Town of Lyndon
Development Review Board
Notice of Decision

Introduction: The application (#2024-003) of (Louis J. Buzzi) came before the Development Review Board for Conditional Use and Site Plan approval to construct a Fuel Distribution/gas station with a retail store on his property located at 791 Main Street (Parcel #31-1341) in the Commercial District.

The Development Review Board conducted a public hearing for this application on March 7th, 2024, at the Town of Lyndon Municipal Building. Louis J Buzzi (property owner/developer) and Jeff Olesky (Catamount Consulting Engineers, PLLC) attended this public hearing to present this application and answer any questions from the Board.

Based upon the testimony provided at the above-mentioned public hearing and the documents submitted to the Development Review Board (attached to the permit application), the Development Review Board finds, decides, and concludes as follows:

FINDINGS OF FACT

1. The Applicant's proposed application and site plan were reviewed and considered under the Town of Lyndon Zoning Bylaws amended September 5, 2023, effective September 26, 2023.
2. The Applicant's proposed development is on a 3.8-acre parcel of land as described in the Warranty Deed of Buzzi Revocable Trust, recorded on December 18, 2023, in Book 267/Page 595 of the Town of Lyndon Land Records.
3. The information provided on Zoning permit application #2024-003 indicates the lot size of the proposed development to be 2-acres.
4. Drawing C2.0 of the civil engineering plans provided by Catamount Consulting Engineers, PLLC, of Burlington, VT, indicates the lot size of the proposed development to be 118,993 square feet (or 2.73 acres).
5. The proposed development is not within the designated village center as indicated on Zoning Permit Application #2024-003.
6. The parcel is flat and open in nature, containing no structures and a deeded right of way to the Sanborn Covered Bridge.
7. The parcel has approximately 750 feet of total road frontage along Stevens Loop and Main Street.
8. The parcel is defined as parcel #31-1341 in the Town of Lyndon Land Records.
9. The parcel is classified as a Class 1 lot, defined as having off-lot water supply and sewage disposal (Town of Lyndon Municipal Water and Wastewater systems respectively).
10. The application for zoning permit #2024-003 was received and deemed complete on March 7th, 2024, by the Zoning Administrator. The application including a site plan and technical drawings prepared by Catamount Consulting Engineers, PLLC, of Burlington, VT, and written testimony from Sacha Pealer (CFM|Northeastern River Scientist and Floodplain Manager|Vermont Agency of Natural Resources and Vermont Department of Environmental Conservation) was submitted and reviewed as part of the record.
11. The application was warned in the *Caledonian Record* on February 21st, 2024, as part of the March 7, 2024, public hearing.

12. The Applicant's subject property and proposed development is in the Commercial District.
13. The purpose statement of the Commercial District (section 3.6, Bylaws) states that the District "contains land where commercial development should be located. The Commercial District has access to good roads, sewage disposal and water supplies, utilities, parking, and other facilities necessary to sustain commercial activity. The uses in the District should not interfere with surrounding land uses. Future development in the District should follow Smart Growth principles of mixed land use, compact building design, walking and biking connections, design elements that create a sense of place, connection to open space and natural beauty, and provide a range of housing, shopping, and eating choices. Buildings in the district must be at least two (2) stories tall, meet the Design Overlay features, provide active ground floor use in mixed-use buildings, and provide useable space on the upper floors of commercial buildings for residences, offices, retail, or lodging."
14. The subject property is currently owned by Louis J. Buzzi.
15. The subject property is approximately 165,528 square feet in size (3.8-acres). The minimum lot size for a class 1, commercial use lot in the Commercial District is 30,000 square feet (0.688-acres).
16. The minimum road frontage for all Commercial use only lots in the Commercial District is 150 feet.
17. The front setback requirement for the Commercial District is 50 feet.
18. The side and rear setback requirements for the Commercial District are 25 feet.
19. The subject property is the former location of the Lynburke Motel (Lodging Establishment). All structures on the property have been demolished and removed from the site.
20. The Applicant proposes to change the use of his property located at 791 Main Street (parcel #31-1341) to "Fuel distribution/gas station" and build a 5000 square foot retail store, 2,544 square foot gasoline island, and 576 square foot diesel island. The property is in the Commercial District and Special Flood Hazard Overlay District (Special Flood Hazard Area and River Corridor). This application requires Conditional Use approval under section 3.6.2.11 (Fuel distribution/gas station), section 4.2.2 and 11.4.D (Conditional Use), and must meet the development standards of sections 11.5.A and 11.5.C of the Lyndon Zoning Bylaws. This application also requires site plan approval under section 9.1 and must meet the performance standards under section 4.4.5. of the Lyndon Zoning Bylaws.
21. The Town of Lyndon Zoning Bylaws defines "Fuel distribution/gas station" as an establishment principally used for the sale of any type of fuel, including but not limited to gasoline, propane, diesel, biofuels, and electricity, and other motor vehicle related products. A "gas station/fuel distribution" site can apply for conditional use of the site to include a retail store (if the zone allows for that use) that sells limited lines of grocery and household items. This definition specifically excludes motor vehicle repairs, motor vehicle sales, salvage yards, parking facilities, park and ride facilities, and truck terminals.
22. Fuel distribution/gas station (3.6.2.11) is a Conditional Use in the Commercial district.
23. Pursuant to section 4.2.2 of the Bylaws, any development identified as a "Conditional Use" in a particular zoning district may be commenced, enlarged, or altered only after the DRB finds that the proposed Conditional Use will not adversely affect:
    a. The capacity of existing or planned community facilities;
    b. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan;
    c. Traffic on roads and highways in the vicinity;
    d. By-laws and Ordinances then in effect;
    e. Utilization of renewable energy resources; and,
    f. Performance standards pursuant to Section 4.4.5 (Bylaws).

24. Pursuant to section 4.4.5 of the Bylaws, and to Section 4414 (5) of the Act, the following performance standards, and all applicable state-imposed standards, shall be satisfied for any Conditional Use in all Districts. The DRB shall, after notice and hearing, decide whether a proposed Development satisfies the performance standards set forth herein. No Development shall:

    4.4.5.1 create noise in excess of 70 decibels at any property line;

    4.4.5.2 emit any offensive odor except in connection with agriculture;

    4.4.5.3 discharge dust, dirt, soot, ash, or any other offensive material onto nearby property owned by others;

    4.4.5.4 emit any gases or other substances which might endanger the health, comfort, safety or welfare of any person, or which might injure or cause damage to property;

    4.4.5.5 cause vibrations beyond any property line that have the potential to cause damage to property; or

    4.4.5.6 create a fire, explosion, or safety hazard.

25. The application requires site plan approval by the Development Review Board. Unless otherwise specifically provided herein, site plan approval shall be granted only after public notice and hearing.
26. Pursuant to section 9.1.5 of the Bylaws, when considering whether to approve or disapprove any site plan the Development Review Board shall consider the following matters:

    a. Maximum safety of vehicular circulation between the site and the adjacent street network;

    b. Adequacy of circulation, parking and loading facilities with particular attention to safety;

    c. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility with and protection of adjacent property; and,

    d. Protection of the utilization of renewable energy resources.

27. Pursuant to Section 9.1.6 of the Bylaws, Unless a variance or other special action by the DRB must first be obtained, a zoning permit may be issued by the Administrative Officer, pursuant to this bylaw any time within one year of the granting of site plan approval. If a zoning permit is not issued within one year, the site plan approval shall become null and void and reapplication shall be required prior to the issuance of a zoning permit.
28. Pursuant to section 9.1.7 of the Bylaws, When approved, a site plan shall be signed and dated by the Chair of the Development Review Board. No site plan may be altered, modified, changed, or amended without the written approval of the Development Review Board, after public notice and hearing, except upon a finding by the Development Review Board that the proposed amendment does not affect the adequacy of traffic access, circulation and parking, landscaping and screening, or the protection of the utilization of renewable energy resources.
29. The subject property and proposed development are in the River Corridor and Special Flood Hazard Area zone AE as depicted on Panel 20 of the FEMA Flood Insurance Rate Map revised on May 17, 1988, for the Town of Lyndon, VT, and must comply with the regulations and conditions as outlined by Article 11 of the Lyndon Zoning Bylaws.
30. The Statement of Purpose of the Flood Hazard Regulations (section 11.1, Bylaws) states It is the purpose of this bylaw to:

    A. Implement the goals, policies, and recommendations in the current municipal plan;

    B. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation and erosion;

    C. Ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or river corridors,

D. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Lyndon, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

31. Pursuant to section 11.3 of the Bylaws, Lands to Which these Regulations Apply are as follows:
    A. Regulated Flood Hazard Areas
    These regulations shall apply to the River Corridors and Special Flood Hazard Areas (hereafter called "hazard areas") in the Town of Lyndon, Vermont as described below. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. These hazard areas include:
        1. The River Corridors as published by the Vermont Agency of Natural Resources including the Statewide River Corridors, refinements to that data based on field-based assessments, and VT DEC approved administrative areas which are hereby adopted by reference. Where River Corridors are not mapped, the standards in § 11.5.C shall apply to the area measured as fifty (50) feet from the top of the stream bank or slope.
        2. The Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.

    B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the most recent Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies.

    C. Interpretation The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.
        1. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Administrative Officer (AO). If the applicant disagrees with the determination made by the AO, a Letter of Map Amendment from FEMA shall constitute proof.
        2. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the AO. If the applicant disagrees with the determination made by the AO, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

32. Pursuant to section 11.4 of the Bylaws, Conditional use review is required prior to the issuance of a permit by the AO for all development within the hazard areas, other than those activities which either are exempt under § 11.4.B or require only an administrative permit under § 11.4.C. The following proposed development may be permitted within the hazard areas, provided that the DRB finds that the applicant has complied with the Development Standards in § 11.5:
    1. New structures, other than critical facilities, outside the floodway;

2. The use of fill outside the floodway when either a. used in conjunction or association with a new or existing structure; or b. used contemporaneously with the removal of a building or other structure, but limited to the structure's footprint or foundation hole.
3. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
4. New or replacement storage tanks for new or existing structures;
5. Non-substantial improvements (i.e., decks, patios, additions, or accessory structures) with a footprint of 500 square feet or less to existing structures in the floodway;
6. Grading, excavation; or the creation of a pond;
7. Improvements to existing roads;
8. Storage outside of the floodway;
9. Bridges, culverts, channel management activities, or public projects which are functionally "Substantial improvement" means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed and may also include interior renovations. dependent on stream access or stream crossing;
10. Development related to on-site septic or water supply systems within the floodway;
11. Public utilities
12. At grade parking within the floodway; and
13. Building utilities in the River Corridors

33. Pursuant to section 11.5 of the Bylaws, The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

A. Special Flood Hazard Area

1. All development shall be:

a. Reasonably safe from flooding;
b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
c. Constructed with materials resistant to flood damage;
d. Constructed by methods and practices that minimize flood damage;
e. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
f. Adequately drained to reduce exposure to flood hazards;
g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
h. Required to locate any fuel storage tanks (as needed to serve a new or existing structure in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

2. In Zones AE, AH, and A1 – A30 where base flood elevations and/or floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood elevation more than 1.00 foot at any

point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.

3. Development in the special flood hazard area, but outside floodway limits, must not unduly increase base flood elevations or flood velocities. Such development shall not be permitted unless:

a. it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood water surface elevation within the cross sections in which the property is located, by more than the increase established in "Table 2" ("Floodway Data") of the Flood Insurance Study ("FIS") prepared by the Federal Emergency Management Agency ("FEMA"). The demonstration shall include a copy of the Flood Insurance Rate Map ("FIRM") identifying the upstream and downstream cross sections; the FIS Table 2, identifying the upstream and downstream cross sections and associated established increases. Such demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a licensed professional engineer; or,

b. the proposal provides compensatory storage for floodwater (in the same reach and at elevations up to and including the base flood elevation) to offset the impacts of the proposal. The net post-construction flood storage capacity shall not be less than the preconstruction capacity. A volumetric analysis and supporting data must be provided by the applicant and certified by a licensed professional engineer.

4. Analyses required under § 11.5.A.2 and § 11.5.A.3 will be waived for replacement or relocated primary structures where the proposal indicates no new fill and no increase in the structure's footprint (or an open foundation design).

5. New structures or structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate.

6. New non-residential structures and non-residential structures to be substantially improved shall:

a. Meet the standards in § 11.5.A.5 or,

b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; a permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

7. Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.

8. Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall:

a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,

b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one-foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

9. Recreational vehicles must be fully licensed and ready for highway use.

10. A small accessory structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in § 11.5.A.6 (above).

11. Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

12. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

13. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

14. The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability.

15. Access to new subdivisions and new planned unit developments must be located on dry land outside the special flood hazard area.

B. Floodway Areas- Additional Requirements

1. Development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:

a. Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;

b. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

2. Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

C. River Corridors

1. Development within designated centers shall be allowed within the River Corridors if the applicant can demonstrate that the proposed development will not be any closer to the river than pre-existing adjacent development.

2. Development outside of designated centers shall meet the following criteria:

a. In-Fill Between Existing Development: Development must be located no closer to the channel than the adjacent existing primary structures, within a gap that is no more than 300 feet, or

b. Down River Shadow: An addition to an existing structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the

downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system.

3. River Corridor Performance Standard

a. Proposals that do not meet the infill or shadowing criteria in section § 11.5.C.2 must demonstrate and the DRB must find that the proposed development will:

i. not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion;

ii. not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and

iii. not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.

b. Proposals that meet the infill or shadowing criteria in § 11.5.C.2 are presumed to meet the River Corridor Performance Standard. However, The DRB has the option to require an applicant to demonstrate that a proposal meets the River Corridor Performance Standard if there is a concern that the proposed development is at particular risk from fluvial erosion or may increase fluvial erosion, based on location or past flood damage.

34. Pursuant to section 11.6 of the Bylaws, the following requirements and conditions apply to all applications for development within the Hazard areas:

A. Application Submission Requirements

1. Where applicable, applications for development shall include a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, River Corridors, the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;

B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction the AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and the DRB shall consider all comments from ANR.

2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

C. Records

The Administrative Officer shall properly file and maintain a record of:

1. All permits issued in areas covered by Article XI;

2. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
3. All flood proofing and other certifications required under this regulation; and,
4. All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions, and conditions.

35. The use of Fuel distribution/gas station has no designated parking space requirements outlined in section 6.2 of the Lyndon Zoning Bylaws. Fuel distribution/gas station falls under the "Other Uses" category where the number of parking spaces are "As required by the Development Review Board (DRB) after site plan review." The proposed development also includes a retail store component which requires 1 space per every 350 square feet of gross area as outlined in section 6.2 of the Lyndon Zoning Bylaws.
36. Land Development is defined in the Lyndon Zoning Bylaws as "the division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any mining, excavation, or landfill for a commercial purpose; and any change in the use of any structure or land or extension of the use of land. "Land Development" does not include the replacement of an existing sign with another sign of the same type construction and having the same or less area than the sign being replaced. For regulator purposes within the Special Flood Hazard Area (SFHA) or River Corridor, "development" means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials."
37. Structure is defined in the Lyndon Zoning Bylaws as "an assembly of materials with a fixed location on the ground or attached to something having a fixed location on the ground, intended for occupancy or use. This term includes, but not limited to, a building, mobile home, trailer, tractor trailer, billboard, or sign. For regulatory purposes within the Special Flood Hazard Area (SFA) and River Corridor, "structure" means a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or storage tanks."
38. Section 13.2.1 of the Lyndon Zoning Bylaws states: No person shall commence development without first obtaining a permit therefore pursuant to these bylaws. Any land development not specifically authorized by, or exempt from, this bylaw is prohibited. A person who wishes to undertake development shall first apply in writing to the Zoning Administrator for a permit.
39. The Applicant explained that he proposes to build a gas station and "mini mart" on his property located at 791 Main Street. The proposed development will have a 5000 square foot store with a 2500 square foot gas pump island and 576 square foot diesel island. The site is designed for traffic to access from both Route 5 and Route 122. He then referred to Jeff Oleski for technical comments.
40. Jeff Olesky of Catamount Engineering explained that the proposed development to build a gas station and convenience store is located at the former Lynburke Hotel site. The site is served by Municipal water and sewer with curb cuts on Route 5 and Route 122. He stated that the proposed convenience store would have customer parking along the east and north sides of the building that would meet the zoning requirements. There would be two ADA compliant parking spaces as well as ADA compatible concrete sidewalks. A standard fueling station and canopy will be constructed to the north side of the building, with a diesel station to the west of the building. The diesel station is proposed to have a double-sided pump as well as a single slave pump. He stated that the diesel area is mainly for tractor trailer truck fueling, which is one of the motivating factors for the particular layout and design of the site. The two proposed curb cuts meet the VTrans and AOT standards. The site plan design is to allow trucks to enter one side of the site and exit the other side without requiring on-site turning maneuvers

or three-point turns. Trucks could enter from either curb cut location, get to the fueling station and exit without conflict with on-site traffic flow.

41. Mr. Olesky explained that the proposed development triggers a State Stormwater permit (construction and discharge) because they are proposing more than a ½ acre of impervious surfaces. The proposed fill is primarily to raise the proposed building and pump islands out of the flood plain. The building and pumps would essentially be islands or high points on the property and stormwater would sheet flow to the perimeters into a series of two grass swales (on the east, north, and south sides) running west to a stormwater treatment facility. It would then be discharged into the field and sheet flow to the (Passumpsic) River.
42. Mr. Olesky stated that the majority of the site is in the Special Flood Hazard Area and that the proposed application was presented to Sacha Pealer (Vermont Floodplain Manager and River Scientist) for her comments (protocol). He explained that she was supportive of the project in how it relates to improving River Corridor and Floodway components as removing the former hotel and pool increases the natural vegetative buffer in the proposed development. He continued by explaining that in order to satisfy the Town requirements of having the proposed building and pumps be a minimum of one foot above the Base Flood Elevation, the placement of fill is required. Mr. Olesky expressed that Sacha Pealer noted there is a net fill on the site, which is not 100% in line with the Compensatory Storage Guidelines that State provides and reviews a project by, but he feels it does comply with all components of the Lyndon Bylaws. He explained that as it relates to fill on the property, the only Lyndon Bylaw requirement is to ensure that the proposed fill doesn't increase the floodwaters in this area any more than if we were to fill the perimeter and areas outside the Floodway on the project site. Mr. Olesky shared that during his preliminary analysis and review of the Floodplain Regulations, he found that the Flood Insurance Study that the proposed project is subject to allows for an increase in floodwaters of 0.4 feet (approximately 5 inches) in this area. He determined that the proposed fill associated with the project will not come close to that (approximately 1-1.5").
43. Mr. Olesky concluded by explaining that the cut/fill analysis drawing provided with the application shows areas of fill in blue and areas of cut in red. A darker blue color indicates more fill while a darker red color indicates more cut. The proposed building and diesel canopy areas are the primary locations of fill and are necessary to get those structures out of the Floodplain to the minimum of what is required. The proposed fill also makes traffic access points usable from a vertical curve standpoint for large trucks. He ended by saying they did their best to minimize fill while still complying with the regulations.
44. Acting DRB Chair Curtis Carpenter explained that Article 11 of the Lyndon Zoning Bylaws was written as a FEMA compliant bylaw but did not adopt the No Adverse Impact standard for floodplains in the ANR DEC *Flood Hazard Area & River Corridor Protection Procedure*. FEMA allows fill outside of the Floodway which is the area of active stream flow during a base flood event. If you are outside of that, you are in the flood fringe. When section 11.5.A.3.a of the Bylaws states that it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood water surface elevation within the cross sections in which the property is located, by more than the increase established in "Table 2" ("Floodway Data") of the Flood Insurance Study ("FIS") prepared by the Federal Emergency Management Agency ("FEMA"), it means that if you fill everything in that entire cross section you get an overall elevation increase in Base Flood Elevation of .4 feet or 5 inches in this case. The proposed fill wouldn't create an increase of 5 inches because it is only a small portion of what that cross section is.
45. Jeff Olesky stated that it is his understanding that beyond the Floodway, FIRM maps detail what the impacts to the Floodway would be if all areas beyond the Floodway, that are below the Base Flood Elevation, were filled on a specific property. If what you are proposing does not increase the Floodplain

level more than the amount provided in the Table (.4 feet in this case), then you comply with the Flood Regs within the Town. He explains that his initial calculations show a potential impact of up to 1.5 inches as apposed to 5 inches, so it is minor in the grand scheme of things, understanding that the purpose of this is to ensure that the building and gas pumps are out of the Floodplain.

46. Mr. Carpenter expressed that the proposed development is in the River Corridor, does not meet the Infill or Down River Shadowing requirements, and must meet the River Corridor Performance Standards. Mr. Olesky replied by stating that Sacha Pealer did a very thorough job of reviewing the River Corridor section of the Bylaws in her provided comments. He continued to explain that because the proposed development is on a pre-existing developed property, there is a history of impact on that area already (Rt. 5, Sanborn Bridge). The proposed location of development on the site moves development further away from the river, not impacting the river's ability to meander or change, and the site is not highly susceptible to erosion.
47. Pursuant to section 11.6.B.1 of the Bylaws, Zoning Administrator Jon Prue sent a copy of the application (#2024-003) and supplemental materials to Sacha Pealer (CFM, Northeastern River Scientist and Floodplain Manager) at the Vermont Agency of Natural Resources on January 22, 2024, for her comments and technical advice. In an email reply on February 21, 2024, Sacha Pealer provided the following comments on the proposed application.

    Dear Jon Prue:

    Thank you for sending the zoning application for a gas station and mini mart at 791 Main Street. I see this project involves a new nonresidential structure on the vacant lot formerly occupied by a motel. The proposal also includes fueling stations, utility connections, paving, and fill. My comments below relate to Lyndon's flood hazard regulations (Article 11 of the Zoning Bylaws) and National Flood Insurance Program (NFIP) requirements.

    I've organized my comments by the two mapped hazard types below. I added hyperlinks to some FEMA and ANR documents below – please let me know if you have any trouble finding these documents online.

    <u>Special Flood Hazard Area</u> (floodplain)
    Inundation flooding has occurred many times at this location, and the project is proposed in the Special Flood Hazard Area (Zone AE) of the Passumpsic River but outside the floodway. This site is a key part of the floodplain in a neighborhood with a repetitive flood loss history.

    Even so, the current proposal includes significant fill in the floodplain to support commercial development. Over 3,300 cubic yards of net fill are proposed, based on Sheet C2.2. of site plans prepared by Jeff Olesky, P.E. (dated 1/18/24). The new fill appears to cover more than 1 acre of land that is currently below base flood elevation (BFE).

    I strongly recommend the proposal be revised to reduce the fill in the floodplain. Filling can have flood impacts that are contrary to the intent of Lyndon's flood hazard regulations. See the Purposes in §11.1, especially B and C, to "avoid and minimize the loss of life and property" and to "ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, *flood plain services*, or river corridors" (italics added).

A primary floodplain service is the storage of floodwaters. When fill is placed in the floodplain, the flood storage area is reduced, and flood heights may increase. The proposed fill would displace floodwater from the flood fringe (areas of SFHA outside the floodway) and reduce flood storage.

Although the Zoning Bylaws have language about cumulative effects and compensatory storage to preserve floodplain capacity in 11.5.A.3, the proposal does not appear to address this section. The proposal includes some "cuts" as well as fill, but it looks like compensatory storage has not been provided in this proposal to offset all the fill. Although the project is outside the floodway, it could still have direct or cumulative impacts on flood heights and velocities. Table 2 in the effective FEMA Flood Study for Lyndonville/Lyndon (dated 5/17/1988) reports a 0.4-foot increase in water surface elevation during the base flood at nearby cross section J when areas outside the floodway are completely obstructed by development. In other words, if the floodplain fringe is filled all the way, flood heights could go up 0.4 feet at cross section J. Please keep in mind, though, the increases reported in Table 2 only consider flow obstruction and do not account for loss of flood storage that slows delivery of floodwater to the channel. Also, the flood study's increases reflect flood conditions from decades ago before some of the current floodplain development took place. Loss of flood storage through cumulative impacts from other fill projects (since the 1980s and into the future) could add up to greater flood increases within the community not apparent in Table 2.

Moreover, because this proposal reduces flood storage capacity with a net fill, it is unlikely to meet the No Adverse Impact standard for floodplains in the ANR DEC Flood Hazard Area & River Corridor Protection Procedure. While the Procedure is not part of the town's zoning review, my office does use this standard when providing comments to the Act 250 District Commission during Act 250 permit review. Although Act 250 is a separate permit process from the town zoning process, it is worth noting that the proposal would likely need to be significantly changed to gain ANR support during the Act 250 process.

Again, I strongly recommend the proposal be revised to reduce fill in the floodplain. I'm available to provide technical assistance on fill reduction and compensatory flood storage options. Please see also the ANR DEC Compensatory Storage Guidance.

In addition to the fill, the following items need attention under the floodplain regulations:

1) Based on the plan set, it appears the new building is going to be elevated so the lowest floor is more than 1 foot above Base Flood Elevation, as required in Zoning §11.5 A.5 and 6. However, I suggest the town confirm that the "finished floor" is the same as the "lowest floor" (e.g. confirm this is a slab). Also, the town may want to specify that there be no basement or subgrade crawlspace. Basements and subgrade crawlspaces are prohibited by §11.5 A.7.
2) Please remember to require the applicant to submit a completed FEMA Elevation Certificate to Lyndon Zoning after the building is finished per Lyndon Zoning §11.5 A.5. A licensed land surveyor or professional engineer will need to complete the Elevation Certificate.
3) The town will need more details on how the fuel tanks (LP and vehicle fueling station tanks) will meet requirements in §11.5 A.1, especially b and h. During floods, underground tanks can be susceptible to pushing upward due to buoyancy forces or to crushing due to compression. Raising the fueling stations on fill protects them from floodwater to some extent, although saturated soil during flooding could still affect filled areas and below-ground fuel systems. Also, the LP is proposed to be buried in an area below BFE. I recommend the town ask for documentation from a professional engineer or other qualified professional that describes how the project meets FEMA guidelines for underground tanks in FEMA 348:

Protecting Building Utility Systems from Flood Damage (Section 5.4) and FEMA 259: Engineering Principles and Practices (Section 5W.13). Recommended documentation includes anchoring design and accompanying buoyancy calculations for the site, as well as design features to prevent infiltration of floodwaters into the tank or lines.

4) Be sure to confirm that all utilities connections (water, sewer, electric, gas, etc.) below Base Flood Elevation, including buried connections, are designed to be watertight per §11.5 A.1.e.

River Corridor

The proposed building is also located in the River Corridor. I agree with your assessment the building location does not appear to meet the criteria for infill or downriver shadowing described in §11.5 C.2 a or b. Based on the development pattern in the immediate area, I do not have a concern with the project meeting the River Corridor Performance Standard under §11.5 C.3 (in italics below).

Proposals that do not meet the infill or shadowing criteria in §11.5 C.2 must demonstrate and the DRB must find that the proposed development will:

i. not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion;

The flood risk and history at this location is primarily inundation flooding as opposed to fluvial erosion. The Passumpsic River valley is broad and flat here, and the bed and bank materials are erodible, meaning natural conditions are right for the river to move side to side and shift meanders around over time. River movement is occurring downstream, but humans are not allowing the river immediately adjacent to the covered bridge and former motel site to move much. Bank armoring does exist along the northern riverbank near the covered bridge and storage unit property, showing that people have tried to slow river movement. Bank armoring does not mean there is no fluvial erosion risk at all, just that in this case, there is a level of channel management already expected.

ii. not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and,

iii. not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.

Parts ii and iii are key to this review. They ask if the river is going to be crowded more or likely to be managed more (e.g. by riprap) because of the project.

The new building, pavement, and fueling stations are not closer to the river than the previous motel building. Even if we do not take the former motel footprint into account, this corner of floodplain is developed in a way that already crowds the river and creates a channel management expectation. The new building is located just downstream of the intersection of Route 122 and Route 5 and two bridges. The new building is also just upstream of the existing storage units. If one drew a line between the motel building at its closest corner to the river and the storage unit buildings at their closest corner to the river, the proposed parking and stormwater treatment are no closer to the river than that line. Because of existing development, especially the major roads, it is unlikely society would allow a meander bend to move and occupy the former motel site. Therefore, because of existing development, the proposal does not cause the river to *further* depart from its natural meander pattern and dimensions, and it does not increase the river frontage likely to be affected by channelization.

In summary, the primary concern with this proposal is related to inundation flooding in the Special Flood Hazard Area. The proposal includes significant floodplain fill that reduces floodplain storage capacity in a flood vulnerable neighborhood.

Filling the site and redeveloping it now could be a lost opportunity for Lyndon to become more flood resilient. Given the flood damage history of the neighborhood and current vacancy of the lot, now is a great time for the community to support voluntary acquisition and restoration of the site as a community green space. Otherwise, if redevelopment is going to take place, I recommend the proposal be revised to include less fill and/or provide offset areas to maintain or enhance flood storage capacity.

Please let me know if you have any questions. You may consider this email as ANR flood hazard review to assist with the local permit process per 24 V.S.A. §4424.

48. When asked by Mr. Carpenter what his thoughts were on Sacha Pealer's comments regarding compensatory storage, Mr. Olesky stated that Sacha Pealer works for the Vermont Agency of Natural Resources. They have River Corridor guidelines that she uses when reviewing projects for ACT250, but there is no actual State permit required, and her comments are strictly recommendations she provides to the Town and ACT250 Commission. ANR has compensatory storage guidance that says that if you are placing fill on a property, you should remove an equal or greater amount. The point is to reduce floodwaters, if at all possible, but it is not mandated by FEMA or the Town of Lyndon Bylaws.
49. DRB member Amy Rast asked what the (fuel) spill containment system looked like. Mr. Olesky replied that both FEMA and the Town of Lyndon have specific regulations and standards for underground storage tanks within the Floodplain. The tanks will be certified and pinned down with concrete caps. He concluded by saying the tanks and fuel pumps will comply with all State and Federal requirements.
50. Alternate DRB member Eric Paris asked if all vehicles could enter and exit the site from both proposed curb cuts. The Applicant replied that both access points would allow for in and out traffic flow.
51. Member of the public, Wendy Beattie asked how floodwaters would impact Route 122 and Route 5 during a flood event if the site was filled as proposed. Mr. Olesky replied that the designed swales would provide channelization opportunities to alleviate some of the inundation pressure and provide a natural avenue for waters to flow by the filled areas. There are multiple oversized culverts proposed at the Route 122 access to provide additional capacity beyond what is needed during typical rain runoff to manage additional flood capacity and drain the northeast component of the site in a much better fashion.
52. Ms. Rast asked if the Applicant has spoken with VTrans about the level of service on the intersection that the two driveways might have an impact on. Mr. Olesky acknowledged that (Route 5, Route 122, and Route 114) is a high-volume intersection and although they do not anticipate increasing the amount of traffic, the development will increase the number of trips on and off the site. He explained that the proposed development will require ACT250 review, which does have a traffic criteria review component, and could require a traffic impact study. He continued to state that he does not feel as though the proposed development will trigger enough trips to require an impact study. Mr. Olesky pointed out that the two-access point design of the site alleviates all traffic being at one spot, and the two proposed curb cuts are as far away from the intersection as possible. The proposed Route 122 access point is 380 feet from the intersection while the proposed Route 5 access point is 315 feet from the intersection. He continued to explain that he had run AutoTURN scenarios in every direction coming in and out of the site and there is adequate width and radii to comply with AOT and commercial curb cut standards.

53. The project will respect the 25-foot deeded right of way extending from Route 122 to the Sanborn covered bridge.
54. The proposed hours of operation for the retail store are 5am to 9pm, seven days a week.
55. The proposed fuel pumps will be available 24/7.
56. Proposed lighting for the project includes building mounted lighting at the store entrances, recessed canopy lighting for both the standard and diesel fuel islands, and four pole mounted lights around the development perimeter to provide security and safety lighting. All proposed lighting will be LED, downcast, night sky compliant lighting. The Applicant proposed some fuel island lighting will stay on 24/7 for the pumps to be used.
57. Wendy Beattie, Marty Feltus, Paul Hayes, and Martha Elmes attended and participated in the public hearing by asking questions, expressing support, or expressing concerns.
58. The following members of the Development Review Board were present for the public hearing on March 7th, 2024, constituting a quorum: Kevin McKeon, Curtis Carpenter, Jeremiah Aiken, Kevin Cole, Amy Rast, and Eric Paris. See the official meeting minutes for a list of others present at the meeting.
59. The properties owned by Jacob Simpson and Kurt Nygren border the subject property to the north.
60. The properties owned by Justin Tanner, Beans Mobile Homes Inc., and Northern Vermont Rentals border the subject property to the east.
61. The properties owned by Northeast Storage LLC and Lyndon Institute border the subject property to the west.
62. The property owned by the Town of Lyndon borders the subject property to the south.

CONCLUSIONS

1. The Applicant's proposed development is on property in the Commercial District designated in Article 2 of the Zoning Bylaws.
2. The 3.8-acre parcel was inaccurately described as 2-acres on the submitted Zoning Permit Application, and as 118,993 square feet (2.73-acres) on sheet C2.0 of the submitted engineering plans.
3. The 3.8-acre parcel (165,528 square feet) meets the minimum lot size of 30,000 square feet for a class 1, commercial use lot in the Commercial District.
4. The 3.8-acre parcel has approximately 750 feet of road frontage along Stevens Loop and Main Street meeting the minimum requirements of 150 feet for a Class 1, Commercial Use Only lot in the Commercial district.
5. The proposed use meets the definition of Fuel distribution/gas station.
6. The language describing the proposed retail space is reflected inaccurately in the engineered plans provided. The use of "Auto Service Station & Convenience Store" is not being reviewed as part of Zoning Application #2024-003. The proposed use for the application is "Fuel distribution/gas station" as outlined in section 3.6.2.11 of the Lyndon Zoning Bylaws.
7. The proposed development of constructing a 5000 square foot retail store, 2,544 square foot gasoline island, and 576 square foot diesel island to be used as a "Fuel distribution/gas station" in the Special Flood Hazard Area, River Corridor, and Commercial District requires Conditional Use and Site Plan approval.
8. An application for a Conditional Use must go before the Development Review Board for Conditional Use approval. The Development Review Board may approve a Conditional Use in the Commercial District if it satisfies all requirements and standards contained in Sections 4.2.2 of the Zoning Bylaws. Pursuant to Section 4.2.2 of the Bylaws any development identified as a "Conditional Use" in a particular zoning district may be commenced, enlarged, or altered in such district only after the applicant obtains approval for such Development from the DRB pursuant to Section 4414 (3) of the Act, after public notice and

hearing, and all other necessary approvals. No Conditional Use permit shall be granted unless the applicant affirmatively establishes and the DRB finds that the proposed Conditional Use will not adversely affect sections 4.2.2.1 – 4.2.2.6. The Board concludes that an application for conditional use approval (#2024-003) was publicly warned on February 21st, 2024, presented to the DRB at the March 7th, 2024, public hearing, and the conditions of sections 4.2.2.1 – 4.2.2.6 are met (see Conclusions #9-14 below).

9. Pursuant to Section 4.2.2.1 of the Bylaws, the Development Review Board must determine whether this project will adversely affect the capacity of existing or planned facilities. The community facilities presently maintained by the Town include the schools, roads, water, wastewater, public library, police department and volunteer fire department. The Board concludes that these facilities are adequate to accommodate this proposed development.
10. Pursuant to Section 4.2.2.2 of the Bylaws, the Development Review Board must determine whether this project will adversely affect the character of the area. The Board concludes that the proposed development will not adversely affect the character of the area.
11. Pursuant to Section 4.2.2.3 of the Bylaws, the Development Review Board must conclude the proposed project does not adversely affect the traffic on roads and highways in the vicinity. The Board concludes that the proposed development will not adversely increase the traffic on the roads and highways in the vicinity.
12. Pursuant to Section 4.2.2.4 of the Bylaws, the Development Review Board must conclude that the proposed project conforms with all bylaws in effect in the Town. The only bylaw presently in effect in the Town applicable to this project is the zoning bylaw adopted by the Town. This bylaw contains requirements applicable to all proposed development in Attachment 2 “Minimum Requirements for Development”. The Board concludes that the proposed project conforms with all bylaws in effect in the Town and the minimum requirements for development have been met.
13. Pursuant to Section 4.2.2.5 of the Bylaws, The Board must conclude that the proposed project makes reasonable utilization of energy resources. Given the nature and size of the proposed project, The Board concludes that the Applicant has reasonably complied with this requirement.
14. Pursuant to Section 4.2.2.6 of the Bylaws, The Board must determine that the proposed project does not adversely affect the performance standards pursuant to Section 4407 (7) of the Act and Section 4.4.5 of this bylaw. Pursuant to Section 4.4.5 of the Bylaws and Section 4414 (5) of the Act, the following performance standards, and all applicable state-imposed standards, shall be satisfied for any Conditional Use in all Districts. The DRB shall, after notice and hearing, decide whether a proposed development satisfies the performance standards set forth herein. No development shall adversely affect the performance standards outlined in sections 4.4.5.1 – 4.4.5.6. The Board concludes that an application for Conditional Use approval (#2024-003) was publicly warned on February 21st, 2024, presented to the DRB at the March 7th, 2024, public hearing, and the conditions of sections 4.4.5.1 – 4.4.5.6 are met (see Conclusions #16-21 below).
15. Pursuant to Section 4.4.5 of the Bylaws and Section 4414 (5) of the Act, the following performance standards, and all applicable state-imposed standards, shall be satisfied for any Conditional Use in all Districts. The DRB shall, after notice and hearing, decide whether a proposed Development satisfies the performance standards set forth herein. No Development shall affect the performance standards outlined in sections 4.4.5.1 – 4.4.5.6. The Board concludes that an application for Conditional Use approval (#2024-003) was publicly warned on February 21st, 2024, presented to the DRB at the March 7th, 2024, public hearing, and the conditions of sections 4.4.5.1 – 4.4.5.6 are met (see Conclusions #16-21 below).
16. Pursuant to Section 4.4.5.1 of the Bylaws no development shall: create noise in excess of 70 decibels at any property line. The Board concludes that the proposed development will not create noise in excess of 70 decibels.

17. Pursuant to Section 4.4.5.2 of the Bylaws no development shall emit any offensive odor except in connection with agriculture. The Board concludes that proposed development will not create an offensive odor.
18. Pursuant to Section 4.4.5.3 of the Bylaws no development shall discharge dust, dirt, soot, ash, or any other offensive material onto nearby property owned by others. The Board concludes that the proposed development will not create any dust, soot, ash, or any other kind of offensive material.
19. Pursuant to Section 4.4.5.4 of the Bylaws no development shall emit any gases or other substances which might endanger the health, comfort, safety or welfare of any person, or which might injure or cause damage to property. The Board concludes if the proposed storage tanks and fuel pumps are installed in accordance with any and all industry standards, as well as all Municipal, State, and Federal requirements, including spill containment and fire suppression, no gases or substances will be emitted which might endanger the health, comfort, safety, or welfare of any person.
20. Pursuant to section 4.4.5.5 of the Bylaws no development is allowed to cause vibrations beyond any property line that have the potential to cause damage to property. The Board concludes that the proposed use will not create vibrations which will cause damage to adjoining property.
21. Pursuant to Section 4.4.5.6 of the Bylaws no development shall create a fire, explosion, or safety hazard. The Board concludes that if the proposed storage tanks and fuel pumps are installed in accordance with any and all industry standards, as well as all Municipal, State, and Federal requirements, including spill containment and fire suppression, the proposed use and structures will not create, explosion, or safety hazard. The Board concludes that it is the responsibility of the Applicant to ensure the fuel pumps and storage tanks are safe from vandals and from vehicles.
22. Pursuant to Section 9.1.1 of the Bylaws, application for site plan approval shall be made to the Development Review Board. Unless otherwise specifically provided for herein, site plan approval shall be granted only after public notice and hearing. The Board concludes the application (#2024-003) was publicly warned on February 21st, 2024, for public hearing on March 7th, 2024.
23. Pursuant to Section 9.1.4 of the Bylaws, an applicant seeking site plan approval shall submit to the Development Review Board two sets of site plan maps and supporting data which shall include the information outlined in sections 9.1.4.1 – 9.1.4.6. The Board concludes the Applicant submitted all required materials and information (see Conclusions #24-29 below).
24. Pursuant to Section 9.1.4.1 of the Bylaws, the site plan shall include the name and address of the owner of record of the land in question and of all adjoining lands. The Board concludes this site plan condition has been met.
25. Pursuant to Section 9.1.4.2 of the Bylaws, the site plan shall include the name and address of the person or firm preparing the map. The Board concludes this site plan condition has been met.
26. Pursuant to Section 9.1.4.3 of the Bylaws, the site plan shall include scale and date of map, and north arrow. The Board concludes this site plan condition has been met.
27. Pursuant to Section 9.1.4.4 of the Bylaws, the site plan shall include a survey of the land in question showing existing features, contours, structures, large trees, streets, utility poles, easements of record, rights-of-way, and land use and deed restrictions. The Board concludes this site plan condition has been met.
28. Pursuant to Section 9.1.4.5 of the Bylaws, the site plan shall include proposed structures, location, and elevations thereof and use to be made of other land subject to application; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design and screening. The Board concludes this site plan condition has been met.
29. Pursuant to Section 9.1.4.6 of the Bylaws, the site plan shall include the construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development. The Applicant did not discuss or provide a detailed construction sequence or time schedule

but did discuss that it will take an undeterminable amount of time to acquire the other State level permits they are required to obtain. The Board concludes this site plan condition has been met.

30. Pursuant to Section 9.1.5 of the Bylaws, the Development Review Board shall consider sections 9.1.5.1 – 9.1.5.4 when considering whether to approve any site plan. The Board has considered these sections (see Conclusions #31-34 below).
31. Pursuant to Section 9.1.5.1 of the Bylaws the Development Review Board must determine whether this project will allow for maximum safety of vehicular circulation between the site and the adjacent street network. The Board concludes that the two-way traffic flow of the proposed Main Street access will NOT allow for maximum safety of vehicular circulation between the site and the adjacent street network. All traffic exiting the Main Street access MUST turn south onto Main Street (see Condition #14).
32. Pursuant to Section 9.1.5.2 of the Bylaws the Development Review Board must consider the adequacy of circulation, parking and loading facilities with particular attention to safety. The Board concludes that the Applicant has provided the required number of spaces according to the Off-Street Parking Regulations outlined in Section 6 of the Bylaws (see Conclusion #35 below), and that the other requirements of Section 9.1.5.2 have been met.
33. Pursuant to Section 9.1.5.3 of the Bylaws the Development Review Board must consider the adequacy of landscaping, screening, and setbacks in regard to achieving maximum compatibility with the protection of adjacent property. The Board concludes that the setbacks have been met and the landscaping and screening are adequate for the proposed use.
34. Pursuant to Section 9.1.5.4 of the Bylaws, the Development Review Board must consider whether the project provides protection of the utilization of renewable energy resources. Given the nature and size of the proposed project, the Board finds the Applicant has adequately met this requirement.
35. Pursuant to Section 6.2 of the Bylaws, in all districts, an applicant for a permit shall demonstrate in the application that the property for which the permit is sought has the capacity to provide parking as outlined in the parking space requirements chart. The Board concludes the use of Fuel distribution/gas station falls under Other Uses as listed in the chart of minimum parking requirements, allowing the Board to determine the number of required parking spaces for the proposed development, after site plan review. The use of Retail requires 1 space for every 350 square feet of gross area. The 5000 square foot retail store included in the proposed development requires 15 parking spaces (1 space for every 350 square feet of gross area) as listed in the chart of minimum parking requirements. The Board concludes that the 16 proposed parking spaces outlined on the provided site plan, along with the availability to park one vehicle in front of each individual fuel pump, is sufficient parking for the proposed use and development.
36. Pursuant to Section 6.4 of the Bylaws, all on-site parking stalls shall be a minimum of 9 feet wide by 20 feet long. Ninety-degree parking stalls assume two-way traffic in the isles. Ninety-degree parking stalls require a 25-foot isle width. The Board concludes that the site plan provided by the Applicant shows 16 parking stalls measuring 9 feet in width and 20 feet in length, meeting the required size for parking stalls. The Board also concludes that the site plan provided by the Applicant shows two isles measuring a minimum of 25 feet wide or greater respectively, meeting the required isle width.
37. Pursuant to Section 11.4.D of the Bylaws, Conditional Use review is required prior to the issuance of a permit by the AO for all development within the hazard areas, other than those activities which either are exempt under section 11.4.B or require only an administrative permit under section 11.4.C. The proposed development of a New Structure, other than critical facilities, outside the floodway (11.4.D.1), the use of fill outside the floodway when used in conjunction or association with a new or existing structure (11.4.D.2.a), and new or replacement storage tanks for new or existing structures (11.4.D.4) may be permitted within the hazard areas, provided that the DRB finds that the applicant has complied with the Development Standards in section 11.5. The Board concludes that the proposed development is not

exempt under section 11.4.B, requires Conditional Use Review under sections in 11.4.D., and has complied with the development standards in section 11.5 (See Conclusions #38-42 below).

38. Pursuant to Section 11.5.A.1 (Development Standards, Special Flood Hazard Area), the proposed development shall be:

    a. Reasonably safe from flooding;
    b. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
    c. Constructed with materials resistant to flood damage;
    d. Constructed by methods and practices that minimize flood damage;
    e. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
    f. Adequately drained to reduce exposure to flood hazards;
    g. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
    h. Required to locate any fuel storage tanks (as needed to serve a new or existing structure in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

    The Board concludes that these (applicable) development standards have been met.

39. Pursuant to Section 11.5.A.3., Development in the special flood hazard area, but outside floodway limits, must not unduly increase base flood elevations or flood velocities. Such development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood water surface elevation within the cross sections in which the property is located, by more than the increase established in "Table 2" ("Floodway Data") of the Flood Insurance Study ("FIS") prepared by the Federal Emergency Management Agency ("FEMA"). The demonstration shall include a copy of the Flood Insurance Rate Map ("FIRM") identifying the upstream and downstream cross sections; the FIS Table 2, identifying the upstream and downstream cross sections and associated established increases. Such demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a licensed professional engineer; ***or*** the proposal provide compensatory storage for floodwater (in the same reach and at elevations up to and including the base flood elevation) to offset the impacts of the proposal. The net post-construction flood storage capacity shall not be less than the pre-construction capacity. A volumetric analysis and supporting data must be provided by the applicant and certified by a licensed professional engineer. The Applicant proposes a net fill for development as well as cuts on the northeast, south, and northwest side of the property to provide for the compensatory storage for floodwater. The proposed net post-construction flood storage capacity will be less than the pre-construction capacity. Table 2 in the effective FEMA Flood Study for Lyndon (dated 5/17/1988) reports a 0.4-foot increase in water surface elevation during the base flood at nearby cross section J when areas outside the floodway are completely obstructed by development. Technical data discussed and presented demonstrates a proposed net fill to potentially create an increase in water surface elevation of 0.125 feet of the cross-sectional area. Thus, the Board concludes the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the base flood water surface elevation within the cross sections in which the property is located, by more than the increase established in "Table 2" ("Floodway Data") of the

Flood Insurance Study ("FIS") prepared by the Federal Emergency Management Agency ("FEMA") and that this development standard has been met.

40. Pursuant to Section 11.5.A.5, new structures or structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate. The Board concludes that the lowest floor will be at least one foot above the base flood elevation. Recording the documentation of such, in as-built conditions, with a FEMA Elevation Certificate in the Town of Lyndon Land Records will be a condition of this Notice of Decision (See Conditions #5).
41. Pursuant to Section 11.5.A.6, New non-residential structures and non-residential structures to be substantially improved shall:

    a. Meet the standards in section 11.5.A.5 or,

    b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; a permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

    The Board Concludes that the standards in section 11.5.A.5 are met.
42. Pursuant to Sections 11.5.A.7 through 11.5.A.15, the Board concludes that these development standards do not apply to the proposed development.
43. Pursuant to Section 11.5.C.1, Development within designated centers shall be allowed within the River Corridors if the applicant can demonstrate that the proposed development will not be any closer to the river than pre-existing adjacent development. The Board Concludes the proposed developments are not closer to the river than the previous motel building and pool on the site and that this development standard has been met.
44. Pursuant to Section 11.5.C.2, Development outside of designated centers shall meet the following criteria:

    a. In-Fill Between Existing Development: Development must be located no closer to the channel than the adjacent existing primary structures, within a gap that is no more than 300 feet, or

    b. Down River Shadow: An addition to an existing structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system

    The Board concludes that the proposed development does not meet the In-Fill or Down River Shadow development requirements of section 11.5.C.2.
45. Pursuant to Section 11.5.A.3.a (River Corridor Performance Standards), Proposals that do not meet the infill or shadowing criteria in section 11.5.C.2 must demonstrate and the DRB must find that the proposed development will:

    i. not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion;

    ii. not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and

iii. not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.

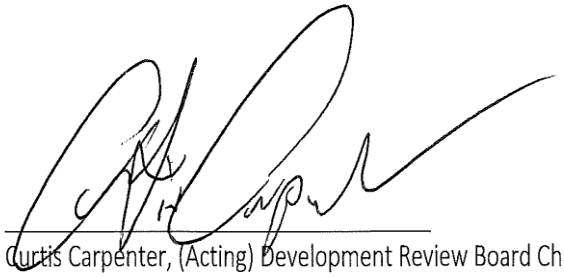
The Board concludes that the proposed development will not be placed on land with a history of fluvial erosion damage nor is imminently threatened by fluvial erosion and will not cause the river reach to depart or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions. The Board also concludes that because existing development already crowds the river and creates a channel management expectation, the proposed development will not result in an immediate need or anticipated future need for stream channelization solely because of the proposed development that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations and that the conditions of this performance standard are met.

DECISION AND CONDITIONS

Based upon the Findings and Conclusions set forth above, the Lyndon Development Review Board APPROVES the Applicant's request for Conditional Use and Site Plan approval to build a 5000 square foot retail store, 2,544 square foot gasoline island, and 576 square foot diesel island to be used as a "Fuel distribution/gas station" in the Special Flood Hazard Area and River Corridor on his property located at 791 Main Street (Parcel #31-1341) in the Commercial District. The following conditions supplement the permit (#2024-003).

1. A Certificate of Occupancy/Certificate of Completion is required before use or occupancy of any land or structure.
2. No further development of the property shall occur without review or approval of the administrative officer.
3. The Applicant is responsible for obtaining any/all other required Municipal, State, or Federal permits required for the proposed development.
4. No basements or crawlspaces allowed.
5. A FEMA Elevation Certificate completed by a licensed land surveyor or professional engineer, documenting in as-built condition, that the lowest floor elevation is at least one foot above the base flood elevation, must be provided to the Administrative Officer and recorded in the Town of Lyndon Land records.
6. The Applicant must notify the Administrative Officer of any changes to the proposed project or site plan (including changes to the lowest floor elevation) created by the need of an Act 250 permit or Act 250 permit amendment.
7. All utilities connections (water, sewer, electric, gas, etc.) below Base Flood Elevation, including buried connections, are designed to be watertight per §11.5 A.1.e.
8. The proposed fuel and LP tanks must meet FEMA guidelines for underground tanks in accordance with section 5.4 of FEMA 348: Protecting Building Utility Systems from Flood Damage and section 5W.13 of FEMA 259: Engineering Principles and Practices as well as the requirements in section 11.5.A.1 of the Lyndon Zoning Bylaws.

9. All exterior lighting is Night Sky compliant, downcast lighting.
10. All signage requires a zoning permit per Article 16 of the Lyndon Zoning Bylaws.
11. The Applicant must provide the Town of Lyndon with a site plan showing the turning radii scenarios as described by P.E. Jeff Olesky.
12. The proposed curb cuts providing access to and from the proposed development to the highways will comply with Title 19 VSA section 1111 and the B27-B State design standard.
13. The applicant will obtain the required State access permits prior to commencing development on the site.
14. Traffic exiting the Main Street access point MUST go south onto Main Street (no northbound turns onto Main Street).



Curtis Carpenter, (Acting) Development Review Board Chair

Date: April 19, 2024

Board Members participating in this decision:

Kevin McKeon, Kevin Cole, Jeremiah Aiken, Curtis Carpenter, and Eric Paris voted to approve the application with conditions.

Amy Rast voted to not approve the application. (See attached comments)

Vote: 5-1

NOTICE: This decision may be appealed to the Vermont Environmental Court by the applicant or an interested person who participated in the proceeding(s) before the Development Review Board. Such appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

Hi Jon,

Apologies for the delayed response. I have included some suggested edits in the attached document.

Also, for the following reasons, I will not be voting to approve the application. I understand that the applicant will still have the required number of affirmative votes to receive approval, but would like my comments reflected for the record.

Although I do appreciate the level of effort put into the preparation for the presentation to address flood concerns, I feel that other points of the application did not meet the requirements of the bylaws, including:

Site plan requirements: Although the plans included cross sections of design features (utility connections and details, pavement, curbing, and landscaping details, etcetera), there were no required elevation drawings for the proposed mini-mart. The site plan included a proposed "auto service station and convenience store", but the application language did not include an auto service station (although it is a Conditional Use in the Commercial District per 3.6.2.8). I remain unconvinced that the on-site traffic flow (not shown on the plans) and access to the state and federal highways (VT 122 and US 5 respectively) are adequately designed to facilitate safe movement of tanker trucks within the site and into traffic. There are no turning radii shown on the plans, nor are there driveway elevations to provide evidence that the VT commercial driveway standards can and will be met. There is no evidence to support that the anticipated traffic generated by the proposed development will not adversely impact the level of service at the very busy intersection of VT 122/VT114/US 5. The applicant did not provide the required construction sequence or schedule for completion. I understand that additional permitting is required and that will take time, but I believe that an estimate could be provided.

Back to the flood concerns:

There was discussion about plans to properly design and install fuel tanks securely to prevent flotation, however, there were no design plans included in the proposal.

There was no building elevation plan showing a slab or footing, or alternatively, a crawl space or basement. That is relevant to the discussion of the lowest floor being 1 foot above the base flood elevation.

According to Lyndon bylaws 11.6 B. Referrals, "The AO and the DRB shall consider all comments from ANR" relating to new construction in flood hazard areas. ANR's Floodplain Manager, Sacha Pealer (a category expert in this topic) provided a thorough and thoughtful review of the proposal. Sacha's comments included:

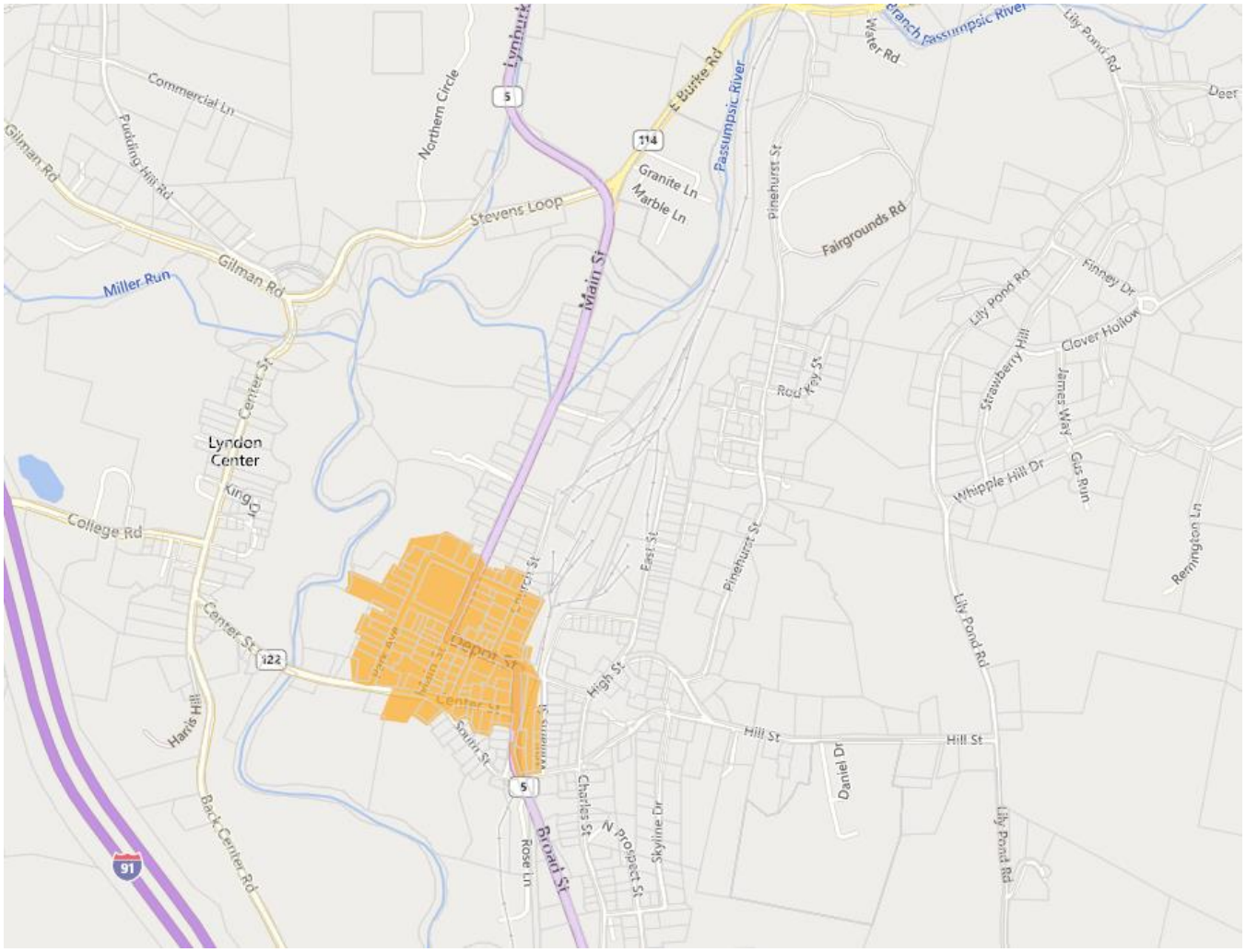
"I strongly recommend the proposal be revised to reduce the fill in the floodplain. Filling can have flood impacts that are contrary to the intent of Lyndon's flood hazard regulations. See the Purposes in §11.1, especially B and C, to "avoid and minimize the loss of life and property" and to "ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, *flood plain services*, or river corridors" (italics added)."

and

"A primary floodplain service is the storage of floodwaters. When fill is placed in the floodplain, the flood storage area is reduced, and flood heights may increase. The proposed fill would displace floodwater from the flood fringe (areas of SFHA outside the floodway) and reduce flood storage..." "Please keep in mind, though, the increases reported in Table 2 only consider flow obstruction and do not account for loss of flood storage that slows delivery of floodwater to the channel. Also, the flood study's increases reflect flood conditions from decades ago before some of the current floodplain development took place. Loss of flood storage through cumulative impacts from other fill projects (since the 1980s and into the future) could add up to greater flood increases within the community not apparent in Table 2".

I think that when we seek review and comments from a category expert that we weigh them heavily. Analyzing flood behavior is Sacha's livelihood. My bet is that she knows a whole lot more about the topic than anyone in that room. My takeaway from Sacha's comments is that, although some technical criteria can be met with the proposal, when taken out of the vacuum of the lot to be developed and put into the larger scheme of the natural behavior of the river (which wants to eventually evolve into the shortest distance between two points - a straight line), and given the historic flooding in that area, the displaced flood storage on that lot will move water to a lower area off of the lot, and without armoring banks, erosion will happen. I disagree with Mr. Oleski's assertion that "The proposed location of development on the site moves development further away from the river, not impacting the river's ability to meander or change, and the site is not highly susceptible to erosion."

Lastly, but not a huge issue, the application represented that the project is in the designated village center. According to the Lyndon Village Center Boundary (snipped from the Vermont Dept of Housing and Community Development planning atlas resource map), that isn't the case:



There may be more objections, but it's late and I am tired. (Jon, I'm sure you can relate!).

Thank you for the opportunity to comment. Let me know if you have any questions.

Amy