

**TOWN OF EXETER
PLANNING BOARD
January 14, 2021
VIRTUAL MEETING
DRAFT MINUTES**

Zoom ID: 833 0020 0162

Phone: 1 646 558 8656

I. PRELIMINARIES:

BOARD MEMBERS PRESENT BY ROLL CALL: Chair Langdon Plumer, Vice-Chair Brown, Pete Cameron, Clerk, Gwen English, John Grueter, Jennifer Martel, Molly Cowan, Select Board Representative, Nancy Belanger, Alternate, Mark Dettore, Alternate and Pete Steckler, Alternate.

STAFF PRESENT: Town Planner Dave Sharples

II. CALL TO ORDER: Chair Plumer called the meeting to order at 7:00 PM. Chair Plumer read out loud the meeting preamble which indicated that an emergency exists and the provisions of RSA 91-A:2 III (b) are being invoked. As federal, state and local officials have determined gatherings of ten or more people pose a substantial risk to the community and the meeting imperative to the continued operation of Town and government and services which are vital to public, health, safety and confidence. This meeting will be conducted without a quorum physically present in the same location and welcome members of the public accessing the meeting remotely.

The members introduced themselves by roll call and in accordance with the Right to Know Law noted they were alone in the room.

III. OLD BUSINESS

APPROVAL OF MINUTES

December 3, 2020

Mr. Cameron, Mr. Steckler and Ms. English suggested edits.

Mr. Cameron motioned to approve the December 3, 2020 Exeter Planning Board meeting minutes with the suggestions agreed to earlier. Ms. English seconded the motion. A roll call vote was taken Brown – aye, Cameron – aye, Cowan – aye, English – aye, Martel – aye, Grueter – aye and Plumer – aye. The motion passed 7-0-0.

41 December 17, 2020

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43 Mr. Cameron, Mr. Steckler and Ms. English suggested edits.

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45 ***Ms. Martel motioned to approve the December 17, 2020 Exeter Planning Board meeting***
46 ***minutes, as amended. Vice-Chair Brown seconded the motion. A roll call vote was taken***
47 ***Grueter – abstain, English – abstain, Martel – aye, Cameron – aye, Brown – aye and Plumer -***
48 ***aye. The motion passed 5-0-2.***

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50 **IV. NEW BUSINESS**

51 **PUBLIC HEARINGS**

52 1. The application of Patricia Duval for a minor subdivision of an existing 3.39-acre parcel located off
53 105 Brentwood Road to create a new residential lot.

54 R-1, Low Density Residential zoning district.

55 Tax Map Parcel #60-24

56 Planning Board Case #20-19

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58 Chair Plumer read the Public Hearing Notice out loud.

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60 Mr. Sharples indicated the application was complete and ready for review.

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62 ***Mr. Grueter motioned to accept the application of Patricia Duval (PB Case #20-19) as complete for***
63 ***review. Mr. Cameron seconded the motion. A roll call vote was taken Brown – aye, Cameron – aye,***
64 ***Cowan – aye, English – aye, Martel – aye, Grueter – aye and Plumer – aye. The motion passed 7-0-0.***

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66 Mr. Sharples indicated the application is for a minor subdivision of a 3.39-acre lot. The application and
67 accompanying documents were submitted on 11/3/2020. The applicant sought relief with the Zoning
68 Board of Adjustment at their August 18, 2020 hearing for the minimum lot area required in the R-1 zone
69 for less than two acres without water and sewer services. There was no review by TRC, but the
70 application was reviewed by the Code Enforcement Officer. An application to the State DOT for a
71 driveway permit was requested by the applicant but not under the Planning Board's control. The
72 proposed 75' well radius falls into the State ROW. The State was notified, and the onus is on the driller
73 of the well. Standard Conditions of Approval for the minor subdivision application have been prepared.

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75 Henry Boyd of Millennium Engineering presented the application accompanied by Mrs. Duval. Mr. Boyd
76 noted State subdivision approval has been received for the septic under five acres on 11/23/2020 and
77 noted on the plan. The lot would be at least one acre with 700' of frontage. After surveying the lot
78 there was more land than shown on the tax map.

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80 Mr. Grueter asked about the well radius and Mr. Boyd noted it is State Subsurface approved and is not
81 an infrequent occurrence. It does not invade the 4,000 SF septic and there is no prohibition. The well
82 radius is not located on another property.

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Chair Plumer asked why the septic was located where shown and not further away to allow the well radius to be within the property. Mr. Boyd noted the test pits were dug and more could be dug but it would be at additional expense to the applicant when the State has no issue with it.

Vice-Chair Brown asked about wetlands and Mr. Boyd noted there is a small area on Lot A where the existing house is, near the gravel drive culvert.

Ms. English asked about the driveway for Lot B and the sight distance. Mr. Boyd noted measurements were taken which is why the driveway is located where shown for a safe sight distance from the hill, 400' in either direction. A preliminary plan was submitted to DOT.

Chair Plumer opened the hearing to the public for comments and questions at 7:34 PM.

Vice-Chair Brown asked about the easement noted on the plan and Mr. Boyd indicated there were two title sources with an old access across parcel 1 that in his opinion is long extinguished, for decades, based on no evidence of use, tree growth and topography.

Vice-Chair Brown asked if it will be landlocked and Mr. Boyd noted access is east of Lot A. The Town's piece is to the left on the sharp curve.

Chair Plumer closed the hearing to the public for deliberations at 7:38 PM.

Mr. Sharples indicated there are Conditions of Approval:

1. A dwg or dxf file format and in NAD 1983 State Plane New Hampshire FIPS 2800 Feet coordinates;
2. All monumentation shall be set in accordance with Section 9.25 of the Site Plan Review and Subdivision Regulations prior to the issuance of a Certificate of Occupancy; and
3. NH DOT driveway approval shall be noted on the plan.

Vice-Chair Brown moved that the request of Patricia Duval (PB Case #20-170 for Minor Subdivision approval be approved with the conditions stated by Town Planner Dave Sharples. Ms. English seconded the motion. A roll call vote was taken Cowan – aye, Cameron – aye, Brown – aye, Grueter – aye, Martel – aye, English – aye and Plumer – aye. The motion passed 7-0-0.

2. The application of Brian Griset for review of a Yield Plan in conjunction with a proposed single-family condominium open space development and associated site improvements on property located off Tamarind Lane and Cullen Way.
R-1, Low Density Residential and NP-Neighborhood Professional zoning districts
Tax Map Parcel S #96-15 and #81-53
Planning Board Case #20-2

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Chair Plumer read the public hearing notice out loud.

Mr. Sharples noted the application is for a Yield Plan for an open space development. Mr. Sharples provided a brief history of the prior applications: In September of 2020 the Yield Plan was for 12 units. The applicant returned to the Planning Board to ask for reconsideration of the waiver citing a discrepancy in the criteria at the October 2020 meeting. The Attorney's 12/4/20 letter outlines the process the applicant has gone through so far. The Yield Plan before the Board now is the same plan originally submitted but with five more lots no longer requiring a waiver for the buffer. There is a waiver for Section 7.13 concerning the variance used to achieve density.

Attorney Pasay noted the applicant obtained a variance in January of 2020.

Attorney Pasay noted that Engineer, Christian Smith is present as well as the applicant Brian Griset. A letter dated June 3, 2020 supports the request for a waiver to establish density for the open space development's upland area. The Mendez property was added back in to the plan, shown as Map/Lot 81-53. A density transfer was requested for the Brickyard property owned by the Town per agreement. The previous approval was for 12 lots without the Mendez property. The waiver request was denied. Attorney Pasay noted the Yield Plan was reasonably achievable.

Christian Smith of Beals Associates presented the proposal electronically on the screen to review the plan. Frontage is on Cullen Way for two additional lots with three off Kingston Road.

Chair Plumer opened the hearing for comments and questions from the public at 7:55 PM.

Attorney Pasay reviewed the criteria for the waiver from Section 7.13 and the requirement that the Yield Plan shall not require a variance. The Grisets obtained the variance last January. The Special Exception is to depict residential uses in the Mendez Trust property which is zoned NP. Attorney Pasay noted the Yield Plan must be feasible, viable and reasonably achievable. Section 7.13 is for Yield Plans that require variances to be feasible not those that already have variances. It is not detrimental to health, safety or welfare and will not alter the essential character of the neighborhood. The development is consistent as a large R-1 neighborhood and allowed by right and special exception. An appraisal by White Appraisal was referenced.

Mr. Griset referenced the conveyance of 30-acres of the Mendez Trust property which was to benefit the Town in the first application. The property is unique. The NP property was landlocked with no frontage. The hardship criteria was met with the variance approval. #4 the spirit and intent would not be inconsistent with Section 7.13. Yield Plans that require a variance are different than those who have a variance and as such comply with all technical requirements. The waiver will not vary the provisions of the zoning ordinance or the Master Plan. The Special Exception allows for residential use in the neighborhood professional area. The property values continue to go up.

168 Ms. English noted there are two houses planned 50' from the railroad. Cullen Way Extension will be
169 built, an 1100' roadway with cul-de-sac with 300' of flood zone, 100' of wetlands and a big price tag to
170 make it financially worthwhile.

171
172 Attorney Pasay discussed the analysis done by Gove Environmental in February and May for the long
173 driveways and \$125,000 lot prices. The three lots on Kingston Road are substantially smaller and sold
174 for \$275,000 each.

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176 Mr. Steckler asked about the flood zone line for the new Lot 5 and driveways through flood zones. Mr.
177 Smith explained the location of the flood zone line to the north and that there is a portion of the road in
178 the flood zone. Mr. Steckler stated this puts emergency access at risk as well as the viability of the
179 roadway. Mr. Steckler noted while he is not voting he feels the waiver is not eligible based on Section
180 13.74.

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182 Attorney Pasay stated that Yield Plans establish density. The Grisets could propose a conventional
183 subdivision and there are no regulations to prevent approval. The lots conform to the technical
184 requirements of the Town and are compliant with regulations. The land can accommodate the lots. A
185 conventional subdivision could be approved. The plan is reasonably achievable, has a variance and
186 special exception and does not contradict regulations.

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188 Mr. Smith noted the development is allowed to cross to get to buildable uplands. There could be
189 mitigation. The driveway would be constructed outside the 100-year flood plain. Mr. Steckler noted
190 approving a waiver goes against the regulations. Attorney Pasay noted it is inconsistent with NH law to
191 trump the relief valve by denying a waiver because granting the waiver is against regulations.

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193 Mr. Griset disagreed that the waiver was contrary to the ordinance as the Mendez Trust property could
194 be developed with access to the upland areas with a greater impact by commercial or multi-use
195 development than what is being proposed. The application has sought to have the minimum impacts on
196 the flood plain area.

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198 Chair Plumer opened the hearing to the public for comments and questions at 8:25 PM.

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200 Ann Flaherty of 8 Tamarind Lane stated that she would like to reiterate that she is in support of the Yield
201 Plan and waiver. There is ROW access for some of the property across her property for Lots 7, 8, 9 and
202 10.

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204 Laura Knott of 15 Tamarind Lane noted she sent a letter to Mr. Sharples tonight which was read out
205 loud. The applicant has changed the plan yet again. Ms. Knott stated the reason was to pay medical
206 bills but if that were the case Mr. Griset would have taken the approvals by now and has made no
207 attempt to negotiate with the neighborhood. It was claimed to not be financially viable with 13 lots now
208 there are 17 proposed. On June 10, 2020 Attorney Britton argued that the ZBA lacks the authority to
209 transfer density per RSA 674:21 innovative land use controls which can only be adopted through the
210 Town Meeting process and are outside the authority of the ZBA. The zoning ordinance lacks provisions

211 for density transfer and therefore the ZBA lacks the authority to grant them. Section 7.13 regulations
212 violate the criteria because the Yield Plan shall not require a variance.

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214 Mark Page of Tamarind Lane noted the application is a pretty complicated record and wondered if all
215 the other submissions become a part of the record. The Town and Brickyard contract transfers of
216 density require enabling legislation. The Mendez Trust property has been referred to as undevelopable
217 and then hear the applicant state it could be developed.

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219 Attorney Pasay noted that Attorney Britton argued variances and special exceptions which his clients did
220 not appeal should be ignored. The abutters have no standing in the Brickyard property contract. The
221 Board did accept the previous Yield Plan.

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223 Chair Plumer closed the hearing to the public for deliberations at 8:41 PM.

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225 Mr. Cameron objected that it was stated that a subdivision plan would waltz through with a favorable
226 outcome. The length of Cullen Way Extension is troubling.

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228 Chair Plumer noted the Board is looking at a Yield Plan and it would look very different if what was
229 before us was a subdivision plan.

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231 Mr. Sharples agreed there would be a lot more detail, stormwater, final grading, and those are not
232 required for a Yield Plan.

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234 David Hadden, 12 Tamarind Lane stated he was personally opposed to the Yield Plan but did not specify
235 a reason.

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237 Vice-Chair Brown noted this has been one of the more complicated cases adding the remote nature of
238 the meetings and having to review plans that are small with dozens of lines. The 12-lot plan submitted
239 originally is different from the 17-lot plan now before the Board and what was already voted on.

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241 Mr. Sharples noted what is different is the Mendez Trust property was added back. Lots 5, 6, 7, 15, 16
242 and 17 were created.

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244 Vice-Chair Brown asked about the conservation of the Mendez property and Mr. Sharples noted that
245 was taken out.

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247 Vice-Chair Brown opined that this felt like an application was already voted on and now something
248 significant is being added and should be treated like a new application.

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250 Mr. Sharples explained that because the Mendez Trust property was part of the original application
251 submitted it is not treated like a new application.

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253 Vice-Chair Brown stated it feels like a second bite at the apple under the same case number causing a lot
254 of confusion to the Board and the public.

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Ms. English agreed. The Board is now charged with going through a lot of documents and having to cobble them together. It feels like a new plan.

Mr. Sharples noted he talked to legal and felt a judge would include the previous record because it is the same plan as originally submitted. The Board never reached a determination on the first application because it changed.

Chair Plumer noted structures were added to a plan the Board made a decision on, to better meet the developer's vision.

Attorney Pasay acknowledged the complexity and noted that Yield Plans are frequently revised, citing Rose Farm as one example. The Board reserves the right to revise those Yield Plans.

David Hadden noted he had no further comment.

Vice-Chair Brown noted he would like more time to review the documents. Ms. English agreed. Mr. Grueter agreed. Ms. Martel noted she would like more time to review notes.

Vice-Chair Brown asked Mr. Smith if the plans could be simplified in specific areas such as Lots 5 and 6.

Chair Plumer requested Mr. Smith enlarge the section or make four sheets or large-scale plans. The topography is not as important as the wetland, the flood zone argument, perhaps a color coding of the wetland and prime wetland and flood plain.

Ms. English asked if the wetlands could be shown in blue.

Mr. Grueter asked if the plans could be sent in pdfs so the members could enlarge them. Mr. Sharples noted Ms. McEvoy will get those to them as they were provided by the applicant.

Vice-Chair Brown moved to table Planning Board Case #20-2 to the January 28, 2021 Planning Board meeting at 7:00 PM. Ms. Martel seconded the motion. A roll call vote was taken Martel – aye, Brown – aye, Cameron – aye, Grueter – aye, Cowan – aye, English – aye and Plumer – aye. The motion passed 7-0-0.

- 3. The application of IOKA Properties, LLC for a minor site plan review for the proposed redevelopment of the existing building located at 53 Water Street (the former IOKA Theater).
 - W-C Waterfront Commercial zoning district
 - Tax Map Parcel #72-34
 - Planning Board Case #20-20

Chair Plumer read out loud the public hearing notice.

Mr. Sharples indicated the application was complete and ready for review purposes.

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Mr. Cameron motioned to accept Planning Board Case #20-20 for review. Mr. Grueter seconded the motion. A roll call vote was taken English – aye, Cowan – aye, Grueter – aye, Cameron – aye, Brown – aye, Martel – aye and Plumer – aye. The motion passed 7-0-0.

Mr. Sharples noted the application is for a minor site plan for a retail use, restaurant and eight residential condominium units. The ZBA approved relief on 11/17/20 for height and rear yard setbacks and off-site parking. The NOD and minutes are provided. There was no review by TRC, but the Department Heads did review the plan and the DPW provided comments.

Attorney Sharon Somers from DTC Lawyers presented the plan noting there is a waiver for the number of parking spaces. Attorney Somers noted that owners, David Cowie and Jay Caswell are present as well as Christine O’Brien and Adam Wagner of Market Square Architects and Henry Boyd of Millennium Engineering. The lower-level use will be as a speak easy, the 2nd and 3rd floor will be condominiums. The plans depicting the front of the building were shown electronically. The precast panels will be moved to the top to allow for windows. There will be canopies. The marquis letters will run vertically down the side of the building. The wooden bump out in the rear of the building will be removed. There will be a patio within the building footprint and balconies to the rear for the 1st, 2nd and 3rd floors and a roof top patio with a pergola accessed by stairs to seat up to 49 people maximum. The roof top area is 735 SF and only to be used by residents of the 2nd and 3rd floors. There will be planters and heating and cooling units on the roof. The *Mayor Building* will appear in relief in the upper parapet. The alleyway to the East was shown with new windows and egress doors at the basement level. There will be new stairs along the street side and railings at the lower patio.

Mr. Grueter asked about the 49-person capacity on the roof deck and whether this could constitute a noise issue and Attorney Somers noted it would be unlikely there would be that many people. The building will be subject to condominium ownership and rules.

Mr. Cameron asked if the rooftop heating and cooling units will be visible from the street. Attorney Somers noted the existing parapet should block the view.

Chair Plumer asked about access to the speak easy and Attorney Somers showed the access points on the front and side and noted there will be stairs and an elevator.

Mr. Grueter asked about the outdoor deck and whether the arches were original. Mr. Boyd noted the back was put on after.

Ms. Martel asked about the river, the high-water mark and flooding. Ms. O’Brien noted the wetlands approval process has started. Henry Boyd noted his discussions with Eben Lewis at DES and that the lower level is above base flood elevation and Sergio Bonilla with Mission Wetlands was hired to look at wetlands. Fish species were studied in the NHB report.

Ms. Martel asked about trash removal and Ms. O’Brien noted it would be inside the building and then most likely taken out on trash day.

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Ms. Martel asked about lighting and Mr. Wagner noted code will require some lighting on the roof. Ms. O'Brien noted the style has not been discussed with the client yet. Ms. Martel noted the ordinance would require downcast dark sky compliant lighting.

Attorney Somers noted the multi-family component of the project and the variance for 91 off-street parking spaces, commercial and residential. Residential will consist of 18 spaces, 16 for the 8 two-bedroom units and two visitor spaces.

Attorney Somers reviewed the waiver request criteria under Section 13.7.1. It will not be detrimental to the health, safety or welfare of the community. There are residential on-street and a large municipal parking lot. The abutters have raised no objections. The unique conditions require a waiver. The property was used as a 300-seat theater with 100 grandfathered spaces however the use technically lapsed while the theater has sat dormant and is not being used as a theater now. The property is unique compared to other properties in the area. There is no physical space for parking on the premises. The Exeter Master Plan has identified the importance of redevelopment on this property. The ZBA recognized the unique hardship in granting the variance application. The spirit and intent of the regulations will be observed and prevent other properties from being overly burdened as there are available parking resources to share with other downtown residents. The waiver would not vary the provisions of the zoning ordinance or the Master Plan. The Master Plan discusses the redevelopment on this property and the Board of Adjustment has provided a variance.

Mr. Cameron asked about 24/7 parking for residential use, not for a couple of hours but all night long which is different from when it was a movie theater and people drove away when the movie got out. Attorney Somers indicated the uses would be staggered throughout the day with residential in the evening and retail during the daytime and restaurant use between both of those times. There was a survey with 886 respondents in 2018 with RPC that indicated ample parking. There are large spots in the municipal parking area. Ms. Belanger noted the survey was not an official parking study.

Ms. Belanger asked where residents would park during winter parking bans and Attorney Somers noted they would have to make arrangements such as other downtown residents have done. Mr. Sharples noted utilization drops by 7-8 PM at night and the Town voted to install meters along Lincoln Street prior to COVID and it is incumbent on the Town to manage this area. Vice-Chair Brown noted there are a lot of options in Town and the lack of the Town being progressive should not be an issue.

Mr. Steckler asked about any mechanism when unit owners park on street during business hours in front of businesses and the ability to preserve those spaces. Mr. Grueter noted it would not be enforceable.

Chair Plumer asked how many bedrooms the units were, and Attorney Somers noted they were all two-bedroom units with a rated hallway leading to a rated stairwell and with a sprinkler system.

Ms. English asked if the Town still had a two-hour parking maximum and Mr. Sharples noted it does.

387 ***Vice-Chair Brown motioned after reviewing the criteria for granting waivers that the request of IOKA***
388 ***Properties, LLC (Planning Board Case #20-20) for a waiver from Section 9.13.1 to permit less off-street***
389 ***parking than required in accordance with Section 5.6.6 of the Zoning Ordinance be approved with the***
390 ***conditions as read by the Town Planner David Sharples. Mr. Grueter seconded the motion. A roll call***
391 ***vote was taken Martel – aye, English – aye, Cowan – aye, Grueter – aye, Cameron – aye, Brown – aye***
392 ***and Plumer – aye. The motion passed 7-0-0.***

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394 Ms. Martel asked if there was an elevator and access by elevator to the downstairs speakeasy and
395 Attorney Somers indicated yes.

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397 Mr. Sharples read out loud the conditions of approval:

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399 ***1. An electronic As-Built Plan of the entire property with details acceptable to the Town shall be***
400 ***provided prior to the issuance of a Certificate of Occupancy (C/O). This plan must be in a dwg***
401 ***or dxf file format and in NAD 1983 State Plane New Hampshire FIPS 2800 Feet coordinates;***
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403 ***2. All monumentation shall be set prior to the issuance of the first Certificate of Occupancy;***
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405 ***3. A preconstruction meeting shall be arranged by the applicant and his contractor with the Town***
406 ***engineer prior to any site work commencing. The following must be submitted for review and***
407 ***approval prior to the preconstruction meeting:***
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409 ***i. The SWPPP (storm water pollution prevention plan), if applicable, be submitted***
410 ***to and reviewed for approval by DPW prior to preconstruction meeting.***

411 ***ii. A project schedule and construction cost estimate.***
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413 ***4. All outdoor lighting (including security cameras) shall be down lit and shielded so no direct light***
414 ***is visible from adjacent properties and/or roadways.***
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416 ***Vice-Chair Brown moved that the request of IOKA Properties, LLC (Planning Board Case #20-20) for***
417 ***Minor Site Plan approval be approved subject to the conditions of approval as read by Town Planner***
418 ***David Sharples. Ms. English seconded the motion. A roll call vote was taken Cameron – aye, Cowan –***
419 ***aye, English – aye, Grueter – aye, Martel – aye, Brown – aye and Plumer – aye. The motion passed 7-***
420 ***0-0.***

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422 **V. OTHER BUSINESS**

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424 **VI. TOWN PLANNER'S ITEMS**

425 **VII. CHAIRPERSON'S ITEMS**

426 **VIII. PB REPRESENTATIVE'S REPORT ON "OTHER COMMITTEE ACTIVITY"**

427 **IX. ADJOURN**

428 ***Vice-Chair Brown motioned to adjourn the meeting. Ms. Cowan seconded the motion. A vote was***
429 ***taken, all were in favor, the motion passed unanimously. The meeting adjourned at 10:14 PM.***

430

431 Respectfully submitted,

432 Daniel Hoijer,

433 Recording Secretary