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Via First-Class Mail and Email (planningboard@canterburynh.gov)

June 20, 2025

Planning Board
Town of Canterbury
P.O. Box 500
Canterbury, NH 03224

Re: 114 West Road, Canterbury, NH – Tax Map 248, Lot 8 (the “Property”)

Dear Chair O'Donnell and Members of the Board:

Please be advised that this office represents 114 West Road, LLC, owner of the above-referenced Property (the “Applicant”). As the Board is aware, the Applicant, in conjunction with Meridian Land Services, Inc. (“Meridian”), has previously presented preliminary mixed-use (residential and commercial) cluster development plans for the Property and has now submitted a formal application for consideration.

Over the course of nearly two years, the Applicant and its team have solicited information related to the Town’s cluster subdivision regulations. Among the stated purposes of the regulations, as stated in Section 6.2 of the Zoning Ordinance, are “allow[ing] greater flexibility in the design of residential and commercial projects” and “expand[ing] residential options.” The New Hampshire Constitution, as interpreted by our state Supreme Court, requires towns “to provide assistance to their citizens, and that the ‘measure of assistance certainly includes informing applicants not only whether their applications are substantively acceptable but also whether they are technically in order.’” *See Richmond Co. v. City of Concord*, 149 N.H. 312, 315 (citing *Savage v. Town of Rye*, 120 N.H. 409, 411 (1980)); *see also Carbonneau v. Town of Rye*, 120 N.H. 96, 99 (1980).

It is made plain by both the minutes of the Planning Board hearings and the letters sent by the Applicant to the Board that the Applicant is seeking assistance parsing the vagaries of Ordinance provisions that have not been thoroughly interpreted or implemented previously. By way of reference:

- On October 22, 2024, Meridian and the Applicant “wanted the board to know they were introducing this project to the town early to get an understanding of the clustering of the residential portions and an understanding of how the density calculation is within the ordinance before they start looking at potential commercial uses.” *See* Minutes at lines 15-18. *See also* lines 26-28 (“They would like an understanding of the residential [cluster density] from the board before they explore options in the front and potential options in the back [of the Property].”) In addition, at this hearing, Meridian specifically asked the Board for guidance about how commercial density is calculated or allocated. *See* lines 98-101, 184-186, and 197-198 (“[Meridian] asked about density calculations...is there a means of vetting that question with our attorney and the town’s attorney?”) The meeting minutes’ “Action Items” include conferring with town staff to try to answer the questions posed by the Applicant and Meridian. *See* Minutes at lines 293-300.
- On November 19, 2024, Meridian submitted a letter, a copy of which is included herewith, seeking guidance on the application of the zoning ordinance to the proposal, with particular attention to the interplay of Section 5.2 and Section 6, noting “It is understood this discussion may need to be extended to the Town Attorney in the event the board feels they need additional interpretation.”
- On November 26, 2024, the Applicant presented a revised conceptual plan with a slightly reduced residential unit count and indicated they would return for the Board’s December 10, 2024 hearing. *See* Minutes at lines 137-141.
- On January 14, 2025, the Planning Board noted “we need to focus on the big picture because the application cannot accurately provide many required details until we address the CUP issues that have been discussed.” *See* Minutes at lines 42-43. *See also* lines 224-228 (“Meridian asked for a definite answer so they could come back with acceptable changes. The Board will discuss...and get back to Meridian by end of next week.”)
- On January 17, 2025, Meridian submitted a second letter, included herewith, asking specific questions and providing relevant citations to the Zoning Ordinance in the hope that town counsel could possibly provide guidance to both the Board and the Applicant.
- On February 12, 2025, the Board attempted to answer some of the questions relying on a document of which “portions were [...] what the town attorney told him and referencing decisions made by the board in prior meetings.” *See* Minutes at lines 195-196.

The Applicant is trying to develop a mixed-use concept in Canterbury that will both provide meaningful commercial tax revenue to the Town and hopefully ease the some of the burden of the regional housing crisis. Despite these laudable goals, the Town has not provided any concrete direction despite repeatedly acknowledging the challenges posed by the unclear Ordinance provisions. In fact, it even appears the Town attempted to quash this project through the insertion

of a new Zoning Ordinance footnote limiting residential cluster developments to other Town zoning districts.

This office filed a 91-A, Right-to-Know request for additional information about the recently passed zoning amendments. Article 2, in relevant part, included this provision: “To indicate as foot note number 1 to the Table of Principal Uses, residential uses are permitted in the Commercial District (C) as part of a commercial cluster development only. This shall apply to Cluster Developments for Single Family, Pre-site built housing, Manufactured Housing, Two-Family, and Multi-Family.” Article 5 includes the following language: “To amend Article 6.9, Commercial Cluster Development, Section C to read: No Commercial Cluster development shall be more than 50% residential.”¹

In the 91-A response, Town of Canterbury employee Kathleen McKay indicated that notice was first provided “On 2/12/25 when I published the Sample Ballot Released notice, our Town Clerk-Tax Collector also posted physical copies of the sample ballots at the Town Office and the Country Store.”

Pursuant to RSA 676:12, VI:

The provisions of paragraph I shall not apply to any plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) prior to the first legal notice of a proposed change in a building code or zoning ordinance or any amendment thereto. No proposed subdivision or site plan review or zoning ordinance or amendment thereto shall affect a plat or application which has been the subject of notice by the planning board pursuant to RSA 676:4, I(d) so long as said plat or application was the subject of notice prior to the first legal notice of said change or amendment. **The provisions of this paragraph shall also apply to proposals submitted to a planning board for design review pursuant to RSA 676:4, II(b), provided that a formal application is filed with the planning board within 12 months of the end of the design review process.** (Emphasis added).

As interpreted by the New Hampshire Supreme Court, the purpose of the statute is to protect applications from regulatory amendments passed while the application is under consideration. *See Rallis v. Town of Hampton Planning Board*, 146 N.H. 18, 21 (2001) (citing *Rall v. Town of Belmont*, 138 N.H. 172, 173 (1993)). The Applicant’s design review application was submitted on December 23, 2024, and following discussion at two hearings, concluded on February 11, 2025. The formal cluster subdivision application was filed within 12 months of the conclusion of design review. As a result, the changes to the zoning are not applicable to this project at this time.

¹ As a note, this revised language does not indicate how the commercial/residential percentages are calculated, i.e. using acreage, unit count, or some other metric.

As the Planning Board is aware, the Applicant's team includes several established land developers and related professionals, all of whom intend to build a first-class project that benefits the Town of Canterbury. The Board has noted that the conditional use permit procedures allow for a proposal to "move forward while placing guardrails around the project which can give greater municipal control or safeguards to community concerns." *See* Minutes, October 22, 2024, at lines 232-234. We trust the Board will carefully consider the proposal on behalf of the residents of Canterbury but will also meet its constitutional duty to the Applicant. Should the Town wish to further engage counsel, the applicant is willing to pay reasonable related costs. In return, we hope that answers to the open questions posed by the Applicant are provided directly by counsel, either in person or on letterhead.

We look forward to discussing this project further at the Board's hearing on June 24, 2025.

Most sincerely,

A handwritten signature in blue ink, appearing to read "A. Eli Leino", is written over the typed name.

A. Eli Leino

Enclosures



MERIDIAN

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**Canterbury Planning Board
The Sam Lake House
10 Hackleboro Rd.
PO Box 500
Canterbury, NH 03224
Phone: (603) 783-9955**

November 19, 2024

**Re: 114 West Road,
Tax Map 248 Lot 8
Canterbury, NH**

Interpretation of Mixed Used Cluster Development, Density Determination, and Unit Allocation

We are writing on behalf of our client, 114 West Road LLC (the “Applicant”), seeking additional conceptual discussion with the Planning Board regarding interpretation of the Canterbury Zoning ordinance, specifically section 5.2, and Section 6, and how it will be applied to the proposed development of Tax Map 248 Lot 8 (the “Subject Parcel”). It is understood that this discussion may need to be extended to the Town Attorney in the event the board feels they need additional interpretation. In support of this, actual density calculations have been provided and a conceptual plan has been created to assist with the visualization of the interpretation. We are seeking to discuss zoning ordinance interpretation as follows:

- I) Use Determination
- II) Baseline Density Determination
- III) Bonus Density Determination
- IV) Density Calculation
- V) Density Allocation of Commercial and Residential

(I) Use Determination

Table C. TABLE OF PRINCIPAL USES allows for cluster developments by Conditional Use (CU) permit. This table separately lists single family, two-family, multi family, and commercial. It does not specifically list “Mixed Use” developments. The only section where “mixed use” is mentioned is in section 6.4.A General Requirements for Cluster Developments. We understand this to mean that either a single family/two-family or commercial Cluster Developments could be proposed as long as it meets the requirements spelled out in the zoning ordinance and the CU process. However, the planning board has the authority, at their discretion, to allow mixed use developments.

6.4.A. The permitted uses in a residential cluster neighborhood are residential dwelling units with not more than 6 units in any structure. A limited area of commercial or mixed uses (residential/commercial) may be incorporated into the cluster neighborhood at the Planning Board’s discretion, if the Planning Board determines it complies with the spirit and intent of the ordinance.



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We believe that the subject property is an ideal location for a mixed used development of this nature due to its proximity to RT 93, specifically exit 18. Furthermore, the mixed use is supported by the Canterbury 2023 Master Plan mentioning that a high priority of the Town is to “support mixed use zoning in the vicinity of Exits 17 and 18”. This is further supported by the zoning section 6.4.A referenced above was recently added to the 2024 Zoning ordinance.

(II) **Baseline Density Determination**

The Canterbury Zoning Ordinance determines density for cluster developments via section 6.4.C, which then refers to section 5.2. This section

6.4.C. The density, or maximum number of residential dwelling units permitted in a cluster neighborhood, may not exceed the density allowed under Section 5.2 of the Zoning Ordinance, except when a request for a density incentive is approved by the Planning Board under Section 6.6 or Section 6.7.

Note: From this section there is a restriction on residential dwelling units but is silent on how the commercial “units” effect the total units. There is no mention of commercial density determination till Section 6.9 Commercial Cluster Development. See **(V) Density Allocation of Commercial and Residential** for Commercial Density Determination and how it is allocated.

Referring to Section 5.2, it is not clear how the maximum number of units is calculated. The most relevant section is section 5.2.A. Minimum Lot Size Standards. Of section 5.2.A., section 5.2.A.1 is the most appropriate.

5.2.A. MINIMUM LOT SIZE STANDARDS

- 1. In computing the minimum lot acreage requirements under this article, any portion of the lot not suitable for building due to high water table as evidenced by open water or wetland shall not be included. Open water or wetland that has been dredged, drained or filled shall not be included in computing the minimum lot sizes.*
- 2. In computing minimum lot depth and width, each lot must contain within its bounds a rectangle meeting these requirements: each of the sides parallel to the front boundary line must equal or exceed the minimum lot width requirement in the zone, and each of the other sides must equal or exceed the minimum lot depth requirement in the zone.*
- 3. In computing the minimum lot acreage requirement, that portion of the lot between the front boundary line and the line from which the front setback is measured shall not be included.*
- 4. In computing minimum lot acreage requirements for proposed two-family or multi-family uses, the minimum acreage for the lot shall be calculated as follows: (number of dwelling units per lot) x (minimum lot acreage requirement) x 75%. Width and depth requirements will be consistent with the zone.*



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The use of Section 5.2.A.1 is further supported by our conversation with the planning board at the 10/22/24 planning board meeting. This section allows for density to be calculated by subtracting the wetland area from the overall property area, then dividing the remaining area by the minimum lot size.

As a point of clarification, some board members mentioned steep slopes need to be subtracted as well. However, there is no mention of steep slopes in this section. Upon further review of the Canterbury Zoning Ordinance, the deduction of steep slopes for the purposes of a yield is mentioned in Article 16 Workforce Housing Ordinance. Article 16 does not apply since the proposed development is not workforce housing.

(III) Bonus Density Determination

Bonus are given by Section 6.6 Bonus Density 10% is allocated for providing one of the below criteria and 15% for two and 20% for providing three.

6.6.A. For exemplary cluster neighborhood or commercial cluster proposals, the Planning Board, at its discretion, may grant a density bonus of not more than 20%, if one or more of the following criteria are met. A 10% density bonus may be granted by the Planning Board if one criterion is met, 15% for two criteria, and 20% for three or more criteria:

- 1. Preservation of 75% or more of the parcel as Designated Open Space.*
- 2. Preservation and maintenance of five or more acres of contiguous, open field.*
- 3. Preservation or construction of 1,000 linear feet or more of connected stone walls. The connected stone walls shall be visible to the public and breaks for driveways and walkways are permitted.*
- 4. Maintenance of existing or new agricultural use(s) on the property.*
- 5. Provision of planned pedestrian access, such as sidewalks or maintained trails for public use.*
- 6. Provision of outdoor amenity which may include access to public space.*
- 7. Use of community well or septic system serving six or more units*
- 8. Contiguous connections with permanent conservation land on adjacent parcels*

B. A density bonus yielding a half unit or more may be rounded up.

The 10% density bonus is supported by the criteria outlined in section 6.6.A.7, via the use of a community well. The additional 5% density bonus bringing the total bonus to 15% is section 6.6.A.2 supported by the criteria outlined in section 6.6.A.7, via the preservation of the existing field which is approximately 9.40 acres. Although the field does include a wet meadow it does meet the criteria "Preservation and maintenance of five or more acres of contiguous, open field". Therefore a 15% bonus is applied.

Further density bonuses could be sought via the criteria above, although none are proposed at this stage in the process.



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(IV) Density Calculation

Based on the interpretation of Section 5.2.A.1 the density calculation would be the following without consideration of density bonuses and commercial units.

Gross property area:	37.26 acres	[1,623,197 sf]
Wetland area:	5.09 acres	[221,541 sf]
Net tract area:	32.17 acres	[1,401,656 sf]

Baseline Density = 32.17 acres / 1 unit per acre = 32.17 units

Then applying the bonus allocated per section 6.6, the proposed development yields the following

Baseline density =	32.17 units
Applied bonus:	15%
Density Bonus	4.83
Unit total =	36.996

Rounded Unit Total = 37 Units

(V) Density Allocation of Commercial and Residential

As stated above, section 6.4.C refers to the maximum number of residential dwelling units is determined by section 5.2. It does not mention that commercial units have a density calculation. However Section 6.9 Commercial Cluster Development, should be applied for the commercial portion of the mixed use.

B. GENERAL STANDARDS/PROCEDURE.

Commercial cluster development under this section may be used only for permitted uses in the Commercial and Industrial Zones upon approval of the subdivision and site plan by the Planning Board. A commercial cluster development shall have a minimum tract size of five (5) acres. The total number of lots in the commercial cluster development shall not exceed the number of lots that would be allowed if the entire tract were developed consistent with dimensional requirements otherwise applicable to the property, except when a density bonus is granted by the Planning Board, as permitted in Sections 6.6 & 6.7. In acting upon an application for commercial cluster development, the Planning Board shall follow the procedural requirements under its Subdivision Regulations and Site Plan Review Regulations.

While Section 5.2 is not specifically mentioned similar to how the standard cluster neighborhoods establish maximum units, based on the wording in the above highlighted section, the same approach for establishing density can be applied. This is reinforced by section 6.9.D establishing commercial cluster development shall conform to the same minimum standards as “cluster neighborhoods”.



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D. INDIVIDUAL LOT DESIGN.

The design of individual lots within a commercial cluster development shall conform to the same minimum standards as set forth for Cluster Neighborhoods under this Article and the Planning Board may grant a density bonus, as permitted in Section 6.6 and 6.7.

In summary, one commercial lot/unit subtracts from the total allowable units after the bonus has been applied. It is typical that each unit would have individual ownership and sold to a different entity. The proposed development consists of 35 residential units with 2 commercial units (front lot and back lot).

These interpretations are requested to assist Applicant in making design decisions, and to guide the Planning Board in their assessment of the proposed project. If it would aid in rendering your interpretations, we suggest further discussions between the relevant Town officials, Applicant, and counsel to discuss how these interpretations are consistent with the Ordinance, and applicable statutes.

Sincerely,

Samuel R. Foisie, P.E.

Project Manager

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MLS Project No.: 12609.00

Cc: Keith Anastasy and Timothy M. McGibbon with attachments



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January 17, 2025

**Re: 114 West Road,
Tax Map 248 Lot 8
Canterbury, NH**

Canterbury Zoning Questions for Town Attorney

We are writing this letter on behalf of our client, 114 West Road LLC (the “Applicant”), to outline the questions related to the Canterbury NH Zoning ordinance associated to the Cluster Neighborhood, Commercial Cluster, and Mixed-Use Cluster.

Question 1.A

How is the baseline density calculated for a Residential Cluster Neighborhood, where Section 6.4.C refers to Section 5.2?

6.4.C. The density, or maximum number of residential dwelling units permitted in a cluster neighborhood, may not exceed the density allowed under Section 5.2 of the Zoning Ordinance, except when a request for a density incentive is approved by the Planning Board under Section 6.6 or Section 6.7.

Question 1.B

With no section being perfect for calculation of density in section 5.2, is section 5.2.A.1 the most appropriate section for calculating density?

5.2.A. MINIMUM LOT SIZE STANDARDS

- 1. In computing the minimum lot acreage requirements under this article, any portion of the lot not suitable for building due to high water table as evidenced by open water or wetland shall not be included. Open water or wetland that has been dredged, drained or filled shall not be included in computing the minimum lot sizes.*
- 2. In computing minimum lot depth and width, each lot must contain within its bounds a rectangle meeting these requirements: each of the sides parallel to the front boundary line must equal or exceed the minimum lot width requirement in the zone, and each of the other sides must equal or exceed the minimum lot depth requirement in the zone.*
- 3. In computing the minimum lot acreage requirement, that portion of the lot between the front boundary line and the line from which the front setback is measured shall not be included.*
- 4. In computing minimum lot acreage requirements for proposed two-family or multi-family uses, the minimum acreage for the lot shall be calculated as follows: (number of dwelling units per lot) x (minimum lot acreage requirement) x 75%. Width and depth requirements will be consistent with the zone.*



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Question 1.C

With no mention of steep slopes being removed from the calculation, are steep slopes required to be removed from the area calculation?

Question 1.D

How is the baseline density calculated for commercial Clusters, where section 6.9.D the standards set forth in Cluster Neighborhoods?

D. INDIVIDUAL LOT DESIGN.

The design of individual lots within a commercial cluster development shall conform to the same minimum standards as set forth for Cluster Neighborhoods under this Article and the Planning Board may grant a density bonus, as permitted in Section 6.6 and 6.7.

Question 2

How are units allocated? While the allocation is obvious for a residential dwelling unit being one dwelling unit or one lot (or condominium lot), does the same apply to a commercial unit? Any alternative example presented by a planning board member is that it is based on lot area, specifically commercial lot area. The example given was the commercial lot (or condominium lot) is 5 acres then this would count as 5 units. Is the unit count by area of the lot divided by 1 acre or is it counted by number of lots (or condominium lots)?

Question 3.A

What are the acreage requirements for the 50% open space in Cluster Developments that is referenced in section 6.4.I?

Question 3.B

Do wetlands need to be subtracted from the area within the open space lot?

Question 3.C

Does open space need to be contiguous?

Question 4

Section 6.4.A outlines that the planning board may approve a limited area of commercial or mixed uses in a residential cluster neighborhood, what are the requirements for quantity of commercial to residential?



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6.4.A. *The permitted uses in a residential cluster neighborhood are residential dwelling units with not more than 6 units in any structure. A limited area of commercial or mixed uses (residential/commercial) may be incorporated into the cluster neighborhood at the Planning Board's discretion, if the Planning Board determines it complies with the spirit and intent of the ordinance.*

To assist with understating what has generated these questions a Zoning Interpretation Letter dated November 19th, 2024, submitted to the planning board December 24th, 2024. If it would aid in rendering your interpretations, we suggest further discussions between the relevant Town officials, Applicant, and Town Attorney to discuss how these interpretations are consistent with the Ordinance, and applicable statutes.

Sincerely,

Samuel R. Foisie, P.E.

Project Manager

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