

TOWN OF BEDFORD
July 20, 2020
PLANNING BOARD
MINUTES

A remote Zoom platform meeting of the Bedford Planning Board was held on Monday, July 20, 2020. Members who were present remotely: Jon Levenstein (Chairman), Kelleigh Murphy (Vice Chairman), Hal Newberry (Secretary), Bill Duschatko (Town Council), Rick Sawyer (Town Manager), Jeff Foote (Public Works Director), Mac McMahon, Steve Clough, Priscilla Malcolm, Charlie Fairman (Alternate), Matt Sullivan (Alternate), John Quintal (Alternate), Becky Hebert (Planning Director), and Mark Connors (Assistant Planning Director).

I. Call to Order and Roll Call:

Chairman Levenstein called the remote meeting to order at 7:00 p.m. Phil Greazzo (Town Council Alternate) was absent. Matt Sullivan was appointed a voting member for the Market & Main application.

Ms. Hebert stated due to the Corona Virus crisis and in accordance with Governor Sununu's Emergency Order #12 and pursuant to Executive Order #2020-04, the Planning Board is authorized to meet electronically. This meeting is being conducted using the Zoom platform and all members of the Planning Board have the ability to communicate with each other during the meeting, and members of the public has access to listen and participate in the meeting using BCTV broadcast or by logging into the Zoom meeting. There are instructions on how to log into the Zoom on the screen of the BCTV broadcast and instructions have also been published in advanced of this meeting with directions on how to reach Planning staff to get information about how to join the meeting.

There is no physical location for this meeting, which is permissible pursuant to the Governor's order, the Town of Bedford is providing public access to the Zoom telephone and the meeting is also being broadcast live on BCTV's Channel 22. Members of the public or folks watching from home may email staff directly at Planning@bedfordnh.org and we will be monitoring this email account throughout the meeting. You may also participate and ask questions using the Zoom platform and the phone number for participating via Zoom is listed on the BCTV screen and members of the public can also be given instructions by emailing us at Planning@bedfordnh.org

All votes tonight will be taken as a roll call vote. If there are technological issues during the meeting, the Chair will recess the meeting first and we will try resolve any technical issues. If it has become apparent that the meeting cannot continue or if for some reason the meeting is discontinued due to technological issues, the applications will be postponed and the meeting will be adjourned immediately.

II. Old Business & Continued Hearings:

1. **ER Bedford, LLC c/o Encore Retail, LLC (Owner)** – Request for approval of a site plan and associated waiver requests, for the proposed Market & Main mixed-use development to include three additional buildings comprising 40,561 square-feet of retail uses, 20,046 square-feet of restaurant uses, a cinema with 11 screens (1800 seats), 200 upper level multi-family units, a 90-room hotel, and associated architectural and site changes at 125 South River Road, Lots 12-33, 12-33-1 and 12-33-2, Zoned PZ. *This application was continued from the June 22, 2020 Planning Board meeting.*

III. New Business:

2. **John L. Lang Revocable Trust (Owner)** – Request to amend a condition of subdivision approval granted by the Planning Board October 7, 2019, to eliminate a shared driveway and permit a new driveway design at 27 Old Mill Road, Lot 19-29, Zoned R&A.
3. **I & Q Enterprises, LLC (Owner)** – Request for approval of a Conditional Use Permit to allow six electronic readerboard signs over gasoline pump stations at 381 Boynton Street, Lot 44-23, Zoned HC.
4. **Mark Detscher (Owner)** – Request for approval of a site plan amendment to allow an outdoor retail sales and display area for an existing consignment shop at 400 Boynton Street, Lot 45-204, Zoned GR.

Mr. Connors stated Items 3 and 4 on the agenda have been requested to be postponed to a future Planning Board meeting. Item 3 is postponed to the August 17, 2020 meeting, and Item 4 is postponed to the August 3, 2020 meeting. Chairman Levenstein stated this notice will serve as public notice on these postponed applications.

Mr. Connors stated the applications being heard tonight have been reviewed by staff, and staff would recommend that the Planning Board find the applications to be complete. The abutters have been notified, and it is the opinion of staff that the applications do not pose a regional impact. The Board has already determined that the Market & Main application to be complete at the June 22, 2020 meeting. Staff would recommend that the Planning Board accept the agenda, and in so doing, adopt the staff recommendation that the Lang application is complete and it does not pose a regional impact.

MOTION by Vice Chairman Murphy to accept the agenda as amended. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried, with this

1. **ER Bedford, LLC c/o Encore Retail, LLC (Owner)** – Request for approval of a site plan and associated waiver requests, for the proposed Market & Main mixed-use development to include three additional buildings comprising 40,561 square-feet of

retail uses, 20,046 square-feet of restaurant uses, a cinema with 11 screens (1800 seats), 200 upper level multi-family units, a 90-room hotel, and associated architectural and site changes at 125 South River Road, Lots 12-33, 12-33-1 and 12-33-2, Zoned PZ. This application was continued from the June 22, 2020 Planning Board meeting.

Town Manager Sawyer recused himself from this application.

Chairman Levenstein stated the applicant will be completing their presentation that they started on that date, including presentation of all of the waiver requests. The applicant will complete their presentation with the exception of the traffic review, which will be reviewed by the Town's consultant VHB, and they will provide us with a report for the next meeting. We are planning on continuing this meeting until the August 3, 2020 meeting at which time the traffic will be reviewed and explained and we will vote on the application.

Attorney John Cronin of Cronin, Bisson and Zalinsky stated I am pleased to be able to continue this application this evening. With me here tonight in the room is Chris Rice of TF Moran, Terry Robinson of ER Bedford, LLC c/o Encore Retail, LLC, Bob Duval of TF Moran, and BJ Powers of Encore Retail, LLC. On the Zoom call we have Mark Fougere, who presented the economic impact statement last month, and also Joel Bargmann of BH & A Architects, who did the architectural designs and went through the layouts.

Attorney Cronin stated my plan for this evening, as initially stated by the Chairman, is to go through and pick up where we left off, we were going to talk about the waivers, discuss particularly the market rate housing waiver that we are seeking, and also address some of the questions that have percolated from the conceptual design review and some of the re-engineering, including why we don't believe workforce housing is appropriate for this particular site. Chris Rice is going to handle the multitude of the waivers and take you through them. Many of these waivers were already granted in the prior application. As you recall, this is an amendment to an existing site plan. There has been some discussion with staff; our perspective is some of those, and we would reserve the right to argue that those are vested based on the substantial construction that has been completed, both with The Friendly Toast and Trader Joe's. But for the purposes of this presentation and this plan, we have applied for them at the direction of the staff, we are going to present them fully, and we will expect you to vote on them, we just wanted to make it clear for the record that we are going to reserve our rights with respect to that issue. We know that traffic will be bound over to the next meeting, we certainly hope that we will have time this evening to take some questions from the Board and we can hopefully answer them to your satisfaction. If there is additional time left, we understand there may or may not be opportunity for public comment. If there is, where this is a large case, there has been a lot of discussion and a lot of time, I looked at my calendar today and it has been over a year since this amendment has been in the queue, and there has been a lot of effort with respect to conceptual design reviews and going back to the drawing board. If you recall, when this amendment first came in 290 apartments were proposed and that was scaled back substantially to where we are at today, and I think one of the important things to keep in mind that although the number is 200 residential units, you are looking at 74 2-bedroom units, which is relatively modest. There is a conflict with respect to the binder, and all of you should have a binder that we submitted weeks

ago with the 44 or so exhibits, at Tab 16 there is reference to 80 2-bedroom units, and that has since been scaled down.

I know it has been a month and there are probably going to be some questions that you have, so I am briefly going to go through some slides. I am not going to dwell on them or spend the time that we did the last time, but just to walk you through them so that you can see what we have done in the past and where we are at.

Attorney Cronin stated the posted slide describes the project. For those of you that go by this site frequently, we know it is a very busy thoroughfare and a corridor that connects people of Bedford and the system of public highways, including the interstate highways. We have Trader Joe's that seems to do a great business. Every time that I am there it seems to be a busy place. Carrabba's Italian Restaurant is out on a front pad and has been there for a significant amount of time, and The Friendly Toast restaurant is also enjoying success. There is a parking garage that is in place to support the Trader Joe's but will be part of the development as further development occurs. The proposal that is before you includes an 11-screen state-of-the-art cinema, and some of you may recall that during the process that went away for a while, mainly for the reason that cinemas tend to be lost leaders in that they pay very little rent and the cost to construct and maintain the cinema is more than it is with rent return, but they do provide an attraction to others that might want to situate in the community or in the complex. We heard loud and clear from many of the residents that they were disappointed that that cinema went away and the calls were to come back were listened to and answered. There is also a proposal here for the hotel and 200 luxury residences, which seems to be the crux of people's concerns.

Attorney Cronin stated this next slide gives you an overview of the site when it was the Macy's store. You can see that Macy's footprint and the sea of pavement there that represents the parking. Particularly look at the limited amount of green space both along South River Road and throughout that particular property. Also in your packet there is an overview, which we showed the last time, that shows you the former Macy's store as it existed until it was torn down.

Attorney Cronin stated the next slide is the proposal that Mr. Rice walked you through the last time. It shows the Trader Joe's and The Friendly Toast and the proposed buildings, including the cinema building, the parking garage, Building D residences with the amenities, and the hotel and restaurant site out back.

Attorney Cronin stated on the next slide is the parking management plan. Mr. Rice spent some time talking about this in the initial presentation, we won't rehash it, but he will be available to take questions on it. There is some disconnect, but I think maybe a difference of opinion as to how the waiver with respect to this looks. I know in your packet I provided you most of the details of the adjacent site that is now under construction, not only the waiver letter in the minutes, but also the waiver for the covered parking. This site is going to have substantial covered parking, and there was a call out for us to seek a waiver because it wasn't exclusive covered parking. My read of the ordinance and the regulations does not require the parking to be exclusive, and in a mixed-use development it would be consistent to have shared parking arrangements, but Mr. Rice can get into that in detail when he talks about the waivers.

Attorney Cronin stated the next slide shows some of the elevations that were done by Mr. Bargmann. He spent a length of time describing these, took you through what he had done to do the redesign and this was a work in progress from the beginning. I know when it started we got some feedback from the staff, who had some views of what they would like to see. Mr. Bargmann and his team continued to go back to the drawing board and try to make it better and more consistent with what was sought for this mixed-use development. One of the reasons the 2-bedrooms went down from 80 units to 74 is due to the roof detail to give that mansard type dormered look and they lost some space doing that. That is why that 2-bedroom count was reduced. You can see the elevation of the Regal Cinema. There is going to be a waiver request, again, previously granted for those lights, which are a requirement of Regal and a feature that they see to situate at this location. Mr. Rice will talk about that in more detail. The next slide shows more elevations that Mr. Bargmann talked about, what he was trying to accomplish. It gives you the angled view looking up Main Street so that you can see the proximity of the cinema to the other lower level shops. The next slide shows more elevations just an effort to refresh your memory but not going into a lot of detail about what was discussed. There is in the subscript in the lower left corner you can see the layout of the buildings there, which shows you basically from a 2-dimensional view or 1-dimensional overhead view, where you can see the layout of the buildings, the connection to them and the overhead garage. At one of our earlier communications one person, I won't say criticized me in particular for not making note of it, but when you look at Building D, there is an entrance access on Main Street and that will connect readily to the parking garage. When he first looked at it he was concerned about how the folks living in Building D were going to get to the parking garage, so that was a point well noted for us that we needed to highlight that entrance and the accessibility to the parking structure. In the next slide you get more elevations. Mr. Bargmann is here on the line with us, so when we get to the discussion phase, he will be able to answer any of your questions.

Attorney Cronin stated with the next slide shows how the parking garage looks, its façade and how it will look from the I-293 when approaching the Bedford interchange. The next slide shows the hotel building that is superimposed or shadowed.

Attorney Cronin stated the next slide is another waiver issue. It gives you the proximity of The Friendly Toast and the cinema. Mr. Rice may refer to that in his waiver discussion, and at this point we will turn it over to Mr. Rice so he can talk to you substantively about the waiver requests other than the market rate housing request.

Mr. Rice stated as Attorney Cronin mentioned, there are a number of dimensional waivers that are being requested as part of the site plan application, along with a use waiver request. With the exception of the use waiver, which Attorney Cronin will address shortly, most of the requested dimensional waivers are similar to waiver requests that were previously requested and granted during the original approval back in September of 2016. To the best of my knowledge the waivers requested this evening are equal to or less non-conforming than what was previously approved, and I intend to go through in the order of the staff report just for consistency and clarity.

Mr. Rice stated the first one is a waiver request from Article 275-62A Table 3. For impervious coverage 75 percent is permitted. The original Macy's site was at 86 percent impervious and the

prior approved plan was 84 percent impervious. What we are requesting now is 82 percent impervious, and the two yellow boxes on the lower right are just to give you an idea of what that equates to. The smaller box at the top represented 2 percent of open space. That yellow box at the top is the amount of impervious coverage that we have removed from the site from what was previously approved to now. The larger box at the bottom represents the difference of impervious coverage that has been removed when you compare today's proposed plan to the original Macy's. You can see that that box takes up a decent amount of that usable land in that area. Again, this is the amount of impervious that has been reduced from the original Macy's plan, and, again, the upper box is what has been reduced from the prior approved plan from 2016.

Mr. Rice stated the next three waiver requests on the next slide are all tied to Article 275-62A Table 3, which have to deal with building setbacks. The area that is shaded in red is the portion of the building that does not meet the desired front yard setback, and the front yard setback in that area is dictated by the limit of the Upjohn Street right-of-way, which terminates just beyond the Carrabba's building. Again, that yellow line that you can see is the required 60-foot front yard setback, and, again, the red is the portion of the building that does not comply with that. We provided 34 feet in this area. It is important to note that the prior approved plan had a waiver request for 20.7 feet, so we have provided an additional 13.3 feet from the edge of the Upjohn Street right-of-way to the proposed building when you compare it to the prior approved plan. Again, this only affects, as you can see, a very small corner of the building and it is really because the right-of-way of Upjohn Street terminates in that area. I think the intent of the front setback is met if you are going to compare it to South River Road. That corner of the building is approximately 340 feet from the closest edge of pavement on South River Road.

Mr. Rice stated this slide is for the request for the rear setback of Building F. The rear setback requirement is 55 feet and we have proposed 48 feet. All of the building complies except for that one little sliver in the upper right corner of that building. We feel this is a reasonable request as most of the building complies and this side of the building abuts the I-293 off ramp. This building here is approximately a little over 100 feet from the closest edge of pavement of the I-293 off ramp.

Mr. Rice stated going to the slide of the Building C parking garage; this is the third structure setback request and this has to do with the parking structure that is associated with Building C. This waiver was also previously granted, although the waiver ran a little bit further down the page, approximately to where the page cuts off at this point. Twenty feet is required along that side, we had originally requested and had obtained a setback reduction to 4 feet, and then back in February of 2019 we went back to the Board and received approval for a 3.5-foot setback. We felt this was a reasonable request given that it was previously approved. The length of the waiver request has shortened and we abut another commercial use. This area off to the side is the Whole Foods loading area and there are no public doors or windows within several hundred feet of that location.

Mr. Rice stated the next slide and waiver request is from Article 275-69, which specifies that light trespass shall not exceed 0.1 foot candles at the property line. On the left-hand side of this sheet highlighted in yellow is where that exceedance takes place. We slightly exceed along the

Whole Foods side, but, again, this is where the access drive connection is between our property and Whole Foods so we feel it is not a bad area to have a little bit of extra light. Beyond that, and going to the next slide, the only other area where we have some light spillover is on the back side that faces I-293. We have a little bit of spillover over that property line, but, again, the edge of pavement is approximately 45 – 50 feet from that property line; it is 100 feet from Building D, as previously stated. The only other location just along this side of the property line, that dashed blue line represents the drive aisle entrance and exit for the adjacent daycare facility, and they have two existing lights along that property line as well but we do have a slight exceedance above 0.1 foot candles in that area. Again, we feel it is reasonable given that it provides some extra safety lighting for their access drive as well as our parking area.

Mr. Rice stated going back to slide 12, this is for Waiver #6 that is mentioned in the staff report, which is from Article 275-69, which is to allow uplighting in the form of LED light strips on Building C as part of the cinema façade. This waiver was previously granted in September of 2016; we feel it is reasonable as the light strips are an architectural feature that does not create measurable light levels onsite or spillover. The lights are predominantly to enhance the appearance of the building façade and not to provide onsite lighting. In prior discussions it was pointed out that these lights help identify this as a cinema/entertainment use, which does remain true. It was approved on this basis originally and the cinema use location and building size and shape have substantially remained the same from the original approval.

Mr. Rice stated going back to slide 17. This is Waiver #7, which is from Article 275-63E Parts 2 and 3, for the street tree and front landscape strips. This is to permit a street tree and front landscape strip that is narrower than the 30 feet that is required. Basically, what I have highlighted here is the only area onsite that does not comply with that requirement. This includes the sidewalk, and a crosswalk connection from the Upjohn Street sidewalk that was installed through the rest of the property. Again, this is very similar to what was previously approved in this area. That is the only location that does not comply and this is kind of a unique situation given that the right-of-way for Upjohn Street comes into the site and terminates at that location. We do meet it in the front around all of Carrabba's and planted trees where we were able to along Trader Joe's frontage.

Mr. Rice stated the next slide shows the waiver request, which is Waiver #8 from the staff memo, which is from Article 275-63E Parts 4 and 5, which have to deal with the side and rear landscape strips, as well as the exterior pavement landscape strip. Again, this was also previously granted. The only new part of this waiver request is the little piece on the left-hand side. The side and rear required landscape strips are half the building height or a minimum of 10 feet, and that little section of sidewalk that I have highlighted in blue does encroach into that 10-foot side yard setback, however, beyond that point to the north is an existing vegetative wetland area, so there is no real buffer setback that is required in that specific area. Then over to the right-hand side going around the external edge of pavement, you can see where I have highlighted in blue the area that doesn't meet the rear setback and then the area in red is the additional 15 feet beyond that for the exterior pavement setback. The ordinance does note that the exterior pavement landscape strip can be waived if you immediately abut a side and rear landscape strip, which we obviously do in this case, but I just wanted to point out that if you were to meet both, what that would look like. This edge of pavement in both locations is the

same as what was originally approved, and the retaining wall that is shown along the I-293 off ramp has already been installed. So everything is pretty well the same for this particular waiver request as compared to the prior plan. The only portion that we did need to bring up is that there is a requirement that the planting heights at the time of planting need to be half the building height. This isn't really practical for the garage attached to Building C and for Building F. Given the height of those buildings, this would mean that the plants at the time of planting would need to be 33 feet high for Building C and 28 feet for Building F, which is not practical. I believe that the staff report recommends a larger caliper size to make up for this difference.

Mr. Rice stated the next slide is for Waiver #9, which is the use waiver request, which Attorney Cronin will get into shortly. I just wanted to clearly show a plan where the market rate apartments will fall in relative to the rest of the site. In orange are the apartments associated with Building C, floors 2 – 5 and in green are the apartment units associated with Building D, floors 2 – 5.

Mr. Rice stated this slide is in regard to Waiver #10 from the staff report, which is a waiver request from Section 322.2.1 of the Land Development Control Regulations, which deals with off-street parking requirements. We feel we meet this requirement. Staff had asked us to ask for the waiver just in case because they were not sure if a covered space needed to be dedicated. We didn't see anything in the regulations that stated that, however, basically per the requirements, given we have 200 residential units, we would be required to have 200 covered parking spaces onsite. The areas that I have highlighted in yellow is the grand total onsite which is 582 covered spaces, and which includes the parking garage, the ground level at Building C, and we also have 66 covered parking spaces down by the Trader Joe's garage, and 12 covered parking spaces up by Building F. So we exceed the covered space requirement by a little over 2.5 times, but, again, we have not dedicated any parking spaces. It is important to note that the shared parking analysis shows that at any one point in time there are in excess of 200 covered spaces available for the residential use, and we intend to manage the parking with directional signage as needed to guide people to the parking areas as we had shown on the parking management plan.

Mr. Rice stated on the next slide the two areas indicated highlight Waivers #11 and #12 from the staff report, which are from Section 327.2.1 of the Land Development Control Regulations, which specifies that dumpsters need to be 30 feet from a property line. What Mr. Connors has zoomed in on I have highlighted, the 30-foot mark that is a dashed blue line; the dumpster from Building C falls inside of that, where we are 3.5 feet off the property line in that location. However, as previously noted, this is adjacent to the Whole Foods loading area, and, again, there are no windows or public doors within a couple of hundred feet of that area, and we have tried to provide the dumpster in close proximity to the Building C residential lobby. We will also adequately screen that dumpster as necessary. Then going to the other side of the slide, this waiver request is kind of necessitated by the odd arrangement of the Upjohn Street right-of-way. There is a 30-foot setback off the end of Upjohn Street for the dumpster requirement. The dumpster for Building D in that location is approximately 22 feet off from the property line, so only a portion of the dumpster doesn't meet that requirement. There is a retaining wall separating the parking area from that dumpster location so it is screened by both a retaining wall as well as a proposed dumpster enclosure.

Mr. Rice stated the final waiver request for Waivers #13 and #14 have to deal with the existing conditions plans. They are checklist items from Section 317.1.10 of the Land Development Control Regulations and Appendix B checklist items. This basically states that we are required to show existing conditions for physical features, infrastructure, grading, etc. At the time when we first submitted these updated plans, we had included the prior existing conditions that was submitted as part of the original application. As you know, since that time Trader Joe's and The Friendly Toast has been constructed as well as a majority of the site infrastructure, all of the drainage facilities, etc. Since that time we have gone out and as-built the physical features onsite, we have added the infrastructure that has been installed, including the utilities to the existing conditions plan, however we are still requesting a waiver to not show the topography at this time because it is in kind of a mid-construction phase. We did do enough as-built shots of the grading to compare what has been constructed to the prior design plans and they all substantially match, so there is no concern from the grading. The last part of the waiver request has to deal with showing SCS swales on the existing conditions plan. We requested a waiver from this because we have shown that information on other sheets within the plan set, and that is really used to help facilitate the drainage design, which at this time has already been reviewed, approved and installed for the original approved plans. And those plans were for more impervious coverage than what is currently being proposed, so the drainage system that is in place now is a little bit over-designed for what it would be used for should this plan be approved. I will turn it over to Attorney Cronin for the use waiver.

Attorney Cronin stated if I could direct everyone's attention to Tab 3 in the binder. I want to establish some foundation for the discussion in this particular segment. I included this readily available document, it is a 2020 date, I think it is important, and it talks about the population. About three pages in it talks about the total number of housing units of 8,003 with 7,100 of those being single family units. So it is predominantly a single family community in Bedford. We know that; I don't think that comes as any surprise to anyone, but I just thought that it was important to get some of that data in the record.

Attorney Cronin continued as far as other foundation, we have included in the package, if you go to Tab 11, the apartment project that is under construction that is visible to everyone traveling and making some progress over there, which is the HIR Realty, LLC. It is rare when you are doing this type of work that you have what I refer to as a comp within a stone's throw away. That shows you the plan of that particular site. That site was granted a waiver for market rate housing, there wasn't too much debate about it in the record that I could see in terms of the minutes. There was some discussion from the outset of that particular property to the end of its approval about the number of units seemed to go up and down and shifted somewhat, but the waiver was granted unanimously. I have included the actual waiver request for that particular project from July 5, 2017, and I put it in there just to show the simplicity of it. We were asked to submit a more comprehensive waiver request, which we willingly did, and I know there has been a lot of discussion about that here, but I just wanted to get that on the record so people could take a look at it. Also in the minutes for your eyes, you don't have to take my word for it, but there are the minutes of the discussion there with respect to the waiver that was granted and the final approval. At Tab 14 there are some photographs of that project under construction, and I believe sections of it are five stories that taper to four, and although I can't verify it, I heard that some

input was mentioned by the Board to try and make that design compatible with what the proposed construction and buildings were going to look like over at Market & Main.

Attorney Cronin stated in terms of the unit mix, which is at Tab 16. As I told you initially, there were 80 2-bedroom units but that shifted downward to 74 units. That was due to some of the architectural redesign. The balance of them would be 1-bedrooms and studios. That design was put into place in part because of the outcry that we heard in the process about impacts on schools, the thought being that fewer 2-bedroom units would put less impact on the schools, and as Mark Fougere explained in his economic impact statement, that the school impacts here will be marginal for a project of this particular size.

Attorney Cronin stated I would like to take you for a moment to Tab 24, which is the zoning map. I put that in there because one of the things that I think is important for you to evaluate and consider when you look at this waiver, not only that right next door you granted one with little debate or hesitation, is also the lack of opportunity for market rate housing in the community of Bedford. We took a look at the zoning map and there is limited space in that zone that allows market rate, multi-family units, and when you take a closer look at it, those particular land parcels are built out and have been for some time. You have Village Green in the apartment residential zone, as one of the projects, and I put some photographs of some of the different projects in there from 2006, which includes the Rose Hill project, which I believe is a fee simple condominium, Village Green is one and the other one is Ridgewood. Are those apartment/residential? I think most of them are developed with condominiums and you really can't find a spot to build a market rate project. I think that is probably why the prior board looked at this waiver without too much debate.

Attorney Cronin continued I would like to turn your attention for a moment to Page 32. I have included in here provisions from the 2012 ordinance with respect to the Performance Zoning District, and I just wanted to make sure that we had a flavor of why this particular zone was created. Historically we would draft zoning ordinances and put the houses in one section of the town, we would put industrial in another place, and then commercial, the pig farm somewhere where they wouldn't bother those particular uses, and as development became more innovative, we were struggling to try and fit people into the Table of Uses as to where they would fit. The result is either they couldn't do the project, maybe losing valuable tax revenue for the Town, or they had to go through a variance process and meet a pretty rigid set of standards to get a variance. So the Town smartly, I think, was a leader in this particular type of zoning to create performance zone. I know many other towns followed suit. That is Page 32 of the binder, and I am going to read it: 'This Article 8 is enacted by the Town of Bedford pursuant to RSA 674:21. This innovative land use control shall provide for all approvals, including the granting of conditional or special use permits by the Planning Board. Any decision made by the Planning Board under this innovative land use control ordinance may be appealed directly to Superior Court in the same manner provided by statute for appeals from the Planning Board as set forth in the statutes. A waiver process for particular requirements set forth in Article 8 may be employed by the Planning Board if the applicants demonstrate substantial compliance with the standard set forth in Articles 8, 275-58 Purpose, Sections A – B.' So there is a little bit of a different standard at least contemplated in 2012 for the Performance Zone, and I think that is consistent with the intent, which is at the next subsection. 'Conventional zoning may produce its own set of

undesirable side effects. As design and technology continually change in the market place, new types of land uses are proposed, which cannot be easily assigned to existing zoning classifications.’ I am going to take a break right there because if you look at the Table of Uses, you can’t find anything like what is being proposed here in the Table of Uses. What you can find is a trucking terminal is allowed on this site, adult entertainment is allowed on this site, warehouses are allowed on this site, but you can’t find anything anywhere in the Town where mixed-use development would be allowed. The ordinance also states: ‘Too often innovative land developments are either denied outright resulting in a loss of tax revenue to the municipality.’ And you were right Mr. Fougere, this is definitely a tax positive proposal. I don’t think there was much opposition to that, and he got consensus from the department heads that he dealt with. I think the range was in the \$500,000 to \$750,000 per year amount. So where it says: ‘Appeal to the Zoning Board of Adjustment where special conditions are opposed or subject to a lengthy rezoning procedures.’ That reiterates what I said earlier. ‘Performance standards measure the quantifiable impacts of each proposed development rather than prohibiting certain classes of land use.’ I am going to read that again because I think it is really important. ‘Performance standards measure the quantifiable impacts of each proposed development rather than prohibiting certain classes of land use.’ If you go down to the purpose section, and I will note that this was amended in 2012 and there have been recent amendments with respect to housing in the Performance Zone that we will talk about in a minute. ‘The purposes of this Performance Zoning district when it was adopted was to attract environmentally acceptable commercial, industrial, recreation, institutional, and residential uses to the district. To encourage diversity in the community tax base through appropriate flexibility and land use and land development. To optimize financial return on public infrastructure, investments and expenditures, including the municipal sewer, municipal supply, Manchester airport, Class I and II public highways, and the Merrimack River amenities. To minimize adverse traffic impacts on Route 3, I-293, Route 101 interchange, and surrounding local streets and roadways.’ We know that Mr. Duval and his team and Robin Barousa of VHB, working for the Town, will be speaking next month, and we believe that they will have a consensus that the impact from this amended plan are less than the originally approved plan. And finally, ‘To preserve valuable historical, cultural, and natural features within the district and to minimize adverse environmental impacts, such as water, air, light, noise pollution, flooding, clear cutting of vegetation, and the blocking of scenic views.’

Attorney Cronin continued I will add that this particular area also sits in what we call the TIFF District. This district was not established by the developers or the engineers, this was developed by the people in Bedford in our about 2012. I have put the minutes of that approval in your packages so that you can see it for yourself. What is the TIFF District? It is an area from the Manchester/Bedford line up on South River Road where it connects to Second Street, and follows to the overpass of Route 101. And why did the Town impact the TIFF District? Because they wanted maximum tax revenue and maximum development and maximum density. That is exactly where this particular property sits.

Attorney Cronin stated if you look at Tab 33, this is a zoning amendment that was proposed and it is Amendment #3. It is the River Corridor Ordinance. The River Corridor Ordinance is on your books, it was voted in by the people overwhelmingly back in 2012, and although it is printed in the ordinance the information we received is that it is not applicable because in the

eight years since its passage, no rules have been adopted. Now that remains a mystery to me, but if you look at the River Corridor Ordinance, the Smart Growth District and you look at that and the excerpts are included in Tab 34, that is exactly what is being proposed on this particular site. As you look at the excerpts, it talks about fostering different types of development, mixed-use development, shared parking plans, higher density, innovative mixed-use development along the river corridor that creates housing opportunities for all age groups and income levels in combination with non-residential uses in order to promote efficient land use. I will also note on an earlier master plan in this particular parcel there was a mixed-use development that was identified as what we want for the future. Believe it or not, on this particular site there were 200 residential units proposed in a mixed-use residential over retail development. There was also additional townhouses and other types of development that were proposed. So this is very consistent, at least with what the people in Bedford were thinking about in 2012.

Attorney Cronin stated in terms of our waiver. I sent a pretty detailed letter with respect to why we thought the waiver was required. If you look at the principals of the waiver request, we meet each and every one of them. I have detailed for you in a lengthy letter, it is a 2-page letter with six different pieces. I am not going to read it verbatim, but as we get to the next part, I think this Board can take notice of the fact that we have a drastic housing crisis here in New Hampshire, particularly central New Hampshire, the greater Manchester area where Bedford sits. Our planners, our economists, our community development folks, they go out and try and bring new employers to town. We have Army, which is an innovative user in the mill yard. You have the folks in Nashua, the former Sanders that are coming up to the Old Home Insurance on Goffes Falls Road and building an elaborate campus, we have two hospitals in town that are begging to bring some talented people to this area to work and to live and they all need housing. When you look at the standards for the housing and say we are not going to allow housing on this particular site, not only do we believe that it is contrary to your ordinances, we believe it is contrary to the law in the State of New Hampshire. The reason that we are saying that there is no housing allowed here is because of more recent amendments in which housing was taken out and workforce housing was placed in. I am going to talk a little bit about workforce housing in a few minutes. But if you study what happened there and you studied the zoning map, you will see that this was a clever attempt by some folks that proposed this amendment, and I will note that each one of these was opposed by the Planning Board. Nevertheless, the Town adopted it; and what it did it took workforce housing out of some zones and in the Bow Lane project we heard a lot of people saying you shouldn't have workforce housing so close to the school, you shouldn't have workforce housing so close to the downtown area, you should have it over by South River Road in that area. While the proponents of the ordinance drafted and said we are going to put workforce housing in the Performance Zone, and that sounds great, until you look at the conditions of which were adopted. The conditions are if you have frontage on Route 3, South River Road, or the FE Everett Turnpike, you are excluded, so housing is taken completely away. So if you look at that map and analyze every single piece of property there, there are very few, if any, that are suitable for workforce housing. That is the type of things that people look at when they see it and cause them grave concern. So essentially we have apartment residential excluded out by zoning, no parcels available and we have suggested the Performance Zone where workforce housing opportunities look to be available on their face but they are really not, they are really not there at all. And I know some people along the way have said apartments are not what we want in Bedford, it is inconsistent with what we want in Bedford, it is consistent with

the urbanization of Bedford. As I have noted in the materials, in New Hampshire, towns are really subdivisions of the state. We have a 1 percent vacancy rate here in 2019, we have desperate need for housing, and if you look at that statewide, you will see at Tab 36, I have put the residential survey in there, which will show you the vacancy rates and the real struggle that we are having with respect to housing. So I think that we meet each and every one of the criteria for a waiver, particularly the waiver standards in this particular zone, and not just because you granted it at the property next door, because we believe it is the right thing to do.

Attorney Cronin continued with respect to workforce housing, we need to address it, it was talked about at length during some of the prior meeting. There were comments from some that they wanted workforce housing, there comments from others that they didn't want workforce housing, there were comments from yet additional people that said they wouldn't support a project without workforce housing. So first off, this project does not qualify for workforce housing. The statute requests that you have at least 50 percent or more 2-bedroom units. This one does not, so it is dead on arrival. It is not eligible to be workforce housing. Secondly, workforce housing was not designed to be a mandate or a rent control technique like you might find in New York. It was designed to incentivize developers to try and include additional affordable rental and sale units, and the incentive was to give them additional density over what they might be allowed in the standard course, so we will give you a lot more units to build if you set aside some for workforce housing. Some communities have supported that with 79-E legislation, where they become a partner in that by writing taxes off for as long as seven years. Other communities have said we want workforce housing, maybe we should get into the mix and do some funding. I don't think that has happened in Bedford, maybe it has, but I am not aware of it, but to the extent you want workforce housing, it is not sustainable, it is not consistent and it doesn't work in this project. If you look at the attachment that I provided in your binders, Tab 39, I provided a narrative, which I tried to address some of the questions and concerns about workforce housing. And when you look at the numbers, which is on Page 2, your assessor is saying the market value of a finished unit is \$172,000 per unit. When you are looking at rents in the marketplace in the \$2,000 range, based on Bedford's location and the Manchester regional market, the max rent that you can get is \$1,130 per month including utilities for a 2-bedroom. When you back off the utilities, about \$150 per month, you get to \$980 net rent. When you do the math based on the annual losses over the period of ownership and you cap it at a modest 7 percent cap rate, you are looking at about a \$13 million discrepancy. I wouldn't expect anyone here that has a home that might rent for \$3,000 or \$4,000 to rent it for \$2,000. I don't think you can expect this from the developer here that has incurred astronomical costs for offsite improvements. He has done a lot of work that has been completed, including, the work that is creating that lane up at Meeting House Road that is going to be a big advantage, they have paid substantial impact fees, they have committed to a loss leader in a cinema to be on this site, and they have been working really hard over a number of years to try and make this a first class mixed-use destination. Workforce housing is great, there are opportunities for it, I know the Bow Lane project was approved, we have the Copper Door project, and I understand there is another one in south Bedford that may be coming before you with a workforce housing component, but if you want mixed-use development and you want first class retail and commercial tenants, it is just inconsistent. It is not allowed in this zone anyway, so we don't have a waiver, but I know some folks have asked why not workforce housing and I think you deserved a response to that.

Attorney Cronin stated that concludes my comments with respect to the housing waiver and to the workforce housing. I will check with my colleagues to see if there is anything I missed. In the presentation file included some things that are in here, that you have, and I ask you to analyze between the next meeting when you vote, and you will see with that workforce housing what those exclusionary terms do. I did put some cases in there, which we can talk about. Briton vs. Chester is a seminal case here in New Hampshire, where Chester tried to exclude housing from its community. They didn't think that it was appropriate; that case is still a good law here in New Hampshire. We hope we don't get to that issue; we are asking you to look favorably on the waiver, and we are asking you to look at the facts in this case, look at what we are trying to accomplish, and come to the conclusion that workforce housing is not appropriate. Thank you.

Chairman Levenstein asked have you anything more, Attorney Cronin? Attorney Cronin replied I think we have covered all of the bases other than traffic. We are happy to entertain any questions.

Chairman Levenstein stated I will ask each Board member if they have any questions. Mr. Newberry stated I don't have any questions at this point. Mr. McMahon stated not at this point. I assume we will be able to ask questions at the next meeting. Councilor Duschatko stated I would like to reserve my time for questions for the next meeting. Vice Chairman Murphy stated I have no questions at this time. Mr. Foote stated no questions at this time. Ms. Malcolm stated no questions at this time. Mr. Clough stated no questions at this time. Mr. Sullivan stated I will wait until the next meeting for questions. Mr. Quintal stated no questions at this time.

Chairman Levenstein stated we now go to the public for questions or comments. Ms. Hebert stated if someone has joined the meeting and you would like to speak, please raise your hand. If you have joined by phone, you press *9 and it will do the same thing. If you are having issues raising your hand with the Zoom platform, you can just physically raise your hand. We have a lot of people on the call and I can't see you all on one screen, and I will scroll down and make sure to get to you. Chairman Levenstein stated questions can be about anything that was discussed at the first meeting last month or at this meeting. We will also be taking questions at the next meeting. I would like to limit those to traffic so that we don't go through everything all over again and get repeated questions and comments.

Tom Sullivan, 39 Pilgrim Drive, stated I would like to speak on behalf of the project. Our family has been very involved in development in Bedford over the last 50 years, and we have developed lots of projects, including Ridgewood Road, the apartments congregate living Briston Manor, Pine Village, and also the nursing home on Ridgewood Road. During that time there was a lot of controversy about each of these different projects, and the Ridgewood Road project actually took 7 years for it to get approval, and the thing that I am proud of and one of the reasons that I am very supportive of the project is because of the different types of housing that we now have in our community that are open to all different types of people that can afford all different types of housing. It has given a great benefit to the community, and some of these different projects really took many years to get community approval. I think the financial aspect of the projects also add a lot of credence to its approval and the additional monies that Market & Main folks have mentioned from \$500,000 to \$750,000 a year. That will benefit the community and I am

always in favor of that, of getting additional funds and maximizing our tax base. I just wanted to voice my support of the project, and I am hoping that in two weeks when it comes back for a vote that you are able to support it. Thank you.

Kathy Shartzter, 7 Roblin Road, stated I actually have a question that goes back to the last meeting and it has to do with the green space. Except for the green space that is in front of The Friendly Toast, the green space is really on both sides of the hotel but the hotel always just seems to be like ghosted in and not part of the development. Is the green space being developed with the rest of the development now or does that green space wait for the hotel? I am just confused about it. Mr. Rice responded the intent at this time would be that the open space would be built as part of the Phase 2 construction, which would include essentially everything but the hotel building itself. The pavement in that area is pretty much all in place, I believe, or the outer limits are pretty much there, so the open space and the parks would be constructed as part of the residential construction. The hotel is really the third phase, a later phase, after the reset of the project is built, but the hotel is the last piece to be constructed but that will be after Building C, Building D, Building F, and the parking structure are built. All the green space and the dog park, pool areas, the gazebo, reflecting pool, would all be constructed during this next phase should it get approved.

Ms. Shartzter asked could you just tell me the time difference between Phase 2 and Phase 3, and what would that green space look like if it then becomes next to a construction site? Mr. Rice responded I don't know that there is a timeframe associated with the hotel. The intent would be that those green spaces areas are completely constructed per plan and that they would then protect those areas during construction for the hotel phase. Ms. Shartzter asked not at the last meeting when they didn't take questions, but whenever we last saw you in person, I specifically asked about thinking about green space with the idea that there will be some children around. I still don't see this green space, any of it, that is conducive to younger folks. I hope that this development ends up being vibrant for all ages. Your green space is sort of tending to the older folks. Is that your intention? Mr. Rice replied I don't think that is our intention, I think we have provided areas like a rather large dog park, seating area, we have the existing The Friendly Toast green area, and then we have the pool area that is completely blocked off around Building D, and then we also have the reflecting pool and the gazebo to the side of Building F and the hotel. Families can use the restaurants, the cinemas, all the retail spaces. Attorney Cronin stated I can add to that. All are welcome, there is nobody that is excluded from living here. Like some of the experts say that with amenities and with green space, that is something you can see with your eyes, and there will be people that really want a rural or more green space environment that may choose to live elsewhere. Keep in the mind the unit mix here is slanted heavily to 1-bedrooms and to studios, so as far as having a dominance of families there, I don't see that that is going to happen. Ms. Shartzter responded I guess I was thinking more young people, young adults. Maybe a basketball hoop somewhere or something, I am thinking 20-year olds. I don't know; I just don't see them sitting in a gazebo. Attorney Cronin stated I think the young adults will be looking for maybe a place that has good food and a happy hour. Ms. Shartzter stated I just think some outdoor activities geared towards that younger crowd would be nice. Attorney Cronin stated there is a walking trail that is going to connect to the other development that is around the perimeter of the property. I know there are great hiking opportunities around this state and envy all of those folks that in my world that have done all of the peaks and move around, but for

someone that wanted to take a stroll, there is an ability to do that right on the site without touching your car and plenty of great places to stop along the way. Mr. Robinson wanted me to add the courtyard in Building C. Mr. Rice stated and just to add to that, there is also an arcade that is associated with the cinema. I know that is not exterior, I am just pointing it out as an amenity that is more geared towards the younger crowd. Ms. Shartzter stated I guess I just disagree, but I am grateful that you are listening to my comments.

Mr. Fairman stated I do have a question that is relative to the hotel. Because of one of the outcomes of the pandemic is that business travel is going to greatly be reduced long term, not just in the short term. Airlines are laying off thousands, car rental places are selling their cars and not buying new ones, and they see it coming. I have read that because of business travel, hotels depend on business travelers, they expect thousands across this country to close in the next five years. I am just wondering is this hotel real or should we expect you to come back in the future sometime and say because the market has changed for hotels, you are now going to want to build something. Where this really comes in is that a hotel and the restaurant in the hotel is \$126,000 or \$127,000 of tax revenue, so it makes a big difference in the fiscal analysis. The other thing that makes a big difference in the fiscal analysis is that the existing facilities that you have included, which we already are getting taxes and we are going to get taxes whether or not we approve this. So the real point of all of this is that why doesn't your fiscal analysis match what you are asking us to approve. You are not really asking us to approve a hotel at this point, and I understand it is part of a site plan, but you are not giving us any architecture or anything along those lines. Those are my questions about the hotel and the fiscal analysis. I don't see that that is your order. There are other issues I have with Table 2 but I won't bring those up tonight. Attorney Cronin stated those are good questions, and I will try to respond to them. In January of this year I don't think anyone would anticipate what happened with Covid, and I think to say what is going to happen in the future is equally uncertain. I know that Encore's hospitality group, because we talked to them, they believe that hotels are going to come back. If anyone did any traveling around New Hampshire this weekend and happened to be in the lakes region or the mountains, you saw scores of people that are flooding New Hampshire, people leaving urban areas to get to New Hampshire, and we a lot of new jobs created here. You also see a couple of hotels that are under construction, so we believe that that is a reality, that it is going to forward and that is going to get built out. Even if you don't consider it, it is still a revenue positive project. Mr. Fairman stated I agree, and it is a significant revenue positive even without the hotel. It is a significant contributor to our tax base. Thank you very much.

Michelle Palys, 7 Rockingham Court, stated as a realtor one of my biggest concerns is when I hear the price tag on these rentals, where are these people coming from that are going to pay these amounts. I have heard them starting at upwards of \$2,000 a month, heading close to \$3,000 a month, and in this conversation tonight it was alluded to that people were renting smaller units for \$3,000 and \$4,000 a month, which is incorrect. I was wondering if I could share some actual MLS information with the Planning Board with a screen share for a quick view because I brought it up on my screen. I am seeing rents much lower. And that is my biggest concern because when you start to talk about putting rentals along the highway in a place where there is not a lot to do, obviously it is in a place where there is some retail stuff, but it just doesn't make sense to me because we are not a Woburn, we are not an off the highway place like some of the developments that are done in Massachusetts very well. I am summering at Lake

Winnepesaukee and I own hospitality up in the White Mountains, and yes, those places are busy, but people want deals. People do leave places like Bedford to go vacation in the White Mountains and the lakes region that pay a little bit more but they are not vacationing in Bedford off from the highway, so the hotel piece was just new to me that I am hearing now.

Ms. Palys continued my concern is the market rate. Could I please ask what the market rates are, again, for the 2-bedroom, the 1-bedroom and the studio? Attorney Cronin replied they are going to range from \$1,750 to \$2,400. Ms. Palys stated okay, so you guys have changed those prices since maybe the March or February meeting. Attorney Cronin stated no; I think what you heard me say was I wouldn't expect somebody to rent a \$4,000 house for \$2,000, and that may be have been confusing. We talk that there might be some projections up around \$2,600 at some of the earlier meetings. Encore Group has a residential division that is very large and they have done extensive market studies of this particular area. I don't know what apartments that you deal with, or if you are a leasing agent or a listing agent or selling agent, but if you go to Mill West or you go to the old bank down on Elm Street, I think you would be surprised to see that many of those units rent in excess of \$2,000 per month, and we are not talking about brand new buildings with a mixed-use opportunity here. So the good news is in zoning and planning we are not asking the government to take the investment risk with us, that is going to be Encore's and Encore's alone. Ms. Palys stated could I just get market rent. You are saying \$1,700 for a studio, which is how many square feet. Attorney Cronin replied they will be different. There are different sizes of studios based on where they are located in the buildings. Ms. Palys asked what is the range of those square footages? Attorney Cronin replied we can provide that information to you, but I don't really think it is relevant to the discussion that we have here. Ms. Palys asked what is the price of the 1-bedroom units? It is relevant actually; that was my question. Attorney Cronin stated there are different sizes and different locations. The market is going to determine what these things rent for, so to sit here and say a specific one is going to rent for that, I would just prefer to stick to the range. Ms. Hebert asked is the range per apartment unit sizes, based on the bedrooms? I think that might be in the narrative. Attorney Cronin responded we will stick with the range between now and the time that it gets built, it could be very different than it is now, but these are the projections of what we are making based on the market studies. Ms. Hebert asked for the unit sizes? Attorney Cronin responded Ms. Hebert, there has been no specifics that we have. For example, Heritage on the Merrimack, is \$2,000 for a 2-bedroom. We would expect this to command a premium over that and it is a different type of product that we don't see in Bedford or Manchester, so we are really bullish on it, and when we look around the region and the country, we see these mixed-use type of developments doing really well in the housing component. Mr. Robinson may be able to supplement that response. Mr. Robinson stated I just want to add one comment. As most of you know, we have been here for 4+ years and Encore has a multi-family group that has done this in many locations and we have done our homework. We have market studies and we are not taking this lightly. I can assure you that we have the studies and due diligence done to back up what we are asking for here.

Ms. Palys stated when you bring up the pricing, and I have been to all of the meetings in the past, since October, I am just trying to clarify what the studio size is and rent, 1-bedroom and 2-bedroom. What is the maximum square footage that you are going to have in a 2-bedroom? Attorney Cronin asked can you explain to me what the point is. Why is this important to you? Ms. Palys replied when you are talking about high priced residences in Bedford, it is good for the

Town to know what we are looking at as well, and there are many from the town on this call, and there were higher prices in the beginning that I heard, so the prices have come down a little bit, and I am in real estate and I have that interest to understand what is going on and I think it is good for all of us to know. I don't think it should be some big secrete; I am just asking the question. Mr. Bargmann stated 1-bedroom apartments are 720 – 780 square feet and the 2-bedroom are 1,050 square feet. Ms. Palys stated and that is smaller than a lot of residences that are already in Bedford. I was just kind of assessing what we are looking at for price because these seem to be higher, and looking at the amenities that are available, right off a highway when you are looking at your back window and you are seeing I-293, it is not like you are looking at a river or some relaxing view, you are right off the highway and I was just trying to understand.

Ms. Palys asked this question has come up in past meetings, what happens if you cannot get the luxury apartment rates that you are looking for? Attorney Cronin responded there is over \$100 million of investment here that is being made on this particular project. These people know what they are doing. If we have some calamity, who knows what the future holds. We can only base our decision making and our investment decisions based on the facts on the ground with what we have. If I was in 2006, would I speculate that the housing market would crash, maybe, maybe not. We are looking at this, that we are going to spend a lot of money to build it, and we are going to do everything we can to occupy it. And I think what you may be missing here is the supply and demand component. This is not standard 2-bedroom property, this is a mixed-use development, and if you can show me anywhere in New Hampshire where you can find this type of opportunity, absent maybe Portsmouth, I don't know of one. Ms. Palys responded exactly, we are not Portsmouth. We can't look out at the ocean and walk downtown.

Ms. Palys stated the river corridor ordinance that you refer to in Tab 33, this is part of that even though it is not on the river? Attorney Cronin replied I guess; I didn't create it. It is not effective, as I think I said, at least the Town says it is not effective because rules haven't been adopted. The zoning ordinance provisions were voted upon by the public but I believe it has been sitting idle. The reason that I referenced it was that in 2012 there was a vision at that time for a mixed-use development that is extremely consistent with this particular property, and this property is located within the bounds of the River Corridor District ordinance. Ms. Palys stated I am all set. Ms. Hebert stated on that river corridor question, the Town adopted the ordinance and it was based on kind of a redevelopment of larger sites and the divide guidelines that were meant to be pared with the ordinance that set the design standards, size of buildings, height of buildings, amount of green space, those types of design standards, have not yet been adopted by the Planning Board and there really hasn't been an interest to pursue that. So it is some zoning that passed and it has been on the books but it has not yet been enacted. Ms. Palys responded thank you so much.

Chairman Levenstein stated frankly, as Attorney Cronin did point out, when we did the Master Plan in 2010, we looked at this actual site, this site, the Whole Foods site, and the Bedford Mall site, and had a conceptual plan drawn up of what we might want to do as far as redevelopment, and in fact, it did have this exact type of mixed-use as part of that redevelopment in that Master Plan. That was basically the reason we proposed that River Corridor Overlay District was to match what we had asked for, or what we had talked about, and what had been recommended in the Master Plan. I think just before we did that, the market crashed and nobody was really

building anything for a while and it sort of just sat on the books but nobody followed up and nobody really had the time or the energy to put together those guidelines, so they haven't been put together. Ms. Hebert stated there is a draft of the guidelines, but it is really based on the SMART transect and really meant more for green development, not redevelopment, and doesn't fit well on smaller sites. The design guidelines look at every single aspect, down to street lighting, of the design and the Board hasn't yet adopted those guidelines to guide the zoning in that zone. Chairman Levenstein stated right, and the ordinance specifically states that until the guidelines are adopted, that the ordinance will not take effect. That is the basis for it, the Master Plan in 2010.

Ms. Palys stated I do have one question for the developers. In light of Covid 19 and a lot of people sheltering in place, not going out as much, the movie theater was a big piece, and I hear the movie theater being brought up as a lost leader, which I understand what that means. Is there the potential that if the movie theater doesn't come together, you go to put this all together and all of a sudden people aren't going to the movies anymore because of Covid 19, we don't know what that looks like in the future, is there something that you feel in your development expertise would be more beneficial for the Town or the development project which could bring in more revenue, maybe increase the number of apartments, has that come up in conversation recently, especially in light of Covid 19? Attorney Cronin responded I am not so sure I understand the question, but I certainly can't, and I don't think the developer can predict what is going to happen with Covid 19. They went back during the design review process after hearing that the cinema was something that people wanted at this particular site, until this project is approved and construction has stated what does a commitment mean. The cinema has signed on and they are committed to go forward. These folks know their business, it was signed after Covid started, cinemas are opening now. I was more concerned about streaming than Covid, but they know their business and there is a market for people that want to go out and watch a movie at a really nice theater, and they expect that will do very well here. If it doesn't work for whatever reason, and anything is possible; I can't predict the possibilities. You can't just go open something else or put more apartments into it. You have to come back to the Planning Board and ask for approval of whatever you wanted to do for adaptive use. Ms. Palys stated thank you.

Mr. Sullivan stated I have a follow up for Attorney Cronin from the earlier question regarding green spaces when he said that no one would be restricted from having an apartment there. I just want to clarify that that green space would be public accessible, not just for the apartment residents. Is that correct? Attorney Cronin replied that is correct. Mr. Sullivan stated thank you.

Steve Gordon, 63 Tirrell Road, stated I have been listening to the various conversations that have occurred over the last couple of years and how this whole development changed and morphed along the way with one reason or another as to why more and more apartments could and should be offered within this particular zoning area, which is currently not approved for it. I do want to make two comments. One was there was a comment of well you allowed the current apartments to be built, and I believe that that was part of the agreement with the Wayfarer when that was originally approved. That wasn't something that people changed their minds. That was something that was in the original plan. The second piece is, and if I am wrong, please speak up and correct me, but I believe I am correct, is that we started off with many retail shops and restaurants and what is the difference now, the difference in count on the number of restaurants

that were originally approved versus the number of restaurants that are approved now and the same with the number of shops. What is the delta? Mr. Rice stated I will answer the second part of that question. If you wanted to compare the square footages, again, I don't think that every possible tenant was identified or taken up inside the buildings of the prior plan, so there is no way for me to really correlate the number of tenants previously to now, but I can give you square footages if that is acceptable. Mr. Gordon responded or an approximate number of units that you were anticipating, if you could, just so I have a comparison. Mr. Rice replied I have to really go back and look at the prior architectural plans to see how many potential tenants were there, but I think if I recall correctly, I think we are pretty close to the same because it is all on the ground floor and the only change really is the residential component above, with the exception of what used to be the office and medical office building, so that use has disappeared from the current proposed plan from the prior approved plan. Just to give you some round numbers, on the prior approval the total retail was approximately 116,000 square feet and now we are about 55,000 square feet of retail. The prior approval had about 36,000 square feet of restaurant space, and the current plan has about 31,000 square feet. The cinema on the prior approved plan was about 56,000 square feet and on the new plan it is 60,000 square feet. The hotel was 53,000 and now it is gone up a little bit to be 65,000 square feet. The medical office and general office totaled about 96,000 square feet, that has gone away, but we have added in the residential component. Mr. Gordon asked and the residential component was originally zero and it is now what? Mr. Rice responded what was approved by the Planning Board in 2016 there were no units at all, no residential units. We went before the Board conceptually with 290 units last year and then it was scaled back to 200 units, which is what is before you tonight.

Mr. Gordon stated and the conceptual drawings that you have in the height of those buildings, does that require any additional investment in any of our emergency vehicles or anything that would be required that would be new and different than what we have today within our community. Mr. Rice replied I don't believe so. I could ask Mr. Fougere, who had all of those discussions with the Police Chief and the Fire Chief, but my understanding is that no is the answer. Mr. Fougere stated I can cover that. You have a ladder truck now that the Fire Chief is looking to upgrade but he doesn't need another ladder truck, he just wants to improve the one he has, but there was no mention of additional vehicles or purchases such as that. Ms. Hebert stated the Planning Board does have a letter from our Fire Chief in their packet and he does allude to having concerns with the height of the building and the condition of the Town's ladder truck, which is currently in and out of service frequently, and he is also concerned with staffing because the density of the development and the traffic on South River Road. Mr. Gordon asked Ms. Hebert, is that being included in the numbers that we are evaluating today in terms of what the revenue impact would be? Ms. Hebert replied yes. The capital improvement no, but the additional staffing yes, is taken into account in the fiscal analysis.

Mr. Gordon stated in terms of infrastructure and the impact on the infrastructure; this is for the Encore team. I noticed that we didn't speak to that in much detail, is that for later discussion or are we awaiting some evaluation? What is the reason that we didn't get into any of the details on the infrastructure and the road system?

Attorney Cronin stated Mr. Gordon, first before we get to that, before I forget, you said to correct you if you were wrong. I think you were wrong about the adjacent site. I am looking at the

minutes from the November 20, 2017 meeting, I believe that site was a new proposal that was presented and went through the Planning Board and had independent approval. Ms. Hebert stated you are wrong about that. The Wayfarer apartments were originally approved in 2014 as part of the master plan for the redevelopment of that site, and the waiver was reconsidered when the owners asked for some modifications to the apartment building in terms of the unit makeup, number of 1-bedrooms, 2-bedrooms and studio units, and that waiver was reconsidered in 2017. So that was originally approved in 2014 when the Board was looking at the redevelopment of the hotel site. Attorney Cronin stated I just want to get some clarification, Ms. Hebert. The original approval was never built or vested and that was for 73 units? Ms. Hebert replied that approval was vested. They had a phased approval and could have built the 73 units, which had more 2- and 3-bedroom units than the building that is under construction today. Attorney Cronin asked and ultimately it is 137 that was built or 133? Ms. Hebert replied 133 with no more than 42 2-bedroom units and everything else is a studio or 1-bedroom, I believe.

Attorney Cronin stated as far as the infrastructure, Mr. Gordon. The traffic is going to be at the next meeting, so that was deferred to give the Town's consultant an opportunity to review that. At the last meeting there was some discussion about the offsite improvements that were undertaken with respect to the infrastructure. Mr. Gordon responded first of all, I give the Encore team high marks for coming to the table with a plan. I think we should all give due applause to the folks that come in with something creative to make our town better. I will offer perspective for what it is worth. I am concerned about the traffic and I am very concerned about the impact to the school system. I think your analysis of 24 students with a 37 that you graciously applied as part of your analysis. Frankly, I am not sure that is so accurate. And just for perspective; I grew up in Derry. Just a town that is a hop skip and a jump away from here and I attended Pinkerton Academy. For those folks who grew up in the area and went to school back in the 1980's, you wouldn't know it, but at that time Pinkerton was considered a top notch semi-private school. When I attended that school, when I was a freshman, I was sitting in a classroom that had ample space, great teachers, it was really a fantastic education. By the time I graduated, I was attending classes in overcrowded trailers. They had to bring trailers onsite to support the excess students, and I think today you would find that while Pinkerton is still a good school, it is nothing of what it used to be, and I am deathly afraid of the impact. And for the folks that are imbedded in the community, they are vetted, their children are part of this community, and, again, the Encore team I don't believe that you are part of the community, I know that you are coming in from the outside, but I would think the communities that you do live in and you have children in the school system, that that would be a consideration, and I would urge the residents of Bedford, and certainly the Chairman of the Board and the Board members to really look at that. Look at what happened, just look over at Derry and you will see what the impact was and it wasn't good. And the impact, by the way, on the infrastructure was just as bad. Chairman Levenstein asked Attorney Cronin, do you have any comment or onto the next? Attorney Cronin responded other than Mr. Rice is sitting here and I think his children go to Pinkerton and he thinks it is a fine school, but other than that, we will move on. Mr. Gordon stated it is not what it used to be. Attorney Cronin stated as far as the traffic; the traffic that is proposed is less than what was already approved, and as far as the school children, the analysis wasn't done in a vacuum. Mr. Fougere met with the Superintendent a number of times, I spoke with the Superintendent myself, he said he might have some concerns if this was a workforce housing project, but he has no concerns whatsoever. Carrying on Ms. Paryls' comments, it looks

like we are not going to have many kids in the schools this coming fall, who knows where that is going to go, but certainly in Bedford in your grade schools, everything but the high school, looks like declining enrollment and plenty of capacity. So the Superintendent was very comfortable with what was being proposed. Mr. Fougere estimated numbers in the teens based on looking at other projects that have similar compositions, but he upped that just in the sense of caution to get that number up higher and get the consensus of everybody. Mr. Fougere stated just to carry on that discussion. I think it is important when you are looking at this project to look at the number of bedrooms. Bedrooms drive school children. Sixty percent plus of this building is studios and 1-bedrooms which don't generate school kids. Two-bedrooms and 3-bedrooms is where families reside. This project has 37 percent of its units in 2-bedrooms, plus it is a mixed-use development and mixed-use developments trending with less children. I highlighted a project down in Shrewsbury, MA which is next to retail development, it has very low numbers. We could look at what is happening in Portsmouth with mixed-use projects there are even less, so that is why I trended low. Families are not going to be attracted to this site in great numbers. It is going to be a place for younger adults and older folks to live and that is what we are seeing in the industry.

Mr. Gordon stated I guess a question for the Board generally is, where does this stop, where do you draw the line. Where do we draw a very clear line of delineation between what it is that we are approving and not approving, the impact to the community, and we have so many apartments that are peripheral of Bedford, a lot of apartments that have been built by Copper Door, where does this stop? It is concerning, and I think that if you evaluate the broader impact, I won't even drive by the Copper Door during rush hour given the amount of traffic because it is crazy, and we have done nothing to address it. Are we going to be running into the same issue here in the middle of Bedford where you have to get through? It is a concern, and, again, I appreciate the creative thinking. I am concerned about that.

Zach Morgan, 5 Wolfe Lane, stated I have a question for the Encore team. What is the demographic for these apartments? Is it confirmed to be young adults and the elderly? Mr. Fougere responded I think it is going to be marketed to people that want to live in the region. I am not a marketing analyst, but I can just tell you that from the mixed-use projects that I have evaluated, including some locally, what we are seeing is that it is occupied by young adults without children or very young children that aren't in the school system, or by older people, over 55, semi-retired or with no children living at home, and that is what we are seeing.

Mr. Morgan asked how do you maintain residency in these apartments. I have seen reports of mixed-use developments having an issue with vacancies, with not grasping tenants and not holding them in there for long times, and that is also for the retail development as well. Attorney Cronin replied with respect to the residential, the vacancy rate here in New Hampshire is about 1 percent, so you can keep your apartments full all the way through Covid, people with apartments are finding tenants to occupy them with prices that we have never seen before. Typically, what happens, and I am going to date myself a little bit by going back to the mid and late 1980's, is we slid through the banking crisis and certainly at that point in time our vacancies in the communities shot up between 10 to 15 percent, and I think economists would tell you that 7 percent is about a healthy market in terms of vacancy. What happens is the older buildings, buildings without amenities, without any innovative concepts like a mixed-use are the ones to suffer, because people will gravitate up the scale to newer, nicer buildings with more amenities

and certainly with mixed-use there really is no competition for that. So the analysts that have looked at that, the folks that do this for a living, are very confident that they will be able to keep these full and maintain a market based vacancy rate. There is always vacancy with respect to turnover, but right now you are seeing it at unprecedented levels in southern New Hampshire, and what we are hearing is people are moving out of the Boston to come to New Hampshire, so we expect that population growth to certainly drive some of the demand for these units. Mr. Morgan asked and you are comfortable with the placing being \$1,700 for the studio apartments with minimum wage workers and young adults only making roughly between \$1,300 and \$1800 a month, and they can afford these apartments without having enough revenue? You have to think that the workers for these restaurants and retailers would want to live close to work and rent these apartments up above, but statistically they don't make enough money to rent those apartments. So you are almost pushing your workforce to other towns and not being able to house them right above. Attorney Cronin responded I think the folks that are making the investment, which is not me, are certainly confident that they can sustain these rents. They are spending a lot of money to develop these units, and they have had a track record of success throughout the country. They do their homework and have done their homework and are comfortable with it. Mr. Morgan stated is that track record of success public knowledge, because there is also a high turnover rate where developers sell off their projects to boost their portfolio. Attorney Cronin responded I don't understand the question. I am sure Encore, like other real estate companies from time to time, sell products and acquire new ones. That is just the nature of the market. I don't think anyone is making the commitment that they are going to own this for 100 years. Mr. Morgan responded I am not asking that, but you say that the developers, Encore, are putting in hundreds of millions of dollars into this development, but how can you sell us, the public, that they won't just cut ties and sell off and leave the project dead in the water with an unusable amount of land and empty buildings and vacant lots. Attorney Cronin replied just so I am clear, I think I said between \$100 and \$120 million in investment. Mr. Morgan stated previous meetings was around \$170 million for the final project. Attorney Cronin stated let's not have any confusion and say in excess of \$100 million. People don't spend that kind of money, in my experience, to lose money and have vacant buildings and go out of business. Mr. Morgan responded there are other states, Wisconsin, Minneapolis, they have mixed-use developments that have flat lined with vacancies for residential, shops and apartments. I just wanted to ask. Attorney Cronin responded I appreciate the feedback. Mr. Morgan stated I have no further questions.

Andrew Kline, 361 No. Amherst Road, stated I want to thank the Planning Board for allowing the public to testify. I know this can take a long time and I appreciate all the work that you are putting into it. I wanted to just comment to add some context. I am President of Apartment Center for Public Policy, we are a free market think tank in New Hampshire, we analyze markets and we do a little bit of housing policy, we are not taking a position on this project, but I just wanted to provide some data in context. I think most of you got my comments from last month's meeting, so I just want to add to those.

Mr. Kline stated I will start by noting that the luxury apartments for the Market & Main project start at, as we heard tonight, \$1,750 for a studio and go up with the addition of 1- or 2-bedrooms. I emailed these comments earlier and I was basing that off from the previous number that I had, which was \$2,100 for the studio, but we now have an adjusted number. I have done a little bit of

math on the slide here so it will be rough. I just wanted to point out for context that the \$1,750 rent for a studio is roughly the same as a mortgage payment on the only one single family home in Bedford that is at \$250,000 right now. That is for context. I heard several people make some comments about how could this rent possibly be affordable. In Bedford there is one house on the market in Bedford that would be roughly comparable to that price. There are only a handful under \$300,000, so the least expensive single family home in Bedford as of right now is an 816 square foot home with a price of \$250,000. A teacher who earns the average Bedford salary of \$64,332 could likely not afford that home. If you take the starting rent of \$1,750 for Market & Main studios and translate it into a mortgage payment, you are looking at roughly priced at about \$245,000. In addition to the \$250,000 home previously mentioned, there are exactly three more homes on the market in Bedford priced below \$300,000. That translates into a mortgage payment of roughly \$2,000 a month. One of those homes is priced at \$299,000 and the others \$299,900, so they are only \$100 less than \$300,000. That is four homes in the entire town that would fall within the monthly price range of these apartments. There are a handful of townhouses, two or three townhouses, that are priced below that. That is it in our town. What that means is that a young college educated professional and an empty nester with a housing budget of around \$2,000 a month, will struggle buying housing in Bedford. In this demographic group are Bedford kids who graduate, go off to a great college and then will want to move back home to be near their friends and family. Also in this group are grandparents who want to live near their grandchildren who are growing in Bedford's half million dollar homes. We have made it extremely difficult for our children and our parents to live near their families. With an extreme shortage of starter homes in Bedford, apartments are really the only option. Without new rental housing, even Bedford high school's brightest graduates who have prestigious college degrees stand only the tiniest chance of being able to live here. The luxury apartments proposed for Market & Main will also give them a chance to live in Bedford in a building that is within walking distance to restaurants and shops like they enjoyed in college without building any new single family homes in town. The rental rate on those units would be affordable for a professional earning roughly a minimum of about \$78,000 a year.

Mr. Kline stated for anyone worried about the impact on Bedford schools I would like to restate my point, that I made in my written comments from last month, that these apartments are a net financial gain for the Town, even if the projected number of families with children move in, which is highly unlikely given the price and size of these apartments. Bedford projects a loss of 166 total school students from its 2016 enrollment peak through 2021. Like the rest of New Hampshire, Bedford is losing, not gaining, public school students. There are no signs that this trend is changing and projections are for continued decline. Total public school enrollment in New Hampshire has fallen by 21,788 students since 2009. The Department of Education projects that decline to continue. Bedford can expect to see further enrollment declines, not gains, as these trends are related to society-wide changes. Enrollment at Pinkerton Academy has fallen by 100 students in the last decade. Americans are getting married later and having fewer children. The US fertility rate hit a record low of 1.71 percent last year, well below the 2.1 percent needed to replace the population, the US Census Bureau reported last year that New Hampshire's fertility rate was the second lowest in the nation behind only Vermont. The simple fact is that Bedford is not immune to these greater demographic trends that are occurring in New Hampshire and throughout the country, the most important being that Americans are waiting longer to have children and are having fewer of them. The real threat to Bedford schools is not

for growing enrollment but from a stagnating tax base. In New Hampshire the school systems that are losing funding are the ones in towns with declining tax bases. Based on the publicly available data, the Market & Main apartments would add to the Town's tax base generating significantly more revenue than its cost to educate those children, any children who live in the apartments and end up as a net financial positive to the Town. I will leave you with that. You have some more extensive written comments that I submitted last month, and, again, I appreciate the opportunity to speak.

Becky Soule, 327 New Boston Road, stated I would like to address a couple of things. First of all, Mr. Kline's comments regarding the housing shortage in the lower end of the market. There actually is a housing shortage in all aspects of the market in Bedford, not just the lower end of the market. As far as that goes, I am not sure really, that that is an issue that is going to be resolved by developing every single lot in town.

Ms. Soule stated secondly, I would like to address the zoning amendments that were adopted in March 2019, and I did hear the developer kind of addressing the 2012 Master Plan and some of the zoning that was existing in 2012. That zoning is actually not relevant anymore. The same as their original plan for Market & Main is not relevant. Bedford residents have evaluated the ongoing development in Bedford and decided that it does not suit the vibe that we wish to project for our town. There are a lot of people who work in the cities that either drive to Massachusetts, other towns in New Hampshire, or southern New Hampshire for some peace and quiet in Bedford. So the residents have not allowed over the last 10 years zoning and the Planning Board approvals and we have decided that we don't want that and that is why we have decided to change zoning and not allow apartments in the center of Bedford or to only allow workforce housing in the Performance Zone at a minimum. I heard the developer speaking, kind of throwing a little threat out there, speaking about a law suit against Chester, maybe insinuating that same thing is going to happen here but local control is still up to us if we want to have apartments in town. If they want to play hardball and not conform to our zoning, then they are not building things that really are suited for Bedford like they say they are. We don't want those big apartment buildings, and that is why we changed the zoning. The Town voted on that. I understand that the Planning Board recommended that they not pass, but most of the people that vote that live in Bedford passed those because that is what we want the town to be like. I did send a letter to some of the Board members addressing other views so I am not going to speak on that. I don't know if Ms. Hebert presents that to people, but I did want to speak about the zoning, and I kind of felt like the Bedford voters are getting played for that. The residents have the right to change the zoning to reflect how we want the town to be, how we want to control it. The 2012 zoning is no longer relevant.

Chairman Levenstein asked Ms. Hebert, in 2019 there was no zoning change regarding apartments per say in the Performance Zone? They had been banned from a previous amendment? Hadn't they? Ms. Hebert responded I believe in 2007 the apartments were taken out as a permitted use, and in 2019 they were brought back in for workforce housing only. Chairman Levenstein stated actually apartments were added in 2019, they weren't taken away. It was limited to what type of apartments were added. Ms. Soule stated they were added in the Performance Zone because we felt like they were really taking over development, and the owners of the Copper Door development came in and have the new Bow Lane that is going in

behind the high school and Bedford voters don't want that in the middle of town, and we don't want the oversized projects that this company is proposing. That is why we changed the zoning. We are permitting some apartments on the outer zones in town, so we did make some changes, and it is very minimal what we will allow in the Performance Zone. Bedford taxpayers have the right to try to control the zoning and the further development of our town. That is my opinion. I understand that the project may be losing money.

George Morin, 222 County Road, stated since the Covid pandemic I have been riding my bike a lot more, probably doing 25 miles a week around the various roads in our neighborhood. What I am observing is that I see a lot of children out there riding bicycles, scooters seem to have made a comeback, and there are also skateboards being used on the roads in the area. I believe we have a safe neighborhood with drivers watching out for children riding in the road and proceeding cautiously. If the waivers requested by Encore are granted and the 200 apartments are approved, the children living in these apartments are going to have the streets of Market & Main as their neighborhood to ride their bikes, scooters and skateboards. I don't believe that drivers over in that area who are looking for parking and trying to negotiate the 1-way route around The Friendly Toast or trying to figure out what lane to exit out onto South River Road, are going to be prepared to avoid children riding in the road. My feeling is the addition of these 200 apartments to this project is creating a dangerous situation as a result of a combination of commercial and residential development. Those are my observations, and I thank the Planning Board and the Planning Department with the time they have put in on this project.

Ms. Hebert asked for any further members of the public that would like to speak via phone or Zoom.

Mr. Gordon stated I have a couple of final comments. First of all, Mr. Hawkins, I give you high marks for communicating the voice of the Bedford residents. Mr. Kline, the comments that you made I don't know where you are getting all of your facts. All I know is that when I went to school there were 500 students per class, and, again, I am going back to Pinkerton and the person that has children that are in the Pinkerton school system, I believe are in excess of 1,000 students per class now. I also know that because my dad was part of the School Board membership and he was surprised over the amount of growth that was taking place predominantly due to the apartments that were built.

Mr. Gordon stated I believe that the residents of Bedford have voted and have positioned their concerns amply over the changes in this community. My question to the Planning Board is where does it stop? You allow this, then what? You put a plan in place to expand this community to allow for creative use to occur but you very strictly have positioned regulatory constraints around it. If you allow this to go through, at what point does it stop? At what point do you take the voice of the Bedford resident into consideration. I would surmise that if you were to evaluate the buildings that have taken place, do a moratorium, sit back for a year, watch what happens, because the people that are building this, I give the Encore team high marks for a very creative plan, but the impact to the community we have no idea. We have these experts that have a different point of view. In my world I am an expert in what I do and I can twist the facts every which way to summer. I am not saying that is what people are doing here, but I know that is happens. I believe that this community needs to step back and take a breather and look at what

is really happening. We just built a whole bunch of apartments. Do we have any residents in those apartments yet? Do we know what the impact is on the infrastructure? Do we know what the impact is on the school system? Do we know the impacts of anything? No we don't. Stop, evaluate and look at what is really happening. Please take the voice of the Bedford residents who live here, who is vested in this community, please take what they say more than just face value.

Chairman Levenstein asked Mr. Fougere, did you look what the effects have been of the apartments by Copper Door on the community? Mr. Fougere replied yes. The Copper Door presently has 31 school children in it. there are 120 2-beds and 16 3-beds, 94 percent of the units in that building are either 2- or 3-beds and there are 31 kids there. I did the fiscal for that development also and it was a positive generator. Obviously there is an impact on the schools with 31 children, but children are in that 144-unit development right now. Mr. Gordon asked and how many more units are in process beyond what we are talking about here? How many additional apartment buildings, how many units, things that are not single family, what else is in consideration right now or what else is in the process of being built and have we evaluated the impacts on the community. I think you need to listen to what the Bedford residents are telling you. They voted on the zoning, they gave you an opinion that is this goes through, I really have to question have you really thought about it. If you listened to who the Bedford resident is and what it is that they are asking you to do. Thank you.

Elaine Tefft, 7 Meeting House Road, asked how did we go from a 1,200-seat cinema to an 1,800-seat cinema. That is a 50 percent increase and will require additional parking facilities. Attorney Cronin stated initially there was a cinema, the cinema was removed from the project, we pursued the cinema and that is the size of the cinema that they wanted and that is what the agreement talks about. It was directly in response to the demands of the people that spoke. The cinema is addressed both in the traffic study and the parking study. Ms. Tefft responded yes, and I am going to get to the parking and I am going to get to the green space, but there have been a few surprises watching you tonight, and I have been totally unable to see what your records show. When was the arcade added and how large is the arcade? I assume it is your typical arcade with those machines that children like to play with. Attorney Cronin replied the arcade is about 3,000 - 4,000 square feet and is located on the first level of the theater. Ms. Tefft asked what was going to be where the arcade is now? Attorney Cronin replied I think it was always designed that way, that is a component of the theater. We didn't emphasize it until I think a member of the public said that they would hope that there would be an arcade and other things and they wanted it to available to play some games while waiting to watch a movie.

Ms. Tefft stated now I would like to get to the parking garage with 594 spaces on six floors. How did you get away with going up six floors? I thought there was a limit to the number of floors. You have a ground floor, a first floor, second floor, third floor, fourth floor, fifth floor, that is six floors any way that you slice it. How did you do that? Mr. Rice responded the maximum height requirement in this zone is 48 feet and we are roughly 14 feet below that with the top level of the parking deck. Ms. Tefft stated that is an awfully tall, ugly building. Have you been given a waiver for that fifth and sixth floor? Mr. Rice replied we don't require a waiver. We meet the height requirement.

Ms. Tefft stated let's get to the green space, which is what really got my interest peaked. According to your material, there are 440 linear feet that run along the sewer access in the back of the property as part of the green space, which you are counting. Linear to me means a line, and there is no width given, so I assume you are running a spring for 440 feet and say this is a green spring. How can you even use that as part of your green conformity with what we require in the zoning ordinance? Mr. Rice responded we did not count that in the green space. That is a walkway. Ms. Tefft stated you did in your documents. I have a stack of your documents, and if you want to take it out, I will be happy to take it out. I am not going to hold you to it because whoever wrote that up obviously was working very late. The second thing about green space; you propose a dog park of 7,600 square feet. Is that correct? Mr. Rice replied that is correct. Ms. Tefft stated that is 13 percent the size of the football field at Bedford high school, that is not very much. You get a couple of Great Danes and you have a problem. The next thing in your green area is the proposed pergola seating and a reflecting pool of 4,800 square feet. That particular green space is 8 percent the size of the football field at Bedford high school, and I am obviously using the football field because most people are familiar with it. Then you have a pool area and patio of approximately 10,000 square feet, which is 17 percent size of the football field. Then you get to Building C of restaurants, movies, parking garage, retail and it has an internal courtyard of 9,000 square feet and you count that as your green space. I assume you are going to be planting that with grass. Is that correct? Mr. Rice replied yes; that is correct. Grass and/or plantings. Ms. Tefft asked you are not just going to lay down fake plastic, you are going to actually put real grass. Is that right? I am unhappy that there is no green space worth talking about, quite frankly. I am not through with you yet. That particular courtyard is 15.5 percent the size of the Bedford high school football field. If you add up all of your green space, and I will leave in the 440 linear feet, just to make it look good. That totals 31,460 square feet. That is not even half the size of the football field at Bedford high school. That is not a lot of green for people or children or even color, which you are going to have in buildings. The other thing that makes me think your heart is not in the right place, I have seen some of your drawings and plans and on one of them there is a notation cut all trees and shrubs. That doesn't encourage me into thinking that you are going to be a green at all. Then one of your waiver requests asks to plan shorter trees. We don't want shorter trees. We want tall trees, more trees, more green, more plants. We want something that looks like a town village green and that is not what you are giving us at all. You can't make money, I guess, off from green spaces like you can on arcades. But I think the zoning regulations are pretty clear, especially I think it is Section D, I am not 100 percent sure on that, of the Performance Zoning Ordinance requires green space and consideration be given to appearance.

Ms. Tefft stated now we are going to get to the parking thing. Your documents claim that what you need for the entire development, which by the way is only 15.42 acres all totaled, what you need for parking is 1,362 spaces and that you, in fact, do have them. You have an 1,800 seat theater, so you expect them all to carpool because that is not even going to take care of the movie goers and that is why we don't have a theater at the Bedford Mall. We tried it once many years ago and you couldn't get any parking and they finally got rid of theater. It was right in the middle of the Bedford Mall. You could either go to the movies or you could go to the stores, and the stores decided that they didn't want us going to the movies. So you are going to have a lack of shopping and the restaurant going, and if they go to the movies, personally I am not going to any movies, but this is not really well thought out. I don't know how you can have 1,800 seats

and say we are only going to have 1,362 parking spaces, because you have stores, you have restaurants, you have hotels, you have apartment buildings, and right now parking is not good and neither is the traffic. The other thing I picked up, I assume that beep is because you are recording me, the other thing I picked up was from your notes is that you will have 625 surface parking spaces scattered throughout the whole development. Now I did a little math and that will add up to, if you use the regular standard, is that Google says you are supposed to, that is 4.66 acres of asphalt. So you subtract that from your 15.42 acres and then you subtract the 0.72 partial acre for green space, and you are left with about 10 acres for buildings. Does that sound like a good plan to you? That was a question. If you didn't understand my numbers, I will be very happy to repeat them. And I did count the 12 covered spaces at Building F because I wanted to be fair. I only have one last question after you answer this last one. Attorney Cronin stated we have taken all of your comments, and there have been a lot of them and a lot of calculations and we certainly appreciate them and are going to take them under advisement, and I see Mr. Rice took copious notes to verify his information. But as we stand here now, the applicant is very pleased with their plan and the progress that they have made and the end product that is in part to people like you have voiced their concerns.

Ms. Tefft stated my final question is, what happened to the workforce units. My understanding is that there was supposed to be a provision made for workforce, for people who actually work for a living. Attorney Cronin responded that was discussed at different times, that was never part of the proposal in this particular plan. Ms. Tefft asked isn't that part of the Performance Zoning? Attorney Cronin replied it depends. This property would be excluded from residential workforce housing because of its proximity to Route 101 and to the FE Everett Turnpike. Ms. Tefft asked so you don't need a waiver for that, it is automatically excused for having workforce units? Is that what you are saying. Attorney Cronin replied yes. We don't need a waiver because it is not allowed here. Ms. Tefft stated isn't that interesting. I wonder why people have been thinking that you were actually going to provide them. It doesn't make sense to me.

Ms. Tefft stated I have to tell you that I am very concerned, I managed to see some of the photographs, which looked like Salisbury Beach quite frankly, and that is not a compliment. I am very disappointed. I think you really need to rethink it. I think that if you had started building them in October, you might have been home free, but with everything that has happened with all of the empty buildings, and I am concerned that we are going to have a lot of really ugly buildings down on South River Road and the worse traffic jam in the world because there is just no place to drive as it stands. Getting in and out of Trader Joe's is an exercise in patience and you can tell I have a lot of it, can't you. By the time you get all of the other buildings, because I believe it goes A – J, and I didn't go through all of the buildings because I don't think it is fair to you. Some of them have not been sited yet; I guess I depends on what you can sell to the market. I personally hope that you don't get any waivers at all, I have seen where there have been applications to replace a 20-foot distance by a 3- to 3.5-foot distance, and you have gotten I think one or two waivers for that, or at least you have certainly tried. It is very disappointing. I have lived here a long time and Bedford used to be a nice little town, and it is our town, and it is our job to try to preserve it for future generations, which is the most optimistic statement that I have made all day. I am certainly unhappy with the virtual meetings because it isn't fair to people who really have a sincere and serious concern and who have invested a lot of time and effort and money in this town, and money is the least of it and it is being changed, and not for the better.

Quite frankly, I don't wish anybody ill, not even the developers of this thing, but I would like them to come to their senses and come up with something decent and in keeping with what Bedford was, has and rapidly losing, as opposed to just bright lights and cement and asphalt. Thank you for listening to me.

Ms. Hebert stated I do not see anyone else volunteering to speak. If there anyone who has recently joined the call and you would like to provide testimony, please raise your hand in the Zoom platform or if you are joined by phone, press *9. If you are unable to get the technology to work, you can unmute yourself and just speak up. Chairman Levenstein stated Mr. Connors, we have a whole bunch of emails and communications that came in today. That is all part of the record? Mr. Connors replied yes, that will be part of the record and in the file. Any new emails that we get we will forward to you, but I don't believe we have received any since the last batch we sent out to you. Chairman Levenstein asked that was at 4:30pm today? Mr. Connors replied 5:30pm. We did get one from Andrew Kline, but I believe he orally presented his remarks mostly, and I will forward that email.

Attorney Cronin stated Mr. Chairman, I would like to finish up. I don't know how many or who has sent in emails, I don't know if perhaps Ms. Hebert has any that people have sent in that are supporting this. I have here a number of letters of support from Richard Power, Catholic Medical Center, John B. Sullivan, Steven Griswack, Thomas Boucher, Michael Dion, Peter Wenger, and Steven Alvano. I could take the time to read them into the record tonight or we could submit them and have them for the record in conclusion next month if that is your preference. Chairman Levenstein stated I would prefer to just have them submit them. They will be part of the record. Attorney Cronin stated I am happy to do that. Are you going to foreclose me at the next meeting to maybe read some of these into the record? There are some that I think are important. Chairman Levenstein replied if you want to do it at the next meeting, you can do it. Actually, if there is something that you feel is really important that you want to do this meeting, you can do it right now. Attorney Cronin stated I will read one of these because I think it is consistent with what we have been talking about. This is addressed to you, Mr. Chairman, and Ms. Hebert may have a copy of this, as follows:

Jon Levenstein, Planning Board, Market & Main, South River Road, Bedford, NH. Dear Chairman Levenstein, Catholic Medical Center is honored to be a part of the Bedford community. We strive to provide health, healing and hope to all of our patients, including those that visit our many locations in Bedford. We are proud of the vein and vascular center at the corner of Meeting House Road and South River Road and believe the facility provides a state-of-the-art center for the delivery of care, respects and enhances the neighborhood. We continue to follow the Market & Main development, have no objection to the development and the site, as a mixed-use development with residences over commercial and retail spaces. Like all hospitals, we face challenges recruiting the best and brightest, housing is a key factor for medical professionals making career choices, availability of luxury housing will be helpful in our recruiting efforts. The offsite improvements completed on South River Road are helpful and we expect the dedicated lane from South River Road to the highway to be beneficial for the motoring public when it is open and operating. Respectfully, Alex J. Walker, Executive Vice President, Chief Operating Office, Catholic Medical Center.

Attorney Cronin stated I will submit these other ones in support, and I will confirm with Ms. Hebert in the meantime to see if I can get copies of any of those other emails or letters that have been submitted. Ms. Hebert asked Attorney Cronin, if you could please send me copies of those letters. I did not receive a copy of that letter in advance of this meeting, so you would need to get copies of those, and I will certainly share them with the Board for the August meeting. We received several communications from residents and we have attached them to the planning packet from past meetings and have forwarded them out to the Board ahead of the meetings. Attorney Cronin stated I will get them off to you tomorrow. Chairman Levenstein asked please make sure they get the ones that we got this afternoon. Ms. Hebert responded absolutely.

Chairman Levenstein asked do you have anything else? Attorney Cronin replied no; thank you all for your time and patience this evening. We will continue to work at it and we will expect to return on August 3, 2020 with the traffic analysis and suspect that Mr. Duval and Ms. Barousa will have an opportunity to review it, address comments and be prepared to make a meaningful presentation.

MOTION by Mr. Newberry to continue the application of ER Bedford, LLC c/o Encore Retail, LLC (Owner) requesting approval of a site plan and associated waiver requests, for the proposed Market & Main mixed-use development to include three additional buildings comprising 40,561 square-feet of retail uses, 20,046 square-feet of restaurant uses, a cinema with 11 screens (1800 seats), 200 upper level multi-family units, a 90-room hotel, and associated architectural and site changes at 125 South River Road, Lots 12-33, 12-33-1 and 12-33-2, Zoned PZ, to the August 3, 2020 Planning Board meeting. Mr. Sullivan duly seconded the motion. On a unanimous roll call vote, the motion carried.

Town Manager Sawyer returned to the meeting.

2. John L. Lang Revocable Trust (Owner) – Request to amend a condition of subdivision approval granted by the Planning Board October 7, 2019, to eliminate a shared driveway and permit a new driveway design at 27 Old Mill Road, Lot 19-29, Zoned R&A.

John Lang was present to address this request to amend a condition of a subdivision. I have been working with TF Moran. I am requesting the removal of the subdivision approval contingency #6, which is to modify the existing right-of-way easement agreement for shared use. I no longer wish to have a shared use driveway; I wish to construct my own private driveway. I have submitted plans provided by TF Moran to the Town to construct a private driveway.

Chairman Levenstein asked Mr. Foote, have you had a chance to review the plans? Mr. Foote replied yes I did. Jeff Kevan and I had a conversation and he found additional language to ensure that the driveway also conform to the future road alignment improvements that the Town is planning on making. I believe Mr. Lang has some language that he is going to include in his request. Chairman Levenstein asked is that going to be included as a condition of approval? Mr. Lang responded that it also works with the existing roadway, that will be included. Mr. Foote

stated my concern was that the developer granted the Town an easement so we could introduce a curb that met some sort of standard, so when we reconstruct the road, I just wanted to make sure that that steep slope of the driveway as it came to meet the proposed road, would have a platform and TF Moran assured me on Friday that it would.

Chairman Levenstein asked is there anything you would like to add, Mr. Lang? Mr. Lang stated I just no longer wish to have a shared-use driveway for all of the reasons that are frowned upon with shared-use driveways. I would like to remove that contingency from the subdivision approval and just put in my own driveway.

Chairman Levenstein asked are there any questions or comments from the Board. Mr. Newberry stated I have no questions. Vice Chairman Murphy stated I have no questions. Mr. McMahon stated I have no questions. Ms. Malcolm stated I have no questions. Mr. Sullivan stated I have no questions. Mr. Quintal stated I have no questions.

Councilor Duschatko asked do you have a profile of the proposed driveway? The profile was posted on the screen.

Mr. Clough stated I believe it mentioned wetlands, and I know that the headwaters of McQuade Brook, I believe, goes through that property. I was just curious if they had gotten a go ahead with the Conservation Commission, and if he is going to be using salt, where would the salt be running off from. Mr. Connors stated I don't believe it impacts the wetlands because they moved the driveway to the very edge of the property because in order to avoid the wetlands, so it wouldn't need to go to the Conservation Commission unless there was a wetland impact. Mr. Clough asked there is enough buffer between the driveway and the wetland? Mr. Connors replied yes. Mr. Clough stated I don't have any further questions.

Town Manager Sawyer stated the only question I had is the one that Mr. Foote spoke of. I couldn't see how with the new alignment the driveway could still have less than 10 percent, but if that has been worked out with the engineer, I am all satisfied. Mr. Foote stated just to be clear, my conversation was independent of the 10 percent grade on the property. I was only concerned with the impact on the right-of-way and where the driveway met, not only the existing condition, and then for future condition. Town Manager Sawyer stated I see that it meets the driveway standard for sloping back in the current condition, when we move the roadway further into the property, the driveway is already at that 10 percent at that point, so I don't see how they could still retain the slope back and stay under the 10 percent. Mr. Foote stated Jeff Kevan assured me that they could. Town Manager Sawyer stated that works for me. Thank you. Mr. Connors stated there is note on the plan that they can't exceed the 10 percent grade level.

Chairman Levenstein asked for any comments or questions from the audience. Ms. Hebert, do we have any comments? Ms. Hebert stated John Munson has raised his hand.

John Monson, 24 Wellesley Drive, stated I am an abutter to the property. Removing Condition #6 to the subdivision approval does not meet with my approval. There is nothing to prevent Mr. Lang from continuing to use the driveway that has been established there for years. Just because he is coming in on another driveway, he still has the legal right to use that right-of-way that has

been approved by me along with the power that comes up through it and everything else. Plus, there are two other lots that are abutting lots and he could certainly give a right to one of those lots to use that same driveway to come down and exit on Old Mill Road through the current easement, so I am not sure that solves the problem for me at all. If Mr. Lang wants to give up his right to use that right-of-way period, that is fine, but I don't see how he is prevented from using it if he wants to as an alternate driveway any time he wishes. Mr. Lang stated I have always had the right to use that driveway anytime that I wish as part of buying the property. The other two lots that are proposed, one already has an existing house with a driveway and the other one is on the other side of that lot that already has a curb cut planned for that lot. There is no reason why I would use that easement to access those other two lots. Mr. Monson stated you may not but a successor may. The whole idea behind the joint use was that in case you did use it and you had intended to at that time and you may very well use it again for access to your new home. There is nothing in writing about joint maintenance and share responsibility for it. Mr. Lang stated there is a current agreement in place right now that does take into account shared use. It was 50/50 and for this exact reason I am willing to just build my own driveway, go through the expense of doing so that there are no issues in the future. Mr. Monson stated I don't think the current easement talks about any 50/50 use at all. Chairman Levenstein stated I don't think it is up to the Planning Board to get involved with what your agreement is between the two of you. Mr. Monson stated you made it Condition #6 of the subdivision approval and now he is requesting a deletion of that condition. Mr. Lang stated I was originally planning on using the easement as part of my driveway. In light of everything that has come to be, I do not wish to share a driveway, I wish to just have my own driveway. Mr. Monson stated but that doesn't mean that you are not going to be using the easement to access that egress to your property, or your new home. Mr. Lang stated I am going to have my own paved driveway much like you do. You have your own paved driveway and we can both use the easement together.

Chairman Levenstein stated I assume there are other things involved with the easement other than just the driveway. I don't understand what the issue is unless there is something else that you are entitled to use with the easement. Mr. Lang responded we have never had a problem in the past, I don't totally understand the concerns. I have never asked for any money to maintain it; I have never asked for anything. I just want to be able to build my house and if that means having my own private driveway, I am totally fine with that, I will pay the money to do it, I just want to be able to build my house. Mr. Monson stated and at the same time access that easement from your home if you want to at any time. That was the whole issue here. I have been maintaining that, grading it, and taking care of the trees and everything else on it for years, since about 1982-1983. It is not something you are going to be using, I am sure. Chairman Levenstein stated again, I don't think that is a Planning Board issue. I think that is a private issue between the two of you, and if you feel that you are entitled to something from him for maintaining the easement. Mr. Monson asked then why was it made a condition of the subdivision in the first place? Chairman Levenstein responded I think he asked for it to be a condition because he was going to use it and then he has changed his mind, though I don't remember. Ms. Hebert, do you remember why it was made a condition? Ms. Hebert replied I do remember. Mr. Monson's focus at the original public hearing was a subdivision, was approved and the driveway was going to be the primary access to the lot and we felt that the easement language needed to be modified to take into account that shared use and maintenance because that can be an issue when you have shared driveways. The lot is more conforming with its own driveway, it is a waiver request from

our subdivision regulations to have a shared driveway. The easement and the right-of-way across the Lang's property exists today, the driveway exists today, so the current proposal doesn't change any of those existing easements or rights. I would agree that it is a civil matter.

Chairman Levenstein asked are there any other questions. Mr. Monson stated I can't add anything else except that I know what is going to happen here. He is going to be using the easement as part of his ingress and egress when he chooses to, and he is going to be using it part of the time and maybe not all of the time, but he is still going to be using it, and he doesn't have an obligation to contribute to its upkeep. Mr. Lang stated I have in good faith plowed it in the wintertime, I have never asked anybody for anything ever. I have sent you legal things that said I will never ask you for a penny of money. All I want to do is build my house. I don't want your money; I have my own. I just want to build my house.

Chairman Levenstein asked for any further comments or questions from the audience. There were none.

Ms. Hebert asked Mr. Monson, did you review a proposed document that spelled out shared use and maintenance of the driveway? Mr. Monson replied yes, we reviewed one. We redrafted it and sent it to Mr. Lang to review and he said he didn't want to do anything more with it, so that was the end of that. He had no interest once he saw the document that made sense. His document specifically allowed for his use of it in a subdivision scenario, and once I asked for that to be removed, he said that he would not agree with it. Ms. Hebert stated it clearly is a civil matter. Chairman Levenstein stated yes, I don't think it is a planning matter.

MOTION by Town Manager Sawyer that the Planning Board amend the subdivision approval of 27 Old Mill Road, Lot 19-29, granted by the Planning Board on October 7, 2019 to eliminate Condition #6 and to allow the relocation of the driveway access serving Lot 19-29, in accordance with the plans prepared by TF Moran, Inc., last revised May 22, 2020, subject to the following condition:

- 1. All other conditions of the October 7, 2019 Planning Board subdivision approval shall remain in effect.**

Vice Chairman Murphy duly seconded the motion. On a roll call vote, the motion carried, with Councilor Duschatko abstaining due to lack of information.

V. Approval of Minutes of Previous Meetings:

MOTION by Vice Chairman Murphy to approve the minutes of the June 22, 2020 Planning Board meeting as written. Councilor Duschatko duly seconded the motion. On a unanimous roll call vote, the motion carried.

VI. Communications to the Board: None

VII. Reports of Committees: None

Ms. Hebert stated we have a busy month coming up in August. The Planning Board has three meetings scheduled and those are for August 3, 17 and 30. Please let us know if you are not able to attend any of the meetings so we can be sure we have a quorum.

Ms. Hebert stated the Planning Board has also received a site plan application for the proposed development called Circle Drive, the Sebbins Brook Crossing. The Board had scheduled a site walk that was canceled because of poor winter weather, and we are talking about rescheduling a site walk before your review of that application. That will also happen at some point in August.

VIII. Adjournment:

MOTION by Vice Chairman Murphy to adjourn at 10:00pm. Mr. McMahon duly seconded the motion. On a unanimous roll call vote, the motion carried.

Respectfully submitted by
Valerie J. Emmons