

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 20, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Lori Davison, Secretary; Frank Bartkiewicz; Maya Levin, Mark Connors (7:35 pm), James MacEachern (via telephone), Members

Absent: John O'Connor, Brian Chirichiello, Randy Chase, Matthew Leavitt, Elizabeth Carver

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

Mr. Granese called the meeting to order at 7:08 p.m. Mr. MacEachern joined the meeting via telephone to complete the quorum. 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.

Escrow

#19-12

Project Name: Shepard Landing

Developer: Healyford Realty, LLC

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 27094, 3 Nutfield Court

The request is to establish cash escrow in the amount of \$548,507.38 for the above noted project. This escrow account is non-interest bearing.

Motion by Bartkiewicz, seconded by MacEachern to approve as presented. The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the March 06, 2019, meeting.

Motion by Bartkiewicz, seconded by Levin to approve the minutes of the March 06, 2019, meeting as amended. The motion passed.

The Board reviewed the site walk notes of 8.5 Richardson Road, held on March 09, 2019.

Motion by Bartkiewicz, seconded by Levin to approve the site walk notes of 8.5 Richardson Road. The motion passed with Davison and Levin abstained.

The Board reviewed the site walk notes of 52 Lane Road, held on March 09, 2019.

Motion by Bartkiewicz, seconded by MacEachern to approve the site walk notes of 52 Lane Road. The motion passed with Davison and Levin abstained.

Correspondence

Ms. Davison advised the Board is in receipt of the most recent edition of *Town and City*. A copy is available on line or in the Planning Office.

Other Business

Zoning Amendments and Master Plan Forum

Mr. Sioras reported the Town Council approved the rezoning of parcels near Maple and Elm Streets. The town will also be holding the second community forum for the Master Plan on Saturday, April 06, 2019, between 10:30 a.m. and 12:30 p.m. The forum will be held in the 3rd floor meeting room of the Municipal Center.

Schedule Public Hearing – Amend Article VI, Section 165-32.A.1

Motion by MacEachern, seconded by Bartkiewicz to schedule a public hearing for April 17, 2019 to amend Article VI, District Provisions, Section 165-32.A.1, General Commercial District, Permitted Uses, to ADD medical office as a permitted use in the zone. The purpose of the amendment is to clarify the list of permitted uses in the zone. Medical Office was a permitted use under the definition of Profession Office until the definition of Medial Office was created in 2013.

MacEachern, Levin, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

Schedule Public Hearing – Amend Article VI, Section 165-30

Motion by MacEachern, seconded by Bartkiewicz to schedule public hearing for April 17, 2019 to amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to move twenty (20) parcels from Medium High Density Residential and one (1) parcel from the General Commercial zone to the Office Business District. The purpose of the amendment is to allow for potential new development and redevelopment in the Opportunity Zone which follows this boundary. Discussion followed.

Mr. MacEachern confirmed this is in the area near Exit 4.

MacEachern, Levin, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

Public Hearing

**Pennichuck Water Works, Inc.
PID 10062-020, 8.5 Richardson Road
Review, Amended Subdivision
To designate the lot as buildable
Continued from February 20, 2019**

Mr. Sioras provided the following staff report. The Board held a site walk with the neighbors and there was some discussion to see if Pennichuck would be willing to sell the lot. Pennichuck is in the process of determining a sale price if they were to sell the lot to the town. The abutters will be contacting the Town Council to see if the town will purchase the lot. The applicant has requested a continuance to June 05, 2019, to see if something can be worked out.

Motion by MacEachern, seconded by Bartkiewicz to continue the application for an amended subdivision for Pennichuck Water Works, Inc., 8.5 Richardson Road, PID 10062-020, to Wednesday, June 05, 2019, and to acknowledge the applicant has voluntarily waived the 65 day clock.

MacEachern, Levin, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

Mr. Granese advised there would be no further notice for the public hearing; the meeting will start at 7 pm.

**Linda Rutter
PID 06058, 52 Lane Road
Kathleen B. Brooks Rev. Trust
PID 06058-001, 32 Lane Road
Review, Two lot subdivision and lot line adjustment
Continued from February 20, 2019**

Mr. Sioras provided the following staff report. The Board held a site walk and walked the land and the driveway location. The Board has received follow up correspondence from the abutter, Loren Thompson, dated March 14, 2019, that outlines her questions. There is a follow up email from Michael Fowler answering the questions with regard to the cul de sac which can be addressed later.

Tim Peloquin, Promised Land Survey, presented for the applicant Linda Rutter, who was also in attendance. There have been no changes to the plan set since the last meeting. The parcel is approximately 39 acres. The intent is to subdivide a 2.87 acre parcel which will contain the existing home. There will be a 33 acre lot intended for a new home to be accessed from Fox Hollow Road. 18 $\frac{3}{4}$ acres of this new lot will be dedicated as conservation area; the applicant is currently working with the Conservation Commission on that. In the north, there is a 2 acre area which will be added to the Brooks property. The land has been used by Kathleen Brooks for many years with permission of the Rutter family. The lot line adjustment will address that.

The driveway accessing the new lot is approximately 600 feet in length. The driveway was the focus of the site walk held on March 09. The Board members walked the right of way which was marked out with stakes; the centerline of the right of way was flagged. The Board observed the logging operation that was in process and saw the area where the home is proposed to be located, overlooking the pond. There was some discussion about the proposed courtesy screening benefiting Ms. Thompson during the site walk. The area proposed for the plantings was along the stone wall. During the site walk, it was decided it might be better to move that with the intent of screening the hammerhead area on Ms. Thompson's driveway. Sheet 4 shows the area originally proposed for the screening near the stone wall. There are several large oak trees in the area of the stone wall which had been intended to be cut down, but those will remain as an additional natural buffer and the screening will be moved to a 33 foot wide section of open area between the woods that faces the Thompson driveway. The screening will be placed in the town right of way. There was a variance granted to allow utilization of the driveway and a Town Council meeting to dedicate this as a Class VI roadway rather than Class V improved paper street.

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

Loren Thompson, 8 Fox Hollow Road, asked for confirmation of the location of the buffer. It was confirmed it would be moved adjacent to the hammerhead on her driveway. She asked why the driveway was being placed in the middle of the right of way. Room between her property and the driveway would be beneficial to both parties. The area has been cleared of trees and it is very open. It looks like they intend to clear out everything; why do they need to cut so much if they are staying in the middle of the right of way? Mr. Peloquin said there was a 25 foot wide swath that was cut to accommodate the utilities and the drainage. The driveway is located in the center of the right of way. If they tried to move away from her lot, it would affect the abutter to the north. The topography suggests the proposed driveway location is in the best spot. There is a large knob or topographic mound near the existing telephone pole, which the Board members observed during the site walk. They have worked with DPW to extend the culvert so that drainage works better; this placement makes the most sense.

Ms. Thompson asked with regard to the disposition of the temporary cul de sac. Mr. Granese read Ms. Thompson's letter dated March 14, 2019 into the record.

“Dear Mr. Sioras: In reference to the above captioned matter [52 Lane Road Variance and Class VI Road off Fox Hollow – Linda Rutter], I want to first thank the Planning Board members for coming out to Fox Hollow Road and taking a site walk. I really appreciate the time you all took out of your day to view the area. However, I still have some questions and concerns I would like the Planning Board to address.

The logging company has started cutting trees in the ROW and have gotten stuck in the mud a few times. From what we heard from the builder this morning, they may have to move the driveway even closer to my property because the area where they are cutting is too wet. My concern is, and always has been, how are they going to put a driveway in a very wet area without causing flooding/damage to my property?

Also, I never got an answer about the temporary cul-de-sac. Is it now a permanent cul-de-sac, or will there be future development on the land owned by Rutter. Mike Fowler did say on the record at the very first Town Council meeting that the Rutters may decide to change the Class VI road into a Class V for possible future development.

I appreciate you taking the time to review my concerns before the meeting takes place on March 20th.

Thank you, Loren Thompson, 8 Fox Hollow Road.”

Mr. Granese advised the Board has a copy of the email prepared by Mike Fowler in response to this inquiry, dated March 20th. He read that into the record.

“George, I understand that your office has received correspondence from Loren Thompson of 8 Fox Hollow Road citing concerns about the proposed subdivision plan and lot line adjustment.

Responding to questions raised in the last paragraph:

1. The original recorded plan D-12629 from 1984 depicts a temporary cul-de-sac, in recognition that at some future point, the road would have been extended to either connect to another road or create another cul-de-sac into a new section of development. The plan and the deeds for the subdivided properties on Fox Hollow Road do not provide any guidance as to when the temporary cul-de-sac can be extinguished. As a practical matter, the extension of the Class VI way serves essentially as a private driveway. Motorists and Town plowing equipment still require a satisfactory turn-around and the creation of a Class VI way would not serve as a trigger to extinguish the temporary cul-de-sac. It would be the Town’s intent to retain the cul-de-sac for maintenance purposes. If there is an intent to discuss temporary easement designation versus a permanent dedication and acceptance – it would be a separate matter for the Planning Board and Council to consider should the abutters seek to address this question.
2. A comment was attributed to me from the October 2018 Council meeting about the possibility of the road being changed to Class V. I believe my comment was in response to a question as to the legal possibility of changing the classification. I understood the question in the context that any interested party could petition to change the road status. However, practically speaking this would be a difficult standard to meet with regards to the infrastructure upgrades and other constraints that would likely keep the extension of Fox Hollow Road as Class VI.

Mike”

Mr. Sioras stated he spoke with Mike Fowler and with Alan Côté. The town will want to keep the cul de sac in its current location. It is believed the area will not be further developed because of the constraints of the wetland, the pond, location of existing homes, and the conservation

easement. What is shown on the plan is what will be going forward. They do not see any future development of the lot. Ms. Thompson asked if the lot could ever be further developed.

Mr. L'Heureux said it was possible the lot could be, but it was highly unlikely because of the economics and physical features of the lot. Almost every cul de sacs in town is on a temporary easement and the road is intended to go through it. It has to make financial sense for a developer to go through a dedication process. In this case, they have run out of property to develop. Ms. Thompson said it seemed like a long way to go for one house. She is happy with the placement of the new screening as proposed and she can put a higher fence near her pool if she needs to.

There was no further public comment.

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

Mr. L'Heureux advised the construction of the access as stated on the plan needs to stay in the center of the easement. It is critical for the proper grading along the sides as well as the drainage outlet on the other side. It is important to stay in the center. The developer/applicant must adhere to this alignment and make sure the surveyor is involved in the layout of the driveway, especially near the stone wall and wetland. There is no wetland permit so the wetlands cannot be impacted. The driveway must be constructed prior to the lot being eligible for a building permit; Code Enforcement needs viable access to the lot for inspections. Good erosion control and construction practices must be in place. The town should be included to make sure that is done. If the shrubs are being moved into the town right of way, because this is a Class VI roadway, the town will not maintain the shrubs. That should be a condition of approval. The town does not maintain Class VI roadways, even though there is public access on the road. The applicant will assume responsibility for the shrubs. He has no issues with the waiver requests.

Mr. Granese confirmed additional conditions should be that trees intended to screen the abutter will be moved adjacent to the hammerhead portion of the driveway at 8 Fox Hollow Road; the landowner of the development is responsible for maintaining the shrubs; and ensure the driveway stays in the middle of the roadway and is built to specification. Mr. Peloquin agreed.

Mark Connors entered the meeting. As the hearing had already begun, he was not eligible to vote on the application.

Mr. Peloquin stated the application is for one home on almost 34 acres with conservation land. This creates what can be deemed a generous development.

Motion by Bartkiewicz, seconded by MacEachern to grant a waiver from LDCR Section 170-25.b which requires submission of high intensity soil calculations and LDCR Section 170-25.f, which requires test pits as after review of the waiver requests, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

MacEachern, Levin, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

Motion by Bartkiewicz, seconded by Levin, to approve, pursuant to RSA 676:4,I, Completed Application, with the following conditions: subject to owner's signature, subject to on site inspection by the Town's Engineer, certify the bounds are set, establish appropriate escrow as required to complete the project, obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24.C/170-61.C, conservation easement documents to be reviewed by town's legal counsel, accepted by the Town of Derry, and recorded (this is a condition subsequent), note approved waivers on the plan, ensure location of well is outside of any area that will receive stormwater drainage, subject to receipt of state or local permits relating to the project, above conditions to be met within 6 months; a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement, appropriate recording fees shall be submitted, payable to the Town of Derry, the trees intended to screen the Thompson property will be moved to the area adjacent to their hammerhead on their driveway and will be located in the town right of way, the driveway will remain in the center of the right of way, maintenance of the screening shrubs is the responsibility of the landowner at 10 Fox Hollow Road.

MacEachern, Levin, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

There was no further business before the Board.

Motion by Levin, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 7:39 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____