

**Town of Northwood
Planning Board Meeting
March 12, 2020**

Chair Strobel called the meeting to order at 6:35 PM.

PRESENT: Chair Bob Strobel, Selectmen's Representative Hal Kreider, Betty Smith, Joe McCaffrey, and Victoria Parmele.

TOWN STAFF PRESENT: Linda Smith and Susan Austin, Land Use Department. James Burdin, Town Planner.

VOTING DESIGNATION: Chair Bob Strobel, Selectmen's Representative Hal Kreider, Betty Smith, Joe McCaffrey, and Victoria Parmele.

MINUTES:

February 13, 2020

Ms. B. Smith made a motion to approve the minutes of February 13, 2020 as amended. Ms. Parmele seconded. Motion carried 5/0

February 27, 2020

Ms. B. Smith made a motion to approve the minutes of February 13, 2020 as amended. Ms. Parmele seconded. Motion carried 5/0

CONTINUED CASE

Case 19-12

Michael Sullivan (Aroma Joes) 8 Bow Lake Road Map 222 Lot 61. Applicant is proposing to build a drive thru and walk up coffee shop on a lot that has an existing seasonal green house and single-family home that will have an office.

Scott Frankiewicz and Michael Sullivan were present to speak for the application. Mr. Frankiewicz stated that Brent Gardner, a real estate appraiser from Horizons Associates, Steve Pernaw, and Brent Allard, Attorney were also present in case there were any questions for them.

Mr. Frankiewicz stated that the new plans had very little as far as changes on them. The most significant change is the sidewalk improvement in the back-parking lot. The board had issues with the original plan, so they revised it to go around the parking. There is also a traffic improvement plan that they put together that they expect to be reviewed by DOT. They have also included the septic design that has been approved. They are waiting for the approval from DES. They have submitted two letters, one in reference to traffic improvement, and all of the outside comments have been taken into consideration. The other letter lays out the planning process, and what the process has been up until now, including all of the changes made from start to now. It also thanks the board for the professionalism throughout the process. The other item that he hopes to talk about tonight would be the waiver for the sidewalk.

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Chair Strobel stated that based on Mr. Burdin's comments at the last meeting about new information, and that they have now received two letters and a new plan, he would like to consider not closing the public hearing tonight. Mr. Burdin stated that since they are getting letters and plans handed to them right now, are they prepared to ask all of their questions tonight? From a process standpoint, if they were to close a public hearing tonight and reopen at the same meeting, that would be fairly easy to do. If they were to close the public hearing tonight, they could not reopen the public hearing without re-noticing. If they feel that there may be other questions that they would like to ask about then they should keep the hearing open. He stated that he had suggested that everything written be delivered 10 days before the meeting. It might be a problem if they set one date for everything written, mainly if there are substantial changes to the plan set that are delivered on that 10-day mark. Then nothing else that is written can be informed by that plan set. There may need to be a separate date for written comments and information. Mr. Frankiewicz stated that they don't anticipate making any changes to what they submitted tonight.

Mr. Frankiewicz stated that the Road Improvement sheet is based on all the input from the meetings and comments about Bow Lake Road. There was an agreement that the area needed to be upgraded, so they are proposing some striping and resurfacing some areas. Of course, that will be an application through DOT and the town working side by side. In addition, all of the Bow Lake Road improvements that Mr. Sullivan has been discussing is a 10-foot strip in front of his property, which would be an easement, to be dedicated to a Route 4 widening, when DOT deems it necessary. In the letter they provided tonight, it talks about a fair share donation or monetary amount based on how much traffic this site is generating. That's approximately 13%. They have used that number to come up with the amount of \$52,000, while recognizing that is a number that could change. Ms. Parmele asked where would the rest of the money for the upgrades come from? Mr. Burdin stated that he spoke with Roger Appleton from the NH DOT District 6. Mr. Appleton stated that they don't know what the timeline would be or where the funding would come from. He reiterated that DOT's position is that they would like the donation of the right of way for potential future widening. He felt that the widening would be an ongoing discussion between the town and DOT regarding counts, level of service, and safety at the intersection to determine whether any improvement would be necessary at that intersection. That funding source could be anything from a highway safety improvement program application filed by the town, to getting rolled into some larger Route 4 tenure project to potentially being covered by District Six paving funds. There is no single source that would be the obvious go to. Assuming they don't know what source, what is the likelihood that the town would be expected to contribute to either financially or in kind? The answer depends on the funding source. Again, they don't know, and if they don't know how it's paid for then they don't know to what extent the town would be expected to pay for it. Ms. Parmele asked if Mr. Burdin had the sense that DOT was looking at all of the aspects of that intersection, including the left turn lane and the need for a traffic light. They came into the process somewhat late. Mr. Burdin stated that DOT is familiar with all of the materials that have been submitted. The position that they hold is similar to the discussion that the two engineers had at the last meeting, they are aware that it meets the warrant for a right turn lane, but warrants

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are not the sole deciding factor for DOT and determining when to install an improvement. They are also not saying there will never be a time the DOT doesn't want this improved; they are willing to engage in an ongoing discussion about what the town feels is becoming necessary and they are willing to be flexible, but the town needs to be patient. DOT is willing to work with the town to figure out how to do these improvements, but it may involve the town contributing some money. Mr. McCaffrey asked what category is the traffic in between the peak hours categorized as? Mr. Pernaw stated it was everything, commercial, school, and just about everything. The overall pattern says at midnight it slows, but there are two peaks during the day. Ms. L. Smith asked should the town have to go forward and apply for this permit where it meets Route 4? Mr. Burdin stated that the town could require the applicant to provide engineered drawings, but are there other cost involved to the town and how does the build process work? Is it similar to any other escrow? Mr. Burdin stated that the process itself would be like any improvement to a town road, because the town road intersects with a state road, DOT needs a driveway permit. For the most part, the actual improvement of the road would be the same as any other town road. DOT would need the driveway permit from the town because it is a town road that is connecting to a state road. Ms. L. Smith stated that when CBNA installed Academy Way, they were required to do striping n Bow Lake Road in this area which they have done every year. The road is going to change and that is something to think about, as far as how that will fit in. Chair Strobel stated that he would like to bring up the determination of regional impact.

Ms. Parmele made a motion stating that no potential regional impact exists for this case. Ms. B. Smith seconded.

Mr. Burdin stated that regional impact is whether an opinion of a local land use board determines whether the development of a lot could reasonably be expected to have an impact on a neighboring municipality because of a variety of factors.

Motion carried 5/0

Chair Strobel stated that they still have the outstanding waiver for the sidewalk, he stated that just to clarify, the existing sidewalk along Route 4 will remain? Mr. Frankiewicz stated that yes it would. Ms. Parmele stated that she didn't feel that the waiver should be voted on until they are deliberating, and she stands by that because if for some reason the design changes, which she doesn't think it will, but voting on waivers should be a part of the deliberation. It's implying that they are deliberating, and they aren't yet. Chair Strobel stated that this is the last meeting for public input, the public is here, so they definitely need to have public input. Mr. Burdin stated that to Ms. Parmele's point, if for some reason they go into deliberation and they were to consider denying the waiver and the application at the same meeting, he would strongly discourage the board from denying the waiver and then immediately use the sidewalk as a justification for denying an application. That is the only reason he continues to suggest that they act on the waiver long before deliberation so they have the question answered of whether this needs to be redesigned. If they are suggesting that it does need to be moved, that cannot be the only reason for denial. The applicant

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should a reasonable chance if they have to redesign. As long as the board is clear on that and if they don't act on the waiver tonight. Selectman Kreider stated that he thinks they should have a discussion about this. He's sat in on many of the visionary meetings for the master plan, and one of the biggest concerns was about development on Route 4 and Route 43. There was disappointment in that the town didn't think ahead and put sidewalks in so people could walk from the different areas. The applicant has indicated that he views this as a business area, and therefore the board should take that into consideration when they are thinking about whether or not a sidewalk is appropriate. If this turns into another "center of the town" and they don't do sidewalks in advance, they once again lose the opportunity to do that. He thinks they should have the discussion, and if its an appropriate time, then they should do it now. If they prefer to do it later, that's fine also, but he would like to hear other people's opinions on that point.

Chair Strobel asked if there was a pedestrian count done. Mr. Pernaw stated that yes, there was it's described on page 5. Mr. Pernaw summarized "pedestrian activity at the subject intersection is minimal. Three pedestrians and one bicycle in the two-hour morning time period, and none from 3 PM to 6PM. Selectman Kreider stated that his prediction would be that, like a row of dominos, once you start doing something in an area, the same types of things start happening, so you can envision that they wouldn't necessarily want to live there anymore, and sell their house and their bet and biggest offer might be from a commercial element. That's really what he's thinking about, once you start, this will build into that. Being the Planning Board, they should plan for that.

Chair Strobel opened public comment, directing the comments be about traffic concerns.

Amy Manzelli, Attorney for the Severance Family

Ms. Manzelli Stated that she doesn't have any questions about traffic, but she has comments. Traffic is one of the eight major reasons why they are asking the board to deny this application. Traffic is a huge concern in this application. She stated that she has one clarification of what the applicant's team said earlier. The town engineers did not say that they need to add a turning lane later, at some unknown time for an unknown cost. What they actually said was that a turning lane on Route 4 needs to be added now, as part of this project because of the traffic it would cause. She said she had two questions pertaining to traffic. On one hand, assume that the project is approved and Route 4 ends up not being improved for a long time. When else would this planning board have approved a site plan application that would increase traffic this way at such an unsafe intersection, knowing it was going to remain so for the long term. What other application they would have approved that would have exacerbated such an unsafe circumstance. So unsafe, in fact that two accidents have occurred at that intersection already this week. On the flip side, the board approves the project, but push really hard for Route 4 to be improved right away, because it is a high priority. When else has the planning board put the Town of Northwood in a position of having to pay money, perhaps tens of thousands of dollars, or even hundreds of

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thousands of dollars, for the benefit of one commercial site plan approval. Think about if you would have ever done that before. For one site plan approval, they are going to push for improvements to Route 4, knowing that they town is likely going to have to eat that cost because they want it done fast. The bottom line is, the instincts of your own police department were right: "Serious traffic concerns" That was the gut instinct at the beginning, and they know have the evidence showing that.

Jim Hadley, Old Mountain Road

Mr. Hadley stated that his questions do relate to transportation. The previous speaker brought the cost up. The town just approved a \$350,000 warrant article for road improvements. If this goes the way it seems, the applicant is only paying \$52,000 the town could be paying \$350,000. It sounds like they are asking the tax payers to subsidize \$350,000 for this project. Would they include it in the CIP plan now, or in the next couple of years? Chair Strobel stated that the applicant is willing to pay \$52,000 towards the turning lane on Route 4 and the estimated cost is between \$300,000 to \$400,000. Mr. Burdin stated that he wanted to point out that those numbers were rough estimates. Selectman Kreider stated that the CIP is to list out what they might have to as a town do, so they can get it on the radar. He could envision if this were to be on the CIP, then they could put bonding as a funding source, town taxes from that particular year. Or private contributions. The applicant's contributions could be listed as part of that. He feels to Mr. Hadley's point, they could include it on the CIP there are provisions to deal with how they might fund it. Chair Strobel said that they haven't even thought that far ahead, as to what will be on the CIP this year. Mr. Hadley stated that he has lived in Northwood for 30 years, and he doesn't think that the Planning Board has ever subsidized a project of this magnitude. It would set a bad precedent going forward.

Karen Breiger, Ravenwood Road

Ms. Breiger stated that a traffic light installation wasn't up to the town. That is a state decision. As she said at the last meeting, she hopes the planning board isn't approving an application based on a hope and a prayer that the state is going to approve a traffic light and make that happen prior to this business being opened. She stated that the cost for the improvements on Route 4, as they know, those are needed improvements today, without the addition of a business. Mr. Hadley pointed out that the town just approved a warrant article for road improvements, but she would also point out that the town voted down the proposed budget. This is a town that does not look kindly to added tax burdens. Please consider that as they are considering an application for which they would then be requiring the town to fund to make this a safe intersection. One other question, in one of the letters submitted tonight, it says the applicant is agreeable to \$52,000 to be used for improvements on Route 4. Is that a cap of \$52,000? The letter acknowledges the estimate is a range of \$300,000 to \$400,000. The commitment is 13%. It seems that it is a cap that the applicant is not willing to go above. She would hope the board would consider if that is a cap, on one hand, acknowledge that the cost is only an estimate, and in all of her dealings with estimates it is usually the top range of the estimate that she was given, not the low end from all

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the contractors that submitted bids. Again, where is the money coming from to fund the majority of the costs?

Kate McNally

If she's understanding correctly, the state is not going to do the right-hand turn. The applicant is willing to commit \$52,000. The rest would fall somehow to the tax payers. She is not willing to fund something, that although has been needed, is occurring now to benefit a business. Besides that, a right-hand turn may solve some problems, but it doesn't solve the whole intersection problem. The board needs to think very clearly about how they are protecting the neighborhood, the people traveling Route 4, and the people in town who use Route 4.

Chair Strobel closed public comment, subject to reopening.

Mr. Pernaw stated that he would like to make it clear that the applicant is not asking the town to spend a penny on anything. There is an existing 10-foot shoulder there today. In their memo dated Jan 16 shows the existing 10-foot shoulder is used as a right turn lane on an as needed basis. In the same memo, they show the design plan that DOT came up with when they redesigned the intersection. They called for a 10-foot shoulder. In this same memo, they have included the DOT guidelines for deceleration lanes, width, 10 feet to 12 feet. That's why in his opinion, what is out there today is adequate. The board can approve the site plan, traffic will increase and the shoulder will continue to be used as is shown in the photograph. If the DOT wanted a right turn lane, they would have said that, rather than saying a donation of 10 feet was acceptable. The NCHR guideline that they use to write their reports is based on a DOT guideline. When this road was opened, Bow Lake Road, the warrant wasn't there for a right turn lane, what triggered the need was the installation of Academy Way. This new application is only adding 22 more turns. This applicant is willing to pay his fair share. The applicant needs to put a cap on things. He's discussed mission creep before, and this may start out as a one-mile project, and then turn into a two-mile project. I don't want my applicant having to pay 13% of a two-mile project. Its important to have some kind of a reasonable cap on it.

WAIVER

Chair Strobel asked if the board would like to proceed with the waiver. Mr. McCaffrey stated he felt they should be getting that out of the way. How do they make a decision on the full project with missing pieces? Chair Strobel stated that the consideration has been the case since the beginning. Does the town want a sidewalk along Bow Lake Road as a public right of way, as the regulations call for, or are they willing to grant the application to have a sidewalk through the property? Selectman Kreider asked if there was an intermediate solution, such as a public walkway through the middle of the property? Chair Strobel stated that they had that discussion earlier, the applicant was uncomfortable about that because of the security aspects. Mr. Burdin stated that the walkway would be there to serve the business, and there would be no public access easement or guarantee of right of way.

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Ms. B. Smith made a motion to grant the waiver. Mr. McCaffrey seconded, for discussion.

Chair Strobel stated that he would like to go over the criteria for granting a waiver.

1. finding it not detrimental to public safety, health, welfare or injurious to other property.
2. The conditions are unique to the property and not applicable to the others.
3. Because a particular physical surrounding, shape or topo condition of the property, hardship will result, not merely an inconvenience.
4. Finding the waiver will not in any manner vary provisions of town ordinance or master plan.

Chair Strobel stated that the differences he see with this property is that the internal sidewalks meet, in his opinion, the goal of a sidewalk during business hours. They will provide safe public access to anyone coming on to the property or during the day, whether they are a customer or not, they would have a way to walk from Bow Lake Road to Route 4. But does that meet the intent of having a public sidewalk? Selectman Kreider stated that his understanding was that they were to keep quiet about a particular favorableness or not of something, so the question of whether we agreed that this is a reasonable sidewalk solution, he kept quiet. He's sorry that he did that, and maybe they need to change the process so they don't lead someone down a path. That said, he is viewing this from the lens of what he said before, and if they don't think about true public sidewalks, they will never have them in what he suspects will become a business area. From that perspective, he doesn't think that Chair Strobel is correct when he says if you look at it from a long-term perspective, then no, this does not provide public access. Ms. Parmele stated that one of the criteria was that the waiver will not in any way vary provisions of town ordinances or master plan, is that the one, Selectman Kreider, you have the most problem with? Selectman Kreider stated yes. Ms. Parmele stated that she agrees that the solution seems to be reasonable, but yet she can't agree that all of the criteria are met. Mr. McCaffrey stated that master plan doesn't call for sidewalks. Ms. Parmele stated that the vision statement does. Chair Strobel stated that they have to keep in mind that the master plan is a guide. Mr. McCaffery stated that as far as the projection that this will become a business area, he disagrees. The church and the school are not commercial properties. He stated that the board heard that there was a concern about foot traffic. Since the sidewalk cannot be addressed on the road, the applicant came up with a solution. This sidewalk will serve its purpose, based on what the need is. Ms. B> Smith stated that Mr. McCaffrey mentioned that the church and the school are not commercial properties, but one of Mr. Sullivan's points was that they were commercial. She also stated that the tendency of people to take the shortest route between two places. Mr. Sullivan had expressed that he does not want that to be a public sidewalk, it would only be for his business. That diagonal sidewalk will be a natural route for people to cut between Route 4 and Bow Lake Road.

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Mr. Frankiewicz asked if he could read the arguments submitted for the waiver. Mr. Burdin stated that if they were going to hear comments on this waiver from Mr. Frankiewicz, then the board should open comment to everyone. Chair Strobel stated that they would rather keep discussing as a board. The conditions for granting the waiver were as follows:

1. *finding it not detrimental to public safety, health, welfare or injurious to other property.* Ms. Parmele stated that she felt that the proposed sidewalk was the best solution for this plan. Chair Strobel stated that he agreed. Mr. McCaffrey stated he agreed as well. Selectman Kreider stated that it depends on the lens he views. If he views it as future planning, that means that the area has similar businesses. His concern is that if they don't start with the first project, then they would never get there. In terms of an overall business center, this is not a safe sidewalk center.
2. *The conditions are unique to the property and not applicable to the others.* Ms. Parmele stated that she has a hard time with this meeting this condition. Ms. B. Smith stated that she didn't see where it was a unique property. Chair Strobel stated that he felt it was a rare property, because it was on the corner. Not that it was a unique, just not common. Mr. McCaffrey stated that if something has to jump out and be totally unique, every property is totally unique, or not at all. It seems that the sidewalk situation is being satisfied, so its not being ignored.
3. *Because a particular physical surrounding, shape or topo condition of the property, hardship will result, not merely an inconvenience.* Chair Strobel stated that he had a difficult time with this as well, in that is it a hardship as opposed to an inconvenience. He can see a way of getting a sidewalk in along Bow Lake Road. Ms. Parmele stated that she had been sympathetic to the idea of it being a hardship, because it is another expense, but the applicant seems to be able to do some other things in terms of the road on Bow Lake Road and putting money towards a possible right turn.
4. *Finding the waiver will not in any manner vary provisions of town ordinance or master plan.* Chair Strobel stated that he felt that goes to Selectman Kreider's point.

Motion Failed 1/4.

Mr. Burdin stated that if they close public hearing, there would be no new information submitted. Mr. Burdin made a suggestion as to how to take in new information for the next meeting. The new plan set should be in the office 10 days before the next meeting. Any other comments or input should be received by 4 PM the day before the meeting. The scope of the comments should be limited to the things that were changed tonight in the plan revision.

Chair Strobel called for a five-minute recess

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Chair Strobel opened the public comment

Amy Manzelli, Attorney for the Severance Family

Ms. Manzelli stated that she wanted to start logistically on the timing. She thinks it would make sense if the applicant were to file the revised plan and anything additional that the applicant wishes to file by March 20, and any responses to that by members of the public would be by March 30. That would then put the public in the position of having to review those plans, and put the board in the position of having the time to review everything before it rendered decision. This is all of course if the board does not reach a decision tonight.

In substance, she wanted to start with something she reflected on today. She was looking through the town's website and she stumbled upon the mission statement. The Town of Northwood's mission statement as stated on the website in part says "*The Town of Northwood New Hampshire seeks sustainable growth that protects our natural and historic resources, while preserving our values, qualities, and culture. To promote and improve our quality of living, enhance our sense of community, and preserve the integrity of our small-town heritage.*" It is her opinion that this proposal will irrevocably alter this area. It is the very center of Northwood that they are talking about for this application. This project will do the opposite of enhancing a sense of community and preserving Northwood's small-town heritage. Please keep this in mind when you move into deliberations on the application. In the Master Plan, acknowledging that this is guidance, there is what comes close to a definition of historic structures. She stated that for guidance, the Master Plan states that "*The preservation and use of our historic resources, particularly the wealth of buildings constructed in the nineteenth and early twentieth centuries, continue to be of concern to Northwood residents.*" This is a good working definition that they might want to consider applying in their deliberations. Buildings constructed in the nineteenth and early twentieth centuries. As she mentioned before, she thinks they should deny this project for eight reasons. One of them is traffic. But she encourages the board to think about and adopt some or all of the other issues. The more that they can agree with, the stronger a denial will be. The record is amply full of evidence that will support a denial in this case.

1. Variance. The proposed use requires a variance because it will not comply with the 20-foot road setback to the existing residence. Because of the addition of asphalt to meet some of the safety concerns
2. Encroachment. There is a concept called a sanitary protected area, it is land that is meant to be lightly developed or not developed to protect drinking water quality around a well head. The sanitary protective area required by NHDES for approval of a well in this case is 100-foot radius, which encroaches onto the Severance property. The Severances do not agree to grant an easement for this purpose.

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3. Septic. The Septic application to NHDES that Mr. Sullivan submitted is not approvable. In part, because the 100-foot radius encroaches on to private property not owned or controlled by Mr. Sullivan. Therefore, DES has requested further information from Mr. Sullivan. They are not on the verge of approving this application, as was represented earlier.
4. Historic impacts. Imposition of an artificially lighted, commercial drive through operation that creates a ton of traffic on and around a small lot would irreparably degrade the historic character of the neighborhood and its many historic resources.
5. Altering the character of the area. Because of the same reasons just stated and the impact to property values and other reasons, the proposed use would substantially alter the character of the area.
6. Lack of information. As identified recently by CMA and in this letter, the applicant still has not provided all of the information required by the Town. Because of this, the applicant has put the board in a position of not having sufficient information with which to evaluate many aspects of this application.
7. The lot is an inappropriate site for this project. Because of it's size, shape, location, the proposed use cannot meet competing site plan requirements.
8. The dangerous traffic situation.

Each of these reasons standing alone justifies denial. Taken together, it's a strong statement that this board would be correct in determining that this project be denied.

The substantial alteration of the character of the area. She submitted a response letter from Mark Carrenti, The NH licensed appraiser that the Severance's have retained to help them understand the potential property values impact. The important thing here, as you may recall the applicant only submitted half the appraisal he submitted, it was not the before and after it was just the before. Then the applicant later submitted the whole thing. Mr. Carrenti has reviewed this now and he stands by his opinion that the applicant's appraisal in no way appraises the impact of this proposed development.

This Application is coming up on a year of having monthly meetings about this application. Some of the insufficient information, the stuff that is still missing, for example landscaping details, those have been known for many months. Today was the deadline to get everything in. She feels that the board would be well within their rights to deny the application tonight. She respectfully requests on behalf of the Severances that when they do vote on this application, they vote to deny it.

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Jim Hadley, Old Mountain Road

At an earlier meeting on this project, the Chairman spent some time describing a “neighborhood”. It is the inhabitants of a residential area. It forms a community within a larger group. It is a condition of being close together. If this project gets approved then this “neighborhood” that Marcia Severance has lived in for most of her life and has been enjoying in her retirement years from the Town of Northwood after 38 years of exemplary work, will be forever changed. Moreover, the value of her property will be diminished according to an independent report.

At 4:30 am every morning employee cars will begin arriving in this “neighborhood” at this location. At 5:15 am this business will open and the public will begin to arrive in this “neighborhood” in their vehicles at the drive-thru lane to place their orders for coffee and whatever. With their engines running and their lights on, the pollution caused by these vehicles will be evident to the “neighborhood”. All of these items are readily available to the public in several other existing locations in Northwood which are not found in residential “neighborhoods”.

The purpose of site plan approval is to ensure that the applicants comply with the requirements: to promote better site design, to integrate projects more effectively into their surrounding environment, to prevent the impairment or depreciation of property values, to improve internal vehicular and pedestrian circulation, to encourage quality and innovative site planning techniques, to ensure a harmonious relation among the buildings and uses, and adjacent “neighborhoods”, and to protect the health, safety, convenience, and general public.

As I have said in my previous written testimony, in my 30+ years of living in Northwood, I have never seen a site plan application such as this one that would cause as many adverse impacts to a residential “neighborhood”.

If this application is approved it would clearly be in violation of:

1. RSA 674:44, II. (a) – “provide for the safe...expansion of use of the site and guard against such conditions as would involve danger..., to health, safety, or prosperity by reason of”: (3) - “undesirable and preventable elements of pollution such as noise, ..., or any other discharge into the environment (e.g. exhaust of standing vehicles) which might prove harmful to persons, ...or adjacent properties”. This project will cause light pollution, noise pollution, and undue danger to the abutting property owners. Planning boards should be

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protecting existing neighborhoods from the adverse impacts of new development and not creating them.

2. RSA 674:44, II (4) (b) – “provide for the harmonious and aesthetically pleasing development of the municipality and its environments”. This project will cause traffic nightmares in that area during peak times of the day.
3. RSA 674:44, II (4) (f) – “require in proper cases, that plans showing widening of such streets be submitted to the planning board for approval”. Without a right turning lane, the use of a shoulder turning right is illegal in NH according to the Chester, NH police department.

In addition:

1. The Northwood police chief has submitted documentation that this project, if approved, would create serious concerns regarding traffic safety. This planning board should not be compromising public safety contrary to the concerns of our police chief. It would result in unintended consequences.
2. The town’s engineer (CMA Engineers) submitted his traffic review study report (dated 11/18/19) saying that, “in the AM peak hour this project will increase traffic by 30% on the Bow Lake Road approach to Route 4”.
3. There is currently no right turn lane to handle this additional traffic. Rather there is a shoulder lane only which is currently being used by some motorists illegally. Northwood property taxpayers should not be required to pay for any off-site improvements as a result of the adverse impacts to traffic which will result if no improvements are done to this intersection.
4. As soon as this project opens its doors for business, the value of abutting properties will be devalued.

Based on case law below, this planning board has the authority to deny this application based on the following:

1. Bayson Properties, Inc. v. City of Lebanon, No. 2002-538 (N.H. Oct. 24, 2003) – the planning board denied the site plan application because it failed to comply with the city’s traffic regulations and noise impact that the driveway would have on a neighboring property. The superior court affirmed the planning board’s decision and the Supreme Court affirmed the superior court. The planning board provided the applicant with ample time and guidance for bringing this application into compliance with the site plan regulations.

The above decisions should give planning boards the confidence to remind applicants that it is the board that gets to decide what is acceptable, and if the applicant cannot

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run a business in a manner consistent with reasonable site plan regulations, it is free to take its business elsewhere.

The expected adverse impacts to traffic, noise and light pollution to abutting properties and the general public that this project would create in a residential neighborhood would be contrary to the intent of our Site Plan Review Regulations. Given that this application does not meet Northwood's Site Plan Review Regulations, please consider the community's best interest and deny this application.

Verne Gardener, Real Estate Appraiser, on behalf of the applicant

Mr. Gardener stated that he has been a real state appraiser for over 49 years. Over the past 50 years he has traveled Route 4 and he has noticed an increase in traffic. According to NH DOT, traffic increases about 2% a year. The increased traffic has been a subject of discussion that can be found in the Northwood Master Plan for the last 20 years. It is this increased traffic that has affected the relative property values of single-family dwellings that front on Route 4. In economic terms, this increased traffic has changed the highest and best use of properties that line Route 4. If you look at the uses between Ridge Road and Harvey Lake Road, 60% have embodied some form of commercial use. It is not the use of a property that has increased traffic, it is the traffic that has benefitted the placement of these individual uses. This is to say that the proposed coffee shop will not adversely affect the market value of the adjoining properties. The planning board has received a different opinion from the property owner's appraiser. That appraiser tells us that he did not inspect the subject property as part of his appraisal. However, he proposes to put forward an opinion, and he cannot see how that is possible not having inspected the property. It speaks in general terms. The appraiser's license only allows him to appraise properties that are 1 to 4 family dwellings. It does not allow him to appraise property that is commercially influenced, or prepare a market study. The limits of that appraiser's license are evident in that he missed a critical step, and what the step is the underlying influence. The appraiser also misapplied the formula. He mixed the two formulas, group analysis and varied sales. What he would really like to board to focus on is traffic. Traffic from this property will not affect its value any more than it has already. Properties along Route 4 are already adversely affected.

Chair Strobel closed public comment

Chair Strobel stated that he wanted to apprise the board to where they were at with this application. They have just denied their waiver request for the sidewalk. They have had 8 months or so with testimony from the applicant, from engineers, and professionals. The denial of the waiver, if the applicant wishes to continue with the

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application would require design changes. It's fair to the applicant to make some sense of where we stand with this as of now. They have not truly deliberated with all of this content yet. He would be disappointed if the applicant goes through to incorporate a sidewalk because they are requesting it and there are other factors that would be not approved. Ms. L. Smith stated that she wanted to point out that a sidewalk is required, it's not that the board wants it. Mr. Burdin stated that if they are suggesting that they are going to enter deliberation at this point tonight, he would suggest that they close the public hearing, begin their deliberation, with no additional input from anyone, and if after that deliberation they feel like they won't come to a consensus tonight and they would want to continue to another date and time certain. Then they can reopen it again at that point and immediately continue it. If they are going to discuss and deliberate amongst yourselves, it should be among the five of you, with no other input.

Brett Allard, attorney for the applicant, stated that he had some comments he would like to make. Mr. Allard stated that he wanted to touch on some comments that he had heard about the character of the neighborhood. Before he does that, he has two response comments to the abutters counsel regarding whether a variance is required and regarding a well radius. Under the zoning ordinances definition of setbacks, those setbacks run from the lot line, not the edge of pavement, so there would not be a variance required. Even if there was a variance required, this board could still grant the application with a condition of approval. Re: Well radius, his client would not need an easement from anyone because the well radius spills over into an abutting property. A well radius is just a regulatory buffer. Well radiuses routinely cross property lines. Turning to the character of the area, there is no record that this proposal would substantially alter the character of the neighborhood. He stated that he just reviewed the Carol Ogilvie letter and the area as she defined it was limited to just the two residential properties across Bow Lake Road. That very narrow definition of the area or the neighborhood is not supported by any case law, *Harrington V Warner*, the Supreme Court said that the ZBA considered the impacts, such as a large expansion would have on the area including the impact on schools, increased traffic, the availability of affordable housing and the potential of reviving an undesirable area of town. Those are different considerations. With this proposal it stands for the proposition that when you are looking at character area, you are looking at a much broader area than simply two houses across the street. Probably the most important determination that this use will not substantially alter the character of the neighborhood is the determination has already been made with the zoning ordinance. Section B(b) 1A the use is permitted as long as it will not substantially alter the character of the area on the proposed site. That determination had already been made before it got to this board as a permitted use. The applicant was there with the Code Enforcement Officer when that determination was made. That determination was

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made when this application came to the board as a permitted use. Because the determination that it will fit the character of the neighborhood had already been made. As far as evaluating what is the character of the neighborhood, it is decidedly mixed use. Some of the other uses that are within a 1000-foot radius are; a church, construction equipment property, a former motel building, office building and a telecom building, Coe Brown private school, a municipal fire pond, another church, a lighted billboard, and this municipal center. That is not a residential use. There is language in the ordinance that supports uses such as this. It seems that in this area “purely residential” is the exception, not the rule. This coffee shop clearly fits this mixed-use area and it is site appropriate. Elaborating on the fact that it is a permitted use, the law presumes that it fits the character of the neighborhood. In the case of *Malchi V Chichester*, the law presumes that a permitted use is reasonable on the site where it is proposed. This was reiterated most recently by the court in *Dartmouth V Hanover*. In that case the court reversed a planning board decision when it denied a site plan on the basis that it was not harmonious with the surroundings or esthetically pleasing with the neighborhood because it was a permitted use in the town zone. Again, that determination has already been made, even if it hadn’t been, clearly the use fits the site. This is or very soon will be a business area, to the extent that it not is already. Thank you for your time.

Selectman Kreider asked if they could address the question about the Code Officer determination. Mr. Burdin stated that he has spoken to Mr. Antoine. He stated that he issued no written determination. His position is that what he may have indicated verbally in a conversation was not an official determination, and that board has the ability to make a determination on character. That is the position that staff has already put to the record on multiple occasions. Mr. Sullivan stated that in very early September, he scheduled an appointment with Rich Antoine, who is the Code Officer. He met with him at the town hall at his desk and in his official capacity, he spoke to Mr. Sullivan about this project and about the area. At that time, Mr. Antoine stated that this fits within the character of the neighborhood and that these are not historic homes around this area. They looked at the ordinance, and they looked at the existing uses of all the area, and he made that determination. That was his official position while he was working in the capacity of Code Enforcement. As far as a resident coming in looking to get a determination made on my permitted use, he made that determination. Ms. Parmele asked isn’t it fair to say it’s a permitted use but the ordinance says that you have to meet certain requirements, yes, it’s permitted but there are requirements. It’s performance zoning, you have to be able to show that you are not going to impact surrounding uses. Mr. Sullivan stated that the zoning ordinance clearly states that the Code Enforcement Officer shall make these determinations. That’s what he did. Ms. Parmele stated there still are regulations, and there is a planning board, it’s a process. Mr. Sullivan stated that there has never been

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a denial of that, in fact, Mr. Burdin confirmed that this conversation took place and this was the determination. Mr. Burdin stated that that was a misrepresentation of what he just said. Mr. Burdin's understanding is from Mr. Sullivan, and Mr. Sullivan only that this conversation took place. What he is saying to the board is that there is no documentation apart from the applicant representation that a zoning determination was made. Mr. Burdin stated that he has asked the building inspector if a zoning determination was made, could he get something in writing that he could show the planning board. Mr. Antoine has said that he will make no such written statement that will rise to a level of determination. Selectman Kreider asked who has the authority to determine the change in character? Mr. Burdin stated that was an issue of interpretation of the zoning ordinance. That point, and any other point. Mr. Burdin stated that in consultation with legal counsel, they were advised that for the planning board to stop in the middle of a process is unusual to require a separate legal determination, and the board has the authority in their site plan review process, in reviewing an application before them for site plan or for subdivision, the board has the authority to interpret the zoning ordinances. Selectman Kreider asked how do they deal with the fact that Mr. Sullivan thinks that he has a determination from Mr. Antoine? Ms. L. Smith stated that they have the advice of legal counsel. Mr. Sullivan stated that he has spoken with Rich Antoine, since then, and he still has that position. Selectman Kreider asked if he would put it in writing. Mr. Sullivan stated that Mr. Antoine has been put in a position to not put it in writing. The Northwood development ordinance states on page 7: interpretation and administration of enforcement, The board of selectmen or the designee, the board of selectmen have indicated that the building inspector is the designee to enforce this, and on page 29, uses permitted, under specific performance criteria, which this falls under, it says the code enforcement officer "shall". Selectman Kreider stated that his concern was that as an engineer, and multiple capacities, he is concerned that there isn't anything in writing. Ms. B. Smith stated that they have the word of town counsel that Mr. Antoine did not make that determination and it's not in writing.

Mr. Burdin stated that they should continue the public hearing until April 9, but the bulk of that meeting would actually be board member deliberation on all aspects of the plan. If after that deliberation the board is feeling that they can approve the plan as presented but does not have sidewalks at that point, the applicant will be instructed to add sidewalks.

Ms. B. Smith made a motion to continue Case 19-12 until April 9, 2020. All written materials to be accepted on close of business (4PM) on Monday March 30th. All public input to be received by Wednesday April 8 by close of business (4PM) Selectman Kreider seconded. Motion carried 5/0.

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Adjournment

Ms. B. Smith made a motion to adjourn at 10:24 pm. Selectman Kreider seconded. Motion carried 5/0.

***Respectfully Submitted,
Susan Austin, Land Use Assistant.***

Official on May 28, 2020