it.

**MOTION by Mr. Fairman that the Planning Board adopt the changes to the Bedford Land Development Control Regulations Article 120 – Impact Fees as presented. Mr. Newberry duly seconded the motion. Vote taken - all in favor. Motion carried.**

#### **V. Approval of Minutes of Previous Meetings:**

Amendments: Alternate member John Quintal should be removed from the roll call.

**MOTION by Mr. Newberry to approve the minutes of the January 10, 2022 Planning Board meeting as amended. Vice Chairman Duschatko duly seconded the motion. Vote taken on the minutes as amended. With Mr. Nichols abstaining, the motion carried.**

#### **VI. Communications to the Board:**

The next Planning Board meeting is scheduled for February 14, 2022.

#### **VII. Reports of Committees: None**

#### **VIII. Adjournment:**

**MOTION by Ms. Malcolm to adjourn at 9:15 p.m. Vice Chairman Duschatko duly seconded the motion. Vote taken – all in favor. Motion carried.**

Respectfully submitted by  
Valerie J. Emmons