***Cases heard at this meeting:***

*Case 22-7: Millstone Realty Trust*

*Case 22-9: Millstone Realty Trust*

*Case 22:12: Heigis Family Rev. Trust*

*Case 22:13: Frambach*

Chair Jandebeur called the meeting to order at 6:32 PM.

**Present:** Chair Tim Jandebeur, Selectman Representative Hal Kreider, Members: Betty Smith, Lee Baldwin, Judi Anthony, Bob Strobel (Alternate), and Dave Copeland (Alternate) arrived at 6:40 PM.

**Absent:** Vice-Chair Joe McCaffrey

**Voting Designation:** Chair Tim Jandebeur, Selectman Representative Hal Kreider, Betty Smith, Lee Baldwin, Judi Anthony, and Bob Strobel.

**Town Staff Present:** Planner James Burdin, Land Use Specialist Linda Smith, and Land Use Administrative Assistant Lisa Fellows-Weaver.

**Minutes:**

*October 13, 2022*

**On a motion made by Ms. B. Smith, and seconded by Mr. Kreider, the board voted unanimously to approve the minutes of October 13, 2022, as written.**

**CONTINUED CASES:**

**Voting Designation:** Chair Tim Jandebeur, Selectman Representative Hal Kreider, Betty Smith, Lee Baldwin, and Bob Strobel.

*Judi Anthony recused herself from Cases 22-7 & 22-9. Dave Copeland arrived at 6:40 p.m. and recused himself from Cases 22-7 & 22-9.*

**Case 22-7:** Millstone Realty Trust, 1090 First NH Turnpike Map 217/35. Applicant is requesting to replace an expired excavation permit approved as part of Case 16-05, May 24, 2016. *Continued from September 22, 2022.*

**Case 22-9:** Millstone Realty Trust, 1090 First NH Turnpike. Map 217/Lot 35. Applicant is requesting a minor site plan to replace an expired site plan for existing storage and retail sales of commercial construction and landscape materials, including the reclamation phasing and reclamation surety bond phasing approved as part of Planning Board Case 08-11, and Case 16-05, May 24, 2016. *Continued from September 22, 2022.*

Peter Holden of Holden Engineering represented the application along with Dave Docko of Millstone Realty Trust.

Mr. Holden stated that they received and reviewed Mr. Burdin’s comments and would prefer to proceed with Planner Burdin’s suggested Option 2. *(To request a conditional approval with conditions listed in the staff report and amended to require the scope and schedule of inspections for compliance with the former site plan conditions, to be agreed upon and money deposited in the escrow within 30 days of receiving conditional approval).*

Mr. Burdin stated that the goal is to determine the best way to address the site plan, which has expired, and the site that has been operating with detention ponds that have not yet been inspected; the town wants to make sure the detention ponds are inspected.

Ms. L. Smith stated that she has contacted the Town’s engineering and is waiting for them to provide a quote and then an escrow account will be set up.

Mr. Burdin mentioned Case 22-6 for Lot 35, which was conditionally approved. He mentioned that Case 18-19 was approved with a condition for a commitment of conservation land once all the excavating out back was completed. He stated that Case 22-6 would not be in compliance.

Mr. Holden stated that a variance was granted many years ago, granting the quarry within a conservation overlay district. He noted that there is a brook crossing and it was never their intention for the land on the south side of the power lines to be put into conservation. Mr. Kreider noted that Lots 36 and 37 are the lots in the rear of the property.

Mr. Strobel asked if the Conservation Commission would need to review the materials again from 13 years ago. Ms. Smith replied that the variance will expire in 2023 and there are other items that need to be addressed and accomplished in addition to conservation commission.

Mr. Burdin stated that the conservation issues would not have any bearing on tonight’s cases and Case 22-6 should be re-noticed for another hearing.

Mr. Holden stated that he would supply a complete list of lots that were intended to be put into conservation land.

Chair Jandebeur stated that the public hearing for this case is still open. He re- opened the public comment portion of the meeting. With no comments from the public, Chair Jandebeur closed the public comment portion.

Mr. Burdin reviewed his staff report and comments for Cases 22-7 and 22-9. General discussion ensued.

With no further comments from staff, or members of the board, Chair Jandebeur closed the public hearing.

**On a motion made by Ms. B. Smith, and seconded by Mr. Kreider, the board voted unanimously to grant approval for the vesting milestones for the purposes of RSA 974:39:**

1. **Date of Approval**: The date that the Planning Board Chair signs the approved site plan indicating final approval of the Board.
2. **Active and Substantial Development:** Effective immediately upon final approval of Site Plan application 22-09, provided that all necessary erosion control measures remain in place.
3. **Substantial Completion**: The applicant has met all of the following criteria within 5 years of receiving final approval of Site Plan application 22-09.
	1. The site has been fully excavated to the proposed finished grade.
	2. Reclamation for all areas identified to be reclaimed has been completed and inspected by the Town or their designee.
	3. A reclamation bond or other performance guarantee sufficient to restore the retail/wholesale area to a safe and stable condition has been provided to the Town.
	4. Suitable erosion control measures remain in place around the proposed retail/wholesale area to prevent erosion and sedimentation due to stockpiled materials.

**On a motion made by Ms. B. Smith, and seconded by Ms. Baldwin, the board voted unanimously to grant Site Plan approval for Application, 22-9, with the following conditions:**

*Prior to the signing of plans:*

1. The Applicant will make the following changes to the plan set:
	1. Resolve the discrepancy in the fence description on page 5 (stated location is 20’ feet from lot line, depicted location appears closer to 50’).
	2. Add a cross-reference to the reclamation plan (sheets 10 and 11) stating that reclamation shall be consistent with the Reclamation and Erosion Control Inspection and Maintenance Notes on sheet 9.
2. Detention pond #2 shall be inspected by the Town Engineer at the applicant’s expense, which shall include, but not be limited to, the following:
	1. The applicant and Town Engineer shall agree to a schedule and scope of inspections sufficient to determine that detention pond #2 was installed as proposed in application 16-05 and resubmitted with application 22-09 and that there have been no changes to site conditions since application 16-05 that would necessitate a different design. This shall be completed by November 28, 2022.
	2. The applicant will establish an escrow account sufficient to cover the cost of all inspections by November 28, 2022.
	3. The Town Engineer will make a final recommendation about the consistency of the detention pond with approved plans and presence of any issue that would necessitate a different design.
3. The applicant will ensure that adequate reclamation bonds or other surety are in place, including but not limited to the following:
	1. The applicant and Town engineer will agree to an amount necessary for the reclamation of all areas noted in the reclamation plan based on current prices
	2. The applicant and Town engineer will agree to a surety amount to restore the retail/wholesale area to a safe and stable condition
	3. The amount of any existing reclamation sureties for this excavation will be adjusted to reflect the agreed amounts and/or the applicant will provide new sureties as necessary
4. Excavation permit application 22-7 shall be approved.
5. All necessary federal, state, and local permits from application 16-05 must be active and in place or new permits provided to the Town (e.g. documentation of the 2022 AOT renewal).
6. The applicant will deliver three signed and stamped paper copies of the plan to the Town for signature
7. Completion of all conditions necessary for final approval within one year of conditional approval (i.e. by October 27, 2023). The Planning Board may extend this deadline for good cause by a majority vote. The applicant is advised that the Planning Board does not have jurisdiction over code enforcement and that neither this one-year deadline nor any extension thereto approved by the Planning Board can preclude or supersede action by the Code Enforcement Officer for operating without an active site plan.

**Conditions subsequent**

1. The applicant shall achieve the vesting milestones for “substantial completion” as identified by the Planning Board within 5 years of receiving final approval (i.e. by October 27, 2027). Failure to meet this deadline will result in the expiration of this site plan approval effective immediately. This deadline may be extended by the Planning Board for good cause by a majority vote.
2. The applicant will remain compliant with all conditions subsequent of Excavation Permit Case: 22-7, including but not limited to the approved reclamation plan.

Mr. Strobel suggested adding an additional condition to state “by majority vote”. Mr. Burdin explained that this is a state requirement and if the board should change it would be extending that statutory requirement.

**Mr. Strobel amended the motion, seconded by Ms. Baldwin, to include “by majority vote”. The amendment passed unanimously.**

Mr. Kreider asked if the board is able to take any provisions due to inflation with regards to the reclamation. Ms. L. Smith explained that typically projects do not continue for this length of time. A 10% contingency fund could be added as well as language allowing the escrow account to be modified to reflect current costs.

**On a motion made by Ms. B. Smith, and seconded by Mr. Strobel, the board voted unanimously to grant approval of the Excavation Permit Application, 22-7, with the following conditions:**

**Prior to issuance of the Excavation Permit:**

1. The applicant will provide 3 paper copies of the final plan set, including the approved reclamation plan, to the town for signature, incorporating any final edits requested in Minor Site Plan Application Case: 22-9.
2. Minor Site Plan Application Case: 22-9 shall be approved and all applicable conditions necessary for final approval shall be met.
3. Completion of all conditions necessary for issuing the excavation permit shall be completed within one year of conditional approval (i.e. by October 27, 2023). The Planning Board may extend this deadline for good cause by a majority vote. The applicant is advised that the Planning Board does not have jurisdiction over code enforcement and that neither this one-year deadline nor any extension thereto approved by the Planning Board can preclude or supersede action by the Code Enforcement Officer for operating without an active excavation permit.

**Conditions Subsequent**

1. The applicant shall file annual intent to excavate forms to the Town as required by the Department of Revenue Administration
2. The applicant or their successors will maintain a reclamation bond or other surety acceptable to the Northwood Board of Selectmen in an amount adequate to support the reclamation of those portions of the site that have been excavated or cleared and grubbed but not yet reclaimed. Surety will be put in place according to the following procedures:
	1. The applicant will provide annually to the land use department an estimate of the areas to be excavated and those areas that have been reclaimed for the purpose of updating the required surety amount concurrently with the required intent to excavate form;
	2. The Board of Selectmen may, at their discretion, require inspection of the site by the Town engineer or other designee at the applicant’s expense for the purpose of evaluating compliance with and effectiveness of the approved reclamation plan prior to the release of the reclamation bond.
	3. Any required increase to the reclamation bond amount or escrow payment for the cost of required inspections shall be in place prior to excavation in the identified areas.

**Case 22:12:** Heigis Family Rev. Trust, 284 First NH Turnpike Map 231 Lot 6, proposes site plan to add permanent outdoor dining space for an existing restaurant. *Continued from September 22, 2022.*

**Voting Designation:** Chair Tim Jandebeur, Selectman Representative Hal Kreider, Betty Smith, Lee Baldwin, Judi Anthony, Bob Strobel, and Dave Copeland.

Peter Heigis was present and represented the application.

Mr. Heigis requested a continuation to November 17, 2022, to allow him additional time to obtain more information.

Chair Jandebeur read a letter of support he received from Kate Bernier of 66 Green Street, dated October 26, 2022. Mr. Burdin read a letter from abutter Scott Martin, of 28 Green Street, referencing a prior approval for a former business that forbid the use of Green Street for any access.

**On a motion made by Ms. B. Smith, and seconded by Ms. Baldwin, the Board voted unanimously to grant the applicant’s request to continue Case 22-12 to November 17, 2022.**

**NEW CASE:**

**Case 22:13:** Lot line adjustment for the following properties: Mary Frambach (Tax Map 120 Lot 10), Sargent Family Trust of 2020 (Tax Map 110 Lot 9), Robert & Robin Rainville (Tax Map 110 Lot 10 & 11), Blais Re. Trust (Tax Map 110 Lot 12), Scott & Linda Atherton (Tax Map 110 Lot 13), Jon & Caitlin Harrison Rev. Trust (Tax Map 110 Lot 14) and Broad Cove Trust (Tax Map 110 Lot 15)

Lot line adjustment between Tax Map 120 Lot 10 (Frambach) and Tax Map 19 Lots 9,10, 12,13 & 14. Land to be transferred from Tax Map 120 Lot 10 and merged with the other parcels. Lot 9 will merge 1.32 ac, Lot 10 will merge 2.72 ac, Lot 12 will merge 1.61 ac, Lot 13 will merge 1.09 ac, Lot 14 will merge 1.08 ac, Lot 15 will merge 1.24 ac. and Tax Map 120 Lot 10 will go from 88 ac. to 78.79 ac.

John Newman, of NH Land Consultants represented the application along with Mary Frambach.

Mr. Newman gave an overview of the proposal explaining the application is for the approval for a series of seven lot line adjustments that will adjust 9.21 acres from the parent lot of 88 acres, Map 120/Lot 10. He described the property and noted that the lots are along the lake, and access is off of Gulf Road. He noted that the lots all have year-round homes or are seasonal camps; no new lots are being created. A limited survey was completed only around the properties.

The proposed transfer of the 9.21 acres is as follows:

▪ Lot 9 – 1.32 acres

▪ Lot 10 – 2.72 acres

▪ Lot 12 – 1.61 acres

▪ Lot 13 – 1.09 acres

▪ Lot 14 – 1.08 acres

▪ Lot 15 – 1.24 acres

Ms. Smith asked if the roads are shown on the plans. She explained that an approval of the BLA comes under the town’s subdivision regulations; therefore, any road shown on an approved plan will be exempt from 674:41. With the board approval of the BLA plan it would exempt a parcel from having to obtain any relief from 674:41 and no building permit can be issued. The approval would not make Broad Cove Road a town road; it would remain as a private road. She suggested adding a condition to the approved plan stating that the BLA was approved to increase the lot sizes and the approval does not grant relief of 674:41 on any future development; no review of the condition of the road was completed.

Chair Jandebeur stated that he is always in favor of making lots larger; however, he would support the condition and suggested that the issue be discussed with legal.

**On a motion made by Ms. B. Smith, and seconded by Mr. Strobel, the board voted unanimously to determine the application complete and open the hearing.**

A discussion was held regarding the fact that the access to the project is in the Town of Deerfield as well as under the direction of a different regional planning commission. Mr. Newman noted that they are presenting the project to the Town of Deerfield, November 9.

**On a motion made by Ms. B. Smith, and seconded by Mr. Strobel, the board voted unanimously to determine there is no Development of Regional Impact for this project.**

A discussion was held regarding the waivers. Mr. Strobel noted the shape of lot 9. Mr. Newman explained that there is a portion of lot 9 that is along the edge of the road that was “skirted” to avoid creating land on the other side of the road.

Chair Jandebeur opened up the public comment portion.

Walter Joy, Orchard Lane, expressed concern with his property and the right of way. He stated that his driveway and the right of way were previously ruined by loggers. Mr. Newman stated that there would be no access off the driveway or right of way.

Mr. Dollard asked why the adjustments are being done. Erin Tebo explained that he will be purchasing lot 119/10. This process works to make the lots better and have larger lots on the lake. They have no plans to subdivide, and the lot would still not meet the subdivision requirements. All existing easements will remain.

With no further comments from the public, Chair Jandebeur closed the public hearing.

* 1. **Waivers:**
	2. The applicant has requested the following waivers:
	3. Section 3.01(E) to allow a lot that is less than 100 feet in width. The applicant indicates that existing parcels are less than 100 feet in width, and they propose to continue existing parcel lines in transferred areas for clarity of ownership, and, Section 4.10(B)(1)(b) to accept plans that substitute available GIS and LIDAR data instead of a full topographic survey and wetland delineation on the large parcel.

**On a motion made by Ms. B. Smith, and seconded by Mr. Kreider, the board voted unanimously to grant the waiver to Section 3.01(E) allowing a lot to be less than 100 feet in width.**

**On a motion made by Ms. B. Smith, and seconded by Mr. Copeland, the board voted unanimously to grant the waiver to Section 4.10(B)(1)(b) allowing the substitution of GIS and LIDAR data instead of a full survey and wetland delineation.**

Chair Jandebeur expressed concern with the private road matter. Ms. Smith suggested that Mr. Burdin draft a condition stating that an approval of the application would not change the road situation and send for a legal opinion.

**On a motion made by Mr. Kreider, and seconded by Ms. B. Smith, the board voted unanimously to continue Case: 22-13 to November 10 pending legal opinion.**

Chair Jandebeur called for a recess at 8:09 PM. Session resumed at 8:14 PM.

**VOLUNTARY MERGERS:**

The following voluntary mergers were read into the record and signed by Chair Jandebeur:

*Case 22-14: Nishan and Carolyn Nahikian Map 122 Lots 30 & 31*

*Case 22-15: Eric and Jason Hardy Map 125 Lots 31 & 32*

*Case 22-17: Luanne Blanchard Map 111 Lots 13-1 & 31*

**ZONING AMENDMENTS**

Mr. Burdin presented his first draft of proposed zoning amendments to the board for their review. Proposed changes have been *italicized.*

**Amendment 1**

**VII. C. Non-Conforming Lots**

VII.C.(1) No action shall be permitted to change the boundary of the lot *that would make any* aspect of the lot and/or structures thereon more non-conforming. *Changes to lot boundaries or dimensions that would bring the lot closer to conformance, or which would not change the degree of conformance, are permitted.*

**Amendment 2**

**Section III Definitions**

**Large Scale Business:** An individual *commercial or industrial* business that occupies buildings or structures, or a grouping of *commercial or industrial businesses*, with aggregate gross floor area of 10,000 sq. ft. and larger *contained on a single lot.* (Rev. 3/06) (Rev. 3/20).

IV.B.(4) SETBACKS. Structures shall be set back from property lines in conformance with the minimum and maximum setback requirements set forth in this section.

(g) Large Scale Business Setbacks. Minimum front, side, and rear setbacks *for all businesses meeting the definition of a Large Scale Business* shall be set according to the size of the aggregate gross floor area. Minimum setbacks are also specified in Table IV-3, the Large Scale Business Minimum Setback Table.

**Amendment 3**

VI.C. Agricultural Soils Overlay District

VI.C.(3) DEVELOPMENT PATTERN All new subdivision proposals on properties that are *10 (ten)* acres or larger and possess a sum of 25 percent (%) or greater in agricultural land with soils designated “prime” or of “statewide significance” by the U. S. Natural Resource Conservation Service soil survey as shown on the map titled “All Overlay Zones” dated July 2001 or its equivalent map depicting the layers referenced above maintained at the Northwood Town office, shall be Open Space Design proposals consistent with Section IX of this regulation. *(Rev. 3/04)* All proposed development lots shall be clustered away from or as close to the edge of the overlay district as possible. *Open space as required by Section IX of this regulation shall prioritize, as much as possible, the conservation and continued use of agricultural soils of prime or statewide significance for agricultural purposes where this overlay is present.*

**Amendment 4**

VII.D.(3) Permitted Conversion of Seasonal Dwellings for Year-Round Occupancy:

(a) The lot and structure must comply with all provisions of Section IV. General District,*including, but not limited to lot size, setback, type and length of road frontage and height requirements.*

**Amendment 5**

IV. B. (

1) ROAD FRONTAGE

 All lots are required to meet the road frontage requirements of this section. (*Rev. 3/00, 3/01, 3/08)*

1. *Contiguous Frontage. The entire length of required road frontage shall be contained within a single contiguous segment. Corner lots are permitted to count frontage on both roads towards this requirement as long as the parcel contains the entire frontage leading up to the corner on both roads. Parcels with multiple non-contiguous frontage segments will be deemed compliant as long as at least one frontage segment is long enough to satisfy the applicable minimum frontage requirement on its own.*

**Amendment 6**

1. **Definitions**

*"Affordable'' - Housing with combined rental and utility costs or combined mortgage loan debt services, property taxes, and required insurance that do not exceed 30 percent of a household’s gross annual income.*

*“Workforce housing” - Housing which is intended for sale and which is affordable to a household with an income of no more than 100 percent of the median income for a 4-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. "Workforce housing'' also means rental housing which is affordable to a household with an income of no more than 60 percent of the median income for a 3-person household for the metropolitan area or county in which the housing is located as published annually by the United States Department of Housing and Urban Development. Housing developments that exclude minor children from more than 20 percent of the units, or in which more than 50 percent of the dwelling units have fewer than two bedrooms, shall not constitute workforce housing for the purposes of this subdivision.*

V.B. (4) ELDERLY *AND WORKFORCE* HOUSING

(a) Elderly *and workforce* housing developments, two family, and multi-family residential housing must meet the standards as set forth in the development ordinance. *(Rev. 3/05)*

(b) To create an attractive design and livable community for Elderly *and Workforce* Housing development projects, one or more principal residential structure(s) per lot is permitted provided:

[3] Manufactured housing shall not be permitted in Elderly *or Workforce* Housing development projects.*(Rev. 3/02) (Rev. 3/06)*

(c) Road Frontage Road Frontage requirements for Elderly *or Workforce* Housing developments are specified in Table V-2, Elderly Housing Requirements Table.

(d) Lot Size The minimum lot size for Elderly *or Workforce* Housing development shall be 10 acres.

(e) Setbacks: Front, Side and Rear Setbacks are specified in Table V-2, Elderly *and*

*Workforce* Housing Requirements Table.

1. Maximum Density: specified in Section IV(B)(3)(e) and in Table V-2, Elderly *and*

*Workforce* Housing Requirements Table.

1. Open Space Component There shall be an open space component to every Elderly

*or Workforce* Housing development. The required lot percentage and restricted land types shall be consistent with Section IX(E)(1). (*Rev. 3/05)*

Members agreed with the changes presented. In addition, Mr. Copeland suggested looking into proposing a maximum height due to safety issues. The Development

Ordinances will be further discussed at the November 10 meeting.

**INTERNAL BUSINESS**

***Fees:***

Ms. L. Smith provided an overview of the board’s application fees. She explained that there is no requirement for public notices to be placed into a newspaper; therefore, proposed to reduce the public notice fees from $125 to $25, to cover staff time and travel time for postings. With regard to abutters fees, she proposed increasing the fee from $10 to $15 to be consistent with the ZBA fees; this covers staff time, supplies, postage, etc. She stated that the pin inspection should be removed as there is no one currently on contract at this time for the inspections; a fee would be assessed for the cost of the contractor, when applicable. She suggested removing Copies, as well, as there is no way to offer large copies to the public.

**On a motion made by Ms. B. Smith, and seconded by Ms. Baldwin, the board voted unanimously to recommend the new fee schedule, as presented, and to forward it along to the Board of Selectmen for a public hearing.**

***Master Plan Committee***

Upcoming Master Plan Committee Meetings:

* November 21st at 10 a.m.

***Capital Improvement Plan (CIP)***

The completed CIP spreadsheet was provided to members.

**ADJOURNMENT**

**On a motion made by Ms. B. Smith, and seconded by Ms. Baldwin, the board voted unanimously to adjourn at 8:53 p.m.**

A TRUE RECORD ATTEST:

Lisa Fellows-Weaver,



Land Use Administrative Assistant