

TOWN OF BEDFORD
August 3, 2020
PLANNING BOARD
MINUTES

A remote Zoom platform meeting of the Bedford Planning Board was held on Monday, August 3, 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.

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 July 17, 2020 Planning Board meeting.*
2. **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. *This application was postponed from the July 17, 2020 Planning Board meeting.*

III. New Business: None

IV. Concept Proposals and Other Business:

3. Discussion of a site plan violation of a previously approved plan for a 93-unit workforce housing development off Chestnut Drive, Lots 20-99-1, 20-99-2, 20-99-3, and 20-99-4.

Mr. Connors stated we did find out this afternoon that the applicant for Item #1, ER Bedford, LLC, decided to postpone their application to the August 17, 2020 Planning Board meeting. For Item #2, it has been reviewed by staff and staff would recommend that the Board find the application to be complete, the abutters have been notified. It is the opinion of staff that the application does not pose a regional impact; staff would recommend accepting the meeting agenda and in so doing, adopting the staff recommendation that the application is complete and does not pose a regional impact.

MOTION by Mr. Newberry to accept the agenda as read. Ms. Malcolm duly seconded the motion. On a unanimous roll call vote, the motion carried.

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 July 17, 2020 Planning Board meeting.*

Town Manager Sawyer recused himself from any vote on this application.

MOTION by Vice Chairman Murphy to continue this application for ER Bedford, LLC to the August 17, 2020 Planning Board meeting and this motion shall serve as

public notice. Ms. Malcolm duly seconded the motion. On roll call vote, with Town Manager Sawyer recused, the motion carried.

- 2. 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.** *This application was postponed from the July 17, 2020 Planning Board meeting.*

Tom Burns, Senior Project Manager from TF Moran, was present to address this request for a site plan amendment on behalf of the applicant. Mr. Burns stated the location is the Bedford Home Consignment site at 400 Boynton Street. This is a site that has been home to the consignment store as a general retail use since 2015. It was previously the home of the Bedford Pool & Patio location and then historically there has been a number of other retail locations, a landscape site, etc. The reason that we are requesting a change of use is that the site formally had a fenced-in area that was part of the outdoor display that was used by the prior use, the Bedford Pool & Patio site, and what Mr. Detscher is looking to is to be able to utilize that site again for outdoor retail space for the consignment store. What he is looking at is consigning items that would potentially be suitable for outdoor display, things that usually would be outside. As it is right now in the consignment store, they can't take in larger items like that or items that would typically be stored outside, they don't have room in the building and it allows them to reutilize that space that historically had been used for outside display.

Mr. Burns continued on the screen you will see some views of the site from the building. The posted view is the existing display area when you go into this area that is fenced on all four sides. Because it was part of the former Pool & Patio area, you will see it has a number of different types of solid surface pavers and concrete surfaces, which I believe were used to present different patio options at the time when it was a pool and spa retail use. As you can see, the surfaces are in very good shape. You can see in the foreground in this posted picture that it is a series of interlocked pavers that have nice tight joints and then it is solid surfaces looking further into that area and the idea is just to be able to reutilize this area again. For those familiar with the site from a few years ago, MB Tractor had come in as an application to the Town; they had looked at utilizing this site for one of their retail locations and the Planning Board had granted an approval to use the same area with the intent that the front portion of it directly up against Boynton Street was going to be for retail use and then they were going to use the remainder of it for storage in that area. MB Tractor ultimately did not end up pursuing occupying the site after they got their site plan approval so it has remained as the retail use for the consignment store ever since.

Mr. Burns stated in a nutshell, what we are looking to do is to be able to reutilize that space to provide the retail use on the site the ability to have outside display or outside items carried at the site. I am not sure what those would be but this gives them the opportunity to be able to utilize that space and to be able to have the opportunity to bring those items in that otherwise they can't bring in with the limitations of the building.

Mr. Burns stated we do have one waiver letter that was submitted and that is for parking relative to the space. There are currently 28 spaces on the site, and we would not be looking to add any more parking. Generally, at any given time for this building for this use it generates about 25 percent of the required parking for the available parking on the site that is taken up. For those that are familiar with the site, it is not a high traffic generator in general for the site. We wouldn't be looking to make any physical changes to that fenced-in area or to the building or the parking or anything. Again, it is just simply trying to reutilize that space that was previously used for this purpose over the years. I would be happy to answer any questions that the Board has. We have reviewed the staff conditions on it, and I would be happy to go through the conditions as well.

Chairman Levenstein asked would the merchandise be kept there overnight? Mr. Burns replied the intent would be that if it is items that are suitable to go outside, that would be the idea. They would be putting them outside because they don't believe they would have the room inside the building to be bringing them in and out, but the idea is that because it is a fenced area that is secured, they would leave it outside, they would leave it covered, if need be, to protect it against the elements.

Chairman Levenstein asked for any comments or questions from the Board.

Mr. Newberry asked will there be security lighting or any lighting added to what currently exists for lighting? Mr. Burns replied there is no additional lighting proposed for the area. There are a couple of light poles that are along the gated side of that area, but their intent is not to add any more lighting to it. They don't have evening hours, they are not using it when it is dark out there, so the intent will be to just gate it and they are not going to have any lighting on it.

Mr. McMahon asked for staff, were there any comments from abutters that would need them to be required? Mr. Connors replied we did not receive any abutter comments on this application.

Mr. McMahon asked is the applicant happy with the reduced space that staff has suggested? Mr. Burns replied the applicant is hoping to have the availability to use that space that is in the fenced area consistent with what was previously used, and, again, I know that that was a condition that staff was recommending using about 3,000 square feet of the total area. Just looking back at what was historically allowed there and when MB came in they were approved to use that 3,000 square feet in the front for display and then the remaining area was going to be permitted for outside storage, and I think the goal for the applicant is he wants to have the flexibility with that space to be able to put stuff out and be able to space it as he needs to. The preference would be to be able to utilize that space. We are hoping to not have to limit him using that area that was fenced there before or having to add any more fencing to it to divide it up or things like that. Ms. Hebert stated we were concerned that the retail display for a consignment shop could quickly become a flea market. You could have an abundance of materials stored and displayed back there with no guidance on how that is supposed to look and it could become a nuisance to the neighbors on what Bedford typically sees for outdoor display. The display area for the tractor supply store was to display a specific number of tractors and large equipment, so you might have several tractors lined up in the display area but there was kind of a finite use for that space but it is a large area for just open display that is not defined. I

just want the Board to be aware that this retail space could turn over to another business user, it could turn over to another type of retail business and could have display for outside sales.

Mr. McMahon stated I was thinking maybe the same way as staff, so the question is, does the applicant intend upon taking smaller items and putting them on top of the different tables so it does maybe look like a yard sale? Mr. Burns replied no, that is not the intent with it, and I did relay this concern to the applicant as well. That is not the intent with it. Again, the goal is items that are typically an outdoor item but they wouldn't fit in the building, wouldn't be suitable for displaying in the building. I did discuss with him about the fact that should the retail use change and he perfectly understood that he would work with the Town, work with staff if there is a change of use here, to come back in. I don't think he knows specifically what is going to be in there, it is just that it has been an empty space and he has had to turn away people when they have brought things in because he can't consign them because they can't go in the building, and he hasn't been able to utilize that space to be able to say I can bring that item, so that is why his hope is to be able to have that space available because he just doesn't know what the potential is for them to be able to grow his business and make it a little bit more profitable. Ms. Hebert asked do you have specific examples of what would be displayed? Would it be outdoor patio furniture? The Board would want it to be more specific. Mr. Burns responded that is kind of the items that have been discussed. The discussion has been it is items that are suitable that you would typically see outside. In the case of the consignment store, it is the idea that if somebody brings in a patio furniture set, they can set it up out there, or picnic tables, things like that, things that are suitable to be displayed outdoors and can stay outdoors, they are not going to be affected by the elements, and it gives them a little room to space them out. Again, those are larger items that don't fit inside the building.

Chairman Levenstein asked as I recall, wasn't there patio type furniture there when the pool shop was there? Mr. Burns replied yes there was. They had a series of pools out there, some patio displays and they had the different styles of the hardscape surfaces out there that they displayed as well.

Mr. Fairman stated I think the use of this property for a consignment store is a great use of the property where it is within so many residential buildings. Consignment shop material is by its very nature, by the very definition, used, and I can see swing sets out there, patio furniture and a lot of different things, and it could, over a period of time, start to look pretty junky, so I have that concern. I think it is going to be incumbent upon the owner to make sure that doesn't happen and that it is screened well and everything else. I do have a concern of consignment materials sitting outside, even if it is designed to be outside, not looking very good after a period of time. I don't think there is anything we can do to keep that from happening. The owners have to make sure that it doesn't happen. I do think that the staff's note on fencing and landscaping is important and just address that as a concern to the owner.

Town Manager Sawyer stated I think the Board has gotten to most of my questions, but I also wonder if motor vehicles, RV's, ATV's, and boats would be included in consignment sales because they often are in other consignment areas. And then my other question for Mr. Burns would be about Condition #5 about the resurfacing. If you could address that as well. Mr. Burns responded as far as motor vehicles or boats and RV's, I haven't heard that from the applicant that

that is something they are looking to store out there. I think certainly if that becomes something they are looking to store out there, I am sure they could work with staff if that is something to come back for either another change of use or another discussion. I am sure he would be amenable to doing that. That just has not been something that has come up between us.

Mr. Burns stated with regard to the surface out there; there is Condition #5 that noted the display area would be resurfaced with concrete or asphalt pavement, and given the condition of the surfaces out there, our intent was not to add that additional cost and have to go and remove all of those solid surfaces, the concrete and the pavers, just to repave or replace with new concrete. As you will see in the photos that I submitted from inside that area, that surface is in pretty good shape and we would like to be able to just continue to use it as is. The applicant is comfortable with using that surface on his property, it is in good shape, he doesn't have a concern with it, and it would be our preference to not have to go and replace it with something that is almost the same.

Councilor Duschatko stated I happened to serve on the Zoning Board of Adjustment when this first came to our attention, and it is a number of years ago when I recall some of this because of what it used to be, but I remember that the abutters at that point were pretty concerned about limiting any type of outside displays and storage, and I was very surprised that there were no comments that have been made on this. I know that there was a very big concern at that point, and the only reason that it really got approved at the Zoning Board of Adjustment level was that we were assured there would not be ever any type or any attempt of putting outdoor storage or display in that particular area. I too share the same concerns with Town Manager Sawyer about making sure that the entire spot is repaved and made to a same surface because even looking at the pictures that you have shown us, the last picture I saw there appears to be a large area of cracked concrete.

Mr. Newberry asked it is your assertion that the existing surface is level, even and in good condition and has not started to break up? Mr. Burns replied yes. If you could show the picture that I submitted that shows the front to back inside the site. Mr. Connors stated I just wanted to mention that these are the pictures that were submitted as part of the original application. Mr. Burns responded yes. When you look at it, the concrete is different colors, and I went inside and took photos within the gates where you can actually see it a little bit closer and it gives a little bit of a clearer picture of what they look like. What is posted on the screen now shows the concrete surface towards the back. It does have crack lines in it, but the concrete itself is not breaking up, it is not spalling or crumbling when you walk through there, it hasn't experienced any significant settlement, it is fairly level. You walk from front to back through there and it doesn't present a trip hazard, which I think would probably be the biggest concern as the owner of a site, as a retail site, that you would have to be concerned with customers going in and out of there and running the risk of getting injured on the site. It is not in that condition. Other than these surface crack lines, it actually is in pretty good shape, and, again, when you see the other surfaces as well through there, the joints are still nice and tight between the paving blocks, the patio blocks, and everything in the different areas. It is certainly a unique look because it had so many different varieties of materials that were used, I think, as part of the sales and marketing for the pool and patio place, but the surfaces have held up quite well.

Mr. McMahon asked Councilor Duschatko, would you repeat what the thoughts of the Zoning Board were and elaborate on that? Chairman Levenstein asked what was the Zoning Board looking for? Do you remember? Councilor Duschatko replied they were looking for a variance for this type of use. There was a large amount of discussion on it. I would have to go back and look at the minutes because I really don't remember them from at least five years ago. There was a concern voiced by both the abutters and members of the Board about using this area for a non-controlled sort of random space to display stuff in. The whole idea was almost an experiment if the consignment store would make it, and some of the other concerns were what happens if it didn't, what the other uses could be if we had allowed that use of the outside display. I would have to go back and really look at the entire proceedings. I thought about it as it came up and do remember the concern of the abutters about it. Chairman Levenstein stated I remember when we had the tractor place come in and there was a lot of abutter concern. I am surprised nobody is here today. Mr. McMahon stated the people may have changed. We were concerned about whatever use it could be. There was even talk about do we really want it to continue as retail because it was an exception at that particular point, and the only thing that I think was with the Zoning Board of Adjustment at that time is the fact that there was a gas station, sort of, across the street and also the conversion of the insurance company in there across the street. Mr. Burns stated I think it is State Farm across the street.

Ms. Hebert stated it is summarized in the staff report that in 2015 the Zoning Board granted a variance to allow general retail use of the property and warehousing use. The Planning Board specifically required a note on the plan to say that there would be no outdoor storage unless the plan came back to the Board for further review, which is why it is here tonight. Councilor Duschatko stated I do remember that. That was the suggestion from the Zoning Board and it was all to be reviewed on the part of the Planning Board after our decision. Ms. Hebert responded right. There is a note specifically on the plan in front of you that says no outdoor storage permitted. That is why they are here tonight.

Mr. Foote stated I am looking at the curb cut into the entrance and are there any modifications at that location with this proposal? Mr. Burns replied no, there are no changes proposed to the site, to the driveway entrance to the site or to the parking layout of the limits of pavement. There is no change to the access on the site. Mr. Foote asked what is the distance between the sidewalk in the back and the handicap parking spot? It doesn't look like a very tight window with traffic through the site. Mr. Burns asked the handicap spaces along Boynton Street? Mr. Foote replied right. Mr. Burns replied there is probably about 10 feet or so from those existing spaces to where the back of the sidewalk would be; 10 to 12 feet maybe. Mr. Foote stated it seems very narrow.

Mr. Sullivan stated this may be a question for Ms. Hebert; I think it is an issue of semantics. What is the difference between retail outdoor display versus outdoor storage? Ms. Hebert replied it is a difference in semantics. The outdoor display area also does stores pieces of furniture or things that are proposed to be sold at the store. Straight up storage you wouldn't expect customers to walk through the storage space to shop. I think the idea is that people will be walking through here to shop for items.

Mr. Newberry stated I don't really have an issue with allowing them the whole space and to use the surfaces that are there, I am concerned though about it turning into a pile of junk. My

thought would be that if we made a condition that it is not to be used as storage it would provide the opportunity, if necessary in the future, to say that this material has been here for an extended period of time and is storage and you need to clean it out. Chairman Levenstein asked Ms. Hebert, what do you think about that? Mr. Quintal stated I have dealt with these consignment places before, especially the one down on Route 3 in Bedford, and I know when we brought things in from an estate sale, they only kept those items for a period of time, 30, 60 or 90 days, and at the end of that period if it didn't sell, they wanted the junk gone. So I am not sure if there is something if we are concerned about too much junk storage, that we somehow put that in their notice that says a certain period of time that the stuff can be out there per item or something. Ms. Hebert responded I think making a distinction between storage and display and the items that are in the space should be for sale and available to be viewed by people who are shopping at the consignment store so that it doesn't become a storage place for discarded items. They have a storage area to the rear and they have warehousing space within the building today. Chairman Levenstein asked Mr. Burns, what are your thoughts on that? Mr. Burns responded again, the intent of the space is for retail and we indicated on the plan that it is a retail display area. Again, that is the intent of the use of it, so I don't think there would be any objection to noting that that is what that space is for, it is for retail, it is not long-term storage of items. I understand what the Board is saying. I think the intent of retail space is that you are trying to move items, you are not trying to have items just sit there for an unknown amount of time, like you said, and then it just becomes a collection that is in there. That is not the intent of this. This is a retail establishment that is trying to get retail sales. Chairman Levenstein stated right; they don't make money if they don't sell. Mr. Burns responded right. Ms. Hebert stated from a code enforcement standpoint, it would help to clarify that it is not to be used for display of automobiles, recreational vehicles or boats. Mr. Connors stated any vehicles. Mr. Sullivan asked wouldn't they need a dealer permit for that? Ms. Hebert replied technically yes, but property owners are allowed to display a few items. Mr. Fairman stated I think we would add a condition that no motorized vehicles of any type could be displayed on the site. Bicycles and things like that would be okay, but nothing motorized. No scooters, no motorcycles, no ATV's, no motorized vehicles, I think, should be a condition that would cover that and would keep it clean.

Chairman Levenstein asked for any comments, questions or emails from the audience? Ms. Hebert stated if there is anyone that has joined via Zoom or by telephone, please raise your hand if you would like to speak. We have not received any emails on this application.

Vice Chairman Murphy stated I just wanted to make the comment that I appreciated Mr. Newberry's insight and his idea and that I agreed with that.

Mr. Connors stated we do have the waiver request as well. The waiver request is from Section 322.2.1 of the Land Development Control Requirements, to allow no additional parking be provided for the use of the outdoor display area. The Board would have to act on the waiver.

MOTION by Town Manager Sawyer that the Planning Board grant the waiver to Section 322.2.1 of the Land Development Control Requirements, to allow no additional parking be provided for the use of the outdoor display area, as this particular specific use has proven not to need the additional parking that would be

required. Vice Chairman Murphy duly seconded the motion. On a unanimous roll call vote, the motion carried.

MOTION by Mr. Newberry that the Planning Board grant approval for the site plan amendment to permit outdoor displays of the consignment store use for Mark Detscher (Owner) at 400 Boynton Street, Lot 45-204, Zoned GR as shown on plans prepared by TF Moran, last revised July 1, 2020, with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:

- 1. All outstanding technical comments shall be addressed to the satisfaction of the Planning Director and Director of Public Works.**
- 2. If the Planning Board grants the waiver request, it shall be noted on the plan.**
- 3. The applicant shall revise the plan to note that the stockade fence on the north and east sides of the display area be replaced with a 6-foot tall stockade-style fence that is 6-feet in height.**
- 4. A note shall be added to the plan indicating that exterior displays shall be limited to items commonly associated with a consignment store use and that no exterior storage is permitted.**
- 5. The applicant shall repair any surfaces that are deteriorated and require resurfacing with concrete or asphalt pavement.**
- 6. The applicant shall note the existing landscaping in the front setback on the plan. The existing landscaping shall be maintained. Shrubbery may be trimmed to no shorter than the height of the existing fence.**
- 7. Prior to the issuance of a Certificate of Occupancy, all proposed site improvements shall be completed.**
- 8. There shall be no motorized vehicles sold or displayed in the display area.**

Vice Chairman Murphy duly seconded the motion. On a unanimous roll call vote, the motion carried.

- 3. Discussion of a site plan violation of a previously approved plan for a 93-unit workforce housing development off Chestnut Drive, Lots 20-99-1, 20-99-2, 20-99-3, and 20-99-4, Commercial Zone.**

Ms. Hebert stated I put this on tonight's agenda to update the Board and to get some guidance and feedback from the Planning Board in regard to the next steps in correcting a site plan violation at the Bow Lane workforce housing development off from Chestnut Drive.

Ms. Hebert stated in June of 2019 the Planning Board granted conditional site plan approval for the renovation of the former Shorty's restaurant and the construction of a 93-unit workforce housing apartment complex consisting of three 3-story apartment buildings. The approval included 26 precedent conditions that needed to be finalized before the site plan is signed by the Planning Board. That Planning Board signature indicates the Board's final approval of the

permit and no construction or land clearing or development may occur until the Planning Board has signed the plan and issued their final approval. The owners of the property cleared the trees and vegetation on the property before the site plan was signed by the Board and before those 26 precedent conditions were finalized. This became evident to the Planning Department in early June and a letter of violation and a Cease and Desist order was issued to the property owners and all construction activity has stopped on the site, but unfortunately as we looked into the land clearing and the situation in more detail, we learned that the tree clearing also involved cutting areas that weren't identified as locations that would be cut on the approved site plan. So we have a situation where the approved site plan no longer represents the existing conditions on the ground because there was extensive additional clearing on the property. There was a buffer on the westerly side of the site that was cut and there was also some additional clearing that happened along the perimeter of the property.

Ms. Hebert stated as I said before, staff issued a violation notice and the owners have been cooperative and stopped all construction activity on the property, but you can see on the posted approved plan the squiggly line along the perimeter of the property, the bold line indicates the limits of clearing basically. The area to the west of the apartments had buffered vegetation and a proposed stockade fence and the land along Riddle Brook and along the shared property line with the commercial properties that front on Route 101 there was some clearing that extended into those areas that were shown as locations where trees would be preserved. After discovering the violation, I consulted with the Town attorney and discussed possible steps to take in order to correct the violation, and at his recommendation I wanted to update the Board on the situation and wanted to hopefully get some feedback tonight from the Board on a pathway to move forward to correct the situation. At this point construction can't begin again until we have an amended site plan that proposes some restoration and revegetation of the areas that have been cleared. If you look at the screen now, the areas that are shaded are on the perimeter of the property approximately representing those areas that have been cleared where the trees should have been preserved. All of those 26 precedent conditions need to be satisfied and the plans need to be signed by the Board before construction can begin again, and the Town also would need to take an erosion control bond and site stabilization bond and any of our preconstruction requirements would need to be satisfied before construction could begin on the site again.

Ms. Hebert stated the applicant has done some work to start to correct the issue and they had the property surveyed, and the plan you are looking at right now is an illustration of that survey marking the approximate limits of clearing. Tonight I guess I would like to get a sense from the Board how the Board would like to see the restoration plan presented to them. This is a significant violation, and then as you can see in your packet, you had some concerns from the abutting property to the south that the clearing also extended onto their property. You have a letter in your packet from Attorney John Sokul, you also have some letters from other abutters who state they have no concerns with the clearing and the applicant has provided a draft restoration plan and they are in agreement with that restoration plan.

Ms. Hebert stated going back to the fact that the site plan that was approved differs from the existing conditions on the ground, in order for us to move forward we would need the Board to approve a site plan amendment that would include a new planting plan and restoration plan for the cleared areas. When things like this happen, if it is a minor issue, a minor violation, staff

would often approve an amendment like that administratively, but this is a more significant violation and I guess I wanted to bring it back to the Board, get clarification that you agree this should go back to a public hearing for a site plan amendment rather than having staff approve a change administratively. The letter from Attorney John Sokul is asking for a third party surveyor/landscape architect designer to be involved and for a specific size tree to be planted. It is very hard to replace mature trees that have been lost, and I guess I would like to hear the Board's thoughts on this. You have all of the material in your packet that the applicant has submitted in preparation of this discussion and then you also have the letter outlining the concerns from the abutters. Chairman Levenstein stated before we have a discussion, why don't we hear from Attorney Sokul and the applicant has a representative here tonight.

Vice Chairman Murphy stated I recused myself from the underlying project so I am going to recuse myself from this as well just for consistency sake. Mr. Sullivan stated the same statement applies here.

Ms. Hebert stated before we start, I just want to clarify again that we are not asking you to approve a specific plan tonight, so that would in theory come back to the Planning Board and be discussed and reviewed at a public hearing. As you get into the details of the plan, I want the Board to understand that you are not actually approving a plan tonight. We are just looking for some guidance and direction so that we are all on the same page. Chairman Levenstein stated I would still like to hear from Attorney Sokul and the applicant.

Attorney John Sokul stated I am here tonight on behalf of the Dumas family, which is the abutter to the south who was very negatively impacted by the tree cutting. Throughout the project the process was balanced, some seed here, it was a large project, the buildings were tall, knowing that there would be a buffer of large mature trees preserved, together with that buffer area being enhanced, was one of the things that caused the Dumas family to finally support the project and get onboard with it. The buildings are very tall; they will tower over their property, and my goal for tonight is just to make sure we will have a public hearing to discuss this.

Attorney Sokul continued this is not a matter that can be approved administratively. RSA 676:4 talks about when approvals and conditions of approvals can be granted administratively as opposed to those requiring a public hearing and two of them are irrelevant here. One is minor plan changes whether or not imposed by the Board as a result of a public hearing, compliance with which is administrative and which does not involve discretionary judgment. Secondly, conditions which are in themselves administrative and which involve no discretionary judgment. That is a lot of judgement that needs to go into figuring out what an appropriate remedy is here and what an appropriate restoration plan is. Some large, tall trees, 125 feet and taller, were taken down. Whether it was a mistake or not, I don't know. Give the applicant the benefit of the doubt on that for this conversation, but obviously they started without site plan approval in hand, they started without doing a pre-construction meeting, without posting necessary bonds, and had those processes and protocols been followed, none of this would have ever happened. So, we have received a copy of that plan from the developer's attorney. I did send them an email asking some questions about it; I have not heard back from them on that. Joanne Dumas' brother-in-law received an inventory of what was cut from I believe the site excavator on Friday, it does not look accurate to us and we want some time to look at that, but ideally it would be reviewed by an

independent forester selected by the Board. We really want to look hard at what was taken down, what protections were lost as a result of this, and to make sure that an appropriate remedy is put into place. We are not looking to be obstructionists, we are not looking to be bad people, we just want the process to be followed. There was a process that was followed for the original approval, and now we are materially different than what was there at the beginning. We will look at the plan, we have asked for additional information and we will look at it, but this project has started awfully, awfully, and we are concerned about what steps on the project, forget about the restoration plan, the next construction steps. If this was not intentional, then the developer lost complete control over their construction people who went out and clear-cut the property before they had site plan approval, clear-cut required buffer area and clear-cut onto an abutters land and we are concerned about that too. We are very concerned about how this started and how very well-known, wise regulations, requirements were just ignored.

Attorney Sokul stated I have said my peace for tonight for now, and then I expect there will be a public hearing on this, we will look at whatever the restoration plan is, and once we get a little bit more information that we have asked for, give it a good hard look. We know that 125-foot tall trees can't be replaced, we know that 175-foot tall trees can't be replaced, but I think a lot more can be done than was shown on that restoration plan, and we look forward to talking to the Board at the public hearing.

Attorney John Cronin stated I am representing the applicant as we did in the original process. I will concede that this is the type of case that you never want to be involved with and certainly we acknowledge that the limits of the no-cut zone were exceeded. I am sure members are scratching their heads and saying how did this happen, as I had the same questions myself.

Attorney Cronin stated before I get into it, I know two members have recused themselves, and I would ask that Mr. Clough and Mr. Duschatko also recuse themselves. I believe, and my recollection may be wrong, that Mr. Clough spoke in opposition and testified against this project, and I believe Mr. Duschatko was negotiating for the purchase of the property at the time the approval process was ongoing. I recognize that that is their decision, but I just wanted to make a request at the earliest time possible in the proceedings.

Councilor Duschatko stated I was not involved in any negotiation process for this property. We had a discussion of what could be done. The two principals basically walked away from the situation and there was no discussion that went on any farther, had nothing to do with the property as it was approved or an approval process, and any statements made contrary to that are absolutely incorrect. Thank you.

Mr. Clough stated as far as I am concerned any involvement that I had on this property was as a private citizen and all of my commentary at public meetings was as a private citizen. I have no bias against the applicant and that was well before I was a Planning Board member. I anticipate moving forward to give all parties a fair shake.

Attorney Cronin responded Mr. Chairman, I recognize that it is up to the individual members to make their decision on a recusal request. With respect to Mr. Clough, clearly he was actively involved in opposition, and I believe he even signed a petition, whether he was a private citizen

or not, and I recognize that the Board has some authority to at least have a vote making a suggestion, and I think it would save the applicant and the Town a lot of time and money if Mr. Clough recused himself. I recognize that is up to the Chairman to decide, and if you want me to move on, I am happy to do so. Chairman Levenstein responded I think you can move on.

Attorney Cronin stated okay, so how did this happen. As folks may know, the School District was working with the applicants to try and get as much of the site work done prior to the return of school if that were to happen. My understanding is that Mr. Anagnost hired some capable contractors that had experience, not only in Bedford but around the state, and have done a good job on other sites for him, requested to be at the ready because we were working on those 26 conditions. I will note, with the exception of the DOT project, all of those documents have been received. We made an effort to submit them as they were received, but the preference of the Town was to get them all in one lump sum and not to give them individually. As of last Friday, one of the last easements from Tucksman was received so we are hoping that the DOT permit will be forthcoming within a week or so. The instruction was to be at the ready, tried to see if you have a hole in your schedule to get started as soon as possible. We understand that the site contractor took that as an all good to go as a timber permit was issued and they had a pre-meeting with the school. We recognize that is not an excuse, we are not suggesting it is an excuse, it was wrong, it shouldn't have been done, but just to give you some context as to what happened out there.

Attorney Cronin stated as far as the work that was done, there was no benefit to the applicant here, certainly there will be a great expense, not only from the delay but the cost of restoration and so forth. I think it was mentioned that it was early June when this violation occurred, but I believe it was actually in early July that Ms. Hebert gave notice, I believe by text, that there was a problem, work had started, and tree cutting was done. After some discussion there was a meeting on the site and the site walk with Ms. Hebert to analyze what had been done, suggestion made by Ms. Hebert, who was noticeably upset, that they would have to do some restoration of that buffer, and she suggested the Optics site is a buffer that the Town was particularly pleased with would be a starting point for it. Immediately TF Moran starting working on it based on the Optics buffer and created a plan for an enhanced buffer that really magnified the amount of plantings that were in the original plan.

Ms. Hebert stated I would like to interrupt here. You are putting words in my mouth and telling a story that is incorrect as far as the timeline and the events that occurred. I guess I feel like I need to explain to the Board what happened. I thought we were moving forward but this was a highly aggravating situation for me. I had an email exchange with TF Moran, they were looking to schedule a meeting at the school to review starting the utility work at the school, and I specifically said there can be no construction on the Bow Lane site. I did not get a clear response from TF Moran after that email exchange so I took it upon myself to drive down to the site. I happened to be working remotely 30 minutes away, and discovered that all of the trees had been removed from the property and that happened in early July. The team asked me where we have situations where residential buffers had been an issue and I directed to them to look at the Optics site because there is a successful buffer behind the Optics building. So I really would appreciate not selling the restoration and the corrective measures that you are proposing as something that

we collectively agreed upon. I specifically asked for this meeting with the Planning Board because I need direction from the Board on this matter because the violation is so significant.

Attorney Cronin stated the point of my clarification was to correct the date from June to July. With respect to the issues as far as the restoration plan, my understanding is that it was shown to you and you requested some additional deciduous trees and were pleased with it, but that is really not relevant tonight. We can deal with that at the hearing. As far as the staff report that was provided, there is no objection to the site walk or anything of that nature; it is probably a good idea so members can get a look at it with their own eyes. There is no objection to having the amendment to the landscaping plan and the site plan put forward so that you can evaluate and have a public hearing where everyone can air their own positions.

Attorney Cronin stated as far as the goal here, the goal is of course to correct this situation, to make it better than it was proposed. There is no one asking this Board whether you could or not to waive any of the rights that the Dumas' have; we recognize that they have independent rights outside of the planning process and we have put the tree cutters and foresters on notice and their insurance companies of that. We expect that we will have to deal with that. Our hope is to satisfy the Dumas family in that regard, so no one here is suggesting that we are looking for an absolution from the Planning Board.

Attorney Cronin stated in terms of the recommendations in the staff report, we are fine going to the next meeting and moving forward and try and make a correction.

Chairman Levenstein asked for any comments or discussion from the Board.

Mr. Fairman stated I can't express how furious I am about this. The preservation of those trees were critical to my vote to approve this development. These people know the rules and they were reminded of the rules by Ms. Hebert and they still went ahead and broke them. It is the continuation of the arrogance these people showed during the site approval process. I think it is important that we have a new site plan developed and given to the Board to look at, and I think that all things should be on the table, including rescinding the approval for this site plan.

Mr. Newberry stated this looks to be a rather egregious situation and before I would even think of considering a mitigation, I think the Board should go out and have a look, I think that the Board should also have a third party surveyor and a third party qualified landscape architect to review the proposed plans. Chairman Levenstein asked Ms. Hebert, is there any dispute about the border or about where the property lines are or anything that we would need to have a survey done? Ms. Hebert replied I believe that in Attorney Sokul's letter there is a recommendation for a third party surveyor to mark the stumps that have been cleared and to accurately identify those limits of clearing by a third party surveyor so it is not something that is disputed. Mr. Newberry stated I would argue yes, Mr. Chairman, because they clearly didn't know where the lot lines were. Chairman Levenstein stated I don't know whether they clearly didn't know or they were just clearly disregarded. Attorney Sokul, is there an issue about where the lot line is over there in your mind? Attorney Sokul replied we spoke to a surveyor that we were going to hire to come out and only verify the lot line who believed that whatever TF Moran was showing on the plan would probably be accurate. My concern is more fully documenting what was actually cut

down. That is what I want to have reviewed by an independent third party inventorying all of the trees that were cut down, the sizes, the number, the locations. The stumps are still on the site and that is really what I was referring to in my letter.

Mr. McMahon stated I would support a visit to the site and a public meeting and also the comment made by staff about having a third party. I think that would be important considering what we just heard, and I also would suggest that a wetland expert is part of that third party to guarantee that the appropriate actions are taken to be able to protect Riddle Brook. Chairman Levenstein asked Ms. Hebert, is there any concern with Riddle Brook on behalf of the Planning staff? Ms. Hebert replied I think there is no concern with Riddle Brook at this time in terms of erosion control but Riddle Brook has lost some of its vegetated buffer, so something that the Board would want to consider in a restoration plan is what are your goals for the plantings along Riddle Brook. Are they to be for screening purposes or for restoring that natural vegetation along the brook. Mr. McMahon stated Mr. Chairman, that is exactly what I meant to say because the incursion of the ability for water to be absorbed and cleaned before it gets into the brook. Ms. Hebert stated in my experience a landscape architect is very qualified to also make those decisions, so if the Board wanted to have a third party landscape architect review and make suggestions on the restoration plan, I think they would be very qualified at looking at needed plantings or restoration and ecological qualities of the buffer.

Councilor Duschatko stated I would just like to give my support to the comments made by Mr. Fairman, Mr. McMahon and Mr. Newberry. I think they were right on the mark. Thank you.

Mr. Foote stated I have a couple of things. If we could revert back to the plan that was shown. I think it was from the report and he said that the school had asked him to clear some trees. Would you clarify where those trees are that the school requested that the site contractor cleared? Ms. Hebert stated I think Attorney Cronin should answer that question as a representative to the owners. Attorney Cronin replied I don't know the exact location. I am aware that there was a discussion where someone from the School District requested some trees that I believe might have had some impact to the edge of the parking lot be taken down and they did take those down, but I can't say with certainty where they were located. I think Mr. Duval was circling with his highlighter the general location on the screen but maybe we can get some more information before you do your site walk. Mr. Foote stated the reason I asked the question is I think I am looking where the utilities cross into the property and I think that is in the lower right southeast corner of the property. Is that where the water and sewer cross into the property? Attorney Cronin replied that is correct. Mr. Foote asked so is the water and sewer going to be located underneath this proposed mitigation where there is going to be a berm introduced? Attorney Cronin replied I will ask Mr. Duval to handle that one. Bob Duval of TF Moran stated the original clearing made room for the sewer and water trenching. You can see the old treeline here and there was a gash in the middle of it that accommodated the water and sewer connections to the high school property, and the proposed mitigation would also not plant directly on top of those lines, if that is the thrust of your questions. Mr. Foote responded thank you.

Chairman Levenstein asked for any comments or questions from the audience either via Zoom or by telephone. There were none.

Chairman Levenstein asked what do we need to do here to get this before us as far as a public hearing? Do we need to make a motion? Ms. Hebert responded you could make a motion or I can just take your discussion as your concern says if you want to poll folks and see how they feel. Right now it sounds like the recommendation is to schedule a site walk and to have the applicant submit a site plan amendment for review at a public hearing with the proposed restoration plan. I also heard that you want a third party surveyor and/or landscape architect to review the clearing that occurred. Chairman Levenstein stated I am not sure what the surveyor is going to be able to add. I don't really know what the surveyor is going to add. I think the landscape architect would be of benefit to look at it to review the restoration plan. Ms. Hebert stated I just need clarification on that. Mr. Newberry stated my question, Mr. Chairman, would be who do we think would be qualified to inventory the extent of the cutting there. I think I heard the abutter's representative concern regarding inventorying and understanding exactly what had been removed. Chairman Levenstein stated I think, and my problem with an inventory on the applicant's property is one thing, I don't know whether it is the job of the Town to hire somebody to do an inventory of what was cut on the Dumas' property because I assume that is all going to be part of litigation between the Dumas' and the applicant. I don't know if people on the Board have strong feelings about this. Mr. Newberry responded I am not hard set on a surveyor, but I would definitely be in favor of making sure that we have a landscape architect review the proposed mitigation. Chairman Levenstein stated I would think that a landscape architect could tell us what has been cut too. Do you think? Ms. Hebert replied that is a little bit more of a specialty. I think looking at the stump would be more of a forester that would be the professional who could tell us exactly what tree was cut down and how big it potentially was. Chairman Levenstein stated we do have a forester's report; Attorney Sokul is disputing it. Perhaps maybe what we should do is when we go on and do a site walk, we can go and see and if we think there are discrepancies in what the report says and what we see out there on the site, we could request that it be reviewed by somebody independent. How does the Board feel about that? Mr. McMahan responded I think there is always value for a third opinion to ameliorate any differences that may occur between the two. It gives us a better position. Mr. Newberry stated I would agree with Mr. McMahan's comment. Mr. Foote stated I agree with Mr. McMahan's comments as well. Councilor Duschatko stated I agree with Mr. McMahan's comments.

Chairman Levenstein stated okay, it sounds like the consensus is to hire or get an independent forester. Ms. Hebert asked have an independent forester review the limits of the clearing plan? Chairman Levenstein replied no, to examine what was actually cut. Ms. Hebert asked and submit a report? Chairman Levenstein replied yes. Ms. Hebert stated and a third party landscape architect to look at the restoration plan. Chairman Levenstein replied I think so. Mr. Foote asked Ms. Hebert, is there any concern about if there were a drought? Was there any discussion about the buffer trees removed from the site just for safety? Ms. Hebert replied there was some discussion but there was a level of trust that we were struggling with whether the contractor would mobilize again on the site. As you know, we haven't allowed the property to be used as a staging area for the utilities at the school property. The applicant would like to remove the logs that have been cut and that is something I would need direction from the Board on. Mr. Foote stated the logs I am not concerned about; it is the large piles of brush that may become a hazard being that we are about at a drought at this point. Chairman Levenstein asked are you worried about a fire hazard? Mr. Foote replied exactly. Ms. Hebert asked should we have the forester also look at that issue and make a recommendation? Mr. Quintal stated they are

already cut, so if we take a picture, won't that suffice to prevent a potential problem later. Chairman Levenstein stated I don't see what leaving them on the site it is actually doing, especially if we are hiring a forester who is going to be telling us what they want anyway. Ms. Hebert stated then you are asking me to have the contractor mobilize again on the site with heavy equipment and mechanized equipment to move stumps and brush around, so it is just a fine line and a difficult thing for staff to enforce. Chairman Levenstein asked how quickly can we get this on? Attorney Cronin, how long will it take to put together your restoration plan? Attorney Cronin responded there is one that has been done and submitted and enhanced. Mr. Duval will correct me if I am wrong, but I think that adds almost double what was originally proposed, absent the tall trees that were cut. Chairman Levenstein asked Ms. Hebert, how much time do we need? Ms. Hebert replied I think hiring the third party professionals is going to depend on what their schedules are right now and what their availability is. We need at least 14 days' notice to abutters for the public hearing, so I think the earliest we could get this on would be your August 31, 2020 meeting if all the stars are aligned, otherwise you would be looking at your September 14, 2020 meeting. Ms. Malcolm asked will there be a site walk before these meetings?

Chairman Levenstein replied that would be the plan. Do they have to submit an application? Ms. Hebert replied they do. They would submit an application for a site plan amendment. We see these frequently; we just heard one tonight to ask for an outside display area. Chairman Levenstein asked then you have to give 14 days' notice to abutters? Ms. Hebert replied yes. Chairman Levenstein asked you are going to have to have it reviewed by staff that normally goes through all of these things again like the Fire Department, the Police Department, things like that? Ms. Hebert replied that is correct. We would have to review it and if you want to have the third party review, we would have to contract for that third party review and that would be paid for by the applicant. Chairman Levenstein stated we don't have to pick a date now because they have to make the application. We can let that trigger what has to be done and when it can be done.

Ms. Hebert stated I guess I would like the Board to summarize what you would like to see at the end of this discussion so I know we are all on the same page. We will put that plan in motion and it will take the time it takes. Chairman Levenstein stated my understanding is that you want to set up a site walk, we want a public hearing on the amended site plan, which would include the restoration plan, and we want the restoration plan reviewed by a landscape architect and we want a forester to go out and do a survey of what was actually cut. Does anyone have anything to add to that? Mr. Fairman stated I don't think you mentioned that we have to have a revised site plan. Ms. Hebert, one thing I want to make sure, if they have satisfied all of the conditions in the original site plan at this point, they cannot start, or do we need to include that in a motion that they cannot start up again until the revised site plan is approved. I just want to make sure they can't start up again. Chairman Levenstein responded they can't start up because the site plan isn't what was approved. The site has changed. Ms. Hebert stated yes.

Town Manager Sawyer stated Mr. Chairman, I was just trying to clarify. The forester has already done a survey; can we have it be similar to what the landscape architect is going to be doing, providing comment on the existing survey versus a whole new survey being done. Ms. Hebert responded the survey that was provided only looked at the trees that were involved in the

trespass, which isn't really what the Board is looking at. Town Manager Sawyer stated sorry about that. It's my misunderstanding.

Mr. Clough asked do we need to have a wetland expert also? Chairman Levenstein replied no; I don't see why. I think the landscape architect can deal with the vegetation and the buffer. When we get out there and if we see anything on a site walk that seems to show that the wetlands were disturbed, that will be one thing, but based upon what Ms. Hebert said and what we have seen, I don't think that it is an issue at the moment. Once we are out there we could see. Mr. Newberry stated I agree with you in terms of the wetland scientist.

Chairman Levenstein asked Ms. Hebert, do you need anything else from the Board at this time? Ms. Hebert replied not at this time.

V. Approval of Minutes of Previous Meetings:

MOTION by Mr. Newberry to approve the minutes of the July 20, 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:

Ms. Hebert stated I will give you an update on the Master Plan and the public informational session. The Think Tank recorded their presentation. Thank you to Kelleigh Murphy who participated in that recording along with two other members of the Think Tank, and we are now waiting for TPUDC to complete their recording of their portion of that presentation. We are working with BCTV and Bill Jennings to create a show that could be broadcast and rebroadcast on BCTV to solicit public comment on the Master Plan. We are excited, we are moving forward with this aspect of the plan and hope to keep everything on track with having a final draft plan available for review and comment this month.

VIII. Adjournment:

MOTION by Mr. McMahon to adjourn at 8:35pm. Vice Chairman Murphy duly seconded the motion. On a unanimous roll call vote, the motion carried.

