

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 18, 2023, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room.

Members present: John O'Connor, Chairman; David Nelson, Secretary; Randy Chase, Town Administrative Representative; Mark Connors, Members; John Morrison, Richard Malaby, Chris Feinauer, Alternates

Absent: Jim MacEachern, Brian Chirichiello, Dave Granese, Joe Tremper, Andy Myers

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and 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. Mr. O'Connor provided the appropriate links for members of the public to join the meeting virtually via a MAC, PC, or by phone. He then introduced the staff and Board members.

Mr. Morrison was seated for Mr. Granese, Mr. Malaby for Mr. MacEachern, and Mr. Feinauer for Mr. Tremper.

Escrow

#23-01

Project Name: Villages at Oakwood

Developer: Lifestyle Homes of Derry NH

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 08039, 42 Tsienneto Road

The request is to approve the final release of Letter of Credit #43340, drawn on Enterprise Bank in the amount of \$201,171.60 for the above noted project. The amount to retain is zero.

Motion by Nelson, seconded by Connors to approve as presented.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Minutes

The Board reviewed the minutes of the December 07, 2022, meeting.

Motion by Nelson, seconded by Morrison to approve the minutes of the December 07, 2022, meeting as written.

Chase, Morrison, Malaby, Feinauer, Nelson, and O'Connor voted in favor; Connors abstained and the motion passed.

Correspondence

Mr. Nelson advised the Board is in receipt of a copy of the Planning Board submission deadlines for 2023.

Chairman and Planning Director Updates

Mr. O'Connor remarked several of the members have terms that will expire by March 31, 2023. If the Board members are interested in continuing, they should apply online. The Town Council Representatives, Mr. Chirichieillo and Mr. Foote; Mr. Chase, Mr. Nelson, Mr. MacEachern, and Mr. Feinauer all have terms that expire at the end of March.

Mr. O'Connor stated he sits as the Planning Board Chairman on the Net Zero Subcommittee. There are several updates to report from that committee. The electrical savings that will result from the installation of solar panels on the town's former landfill is significant at 6 cents per kW (most pay 21 cents per kW) for the next 25 years. There will be a Community Power Panel meeting hosted at the Derry Municipal Center on January 24, 2023, beginning at 7 p.m. This is to discuss opportunities for cooperative community power options.

Other Business

None.

Public Hearing

Shade Tree Farm, LLC
PID 07084, 66 Drew Road
Acceptance/Review, 4 Lot subdivision
Creation of three new frontage lots

Mr. Sioras provided the following staff report. The purpose of the plan is for a four lot subdivision located on Drew Road in the Low Density Residential District which has a three acre minimum lot size. The lots are intended for single family residential homes. The fourth lot will have 65 acres to the rear. There is an existing new home on the parcel. Following the TRC meeting, staff recommended the lots be reconfigured to have the existing home be on the smaller lot, rather than the 65 acre lot. This configuration allows for better sight distance, and the future development status of the larger, 65 acre lot is not known at this time. If the larger lot is to be developed at some point in the future, abutters would be noticed. All town departments have

reviewed and signed the plan. There are several waiver requests outlined in a letter from Promised Land Survey dated January 03, 2023. The NH DES subdivision approval is pending. Staff recommends approval of the waiver requests and the subdivision plan. Mr. Sioras advised planning staff has had several phone calls from interested abutters and it was noted there were people attending this meeting virtually.

Tim Peloquin, Promised Land Survey, presented for the applicant. This is a large tract of land that continues to the Hampstead town line and totals about 75 acres. Two lots have been merged and the lot the applicant owned in Hampstead has been sold. The intent is to create three, 3 acre lots with frontage on Drew Road. One lot already has a home on it. The last lot will have frontage on Drew Road and contains 65 acres. This larger lot has 200 feet of contiguous frontage, then an additional 50 feet located between two of the 3 acre lots (07084-001 and 07084-002). The access was placed in this location in order to meet sight distance requirements and to have ample stopping distance. The sight distance could not be met along the 200 foot frontage. Parcel 07084-003 will be the 65 acre lot. All of the new lots meet the safe sight distance requirements for the driveways. The Board might recall this lot had been before the Board previously with a proposal for 5 lots. It was determined it would be safer to have the lots divided into three new lots. The 65 acre lot is currently intended as one building lot and it may not be further developed as the costs for a new roadway and the location of the wetlands on the property don't really make further development of the lot viable at this time.

Motion by Nelson, seconded by Connors to accept jurisdiction of the four lot subdivision application before the Board for Shade Tree Farms, LLC, PID 07084, 66 Drew Road.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Connors to find pursuant to RSA 36:56, the proposal as presented at this time meets the definition of a development of regional impact. Discussion followed.

Mr. Connors asked why the paperwork provided showed two lots (07084 and 10112), not one lot as shown on the plan before the Board. Additionally, one of the criteria for meeting the definition of regional impact is "the proposed development is directly adjacent to a municipal boundary". The lot line is the municipal boundary. Mrs. Robidoux explained the two lots had been merged by the Board at a previous meeting, but the GIS has not had a chance to be updated. Mr. Peloquin confirmed the applicant does not own land in Hampstead. Mr. Nelson stated the development itself is taking place well away from the municipal town line, so he did not interpret that condition as being met. Mr. Connors said he was fine with that, if that was the staff recommendation.

Chase voted no, citing the application does not meet the definition of a development of regional impact. Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted no, citing the same reason. The motion failed. The development has no regional impact.

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

There was no public comment.

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

Mr. O'Connor believed the Fire Department normally required a fire cistern or residential sprinklers when a hydrant was not available. Mr. Peloquin agreed and pointed out note 8 on the plan which indicates the applicant is voluntarily providing residential sprinklers for the three new lots.

Mr. Nelson noted on the cover sheet, it appears a portion of Drew Road branches into two lots. Is that a portion of Drew Road? Mr. Sioras stated that is a private driveway created on an old road. The ZBA had granted a variance to allow the creation of two lots in that location. Mr. Peloquin will label that portion so it is more clear.

Mr. Chase commented the text on the 50 foot right of way to Parcel 07084-003 needs to be corrected. It is incorrectly labeled as Map 11; this is on Sheet 2.

Mr. Connors felt with a 50 foot right of way provided for the larger lot, there would be future development on the lot. Fifty feet seems wide for a driveway. Mr. Peloquin stated he has represented the development as it has been discussed with him by his client. It is good stewardship to leave the 50 foot right of way to a parcel that size. The maximum length of a cul de sac in Derry is 2000 feet. There are wetlands on the lot and prime wetlands to one side. The narrow piece leading toward the Hampstead town line is about 500 feet wide in a three acre zone. Mr. Connors said the Board can only talk about the plan in front of it, but it seems like there will be more to come. There is 200 feet of frontage to the left. Mr. Peloquin explained that is the frontage for Parcel 07084-003. There was no sight distance along that area of frontage. His client has people in mind already for the two new lots and he would like to keep the larger lot for an estate home. His client could have created a road, but chose not to. Mr. Connors noted the applicant has a right to develop the lot; he just wants to be sure he is seeing the big picture. Mr. O'Connor said the parcel is adjacent to Town conservation land and he is confident any development will remain out of the floodplain and the prime wetlands.

Mr. Peloquin explained the waiver requests.

The waiver from Section 170-24.A (4) is to not show the whole parcel as the lot was surveyed by another firm. Mr. Peloquin knows the parcel is accurate but does not want to put metes and bounds on the whole parcel. They are requesting a waiver from the wetland mapping requirement, as the wetlands were shown in their entirety on a referenced plan. The same applies to the soil mapping requirement. They would like to not provide drainage calculations, an erosion control plan, and a traffic impact statement as the development is only creating three, new single family lots. There will not be a lot of traffic added to the existing public way.

Mr. L'Heureux advised there had been numerous discussions with regard to the sight distance requirements. It is very challenging to meet the requirements as that area has challenging vertical and horizontal curve alignments. This is why the applicant scaled the plan back to three new lots. If there is development of the larger lot, there could be alterations to the driveway access points, and a culvert could be required. Slope easements have been added to the plan to account for any future development so that drainage can be mitigated easily and they can tie in. Mr. Connors was concerned, given the topography, water would sheet flow to Drew Road. He thought the Board should require erosion control, but it sounds like that was addressed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-24.A (4) to not depict the boundary of the entire parcel given the size of the parcel. After review of the waiver request, the Board finds 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.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-24.A (13) to not map the wetland for the entire site as wetland information is shown from approved plans obtained from NH DES and other sources. After review of the waiver request, the Board finds 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.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-24.A (14) to not provide drainage calculations as the proposal is only for three additional road frontage, single family lots. After review of the waiver request, the Board finds specific circumstances relative to the plan, or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations.

Chase, Morrison, Malaby, Feinauer, Nelson, and O'Connor voted in favor. Connors voted in favor based on the statements made by Mr. L'Heureux. The motion passed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-24.A (15) to not provide an erosion control plan and details, as the proposal is only for three additional road frontage, single family lots. After review of the waiver request, the Board finds specific circumstances relative to the plan, or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations.

Chase, Morrison, Malaby, Feinauer, Nelson, and O'Connor voted in favor. Connors voted in favor stating the Town will monitor during construction to ensure there is no wetland or street impact. The motion passed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-24.A (18) to not provide a traffic impact statement, as the proposal is only for three additional road frontage, single family lots. After review of the waiver request, the Board finds specific circumstances relative to the plan, or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Nelson, seconded by Connors to grant a waiver from LDCR Section 170-25 (B) and (C), to not perform HISS mapping for the entire site.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Motion by Connors, seconded by Nelson, to find 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. Each of the lots has adequate frontage and meets the frontage requirements for the zone. For those design elements that cannot be met for the plan, waivers have been approved by the Board.

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

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

1. Subject to owner's signature
2. Subject to on-site inspection by the Town's engineer
3. Establish escrow for the setting of bounds or certify the bounds have been set
4. Establish appropriate escrow as required to complete the project
5. Note approved waiver (s) on the plan
6. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-24.C
7. Subject to receipt of applicable state or local permits relating to the project
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.]

Chase, Morrison, Malaby, Connors, Feinauer, Nelson, and O'Connor voted in favor and the motion passed.

Workshop #3 – to set a date for a Planning Board district walk related to proposed changes to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, specifically the dimensional requirements in the zone.

Mr. Sioras advised there are a few dates for the district walk available. Staff is not available the weekend of January 28. He suggested February 04, February 11, or February 25. He commented there was an incident at 15 Franklin Street this evening. With emergency responders on scene, it was apparent how narrow the streets are. It would be helpful for the Board to look at the side streets and to pay attention to what the setbacks might look like. Mr. Nelson noted the School District Deliberative Session is on February 04. Mr. O'Connor confirmed the purpose of the walk is to get an idea of the location of the homes in relation to the streets. Mr. Sioras reminded the Board that the owners of 16 Franklin Street have brought several plan options forward for redevelopment on that site and each have been difficult in that they can't meet the current zoning requirements, especially at that location given the intersection and where people park. It might be okay to have the existing dimensional requirements in the TBOD for the lots fronting Broadway, but it does not work on the side streets. Mr. Connors noted the lots are grandfathered, unless someone needs to rebuild. Mr. Sioras stated when staff started to really look at how the lots might be redeveloped, it became apparent the Board needed to look at this zone again. The Board members are aware the lots are very tight. Mr. Nelson felt there was a fairly good summary in the minutes of the last meeting. When the TBOD was originally enacted, it was a result of district walks and charettes. The Board knew the corridor well. He suggested holding a district walk because of the unintended consequences of the TBOD expansion. He feels the Board should perform due diligence and hold this walk to see in what way the district is unique and different. How does the north side of the district vary from the south? The Board needs to set a date to do this. Whatever is changed in the district won't be effectuated until someone redevelops. The Board needs to think about how changes will affect the streetscape. Mr. Sioras said staff does not want to keep sending people to the ZBA for dimensional setback variances.

The Board decided to hold the walk on February 11, 2023, beginning at 9:00 a.m. The meeting place will be the Derry Municipal Center parking lot. The Board should expect to spend a good amount of time walking the district.

Workshop #2 – to discuss the wording of Article XIX, Independent Adult Community Overlay District in relation to HB 1661, Section 72

Mr. Sioras noted the first workshop had been held on December 07, 2022. The Board asked staff to clarify if the town was preempted legislatively with regard to regulating workforce housing as a result of HB 1661 and, if under the Fair Housing laws, Derry can include the current wording in its ordinance? He reached out to Attorney Buckley at the New Hampshire Municipal Association who provided a detailed answer. The town is not preempted from regulating workforce housing.

Attorney Buckley provided the following.

“HB 1661 does not prevent the town from regulating the location of workforce housing.
The statutory duty imposed on the Town of Derry to provide reasonable and realistic

workforce housing development opportunities was not modified by the passage of HB 1661.

Under RSA 674:59, I, the town "shall allow workforce housing to be located in a majority, but not necessarily all, of the land area that is zoned to permit residential uses within the municipality." That mandate was not modified by HB 1661. Thus, within that mandate, the Town of Derry may decide where it wishes to permit workforce housing, provided, workforce housing is permitted in a majority of the land area zoned to permit residential uses.

What HB 1661 did do is implement a new provision of RSA 674:17, IV as follows:

If a municipality allows an increased density, reduced lot size, expedited approval, or other dimensional or procedural incentive under this section for the development of housing for older persons, as defined and regulated pursuant to RSA 354-A:15, VIII, it may allow the same incentive for the development of workforce housing as defined in RSA 674:58, IV. Beginning July 1, 2023, incentives established for housing for older persons shall be deemed applicable to workforce housing development.

If I interpreted Derry's current zoning ordinance correctly, the town permits a density bonus of 1.5 units over the underlying zoning ordinance density requirement for elderly housing units on town water and sewer. In order to comply with HB 1661 the town will now need to extend that very same density bonus to workforce housing."

Mr. Sioras stated housing for elder persons is allowed in any zone where the town allows single family housing. Some developments took advantage of the density bonus, others did not. HB 1661 provides the opportunity for communities to provide incentives; Derry already does that. Mr. Connors asked if workforce housing is also available in all residential zones. Technically, it is not. Mr. Sioras explained the town will need to add this before July 01, 2023. Derry has always felt it meets its fair share for the region of workforce housing and has a wide range of housing types available in the various zones as permitted uses. Derry is one of the few communities that provides that type of diversity of housing.

Mr. O'Connor recalled there had also been a question with regard to the age restriction. The town is not in conflict with federal law, but it is with regard to the State law; this needs to be addressed. Mr. Connors asked if the Board was going to make this Article applicable to workforce housing as well, because there could not be an age restriction for workforce housing.

Mr. Nelson believed either way, it would be a mistake to have only one ordinance apply to both. HB 1661 just says any incentive available for elderly housing needs to apply to workforce, and the town needs to make sure workforce is allowed in the majority of the districts where the town allows residential uses. He suggests, given the mandate and the effective date of July 01, 2023, the Board look at the adult overlay and make sure it still meets the needs of the town. The Board should also work on a workforce housing ordinance. In the adult overlay, the Board needs to determine what is or is not discriminatory.

Mr. Connors asked if the draft provided today is for the adult overlay only, or does it include provisions for workforce housing. Mrs. Robidoux replied it is strictly for adult housing. Under state law, if the town wants to prohibit people under the age of 18, it needs to include the 80/20 provision in the ordinance, otherwise, it is familial discrimination under State law.

Mr. Sioras advised not all of the adult developments are strictly 55 and older. Bunker Estates is now strictly 55 and older per their By Laws. Chase's Mill utilized the 80/20 split. In 80% of the units, one person has to be 55 or older. The remaining 20% are at market rate. The condominium association can change this requirement.

Mr. Chase said given the State law, the town's ordinance is almost null and void if it does not contain the 80/20 provision. What happens if a family purchases a home and the grandmother is living with them. She is over 55 years old. If she passes away, it is possible that no one in the household would be over the age of 55. Does the town then tell this family they need to move out of a home they own? He believes the 80/20 provision should be in the ordinance so that the town can enforce it.

Mr. Nelson commented Attorney Buckley did provide guidance. In his correspondence to Mr. Sioras, Attorney Buckley stated the following.

Under RSA 354:15, VIII, there is an exception to the anti-familial discrimination prohibitions contained in the Fair Housing Act. Consistent with the Fair Housing Act Amendments of 1988, is it permissible to authorize housing that limits occupancy to certain age categories by providing housing for older persons defined as follows:

- (1) Provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or
- (2) Intended for, and solely occupied by, persons 62 years of age or older; or
- (3) Intended and operated for occupancy by persons 55 years of age or older and:
 - (A) At least 80 percent of the occupied units are occupied by at least one person who is 55 years of age or older;
 - (B) The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph; and
 - (C) The housing facility or community complies with rules adopted by the commission for verification of occupancy, which shall:
 - (i) Provide for verification by reliable surveys and affidavits; and
 - (ii) Include examples of the types of policies and procedures relevant to a determination of compliance with the requirement of subparagraph

Based on this advice, Mr. Nelson believed the town can comply with the Federal program, restrict adult housing to 62 years or older, restrict housing to 55 years or older, with the 80/20 split and the homeowners need to provide proof of compliance. Mr. Connors asked how the town verifies compliance. Mr. Sioras explained surveys are provided annually to the Building Inspector. The town does not have a 'housing verification commission'.

Mr. Nelson commented that given the state of the economy, retirement savings, and people working later in life, it might be a good thing to take advantage of option 2 and include the 62

and older provision. The demographic of people moving to retirement communities is closer to this age. He does not suggest removing the 55+ provision.

Mr. Chase agreed with the suggestion to add in the 62+ option, and the 80/20 provision for the 55+ communities. He did not believe the ordinance could avoid that. Mr. O'Connor would like to know what the public has to say. Mr. Connors inquired if the development is limited to those 62 and older, does everyone in the community need to be over the age of 62? The consensus is that all in residence need to be 62 or older. Mr. Sioras said there is a provision already in place in the ordinance (shown on page 4 of the handout), that stipulates annual verification of compliance with the age restriction.

Mr. Nelson summarized the changes to be made for the next workshop. The 55 and older communities need to have the 80/20 provision added so the town is in compliance with the State RSA. Provisions for communities of age 62 and older should be added for those developers who might want to take advantage of that. A workforce housing ordinance should be drafted. He felt the Board was obliged to see if the community need for housing is being met. There needs to be appropriate housing for the elderly and perhaps there is a community need to supply more workforce housing than we have. That issue needs to be reviewed further. Is there a need in Derry for more of this type of housing? Mrs. Robidoux if 'workforce' is defined as people like her, there is not enough housing. Mr. Nelson also suggested reviewing the ordinance's definition of "workforce housing".

Mr. Connors asked if the Board should look at the other changes in the draft suggested by Planning staff. There was discussion with regard to the Authority and Purpose and the phrasing "and have less impact on the school system." Mr. Sioras stated at the time this ordinance was crafted, the town had the Growth Management Ordinance in effect and was trying to mitigate the impacts on the school system which was overloaded. Mrs. Robidoux noted this is not the case now.

Mr. Nelson suggested continuing review of the proposed amendments. The comments from Attorney Buckley should be incorporated as needed, and another draft provided for the Board to work with.

Mr. Sioras asked if there are any Planning Board members who would like to work with staff on the amendments. There are also other amendments that should be reviewed and worked on. Mrs. Robidoux stated she had an ongoing list that could be distributed to the Board to see who would like to assist on a specific topic.

There were no Board member comments.

Motion by Connors, seconded by Malaby to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:31 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____