

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 04, 2017, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman, Michael Fairbanks, Secretary; Charles Foote, Town Council Liaison; Randy Chase, Town Administrative Representative, Mirjam Ijtsma (7:04 p.m.), Jim MacEachern (7:14 p.m.), Members, Mark Connors, Marc Flattes, Elizabeth Carver, Alternates

Absent: Frank Bartkiewicz, Lori Davison

Also present: George Sioras, Planning Director, Elizabeth Robidoux, Planning Assistant; Mark L'Heureux, Engineering Coordinator; Robert Mackey, Code Enforcement Officer/Building Inspector

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese then noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

Mr. Flattes was seated for Mr. Bartkiewicz, Mr. Connors was seated for Ms. Davison and Ms. Carver was seated for Ms. Ijtsma.

Escrow

#17-01

Project Name: Schibbelhute

Developer: Bella Vista Homes

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 09084, 164 Hampstead Road

The request is to approve a release of cash escrow in the amount of \$5,572.80, plus any accumulated interest for the above noted project. The amount to retain is zero. This is the final release.

Motion by Fairbanks, seconded by O'Connor to approve as presented. The motion passed with all in favor.

#07-02**Project Name: Keith Subdivision****Developer: Kathryn Polizzotto****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 29029, 15 Hillside Avenue/12 Everett Street**

The request is to approve a release in the amount of \$8,618.40 for the above noted project. The amount to retain is zero. This is the final release. This escrow is non-interest bearing.

Motion by O'Connor, seconded by Flattes to approve as presented. The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the December 07, 2016 meeting.

Motion by O'Connor, seconded by Flattes to approve the minutes of the December 07, 2016 meeting as amended. The motion passed with Chase abstained.

Correspondence

Mr. Fairbanks advised the Board is in receipt of a notice of public hearing from the Town of Fremont for the review of monopole personal wireless service facility. The public hearing is being held this evening.

Other Business**Request to extend approval – Salvatore Lupoli (Sal's Pizza)**

Mr. Sioras indicated this is first request to extend the approval granted in July of 2016. The applicant would like to request an additional six months to the conditional approval. They plan to move forward with the Derry project once the projects in Manchester and Billerica are completed.

Motion by O'Connor to extend the conditional approval granted on July 06, 2016, for Salvatore N. Lupoli, PID 32032, 2 Lenox Road, for an additional six months. The conditional approval will expire on July 06, 2017. Flattes seconded the motion.

Chase, Carver, Foote, O'Connor, Connors, Flattes, Fairbanks and Granese voted in favor and the motion passed.

Ms. Ijtsma entered the meeting and was seated. Ms. Carver stepped down. Ms. Carver was seated for Mr. MacEachern.

Discussion – Sign Ordinance compliance with *Reed v Gilbert*

Mr. Sioras reminded the Board they took up discussion of the sign ordinance at the last meeting in December. Based on review, it appears the ordinance is in compliance with state law and he does not anticipate any changes are required. Mr. Mackey is present this evening and can provide input.

Robert Mackey, Code Enforcement Officer, said based on the guidance he has received and the intent, he believes the Derry ordinance is well written; many issues were addressed during the re-write of the ordinance a few years ago. He believes the ordinance to be content neutral and in compliance with the *Reed v Gilbert* Supreme Court ruling. He does not see the need for any changes to the existing ordinance.

Mr. Fairbanks said he agreed overall with Mr. Mackey but asked if the ordinance could be reviewed by legal counsel to ensure the town is not open to liability. Mr. Sioras said that could be done. Mr. O'Connor, prior Chair of the Sign Ordinance Subcommittee, agreed with Mr. Mackey. He feels the review by the attorney should include review of the political signs to ensure the ordinance is neutral. Other towns had issues with their political signs during this past November. He agrees the Board spent a considerable amount of time crafting the ordinance. Mr. Mackey noted the ordinance follows state law for political signs, but he will ask the attorney to review it for the Board.

Mr. Connors asked how the ordinance addressed issues such as the sign at Exit 1 off Route 293 in Manchester. Is there anything in our ordinance that addresses slander, or would slander be considered content? Mr. Mackey said that is where the Board has to remain neutral in the ordinance; the sign in Manchester speaks to the freedom of speech. Mr. Connors asked if the ordinance addresses the amount or intensity of illumination. Mr. Mackey advised that under the electronic message center sign section there is a provision that limits the amount of lumens.

Mr. Granese requested legal counsel review the sign ordinance to ensure it is content neutral.

Review of LDCR Article VI, Section 170-19 and Article IX, Section 170-58, General Provisions (Planning Board submission deadlines) – Schedule public hearing

Mr. Sioras advised there had been a change in the law governing the deadline for submissions of planning board applications. Specifically, the deadline has changed from 15 days prior to the public hearing to 21 days prior. Staff would recommend scheduling a public hearing on February 01. As this change is located in the Land Development Control Regulations, the change would take effect immediately upon approval by the Planning Board.

Mr. Flattes confirmed the time frame is individual days not business days.

Motion by O'Connor to schedule a public hearing on February 01, 2017, to discuss a proposed change to the Land Development Control Regulations, Article VI, Section 170-19 and Article IX, Section 170-58, General Provisions. Proposed changes include a revision to the Planning Board application deadline date, seconded by Fairbanks.

Chase, Carver, Foote, O'Connor, Ijtsma, Connors, Flattes, Fairbanks and Granese voted in favor and the motion passed.

Discussion regarding 125 Windham Road

Mr. Fairbanks advised he had concerns about the construction of the self-storage facility at 125 Windham Road. He has no issues with the project, but more with the process that is being followed. The Board held a public hearing and approved a set of plans. There were many discussions during the public hearing with the affected abutters. The Board approved a set of plans and from his perspective the developer is not following those plans. The town is still allowing the developer to continue construction. What latitude does the Board or the town have to waive what they are doing without stopping construction? He does not want to get too involved in discussing the particulars of the project as it may come back before the Board, but would like to know more about the process.

Mr. Granese advised he is privy to emails regarding this project. Mr. Mackey and the engineer are working on it. He agrees with what Mr. Fairbanks said but the town employees are looking at the project. It is the purview of the staff, not the Board, to decide if a project should be shut down. If the developer is not following the conditions of approval, the town would shut the project down and bring it back before the Board.

Mr. L'Heureux explained his view is based on his review of the project. He believes they are proceeding according to the plan. There have been a few changes with regard to drainage, the location of the propane tanks, and detention pond gradation. He follows the LDCR based on the degree of major versus minor change. He referenced Section 170-74 of the LDCR. Per this section of the regulation, staff has the authority to approve minor changes. There may be a gray area between what constitutes a minor change versus major. "Minor" does not change a project; this would include the location of drainage or adjustment of elevations. It also applies to locating items to a different part of the project, but remaining in compliance. The developer needs some latitude. Sometimes an approval is granted on the paper location but the developer may find they can't put a propane tank in an approved area because site construction details, or site conditions, prohibit compliance with safety codes. Then they need to be moved. If something needs to be moved, he looks at compliance with the town regulations, such as setbacks to buildings and drive aisles. It has to comply if it is to be changed. This project complies. He would never authorize a major change such as alteration of a buffer, drive access location or width of a drive aisle, or something that does not meet the town regulations. With regard to the propane tank location at this project, the town has yet to receive a final plan rendition noting the plan modifications such as bollards and screening, so that the town can approve them. Mr. L'Heureux stated he did approve the relocation of the propane tanks because there was no other place to put them and the developer offered a modified plan for approval. The proposed location was not in a buffer and was in green space. It was not something he could

not disapprove based on the regulations. Construction is ongoing. The contractor has been extremely cooperative and has been tasked with upgrading the plan. Staff needs to be allowed time to review the changes to the plan once it is received. Staff would like to review the revised plan internally and make a determination as to whether the changes are minor or major. If staff believes the changes to be major, then staff would recommend a compliance hearing before the Planning Board for its approval. He feels at this point, the changes are well within staff jurisdiction, but he will wait for a plan before making a final determination. Mr. Fairbanks appreciated the input on the process.

Mr. MacEachern entered the meeting was seated. Ms. Carver stepped down.

Public Hearing

**New Wave Diversified, LLC
154 Hampstead Road, PID 09081
Acceptance/Review, 2 Lot Subdivision
Continued from December 07, 2016**

Mr. Granese recalled the applicant was to have provided the Planning Board with a revised plan to review for this meeting. Mr. Sioras advised the applicant has not provided a revised plan. With regard to the procedure, the 65 day clock has started and will expire on February 10th. Staff recommends continuing this hearing to allow the developer time to revise the plan and speak with Pennichuck Water Works.

Gal Peretz, New Wave Development, explained because of the holiday, he was only able to obtain information from Pennichuck today. His surveyor had a death in the family and was not available the last few weeks. He would like to continue the hearing for two weeks.

Motion by MacEachern, seconded by Flattes to continue the public hearing to January 18, 2017.

Chase, Foote, MacEachern, Ijtsma, Connors, Flattes, Fairbanks and Granese voted in favor; O'Connor abstained. The motion passed.

Workshop

Workshop #2 - Review of proposed changes to Article III, Section 165-25, Accessory Dwelling Units

Mr. Sioras advised the Board discussed proposed changes to the Accessory Dwelling Unit regulations in December. State law has changed and the town needs to be in compliance with the changes prior to July 1, 2017. The Board had agreed to the changes but there was a question remaining with regard to the size of the units. Mr. Mackey is present this evening and can answer any questions.

Mr. Mackey advised he went through the proposed changes. Derry has two issues to address. The first is the size of the units. The current maximum is 600 square feet. Around 1990, the original size was designated at 400 square feet; that was a hurdle for some people. It was then increased to 600 square feet. The State regulations dictate towns cannot stipulate a size smaller than 750 square feet in its regulations, although someone could propose something smaller than that. The town may want to allow the maximum to be 800 square feet. The second issue to address is the number of bedrooms as the State law says municipalities cannot restrict these units to one bedroom. Septic systems will need to be upgraded in some instances upon application for additional bedrooms on the property. The number of bedrooms governs the number of people living in the home. The intent is to keep single family homes looking like single family homes and not duplexes. That is why the town wants to have the ADUs attached. Many properties of this type have an attached garage with a unit above. The town also needs to make sure it is not in conflict with Section 165-3 which states there can only be one residential building on a residential lot.

Mr. Granese asked if someone wanted to construct a 1200 square foot unit, could they go to the ZBA for a variance. They could. He also asked if someone wanted to have a detached unit could they apply to the ZBA. They could do that as well. Mr. Granese then inquired about Granny Pods. They are small units that are hooked into the existing septic system and have water and power. Would the Board need to look at amending the regulations, or would these have to be attached to the main dwelling? Mr. Mackey was unfamiliar with this type of unit. Under the town regulations, they would not be allowed because they are detached. He is aware some towns are dealing with the issue of 'tiny houses'. Some of the tiny houses may not meet code with regard to minimum room size. He does not feel the Board needs to address that issue at this time, nor the issue of Granny Pods.

Mr. O'Connor brought attention to the proposed changes under Article VI, Section 165-32.B, the area and dimensional requirements. He is aware septic designs are reviewed and approved by DES, but is this portion of the regulations based on units or bedrooms? Mr. Mackey said septic plans are based on bedrooms. This portion of the ordinance speaks to uses in the General Commercial zone which are typically commercial in nature. Commercial uses are set at 200 gallons of effluent per day. Residential uses are typically around 150 gallons per day, per bedroom. Accessory dwelling units are noted under this section because single family homes in existence prior to 2013 are permitted by right in the General Commercial zone. As such, the town can't prohibit accessory dwelling units on those lots. Mr. Mackey suggested looking at subsection B with an eye to the residential uses that are grandfathered in this zone.

Mr. Fairbanks asked where the 800 square foot maximum came from; many ranches are 960 square feet. Mr. Mackey said he did not feel the ordinance should require a minimum size, but there should be a maximum size. Mr. Granese recalled during the last workshop, the Board noted a 30 x 30 addition would be about 900 square feet, so they used 800 square feet. Mr. Fairbanks asked if the Granny Pods are being placed on wheels. Mr. Granese said they are on foundations like sheds. Mr. Mackey added that would be considered a permanent structure; the only provision for a temporary mobile home on a residential lot would be in the case of a fire while the home was being rebuilt. The manufactured home would need to be removed once an

occupancy permit had been issued. Mr. Fairbanks said he had no worries for now about the Granny Pods if they are detached; it would not be allowed in Derry.

Mr. Flattes had comments with regard to tiny houses. If those are on wheels, do they fall under the codes for manufactured homes? Mr. Mackey said manufactured homes (mobile homes) are allowed in parks or park subdivisions and are constructed to Federal HUD standards. He is not familiar with the standards of construction for tiny houses. Modular homes are built in factories and then delivered to the site to be placed on a foundation. Manufactured homes are on a chassis. Modular homes do follow rules and requires licensing. He believed there would need to be rules and regulations set for tiny houses before they could be allowed.

Mr. Connors asked if the town had any regulations with regard to the mobile homes that are parked on properties for six months or so with people living in them as guests of the main residence. Mr. Mackey said there is nothing specific in the ordinance and perhaps the Board should look at this. The typical rule of thumb is to allow it for 30 days for visitors.

Mr. Connors recalled at the last workshop there had been discussion about the 750 square foot minimum and that the town was not allowed to restrict an applicant to anything less than that with the intent of limiting the number of accessory dwelling units in the town. He feels the wording “cannot be limited to 750 square feet” should be in the ordinance and agrees there should be a maximum size. Mr. MacEachern noted the suggested wording reads “no less than 750 square feet and not more than 800 square feet”. Mr. Mackey suggested amending that paragraph by eliminating any reference to a minimum size and to state the maximum size of the dwelling unit shall not exceed 800 square feet.

The Board held a lively discussion regarding the state requirement. Mr. Granese noted per the law, a municipality must not limit an ADU to one bedroom or to less than 750 square feet. In an effort to reduce the amount of back and forth discussion, Mr. Granese stated the final wording would be sent to legal counsel for review to ensure the ordinance is clear. He felt the Board should put in the wording from the law and that the maximum size should not exceed 800 square feet.

Ms. Ijtsma referenced the last discussion of the Board about rental units. She felt the size should stay between 750 and 800 square feet; otherwise an applicant could go the ZBA.

Mr. Connors asked about proposed subsection ‘g’ which states the accessory dwelling unit shall be composed of and limited to a kitchen, a living room, no more than two bedrooms and a bathroom. Is the town supposed to regulate the requirement for a living room? Mr. Mackey said it would be unusual if there was not a living room in an accessory dwelling unit although some people may opt for an open concept floor plan. Mr. Connors asked if someone wanted to have two bedrooms and a kitchen, are we forcing them to have a living room. Mr. Sioras said the way the ordinance is written it means they can’t have a dining room, etc.

Mr. Connors asked if the Board needs to define what “attached” means. Mr. Mackey admitted people have been known to get creative in attaching single family homes to detached garages to

create the accessory dwelling unit over the garage. "Attached" is a structural connection that is closed in. Mr. Connors wondered if the Board needed to actually define that and give it a width.

Mr. MacEachern asked if the accessory dwelling units are allowed in all zones. Mr. Sioras said they are allowed wherever single family homes are permitted by right. Mr. MacEachern advised he was against the proposed changes but supported Ms. Ijtsma in that dictating a size provides important boundaries and creates a better structure while remaining in compliance with state law. Without a limit on the size, there is no telling what people will design. He wants to make sure any additions are of good quality in that they are not 10 x 10 additions that are turned into extra living rooms once the parents who were living in the unit move on. The size needs to be substantial enough that people design them well. The potential for additional apartments is large. He feels there needs to be parameters in place.

Mr. Granese noted that in absence of a locally established minimum size, an owner can establish something smaller than 750 square feet. Mr. Connors wanted to limit the size. He felt the state wanted to make sure towns did not regulate a small size as a means to prevent ADUs. Mr. Granese explained by law, attached ADUs are allowed by right in any zone that a single family residence is allowed. It can be by special exception or conditional use permit. If the Zoning Ordinance does not address ADUs at all, they are still allowed by right in any single family residence, regardless of the district.

Mr. Mackey did not feel it was necessary to specify a minimum size, but a maximum size would be wise.

Mr. O'Connor wanted to add a stipulation in each zoning district that the septic requirements for the State must be met with the addition of any ADU. Mr. Flattes asked if the ADUs complied with apartment codes, for example fire codes with regard to smoke detectors, etc. Mr. Mackey said they have to have smoke and CO detectors. If they become rental units, there are other codes to be followed. Mr. Flattes noted an ADU would not be required to install a steel fire door. Mr. Mackey said the town follows the code for one and two family residential dwellings for the construction of ADUs.

Mr. MacEachern asked who monitored the ADUs. He had a concern that an ADU could be constructed to the single family codes but then rented out. At that point, the town can't go back and impose the life safety codes it would have imposed if it had been known it was going to be a rental unit. Mr. Mackey acknowledged there are some differences between residential and rental codes with regard to separation requirements and smoke detectors. Mr. Granese noted smoke detectors are required for occupancy and would be inspected by the town. Mr. Mackey added a brand new unit would have smoke detectors and would be built to code with a separate entrance and a common door. Mr. Granese said the town has no way of knowing if someone rents an ADU. He confirmed that if a residence had a sprinkler system, any ADU would need to be connected to the system. Mr. Connors asked if the Board could add the requirement that an ADU had to be constructed to the codes for rental units; it is likely most will end up as rental units. Mr. Mackey said he would speak to the Fire Inspector to see what any major differences would be. Mr. Granese said if the town states the unit must be constructed to single family building codes, that would provide protection for the town. Legal counsel will review this. Mr.

O'Connor felt they were entering a slippery slope if they started adding the words 'rental' to the ADU ordinance. Mr. Mackey noted that any ADUs would be accessory to the single family residence; smoke detectors are hard wired so that if one goes off in the ADU, the smoke alarms in the main dwelling go off and vice versa.

Mr. O'Connor noted the town cannot require a familial relationship between the owner of the property and the occupant of the ADU.

Mr. Chase commented that adding two bedrooms and a bathroom would be considered an addition; that is the distinction between addition and ADU. An ADU has a living room and kitchen. Mr. Mackey noted the residential codes have minimum requirements for room size and there are some guidelines in the IRC.

Mr. Fairbanks suggested amending the proposed subsection 'g' to read: the accessory dwelling unit shall be composed of a kitchen, a living room, one or two bedrooms, and a bathroom.

Mr. Granese asked that the changes proposed this evening be incorporated into the document and discussed at the next meeting. Any changes Board members might suggest should be emailed to the Planning Department.

There was a short discussion regarding the legislative process at the state level.

Mrs. Robidoux confirmed the size limitations will remain, for the next draft, at 750 and 800 square feet.

Mr. Flattes inquired of Mr. Mackey how many residential properties have home occupations and how would an ADU affect that. Mr. Mackey said he did not have that number off the top of his head but during an application to the ZBA, the applicant would need to prove there was adequate parking for the residence, the ADU, and the home occupation.

Workshop #1 – Review of proposed amendments to the Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions

Mr. MacEachern asked if the terms to be defined are all listed as uses in the various districts. They are. Mr. MacEachern felt the Board should look at the permitted uses and delete uses that no longer apply or belong in the zones anymore. For example, he believes there are no slaughterhouses or stockyards in Derry. He felt the lists of permitted uses in the zones needs to be buttoned up.

Mr. Connors had a question with regard to the definition for breweries. Mrs. Robidoux explained what has been offered in the draft has been provided as a starting point for discussion.

Mr. O'Connor suggested adding "microbrewery" as a term to be defined as the State has a formal definition; defining the term was a key factor in the business growth of Moonlight Meadery.

Mr. MacEachern felt the Board allowed things in various districts because there was a history of the use in that particular area and not necessarily because the Board felt it was a good use for the area. There are uses that could be grandfathered that the Board would not necessarily want to see continue in a particular zone. Mr. Granese felt it was important to define the uses first and then go through the zones and determine if the various uses should remain in the zones or not.

Mr. Sioras explained in day to day operations, it can be very difficult for staff to make determinations if a use is not defined. Mr. Mackey agreed there could be listed uses that could be removed from some zones. Mr. Sioras noted things have changed and there are companies and uses today that were not even thought of twenty years ago.

Mr. Granese asked the Board members to go through the packet provided and email any changes to Mrs. Robidoux. The Board will hold another workshop on the definitions at the next meeting.

Motion by MacEachern, seconded by Flattes to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:24 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____