

TOWN OF BEDFORD
January 10, 2022
PLANNING BOARD
MINUTES

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

MOTION by Mr. Fairman that all attendees, including Planning Board members, presenters and the public of this meeting be required to wear a mask at all times except when speaking. Mr. Newberry duly seconded the motion. Vote taken; on a voice vote, the motion failed.

I. Call to Order and Roll Call:

Chairman McMahan called the meeting to order at 7:00 p.m. Town Council Alternate Kelleigh Murphy, Alternate John Quintal and Alternate Matt Nichols were absent.

II. Old Business & Continued Hearings: None

III. New Business:

1. **Group I Realty, Inc. (Applicants & Owners)** – Request for Site Plan Amendment for architectural modifications and a sign waiver for building signage greater than 32 square feet, located at 18 Kilton Road (Ira Lexus), Lot 12-28-1, Zoned PZ. *Postponed from the December 20, 2021 Planning Board Meeting.*
2. The Planning Board will conduct the first public hearing on proposed zoning amendments submitted by the Planning Board. The full text of the amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at www.bedfordnh.org

IV. Concept Proposals and Other Business: None

Ms. Harris stated the new application to be heard tonight has been reviewed by staff, and it is our recommendation that the application is complete, the abutters have been notified and it is the opinion of staff that the application does not pose a regional impact. Staff would recommend that the Board accept the agenda and the application as complete.

MOTION by Ms. Malcolm to accept the agenda as read. Mr. Sullivan duly seconded the motion. Vote taken – all in favor. Motion carried.

New Business:

- 1. Group I Realty, Inc. (Applicants & Owners) – Request for Site Plan Amendment for architectural modifications and a sign waiver for building signage greater than 32 square feet, located at 18 Kilton Road (Ira Lexus), Lot 12-28-1, Zoned PZ. *Postponed from the December 20, 2021 Planning Board Meeting.***

Neil Sander of Independence Engineering, engineer of record for this application, Brad Johnson of Group I Automotive, owners, and David Clear of Clear Architectural Design, architect for the project introduced themselves.

Mr. Sanders stated IRA Lexus of Manchester is a dealership that was purchased by Group I in 2006 as part of the purchase of the IRA group of dealerships. In 2010 they applied for a site plan to upgrade the site, both in terms of site work and architectural work. At that time, waivers were requested of the signage code within the Performance Zone, and ultimately they were granted with approval to construct three wall signs and one pylon sign. Those consisted of a Lexus logo, IRA Lexus channel letters, and service channel letters. Originally this part of a Performance Zone waiver for signage is where they were granted the opportunity to put two wall signs on the same side of the building. Under this current proposal we are proposing to retain the same three signs on the front of the building, so we would be retaining that part of the waiver, but each sign will be slightly larger in order to bring the site into compliance with Lexus's Vision USA Branding Program. Part of this application is also to reface both the building and the façade with a more updated look instead of the taupe concrete that most Lexus's look like from that era. The signage itself falls outside of the particulars of the Town code, and we are proposing to enlarge each sign. The Lexus logo will be 49 square feet, the IRA Lexus channel letters will be 57 square feet and the service channel letters will be 25 square feet. Also, there will be no changes to the pylon sign.

Mr. Sanders stated the first question is, is this waiver appropriate within the Performance Zone, and of the five standard that are set for applications within the Performance Zone, four of them are not affected. This is an existing site, there are no changes in environmentally acceptable uses, there are no changes in the diversity of uses as this is within a business park, there is no change on the return on public infrastructure, we are not proposing any new utility connections or any new roadway improvements as a part of this application, and there is no change to the local heritage or the nuisances created by this use. The only one of the standards that is affected is to minimize adverse traffic impacts in Kilton Road and Route 3 and the intent of this application, in addition to bringing it into compliance with Lexus' standards, it is to also increase the visibility of the site. Currently, as you approach Kilton Road from both the east and the west, you cannot see the site as you approach the traffic lights that are adjacent, that are on either side of the driveway. Increasing the size of the building signage will allow drivers to see that as they come from the major roads and since this is a destination, would make it easier to find if they are not familiar with the area, so we would actually be enhancing Criteria D of the Performance Zone standards.

Mr. Sanders stated as I mentioned, in 2011 the waiver was granted to allow three building signs on the one side of the building, we are requesting the same waiver, three signs, but we are requesting to increase to a total of 131 square feet total for the three of them. We have actually

reduced this from the initial application. After consultation with staff we think that the impact on to the structure is minimal, is less than what we had originally proposed, which was an additional building sign and two of them facing east to west on the front of the building as opposed to directly on the façade.

Chairman McMahan asked are you going to cover the architectural changes? Mr. Sanders replied yes. The architectural changes are actually very simple. I will turn it over to the architect, Mr. Clear.

Mr. Clear stated very simply, we are removing the beige angled façade overhangs that come out over the showroom and flattening them with vertical faces with a combination of silver ACM panels with a horizontal ribbed panel below. Part of the Lexus vision includes a darker charcoal metal panel blade wall. As Mr. Sanders stated, the original blade wall went perpendicular to what is being shown right now on the screen, but due to staff's concerns, we have flipped it to what you can see in this posted elevation. The blade wall is a charcoal ACM, the main façade is a silver ACM and below the silver is a charcoal ribbed panel, and then the entire back of the building, which is now beige concrete, we are painting a gray to match what we are doing in the front.

Chairman McMahan asked for comments or questions from the Board.

Mr. Fairman stated you said you are slightly increasing the size of the signs. One of them is going from a little under 13 square feet to 57 square feet. That is over three times the size of the sign. I don't see it as a slight increase in the size of the sign; you are greatly increasing the size of the sign. Mr. Sanders responded that is actually the channel letters that is 57 square feet; the logo is 48 square feet. Mr. Fairman stated I am just reading the staff report. They are certainly not slightly increasing in size. Mr. Clear stated the words IRA Lexus are currently 18 inches tall and the Lexus image requirement is for 24-inch tall channel letters, so as they get taller, they also spread out. Mr. Fairman stated I for one don't give a dang about Lexus requirements. Our requirements of why it is needed your excuse that it is needed to see it from South River Road doesn't go with me. People are going to be looking for Kilton Road, they are all going to be using GPS today, you don't need signage to help you find it from South River Road. Most people coming there will be coming off from the highway and coming in the other end and of course, you can't see it from Route 101 no matter how big you make the signs. Let's talk about why it is really needed. If I want to vote for a waiver, I need to know a really good reason why you need to increase the size of these signs almost three times as big in square footage. That is where I am at. You have to have some really good reasons. Mr. Sanders stated I think we are just going to have to disagree on the visibility question. Again, I am not from the area, so if I was looking for that Lexus coming off from Route 101, even approaching up to the traffic light, if that light is green, by the time I saw the Lexus sign, the rest of the uses in that business park are all office buildings, that is the only car dealership there. The pylon sign itself is near the road but it is short. Obviously Lexus has certain stages of sign that they would prefer to see on the buildings. If they could get one that is three times this size, they would, but we are trying to keep it within the restrictions of both the building, not too far outside the code, not too far outside of what Lexus wants, and still make it visible from the road.

Mr. Newberry stated please repost the 3D elevation. Are those signs in scale to the building? Mr. Sanders replied yes.

Ms. Malcolm asked are you proposing any changes to the pylon sign? Mr. Sanders replied no.

Mr. Sullivan stated Ms. Hebert, I was wondering if you could clarify for me the square footage as measurement. It is essentially if you draw a box around the sign, that is it, so it is not the actual size of the sign. Because both of these have a lot of negative space in it. Ms. Hebert responded yes. Mr. Clear stated on the signage sheet you can see the little dashed line around all of the letters. Mr. Sullivan stated I just wanted to make sure that my math is right.

Chairman McMahan stated the Board has taken a look at what our standards are, people in business, like you said, would make it three times bigger if they could and that is understandable. Another thing that the Board does need to consider is the precedence that it is going to set and that's going down the road could have impact. There is no reason to believe that other people will not want to piggyback on that. In that vein is there any room here for a compromise starting with the service sign perhaps? Mr. Sanders replied there is. First of all, I would just like to say that one of the things that I forgot to mention that I think really works in our favor in the request for this waiver, this building is 170 feet back from the road. Minimum setback in this district is 50, and in fact, the maximum setback is 60, so we are almost three times as far from the road as we are legally allowed to be. As far as compromise, we have discussed this, we know we are asking for a rather significant waiver. One option we threw out there was not to change the service sign, for instance, that would reduce the total signage to less than 120 square feet, so each sign would average less than 40 square feet. We already have three signs on the building, based on Ms. Harris's calculations in her staff report, we would be looking at 30 square foot building signs. So if we were to remove the request to upgrade the service sign, that would reduce our total area so that each one would average under 40 square feet. We would be going from 131 square feet to 117.5 square feet.

Chairman McMahan asked Ms. Hebert, the distance from the road is that already been taken into consideration when we say 80 square feet? Ms. Hebert responded it has. The Town has a bonus sign area that is calculated when a building is set back greater than 150 feet from the public right-of-way, and for this property they would be permitted two wall signs each 40 square feet. Chairman McMahan asked so that would be 80 square feet plus the current size of the service size is? Mr. Sanders responded I believe the current size of the service size is 11.58 feet. Chairman McMahan asked so that would take it down to 90 square feet? Is that right? Mr. Sanders replied that would be 91 square feet. Chairman McMahan asked so the waiver is not to 131 square feet, it is 90 square feet? The two main signs are 40 square feet. Mr. Sanders responded the two main signs, we are allowed 40 square feet, the waiver that we are requesting is for one of them to be 48 square feet and the other one would be 57 square feet, and then the third sign is currently 11 square feet and we would not change that. Vice Chairman Duschatko asked Chairman McMahan, you are going with an average of 40 square feet? Chairman McMahan replied yes. That would be 120. Vice Chairman Duschatko stated what happens is you reduce the IRA Lexus sign; I assume you want the logo sign being the largest. Can you reduce that also or keep it the same size that it is? Mr. Clear stated instead of 24-inch tall letters, it would be 18-inch tall letters but I don't know what offhand the square footage is. Mr. Sanders stated it would be 9/16th of this, which would be about 31 square feet. If we were to go to the next size IRA Lexus size down, we would be knocking another 26 square feet off from the total area. Chairman McMahan asked so that would be 31 square feet for the IRA Lexus sign, 11 square

feet for service, and the other one is going to be what? I want to make sure I get my math right. Mr. Sanders responded 49 square feet. That is a total of 91 square feet.

Mr. Clough stated I just think that since they are set back so far, at least in my opinion, I am willing to give them the full waiver. I used to work next to that dealership, and I remember driving by it and I said to myself, there is a car dealer there. It is so far back. I am tempted to give them grace here just because the proportion when they are located so far back. I don't see the waiver as doing any injustice.

Mr. Newberry stated I would just comment that I think that if you leave the service sign as it is and looking at the 3D rendering and considering the distance from the street, and also considering your responses to sign waiver criteria, I think I can support granting a waiver.

Mr. Nelson asked do you have any data on what percentage of the Lexus dealerships meet exactly their corporate standard? Mr. Sanders responded I know it is less than 100 percent, otherwise I would be unemployed.

Chairman McMahan opened the public hearing. There was no one in the public that wished to speak. The public hearing was closed.

Chairman McMahan stated there have been several things that have been proposed. The first one was to leave the service sign the same, and now we are talking about the other two signs. The reason I am saying this is that if we have motion, we probably ought to know what it is going to be so we can discuss that motion.

MOTION by Mr. Newberry that the Planning Board approve the waiver from the Table of Performance Zone Sign Standards, Table 6, to allow three building signs of 31 square feet for the IRA Lexus sign, 11.58 square feet for the service sign (existing), 49 square feet for the logo sign in accordance with the application materials submitted by Independence Engineering, last revised December 20, 2021 with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:

- 1. All conditions of the April 25, 2011 and January 25, 2010 Planning Board approvals shall remain in effect.**
- 2. Prior to the issuance of a certificate of occupancy for the building, all site improvements depicted on the plan shall be completed.**
- 3. The IRA sign would be reduced to 31 square feet and the existing service sign would be retained as is.**

Mr. Sanders asked may I request one slight change to that wording? That would be 31+/- square feet for the IRA Lexus sign, until we get the details on that sign.

Mr. Newberry approved the change to his motion to read '31+/- square feet for the IRA Lexus sign.' Mr. Fairman duly seconded the amended motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Fairman that the Planning Board grant final approval of the architectural modifications and site plan amendment in accordance with the architectural plan by Clear Architectural Design, last revised December 20, 2021 and the site plan by Independence Engineering, last revised December 17, 2021, with the following conditions to be fulfilled within one year and prior to plan signature, and the remaining conditions of approval to be fulfilled as noted:

- 1. The Director of Public Works and the Planning Director shall determine that the applicant has addressed all remaining technical review comments to the Town's satisfaction.**
- 2. In the event that the Planning Board approves the waivers, the plan shall be updated to list the waivers granted as approved.**
- 3. Prior to the issuance of a certificate of occupancy for the building, all site improvements depicted on the plan shall be completed.**

Ms. Malcolm duly seconded the motion. Vote taken - all in favor. Motion carried.

- 2. The Planning Board will conduct the first public hearing on proposed zoning amendments submitted by the Planning Board. The full text of the amendments is available in the Town Clerk & Planning offices during normal business hours and on the Town website at www.bedfordnh.org.**

Chairman McMahan stated what I would suggest is that we handle all three of them separately. There will be an introduction from which then the Board will ask questions and when the Board is done, we will go to a public hearing and when that is done, we will close the public hearing and then entertain a motion for extending the public hearing until January 24, 2022.

Ms. Hebert stated for an overview on the Zoning Amendment process. Tonight is the first of two public hearings that the Planning Board will have to discuss and review proposed Zoning Amendments. At the end of the second public hearing, which will be on January 24, 2022, the Planning Board will need to vote to move any of the Board recommended amendments to the Town Ballot and we will also vote to either support or not support any amendments submitted by citizens' petition. This year we have one amendment submitted by citizens' petition. For everyone's clarification, the citizens' petition is placed on the Town Ballot regardless of the Planning Board's recommendation for support, and then all of the amendments go to Town vote in March. For this year's Zoning Amendments, we have two proposed by the Planning Board and one citizens' petition.

Ms. Hebert stated we will take each Zoning Amendment individually, hold a public hearing on each Zoning Amendment, including the citizens' petition and then the Board would not be taking any final action on the Zoning Amendments at tonight's meeting. That would be done on January 24, 2022.

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

Ms. Harris stated Zoning Amendment #1 for solar energy systems is intended to address the use of these systems and to establish local standards for siting and placement. The Board drafted this amendment to help guide solar development from small scale accessory uses up to large scale commercial uses and also in response to a zoning review conducted by the Energy Commission that aims to address barriers or gaps related to the development of solar energy systems.

Ms. Harris continued the proposed amendment creates a new section in the Zoning Ordinance and it incorporates most of the recommended changes from that analysis. The amendments include new definitions for solar ground-mounted and roof-mounted systems and it divides ground-mounted solar energy systems into three categories for small, medium and large. Roof-mounted solar energy systems would continue to be permitted by right, regardless of size, in all zoning districts, the amendment clarifies the required dimensional standards for solar energy systems based on size in each zoning district and includes a process for granting Conditional Use Permits for the siting of medium- and large-scale solar energy systems in certain districts

Ms. Harris stated at the last meeting the Board made an update to the draft amendment and that was to increase the size of small scale ground-mounted solar energy systems to include systems that are up to 2,500 square feet, where they were previously set at 1,750 square feet. Besides that one update, the draft amendment looks the same as was last discussed with the Board.

Chairman McMahan asked for comments or questions from the Planning Board.

Mr. Newberry asked up to what point can we make relatively minor changes to either of these drafts? Ms. Hebert replied you could make minor amendments to the zoning but not significant amendments, and then the Town would need to repost the amendments for public hearing.

Mr. Newberry asked with regard to height in particular, is there a process that would allow for a waiver of the 15-foot proposed height limit? Ms. Harris responded I think the process would be a variance rather than a waiver. Mr. Newberry asked they would have to go to the Zoning Board of Adjustment in order to exceed the 15 feet? Ms. Harris replied correct. Mr. Newberry stated the reason I ask that is that I reviewed the tape from the meeting of the 20th, and I thought I heard it mentioned that the Energy Commission had some concerns about the 15-foot limit, so I am wondering whether we can either get some additional insight on what their concerns are and whether we need to tweak that number a little bit before this is actually reviewed to determine whether the Board wants to go forward with it. One thought I had was a 2-story building is typically 20 to 25 feet, so maybe something like 20 feet in height might be worth at least looking a little more at and considering. I think that if we are at 15 feet, I don't know the exact geometry, but it is probably going to require that an installation be pretty long in length if it is limited in height. I think if we can gain any better understanding of that it would be good before we lock this down and decide whether we want to send it forward.

The other comment I had was in earlier discussions we had talked a little bit about glare coming from an installation. I am just wondering whether we should look more closely at specifically addressing that. I think 2E kind of addresses that, but in looking around, I did discover a line, which I forwarded to staff that I think the Board may want to consider at least words to the effect and possibly applying that to ground installations. The line I found was that 'They shall be designed and located in order to prevent reflective glare toward inhabited buildings on adjacent

properties and adjacent rights-of-way.’ and I think that by adding that as a requirement we may make it a little clearer to anyone who is planning an installation so that they make it a part of their design effort to make sure that they address glare under those conditions. I think that is worth considering adding, but staff hasn’t really had an opportunity to consider that as a suggestion. I did see that one and thought that might help both the Board, the Town and anyone planning and designing a solar installation. I think it might just make sense to apply that to ground installations where you are more likely to have glare conditions created as opposed to a residential roof installation. I think exempting a residential roof would avoid adding an unnecessary impediment to a roof installation. I don’t think a roof installation is typically going to generate a significant glare to adjacent properties. That is my thoughts on it; I don’t know how the Board feels about that.

Mr. Fairman stated I would like to follow-up with a couple of things that Mr. Newberry said. With regard to the height, one of the problems we have here is that solar arrays cannot be flat, they have to be at quite an angle to be effective and therefore the height becomes quite a problem with a large array, which I agree with Mr. Newberry that we need to understand the calculations for the height versus the size of the arrays and whether or not that would further restrict the size of what array would be allowed because they can’t go higher because of the particular angle of the array. I would like to see more definition of that.

Mr. Fairman stated my second point; I agree with Mr. Newberry but it is my understanding that the last time we had a company looking to put solar panels in the Performance Zone, I asked about glare from the panels effecting the traffic coming into the airport because it was in the glide path. The answer we got at that point was that solar panels are designed now to not give much glare. I wonder if we could get a question back to SolSmart on that question of glare from solar panels and is it something that we should be concerned about. I am concerned with that, in fact, and I can’t imagine how they can be designed totally not to give glare, but I would like to ask them about that since they were consulted on it. I think we could get some more information on that. Mr. Newberry stated I don’t know if the designs are such currently that they have minimal glare. My thought would be that if we considered putting that in, then that puts the onus on the designer to address the issue, and if it is addressed through the design of the panel, that is great. Mr. Fairman stated I concur with the comment with putting that in. Chairman McMahan stated a simpler solution. Mr. Newberry stated the other thing I think to keep in mind is, I believe that at this latitude your ideal year-round angle is somewhere around 40 to 42 degrees, so if you think of that as a 45-degree angle conceptually, it is going to rise pretty rapidly. As it becomes wider, it is going to go up pretty quickly. I think that is something that, in my mind at least, we need to understand a little better whether that 15 feet minimum is reasonable or not because I think part of what I am hearing is that we want to try to make the regulations such that they meet the issue of aesthetics and safety across the town, but we also want to try to frame it in a manner that encourages that kind of development and/or minimizes the hoops and costs associated with considering that kind of an installation.

Chairman McMahan asked does staff have enough information from the Board. Ms. Hebert responded I think we do. We can amend the proposed zoning, assuming this is the direction the Board wants to go in, we would be looking for a motion at the end of this hearing to increase the height to 20 feet and to add the section Mr. Newberry suggested regarding glare.

Chairman McMahan opened the public hearing on proposed Amendment #1. There was no one in the public that wished to speak. The public hearing was closed.

MOTION by Mr. Newberry that the Planning Board amend proposed Zoning Amendment #1 - Zoning for Solar - to increase the maximum height of a ground-mounted solar installation to 20 feet and amend wording to the appropriate section to read that the design and location should prevent reflective glare to inhabited buildings on adjacent properties and adjacent rights-of-way. Ms. Malcolm duly seconded the motion. Vote taken - all in favor. Motion carried.

MOTION by Mr. Newberry that the Planning Board repost proposed Zoning Amendment #1 - Zoning for Solar - to reflect the two changes discussed at this meeting. Ms. Malcolm duly seconded the motion. Vote taken - all in favor. Motion carried.

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

Ms. Hebert stated currently the Zoning Ordinance allows attached accessory apartments by right for single family dwellings in the General Residential district and the Residential and Agricultural districts. Attached apartments must meet certain requirements of the Zoning Ordinance and have to be contained within a single family dwelling and cannot exceed 1,000 square feet. The attached apartment must be connected to the existing home through heated interior space and cannot be located above a garage or detached from the living space of the main house at all.

Ms. Hebert continued over the years the Town has seen an increased demand for detached accessory apartments. They are not currently permitted anywhere in Bedford and during the recent Master Plan update the community expressed some support for considering a zoning amendment that would allow for this type of accessory apartment provided there was a review process in place, so we have a zoning amendment that establishes a Conditional Use Permit for the approval of detached accessory apartments.

Ms. Hebert stated over the years the Building Department has seen a demand for this type of housing for residents and is often in the position of determining whether a proposed detached structure is, in fact, an apartment or a pool house or an exercise room or a hobby room and they have asked the Board to consider a conditional use process or some permitting process that would allow for the creation of a legal detached accessory apartment. Detached apartments are often viewed as a mean to increase the supply of affordable housing goals without the need for additional infrastructure or significant land development. The zoning follows the zoning for the accessory attached apartments very closely and includes ten criteria for the granting of the Conditional Use Permit. The first being that only one accessory apartment, whether attached or detached, be permitted per lot, that the accessory apartment be clearly incidental to the primary use of the property for the single family dwelling, not have a gross floor area that is greater than 50 percent of the gross floor area of the single family dwelling, or greater than 1,000 square feet,

which is consistent with the accessory apartment size limitations, the property would need to demonstrate that the septic system is at capacity and approved by the Department of Environmental Services, one parking space would need to be provided for the apartment, and no new driveways or curb cuts from the street could be constructed to serve the new apartment. One single driveway would need to serve both the main house and the detached apartment. In Bedford we have what is called soils based lot sizing so applicants for a detached accessory apartment permit would need to demonstrate that their property meets this minimum soils based lot sizing calculation for a home with the respective number of bedrooms that would be resulting with the additional apartment. If you had a 4-bedroom home and someone wanted to build a 1-bedroom apartment, they would need to demonstrate that they met the soils based lots sizing calculation for a 5-bedroom home. The detached accessory apartment cannot be converted into a condominium or any other form of legal ownership that is different from the ownership of the single family dwelling. There is a 2-bedroom limit on the detached accessory apartment and the detached structure needs to be located in the rear or side yard of the lot. Lastly, the exterior design needs to be compatible with the existing single family dwelling through the use of construction materials, architectural design and scale, and the Board may also impose any reasonable conditions or restrictions that they may feel would be necessary to carry out the purpose of the Zoning Ordinance. The zoning amendment also includes the definition of dwelling accessory detached apartment.

Mr. Fairman stated I have a question on Criteria #3. I am assuming that the detached accessory apartments would be attached into the same septic system as the main house. Ms. Hebert stated yes. Mr. Fairman asked I am wondering if that should be stated to be clearer to say that the existing septic system design capacity shall be approved the New Hampshire Department of Environmental Services for the additional usage? Ms. Hebert responded I don't think it is needed. This is the same criteria that we have for the attached apartment and State law requires an updated septic system. There is a standard that the DES uses. Mr. Fairman stated that is good.

Chairman McMahan opened the public hearing on proposed Amendment #2. There was no one in the public that wished to speak. The public hearing was closed.

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

Bill Greiner, 12 Aspen Lane, stated I am one of the petitioners with the proposed Zoning Amendment #3.

Mr. Greiner stated for some history; our Performance Zone was established for maximizing tax revenue from development in that corridor. It has been like that for the past several decades and has served our community very, very well. It has allowed flexible development, but the primary purpose is to be the economic engine and the tax driver in this community. Some of you were on the Planning Board about a decade ago when the TIFF district was set up in that corridor. At the time Dartmouth Hitchcock and Catholic Medical Center asked to have some practices located on

South River Road, and the problem was the infrastructure there was not sufficient to handle what was being proposed. So the only way that that development could move forward was in cooperation with both the Town Council and the School Board at the time. So the TIFF district was set up, which basically used tax revenues from that development and every other development, as this Board knows, along that corridor in the Performance Zone north of Route 101 to the Manchester line, to pay into the TIFF district to better the infrastructure for the community so that the long-term investment in this community would be paid back through tax dollars. The Town Council has received zero tax dollars from the TIFF district improvements over the last decade, the School District has received zero tax dollars; that was all done for the future, it was a future investment made by the community, was supported by the community as a whole, it was supported by both boards, this Board has been very active and engaged, as people would be aware, in every project that has come forward since in the TIFF district. We are almost at the point where I think that bond is going to be paid off and finally our community will benefit from receiving the tax dollars, which have been deferred for the betterment of the community. Again, perspective is to how important that corridor is and that zone is and the thoughtfulness that has gone in for decades. It has not been willy, nilly, and this Board has been great in looking at projects and if a project doesn't make sense down there, this Board has been tough and understood what the bigger picture is.

Mr. Greiner stated in New Hampshire what we are seeing now, and we have seen it very recently in Salem, are several large medical organizations that are looking to put substantial facilities into southern New Hampshire, spent tens of millions of dollars on these projects, to generate tens of millions of dollars of profit for these entities, and then they turn around and raise their hand and say by the way we are a charity, we are a non-profit, we are doing this benevolently, we don't want to pay taxes. Salem is dealing with that right now with Mass General, and I think it is a matter of time before we see Mass General poke up here. I know nothing, this is purely conjecture, you could see them maybe take a run at Market & Main and then put some sort of campus there, raise their charity hand as a Massachusetts based non-profit and the community loses from a tax revenue standpoint. None of these projects that we talk about, whether it is the Salem one or what is going on in Nashua, what is going on on the seacoast, what may go on in Bedford, from bringing any new services to the area, they are just shuffling chairs that are already there and you have a group here that provides a certain specialty service and they are just moving them over here across the street or they are moving them down the road or just across the town line. It is not as if we are getting any new services, and I am not suggesting the services aren't valuable, it is just that we are being asked in many communities to subsidize these services.

Mr. Greiner stated again, the TIFF district is important, but it is only one thing. I think this amendment is not to prohibit medical offices from coming. There is a size restriction that could come and you could duplicate pretty much any other medical practice that we have in town. If they wanted to relocate or somebody wanted to come in there, what we are really doing is addressing what I would call the mega-plexes from these very large institutions that are choosing to come to, whether it is Salem, in the case of Mass General, or maybe Bedford, where you have a really good insurance paying mix. They are coming here because they can make a lot of money. That is fine if they are going to be a positive contributor to the community from a financial perspective. But if they want to build a smaller facility, this amendment doesn't prevent them from doing that, the Board also has the ability to give a waiver, if a proposal comes forward and somebody says we understand the history of the TIFF, we understand the

community, we understand the Performance Zone, we understand the value of that, we are willing to pick up our fair share, we are willing to row the boat along with everybody else, the Board has the ability to give a waiver. But if one of these mega-plexes wanted to go in the Commercial Zone, the Highway Commercial Zone, the Industrial Zone, they wouldn't be limited to this, they could build a 200,000 square foot mega-plex if they wanted to. This is really geared at protecting the investment that has been made over the last few decades in the Performance Zone, particularly the TIFF district and allow the Town and the school to finally start to reap the tax benefits that have been deferred for a decade and that was kind of the promise and the understanding going forward a decade ago when that TIFF district was set up. If Mass General wanted to come in and they want to build a mega-plex in Bedford, they have several other commercial areas they can do that in town, it just doesn't have to be in the Performance Zone unless they came together with a proposal that made sense, an overall perspective given the community's needs, not just their own needs, you guys can give a waiver. In a nutshell, that is where it stands, and I am happy to take any questions, I am happy to defer if you get public comment or public input.

Chairman McMahan asked for comments or questions from the Board.

Mr. Fairman stated my concern is that this limits office space in the Performance Zone. The only office usage that we see down the horizon at all is medical office. We don't see other types of people coming in to develop offices. This restricts the potential tax revenue from the whole Performance Zone. You have the TIFF, the TIFF bond is going to be paid off and we will start getting the revenue from that unless the present owners of some of the buildings in the TIFF district decide to sell them to Mass General or some non-profit, they are going to stay the way they are and pay their share of taxes. I am more concerned about the rest of the area in the Performance Zone, where a group is going to maybe want to build a medical office building and you are saying you can't, and office buildings are one of the best potential uses in the Performance Zone and we are really restricting that at this point with this. That is my big concern. Mr. Greiner responded first of all, there is no elimination or limitation, it is just a size elimination. If you look at any of the private practice groups that are in Bedford, none of them would be impacted by this at all, zero. If we take a look, for example, at Manchester Urology, they are not in Bedford. They chose to move their operation from Manchester to Bedford and they were going to build everything that they needed, they would fall within this footprint. Mr. Fairman asked a 2-story? Mr. Greiner responded yes. Mr. Fairman stated most of our medical office buildings are much larger than that. Mr. Greiner responded correct, and again, if somebody wanted to come in and master plan this and build a bunch of 2-story buildings, they could do that, and they would be within this framework to do it, we wouldn't be turning them away to do that. You make a point of what if somebody sells a building, you have no control, I'm more concerned about the undeveloped land. There is an apartment project that this Board approved south of the TIFF district that is not moving forward because of cost, it doesn't make sense, that is a piece of property, and again, I am just going to pick on Mass General, they are not here, they could go in and buy that land tomorrow, put a 150,000 square foot facility on it and say they are tax free, so they are taking that property off the tax rolls, saying they are tax free, and now they are going to turn around and they are going to compete against Catholic Medical Center, who is paying property taxes in this town today, or they are going to compete against the dozen other medical practices in town that are competing today, not bringing any new services in, just coming in to take advantage of the affluence of this community in terms of taxes. I worry about the undeveloped properties. Mr. Fairman responded agreed, I worry about those too, and

those are the ones that I want to be able to have developed for office space and you are saying you can for a 2-story building. We are going to get much tax revenue out of the Performance Zone with the increased density, which is more than two stories. We need to be allowing more than two stories. Mr. Greiner responded if they are not paying taxes, you are not getting any tax revenue. That is the concern. Mr. Fairman stated I understand that, but why cut off all office space for something we don't know is really going to happen. Mr. Greiner responded because I don't think you are and as I say, you are allowed the 2-story, you are allowed that footprint to do it, it is not as if it is all or nothing. If there was a for-profit medical group that wanted to come in, there are three other commercial zones, if not four other commercial zones, where they could come in. Mr. Fairman stated they don't have much land.

Mr. Fairman stated let me ask another question. How many of the medical office buildings in this town do you and your associates personally own? Mr. Greiner responded we no longer own the one at Washington Place. We sold it. That is owned by an out-of-state entity that is for-profit, so I don't own that. Mr. Fairman asked you don't own anything? We own zero; Washington Place was sold, do not own any of it, myself or any of the other people that came in on that. Mr. Fairman asked in any part of town? Mr. Greiner replied I own one building on Route 101 and that is it. Washington Place I do not own.

Mr. Newberry asked how would this apply to a medical provider coming in and building an office structure of which they occupy something greater than 20,000 square feet but less than 50 percent of the whole structure? In other words, they come in and they build an office structure, they lease 60 percent of it out to commercial and they keep 30,000 square feet for their operations? Mr. Greiner responded I would have to defer to Ms. Hebert on that. Ms. Hebert stated they would still need a waiver for being in excess of the 20,000 square feet, so we would apply that to the use essentially.

Mr. Greiner stated again, going back to Mr. Fairman, this Board can give a waiver. That is the beauty of the Performance Zone because it is so flexible, there is no variance needed, it is all waiver based. You can do this case-by-case and what make sense for the community, what makes sense for the TIFF, what makes sense for the Performance Zone, how are we protecting that land and acting as stewards going forward. That zone was created very well and has served this community well for decades and the concern is with the finite amount of land left making sure that it gets, to your point, there is maximum density and it is being developed as a community the way it needs to be developed.

Mr. Fairman stated I wonder if it would be better if we required any medical office building of a certain size that was going to be a non-profit to pay pilot in lieu of taxes. Mr. Greiner responded pilot in lieu of taxes equal to the full tax bill, I love it, and I believe the waiver process gives you that ability. Without it there is zero way to enforce that. I have looked at this thing 20 ways to China. This may not be the best, it is the only way that I can see to protect the tax base down there. Ms. Hebert stated the pilot, the payment in lieu of taxes is 100 percent voluntary on behalf of the non-profit organization. Mr. Greiner asked so this Board has the ability to negotiate, as it does with every development that comes in front of it, you ask for money for offsite improvements, you ask for money for impact fees, you ask for money for recreation, and this Planning Board and Planning Boards before have done a very good job of standing up and representing the taxpayers as a community, and I trust this Board and future Boards with a waiver process. If there was something that came in, to Mr. Newberry's example, with a 60,000

square foot building and 25,000 was going to be medical and 35,000 square feet was going to be non, what do you do, I trust this Board to make a decision, I trust this Board has that ability to give waivers or not give waivers as it sees fit based on what makes sense for the community. This Board has done a very good job standing up to developers when it needs to stand up to developers when things don't make sense for this community, and this Planning Board has done a very good job of standing with developers when things do make sense and I trust this Board today and in the future to do this. I wish there was another way; this is not perfect but it protects the future.

Mr. Nelson stated Ms. Hebert, there is similar restrictions to an enterprise like this in other local areas. Ms. Hebert replied no, it is not common to limit the size of a medical clinic. Mr. Nelson asked it is not? Ms. Hebert replied no it is not.

Chairman McMahan opened the public hearing on the proposed citizens' petition Amendment #3.

Craig Beck of Dartmouth Hitchcock, Chief Operating Officer for our community group practice in southern New Hampshire, inclusive of our practices here in Bedford. We have three operating addresses in the town of Bedford. Regional offices at 5 Bedford Place where my office is located, and we have two clinics on South River Road that was referenced in the previous presentation as well.

Mr. Beck stated thank you very much for the opportunity to present Dartmouth Hitchcock's position as it relates to a potential zoning amendment, specifically the amendment that would set limits on future development of medical clinics in the Performance Zone to a maximum size of 20,000 square feet and two stories, including any below grade building. Succinctly stated, it is Dartmouth Hitchcock's position that this amendment is not in the best interest of the Town of Bedford and its residents and should not be supported by the Planning Board. Dartmouth Hitchcock has had an adult and pediatric primary care medical clinic at our South River Road location since 1988. During this time the Dartmouth Hitchcock system has also introduced women's health and select specialty services to the Bedford community currently located in a separate location on South River Road as well, 5 Washington Place. That is over 30 years of delivering high quality, high value, compassionate primary care and specialty care to thousands of Bedford residents, regardless of ability to pay or insured status. All of our clinical services are supported by the State's leading academic health system, ensuring the highest quality through research, education and continually improving clinical delivery. Our goal is to continue to make a positive impact on the health and wellness of this community and our patients. We will do so by continuing to deliver the services we currently provide together with new highly specialized services that do not exist in the community today. Dartmouth Hitchcock has owned a sizable portion of land in the Performance Zone on Kilton Road for five years. This land represents our investment, our commitment to this community, and it is worth noting a large number of clinicians and staff live in this community and care for its residents. Any support given to the zoning amendment is limiting and potentially eliminating our ability to provide the significantly positive impact to both the residents of Bedford and the town itself.

Mr. Beck stated with respect to the information previously presented regarding Dartmouth Hitchcock's tax status, all I would say is that Dartmouth Hitchcock is a charitable tax exempt organization based on the significant community benefit that we provide. This Board probably

does know that we are currently in litigation to resolve any disputes regarding our tax exempt status and we fully anticipate a mutually beneficial resolution to that litigation soon. Thank you very much for the opportunity to present.

Mr. Greiner stated I wanted to follow up on what this gentleman just said. Since 1988 he is correct that Dartmouth has operated medical practice behind T-Bone's, and they have been good taxpaying citizens for a long time. They decided to sue this community, sue the taxpayers, because they no longer want to pay taxes in this community. I don't think it has anything to do with the location they are at. He hit the nail on the head; they own a big piece of property in the Performance Zone, one of those large undeveloped properties, that could generate seven figures of tax revenue, contribute to the TIF district, be a good community partner, unless they want to withdraw the lawsuit today, and I know they have the ability to do that if they wanted to and resolve it today, that lawsuit is really about avoiding seven figures of property taxes. That is really what it is. I welcome a mutually agreeable settlement that would pay a pilot, 100 percent of the taxes, then we wouldn't have to worry about waivers and other things like that. He has hit it right on the head.

Mr. Fairman asked Ms. Hebert, you stated that this would not prevent a hospital? Ms. Hebert replied that is correct. A medical clinic is not considered a hospital. Mr. Fairman asked is there anything additional we could put in there that would? Ms. Hebert replied we cannot amend the zoning petition in any way. Mr. Fairman responded thank you.

Mr. Newberry stated I don't have a comment on proposed Amendment #2, but I do have a comment that I would like to make on proposed Amendment #1 before we lose anybody in the audience interested in solar. I wanted to revisit something on proposed Amendment #1. With the issue of glare, I had mentioned when I was kind of giving the background that I thought maybe we want to consider limiting that to ground-mounted, and I think the way I ad-libbed the amendment it didn't address that. I think the way I ad-libbed the amendment is that it would apply to everything, including residential roof installations, which in my mind is probably one we should consider exempting, but I think I missed that in my ad-lib and I just wanted to point that out. Chairman McMahan stated we can take that as a motion and does the second concur? Mr. Newberry stated I just wanted to point that out and see if the Board had any feelings about that one way or the other or if the Board is good with leaving it as applying to any and all. Chairman McMahan asked do you believe it clarifies it by making this change? Mr. Newberry responded my intent was not to burden roof residential installations with the requirement to address preventing glare in the design and siting of an installation. I don't know how the rest of the Board feels about that, whether we want to go back and change that or let it ride the way it is. Mr. Fairman stated looking at it, I think what you amended was 2B, the 15 feet is particularly ground-mounted, where you increased that from 15 to 20 feet. Mr. Newberry stated and that would apply obviously I think to ground-mounted. What I was going back to was the question of placing the requirement for glare to be addressed as a part of the design siting, and I think the way I drafted it, would apply to all installations, and my take would be that I would prefer to limit that to ground-mounted for the simple reason of not burdening a residential roof installation with having to address glare, which is probably in 99 out of 100 instances of a roof installation not an issue. But if we live it the way it is, my expectation would be that installation would also have to address that requirement. Does that make sense to staff? Ms. Hebert responded it does.

Vice Chairman Duschatko stated I have one comment or question and I don't know if it exists here. If you had a situation where you had a 1-story ranch house design with solar panels on that roof and say it was abutting a 2-story house, you could conceivably have a glare problem from the roof to the second floor of the abutting house. I am not saying it even exists, I would have to look at all of the angles, obviously, but doesn't that sort of work against. Mr. Newberry responded there aren't that many roof installations that really hit 40 degrees. That is close to a 12:12 pitch. I don't think there are all that many roofs around that are 12:12 or greater. Vice Chairman Duschatko stated no, but they could build a frame to get that. I am thinking it through. It is a ridiculous type of situation. I just don't want to see us back ourselves in that particular corner. Mr. Fairman stated I don't see any harm having it on all the way that you worded it. Mr. Newberry stated if the Board is good with it, that is fine. I just wanted to revisit that because my concern was unnecessarily burdening a residential installation. Chairman McMahan stated why don't we take this as a discussion and if there is any further discussion on it, leaving it as it is, then there is no need for another motion and the motion stands. Mr. Newberry stated I am good with that. Chairman McMahan stated that is a good point.

MOTION by Mr. Newberry that the Planning Board continue this public hearing to the January 24, 2022 Planning Board meeting. Vice Chairman Duschatko duly seconded the motion. Vote taken - all in favor. Motion carried.

V. Approval of Minutes of Previous Meetings:

MOTION by Ms. Malcolm to approve the minutes of the December 20, 2021 Planning Board meeting as written. Vice Chairman Duschatko duly seconded the motion. Vote taken; motion carried, with Mr. Newberry abstained.

VI. Communications to the Board:

The next Planning Board meeting is scheduled for January 24, 2022.

Mr. Fairman stated those comments about some legal process with Dartmouth Hitchcock suing the Town about taxes, is there any information about that that you can get and share with the Board. Ms. Hebert responded unfortunately they are in discussions, Vice Chairman Duschatko may have more information on that than I do, but it is a pending legal matter so I don't have anything to share other than there is an appeal in place and litigation is ongoing.

VII. Reports of Committees: None

VIII. Adjournment:

MOTION by Mr. Fairman to adjourn at 8:17 p.m. Ms. Malcolm duly seconded the motion. Vote taken – all in favor. Motion carried.

Respectfully submitted by
Valerie J. Emmons