

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 02, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice-Chair; David Nelson, Secretary; Randy Chase, Town Administrative Representative; David Granese, Andy Myers, Mark Connors, Members; John Morrison, Chris Feinauer, Richard Malaby, Alternates

Absent: Joseph Tremper, Brian Chirichiello

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning & Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. He provided appropriate links for members of the public to join the meeting electronically via a MAC, PC or by phone. He then introduced the Board members.

Mr. Feinauer was seated for Mr. Tremper.

Mr. O'Connor noted Mr. Chase's retirement from the Derry Fire Department after 40 years of service and offered congratulations.

Escrow

None.

Minutes

The Board reviewed the minutes of the October 05, 2022, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the October 05, 2022, meeting as written. The motion passed with Chase and Feinauer abstaining.

Correspondence

Mr. Nelson advised the Board has a Save The Date flyer for the training scheduled for next Wednesday, November 09. The Town Council and staff members have been invited to attend this Planning Board workshop. Dinner will be served at 5:30 with the training to begin at 6:00 p.m. Mr. Nelson added any Planning Board member or alternate who had not yet signed the sheet acknowledging receipt of the Board's Policy & Procedures should do so.

Other Business

Chairman Updates

Mr. O'Connor asked Mr. Sioras to provide more information on the training scheduled for next week. Mr. Sioras reminded the Board of the presentation by Chris Parker, the Deputy City Manager for the City of Dover. Mr. Parker had described the success the City of Dover has had in its downtown with revitalization utilizing Form Based Code. The Form Based Code Institute will facilitate a workshop next week for the Derry Planning Board. The training will count towards the Board's training requirement for the year. The training will be on form based code which is similar to what Dover utilized in its urban area. Town Council and the Town Administrator are encouraging the town to explore this with the hope it will provide redevelopment opportunities. This type of code differs from the West Running Brook district. The City of Concord has also utilized this type of zoning with success. The meeting will be recorded.

Mr. O'Connor advised the Board the town is on a timeline to review the Adult Community Overlay District to ensure the wording in that section is appropriate. In July of next year, the wording in that district will automatically apply to workforce housing. Mr. Sioras noted the Board will have a lot of amendments to work on over the next year.

Mr. Sioras suggested Mr. O'Connor take the public hearings out of order as there may be more discussion required for the site plan application.

Public Hearings

Joseph L. McCarran
PID 56001, 13 Field Road
Joseph D.W. McCarran
PID 52005, 55 North Shore Road
Acceptance/Review
Lot Line Adjustment

Mr. Sioras provided the following staff report. The purpose of the plan is for a lot line adjustment between the above referenced parcels located in the Medium Density Residential District. Department signatures are not required for a Lot Line Adjustment; no waivers have been requested, and staff would recommend approval of the plan.

Shayne Gendron, Edward N. Herbert Associates, Inc., presented for the applicant Mr. McCarran, who was present. 13 Field Road consists of 0.73 acres and is a lakefront property on Beaver Lake. 55 North Shore Road currently has no frontage on the Lake. The purpose of the plan is to adjust the lot line to provide 55 North Shore Road with frontage along the lake. The plan proposes an equal land swap between the properties. The new lot line is shown in bold on the plan. 55 North Shore will be provided 82 feet of frontage along the lake. 13 Field Road will gain land area along the edge of the brook. There is no change in total lot area for either lot.

Both lots are serviced by town sewer but there is no home on 13 Field Road. A variance was granted in 2020 to allow the construction of a home on the lot and there is an active shoreland protection permit in place for the construction of a home on the lot.

Motion by MacEachern, seconded by Granese to accept jurisdiction of the lot line adjustment plan before the Board for Joseph L. McCarran, PID 56001, 13 Field Road and Joseph D.W. McCarran, PID 52005, 55 North Shore Road.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to open the public hearing. The motion passed with all in favor.

The floor was open to the public. There was no public comment.

Motion by MacEachern, seconded by Granese to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Mr. Connors noted the lot line adjustment runs along the brook and it appears to affect the lot lines of the properties along Kenro, since the former property line was to the center of the brook. Those landowners are not included in the application. Do they need to be added to this application and why was that not documented? Mr. Gendron explained 13 Field Road gains a leg of land along the brook of about 10 feet. Mr. Nelson agreed with Mr. Connors based on the darker line shown for the new lot line. Mr. Gendron felt the note on the plan was misleading. The lot line adjustment is along the property line for Parcel 52005 only and does not affect the two lots on Kenro. Their lot lines remain at the center of the brook. Mr. Nelson believed this needed to be clarified more as the plan will be recorded and it could be misinterpreted in the future if it is not very clear. He suggested adding a note to the plan indicating the new lot line is for 55 North Shore only and the lot lines along the brook for 2 and 4 Kenro are existing and will continue to exist.

There was a bit of discussion about the configuration of the new lot line along Parcel 52005. Mr. Gendron agreed this should be clarified on the plan. He highlighted the lot line adjustment on the plan so the Board members could see exactly what was proposed. He confirmed the change does not present an opportunity to create a road to any of the lots. There will be no change to the brook. The Board agreed the language on the plan should be amended to ensure it is very clear the two lots on Kenro did not change, and that 13 Field is gaining land along the west side of the brook as one looks at the plan.

Mr. Nelson believed there was wording in the subdivision regulations that discouraged creating lot lines that are not rectilinear. He did not believe lot lines should take on such a curving, wormy character. He wondered if this creative configuration required a waiver from the regulations? Mr. Sioras believed the requirement only applied to the creation of new lots.

Mr. Connors confirmed Parcel 52005-001 will not be touched or affected by this lot line adjustment. Mr. Gendron explained the McCarran family uses the footbridge now and uses that area of the lake. They just want to be able to legally enjoy the frontage they are using now.

Motion by MacEachern, seconded by Granese to find the proposed plan does not alter existing conditions which would affect access to the lots, ensuring the health, safety, and welfare of the neighborhood remains unchanged as a result of the adjustment of the lot line.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese, to approve pursuant to RSA 676:4, III, Expedited Review, with the following conditions:

1. Subject to owner's signature
2. Subject to onsite inspection by the Town's Engineer
3. Establish escrow for the setting of bounds or certify the bounds have been set
4. Add a revision block to the plan set
5. Amend Note 7 to reflect the plan will be recorded in Rockingham County
6. Verify the plan meets the recording requirements for the Rockingham County Registry of Deeds
7. Obtain written approval from the Planning Director/designee that the GIS disk is received, is operable and complies with LDCR Section 170-24.C
8. Conditions precedent shall be met within 6 months
9. Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds (this includes the \$25.00 LCHIP fee, recording fees for the mylar, and the Notice of Decision)
10. Redefinition to clearly define the lot line adjustment for the McCarran lots.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted in favor and the motion passed.

**Bridgeway Christian Church
PID 03117-025, 148 Rockingham Road
Acceptance/Review, Site Plan
3,136 addition and parking lot expansion**

Mr. Sioras provided the following staff report. The purpose of the plan is for a 3,136 square foot addition and a parking lot expansion for the Church. The Church is a permitted use in the zone. The property is located in the General Commercial zone. All town departments have reviewed and signed the plan, with the exception of the Public Works Department. Mark L'Heureux will speak to the issue of the paved parking versus gravel parking. The Board should note the adoption of HB 1021. HB 1021 is an act prohibiting certain zoning regulation of land or structures used primarily for religious purposes. The bill was signed by Governor Sununu on July 01, 2022. There are several waiver requests which are outlined in the letter from Atlantic

Civil Engineering dated October 04, 2022. There are no state permits required. Mr. Sioras would recommend approval of the waiver requests and the site plan application, other than the paving of the parking lot.

Mr. O'Connor noted the Planning Board has a copy of the new regulations. There are some areas of the new law that even the attorneys are having issues understanding what is or is not acceptable to review. Some of the Board members attended a training course on the new law. In his opinion, the Planning Board does not have purview over what is to be discussed this evening. The new law is silent on how Federal or State law is applied. Normally Federal or State law overrides local regulation. Derry is an MS4 community and therefore subject to Federal rules with regard to stormwater treatment.

Jordan Young, Atlantic Civil Engineering and Brandon Wing, Promised Land Survey, presented for the applicant. Lenny Santosuosso of Bridgeway Christian Church was also present. Mr. Young advised the church is proposing a 3,136 addition which will bring the seating to 261 seats. They are adding pews and general seating. With the added seating, there is a need to provide more parking. The plan proposes to bring the parking count up to 87 spaces with 4 handicap spaces, which meets the town requirement of 3 seats per parking space. The location of the addition will be over the existing septic system, so they are proposing a new septic location and leach field. All of the original TRC comments have been addressed with the exception of the gravel versus paved parking. The plan proposes to, as part of this project, pave a portion of the parking lot, which is currently gravel, but the applicant would like to leave the parking behind the existing building and to the south of the existing building as gravel for the foreseeable future. They felt this was a good compromise at this time because of the cost of asphalt. The Church will pave the gravel areas once it has the funds to do so. The parking lot will be built as if it were to be paved. Following the TRC discussions, the Department of Public Works did not want to sign the plan, so the applicant is requesting a waiver from that requirement. The parking spaces will be painted on the gravel and the Church will ensure the paint remains in good condition to maintain safe access around the site.

Motion by MacEachern, seconded by Connors to accept jurisdiction of the site plan before the Board for Bridgeway Christian Church, PID 03117-025, 148 Rockingham Road.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese, pursuant to RSA 36:56, to find the proposal as presented at this time meets the definition of a development of Regional Impact.

Chaser voted no, stating the project does not meet the criteria for regional impact. Granese, MacEachern and Feinauer voted no for the reason stated by Chase. Myers voted no, stating the dimensions of that the applicant wants to do, based on his review of the material provided, has no regional impact. Nelson and O'Connor voted no for the reasons previously stated. The motion failed.

Motion by MacEachern, seconded by Granese to open the public hearing. The motion passed with all in favor and the floor was open to the public.

Pamela Anderson*, 26R & 26L Lawrence Road, stated she had the opportunity to review the plans and can see a tree line that is shown as existing and proposed on the plan sheets. Will the tree line be altered? Mr. Young stated the green line on the plan shows the limit of disturbance for the project. The tree line will remain, other than a small corner adjacent to Parcel 03095, 150 Rockingham Road. The tree line abutting Ms. Anderson's property will not be touched; there is also a wetland between the project and Ms. Anderson.

Ms. Anderson noted there is a 20 foot wide drainage easement along the frontage of Lawrence Road. The brush in that area is beneficial to wildlife; will that area along the frontage be cleared out and how far will it be cleared? Mr. Young said the roadside along Lawrence Road will be cleaned up along the swale but they are not intending to cut any large trees. They want to clear the swale to better accommodate the treated drainage. Ms. Anderson was concerned with the extent the roadside might be cleared. Mr. L'Heureux explained there are shrubs and small trees that clog the drainage swale area. Those will be removed and cleared to create a clean swale and to improve the line of sight and provide more access to the swale. The swale needs to be reshaped; it is overgrown. Ms. Anderson indicated she wanted to be prepared and not surprised if she came home one evening to find the area clear cut.

There was no further public comment.

Motion by MacEachern, seconded by Granese to close the public hearing. The motion passed with all in favor and review of the plan returned to the Board.

Mr. O'Connor asked if the waiver from the pavement requirement was strictly based on cost as the costs may change over the next few years. At what point would the Church intend to pay for paving of the rest of the parking area? Mr. Young stated the Church is unable to pay for the parking lot paving all at once. They are hoping to have enough funds built up in about two years. Mr. Connors did not believe the Board had the purview to require it because this is a Church. Mr. O'Connor stated without counsel to direct the Board, it appears the Board does not have the jurisdiction over paving; however, because of the Federal MS4 stormwater requirements, it might. The town's stormwater regulations are required by the EPA for the town permit. Mr. Connors noted it appears from the new law that the Board can only regulate height, yard size, lot area, setbacks and building coverage. Mr. O'Connor said the law is very specific. That is why he sent the Joint Memorandum from the training on the new law to the Board. Because there is no clear direction in the law, he is not certain how the law is applied in this case where Derry has to comply with Federal requirements for stormwater.

Mr. Nelson stated per HB 1021, the zoning ordinance or site plan regulations likely don't apply in this case. The State did not preempt the State regulation of wetlands and drainage and the State can't waive Federal law. If there are issues in the town regulations directly traceable to Federal or State law, they are likely still applicable. The State preempted local government from regulating religious uses.

Mr. Connors noted the septic system is moving and the new tank will be below the parking lot. Is that acceptable? Mr. L'Heureux stated it is. It was noted the propane tanks shown on the plan belong to the abutter who will be notified they need to move the tanks to their own property.

Mr. L'Heureux advised staff has been working with the applicant's team for a few months. The applicant has done a good job of addressing staff concerns and the requirements in the regulations. There is a difference of opinion with regard to the stormwater. The Town has to comply with the MS4 permit. The first three sections of the Stormwater Management requirements (storm events, pre versus post runoff) have been addressed. The concern from DPW is the treatment of the stormwater. DPW brought to the Board last year amendments to the LDCR which mimic the DES requirements for an Alteration of Terrain permit. As part of the new MS4 permit, the Town is required to meet those treatment requirements for Phosphorus, fertilizer and Total Suspended Solids. Paving of the parking lot is part of the attempt to reduce sediment. When gravel freezes and thaws, or there is a significant storm event, more sediment gets to the drainage system. The town needs to protect the swale in the long term and wants to mitigate the amount of sediment making its way to the swale. This furthers long term compliance with the MS4. This is why the Department had an issue with the applicant not paving the parking lot.

Mr. Chase had questions about the new requirements. Based on the information provided, it appears the town can look at things like building height and setbacks. Mr. Nelson advised the attorneys believe that to be the case, but it was not in the law. Mr. Chase inquired if there will be any other uses of the property, other than religious services? Mr. Young stated there will not be other uses. Sheet 3, General Note 13 states the hours of operation (9-12 on Sunday, and Wednesday religious gathering with no more than 12 people) and that the purpose is for religious gathering. The Board noted religious uses can cover a lot of ground as it is not uncommon for a church to hold bingo games, or to rent the property out for other people to use. Mr. Young said that would not occur.

Mr. Myers noted a copy of the new state law, RSA 674:75 states the new statute went into effect in July of this year. He believes Mr. Chase is correct. The statute states, "No zoning ordinance or site plan regulation shall prohibit, regulate, or restrict the use of land or structures primarily used for religious purposes; provided, however, that such land or structures may be subject to objective and definite regulations concerning the height of structures, yard sizes, lot area, setbacks, open space, and building coverage requirements as long as said requirements are applicable regardless of the religious or non-religious nature of the use of the property and do not substantially burden religious exercise." Based on this wording, it appears that some zoning issues can be reviewed. There is some wiggle room in the language of the law as to what may be regulated. A Church typically is defined as a sanctuary, with services, community activities, secular and non-secular activities such as bingo, yard sales etc. He believes Mr. Chase's question is on point.

Mr. Nelson believed the intent was to not substantially burden religious uses. During the training he attended, the question what is "substantial burden" was discussed at length. Houses of worship as defined under RSA 72:23,III are exempt from property taxation. Those include, "Houses of public worship, parish houses, church parsonages occupied by their pastors,

convents, monasteries, buildings and the land appertaining to them owned, used and occupied directly for religious training or for other religious purposes by any regularly recognized and constituted denomination, creed or sect, organized, incorporated or legally doing business in this state and the personal property used by them for the purposes for which they are established.” Mr. Nelson believed that even if the definition was interpreted broadly and permissively, he is not sure these items are at issue in this case. The Board needs to apply law and case law if any is available. If the State or Federal law can be applied, it should be. The parking lot pavement is not something he thinks the Board can look at. Mr. Myers felt there was wiggle room based on the regulation; otherwise the Board is wasting everyone’s time.

Mr. Connors asked with regard to the entrance on Lawrence Road. Is that truly an entrance? Mr. L’Heureux explained the curb cut and gravel parking was done without town notice a few years ago. A permit had been applied for after the curb cut a few years ago, but it was never formally approved by the Town. Given the proposed improvements noted on the site plan, it should be fine and it will be used as an exit only. Mr. Young added they are keeping it as an exit only to alleviate the amount of traffic entering Rockingham Road after services. They are increasing the amount of vehicles on site and don’t want to adversely impact Rockingham Road. Mr. L’Heureux acknowledged whatever the Board decides with regard to the waiver, the Board can’t put a condition on the plan as to when the paving has to take place.

Mr. Feinauer inquired if there will be any lights added to the new parking area. Mr. Young stated there will be two lights added to the building. They don’t need more than that as all activity takes place during the daylight hours.

Mr. MacEachern stated that for what the Church is proposing, the Board does not have a lot of say within reason, and the Board needs to treat the church exactly as it would any other use. He assumes the addition will look similar to the existing building. Mr. Young confirmed it would; a design is included in the plan set, although it is not in color. Mr. MacEachern has no issues with the uses highlighted on Sheet 3 and the Church has done a nice job of maintaining the property. With regard to the parking lot, he believed this should be reviewed on a bi-annual basis with the Planning Director or the TRC to see where the Church is with regard to paving. He understood the funding issue. Tonight, the applicant is announcing its intent to pave the parking lot, so he believes it is acceptable to place that condition on the plan. There is no pressure to do the paving, as the Board understands money may be an issue for the congregation, but the gravel will also need to be maintained so that they can pave it later.

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-62 to allow a gravel surface rather than paved for drive aisles and the parking lot as the gravel for the parking surfaces and drive aisles meet the Town of Derry requirements for the build up of the parking lot up to bituminous asphalt, and will be paved when material prices are reduced. After review of the waiver request the Board finds that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Discussion followed.

Mr. Nelson inquired how does this apply? How does paving of the parking lot tie back to the MS4 permit? Mr. L’Heureux stated a paved surface won’t erode because it is a hard surface.

The Town wants to reduce the Total Suspended Solids which is basically dirty water. Intense rainstorms have lead to gravel parking lot erosion. The water will run and funnel into the drainage swale, increasing Total Suspended Solids entering into the town drainage system or the wetland, which is regulated by the MS4 permit. Mr. Nelson commented it appeared the requirement noted in the waiver was in furtherance of the MS4 permit.

MacEachern, Feinauer, Nelson, and O'Connor voted yes. Connors voted yes, but believed there should be a time frame for paving of the parking lot. Chase voted no, stating he sided with the Engineering Department on this issue, this is a substantial gravel parking lot. He is aware there is already an issue with the existing swale. The Board should maintain its regulations on this. If it is beyond the jurisdiction of the Board, then it is beyond its jurisdiction. Granese and Myers voted no, citing the same reason as Chase. The motion passed.

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-61 (A) (34) to not require the Department of Public Works signature on the plan, for the reason noted above for gravel surfaces. After review of the waiver request the Board finds that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

MacEachern voted yes, because the under the current State regulations, which provide little guidance, anything else would be prohibitive and restrictive for the church. Feinauer voted yes for the reasons stated by MacEachern; Connors voted yes for the same reasons and because he believes DPW is not really adamant about it. Nelson voted yes because it is not clear the Board has jurisdiction under the new law to require it. O'Connor voted yes. Chase voted no, he believed the DPW signature should be on the plan, and this goes along with the first waiver request. Granese voted no as the DPW signature should be on the plan for the reasons noted in the first waiver; Myers voted no for the reasons stated by Chase. The motion passed.

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-63 (A) (6) to not require the 15' raised island where the parking spaces abut a public street, as the existing parking does not meet this requirement and the owner proposes to continue to utilize those parking spaces. After review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted yes, and the motion passed unanimously.

Motion by MacEachern, seconded by Granese to find that pursuant to LDCR 170-85, that the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the General Commercial IV district and meets a medium level of compliance as outlined in Section 170-84.

Chase, Granese, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted yes, and the motion passed unanimously.

Mr. MacEachern noted the following findings of fact.

The Board finds the proposed plan provides safe and efficient vehicular access, and the design and construction of the driveways are adequate to accommodate the anticipated volume of traffic proposed by the development.

The Board finds the proposed parking plan is adequate for the site, and meets the parking density requirements for the use.

The Board finds the landscape plan meets the intent of the regulations and a residential buffer is not required as there is a wetland between the project and the direct residential abutter.

The Board finds the stormwater management as proposed is designed to control the post development runoff so that it does not exceed predevelopment runoff.

The Board finds the utility construction standards are met.

The Board finds exterior lighting, solid waste storage and snow storage provisions, and erosion and sediment control provisions are adequate.

Motion by MacEachern, seconded by Granese to agree with the above noted findings of fact.

MacEachern, Feinauer, Connors, and Myers voted yes. Nelson voted yes stating he felt some findings were not applicable to this particular plan because of the recent changes in state law. O'Connor voted yes for the reasons noted by Nelson. Chase voted no, as he believed items #2 and #4 were not met. Granese voted no for the same reason, and the motion passed.

Motion by MacEachern, seconded by Granese, to approve, pursuant to RSA 676:4 I – Completed Application, with the following conditions:

1. Subject to owner's signature
2. Subject to on-site inspection by the Town's engineer
3. Establish appropriate escrow as required to complete the project
4. Note approved waiver (s) on the plan
5. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-61.C
6. Subject to receipt of applicable state or local permits relating to the project
7. Conditions precedent shall be met within 6 months.
8. Amend Sheet 3, General Notes to correct the Parcel ID number to 03117-025 and to add the waiver request for TRC signatures.
9. All gravel areas should be paved, pending the funding and said status shall be reviewed biannually with the Technical Review Committee.

Chase, MacEachern, Feinauer, Connors, Myers, Nelson, and O'Connor voted yes. Granese voted no, because of his reasons stated for the waivers and findings of fact. The motion passed.

Mr. O'Connor thanked the Board members for being mindful during a difficult process tonight. He noted the Board will need to discuss potential changes to the Adult Community Overlay to avoid any conflicts with the new law. He just wants the Board to be aware this will be a topic on an upcoming agenda.

There were no Board member comments.

There was no further business before the Board.

Motion by MacEachern, seconded by Granese to adjourn.

All members voted in favor and the meeting was adjourned at 8:35 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____