

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 17, 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: John O'Connor (Chair), Lori Davison (Vice Chair), Frank Bartkiewicz, David McPherson, Mark Grabowski, Maya Levin (Secretary), Members; Brian Chirichiello, Town Council Liaison; Jim MacEachern, Alternate

Absent: David Granese, Mark Connors, Randy Chase

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

Mr. O'Connor called the meeting to order at 7:02 p.m. The meeting began with a salute the flag. Mr. O'Connor then noted the location of meeting materials, emergency exits, and introduced the Board members and staff present.

### **Election of Officers**

Motion by Chirichiello, seconded by Grabowski to nominate John O'Connor as Chairman. All voted in favor and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to nominate Lori Davison as Vice Chair. All voted in favor and the motion passed.

Motion by O'Connor, seconded by Chirichiello to nominate Maya Levin as Secretary. All voted in favor and the motion passed.

*Mr. MacEachern was seated for Mr. Connors.*

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the April 03, 2019, meeting.

Motion by Bartkiewicz, seconded by McPherson to approve the minutes of the April 03, 2019, meeting as amended. The motion passed with Davison and O'Connor abstained.

The Board reviewed the notes from the April 10, 2019 site walk at 31 Tsienneto Road.

Motion by MacEachern, seconded by Bartkiewicz to approve as amended. The motion passed in favor with Chirichiello and O'Connor abstained.

## **Correspondence**

Ms. Levin advised the Board is in receipt of a letter sent by Russell Prescott, Executive Councilor, District 3, of the Executive Council for the State of New Hampshire. He wanted to let the members of the Board know he was available to answer any questions, concerns or needs and provided his contact information.

## **Other Business**

### Review of Planning Board Policy and Procedures

Mr. Sioras explained this was the second reading of the Policy and Procedures. There had been a suggested change to Section 7, item D. Mr. O'Connor confirmed that plans of more than three lots in a subdivision are reviewed by the outside consulting engineer. Mr. Sioras explained that subdivisions of three lots or less are by definition considered minor subdivisions and typically are not sent for outside review. There are, however, complicated plans of three or less lots that should be reviewed; this is determined at TRC. Mr. O'Connor confirmed if the Board received an application it felt required outside review, the Board had the ability to forward to the outside review engineer.

Motion by MacEachern, seconded by Bartkiewicz to accept the revisions to the Town of Derry Planning Board Policy and Procedures as discussed on April 03, 2019, and to make those changes effective immediately. The motion passed with all in favor and the motion passed.

### Schedule Public Hearing – Zoning Ordinance, to add Electronic Vehicle Charging Stations to all zones

Mr. O'Connor advised there is legislation at the state level (see SB517 from 2018) which establishes rules under the Department of Environmental Services for municipalities and property owners with regard to electric vehicle charging stations. He feels this change moves the town in the right direction.

Motion by MacEachern, seconded by Bartkiewicz to schedule a public hearing for May 01, 2019, to discuss a proposed amendment to Article III, General Provisions, to ADD Section 165-

14.1, Electronic Vehicle Charging Stations, to allow the use in all zones with restrictions AND to amend Article VI, District Provisions, Section 165-33.B.25 and Section 165-49.B.20 to remove Electronic Vehicle Charging Stations as a permitted use. The motion passed with all in favor and the motion passed.

## **Public Hearing**

**High Meadows, LLC**  
**PID 29046, 46 High Street**  
**Acceptance/Review**  
**3 Lot Subdivision**  
**(Continued from March 06, 2019)**

Mr. Sioras advised that as of today, all departments have signed the plan acknowledging that the information required for the Board to accept jurisdiction is now on the plan. The Conservation Commission did not review this proposal. Mr. Sioras is recommending the Board accept the revised plan as revisions have been made to it, accept jurisdiction of the application, and then open the public hearing so that the abutters can speak. Attorney Brian Germaine and Craig Bailey are present this evening, representing the applicant, Deni Oven. Mr. Sioras is recommending the Board hold a site walk to see the property.

Mr. O'Connor had a few questions. He has been on the Board a long time and the Board has never accepted a plan that did not have all of the TRC signatures in place. He asked for an explanation as to why the plans before the Board did not contain the TRC signatures. He wanted confirmation that the Departments approved of the plan. Mrs. Robidoux stated staff just received all of the department signatures today. The plans in the Board's hands this evening are the most up to date plans that include all revisions per VHB and staff comments. Mr. Bailey did not have the benefit of having the plan the departments signed in his possession so that he could make copies for the Board. The plan in the Planning Office has all of the signatures on it. Mr. O'Connor asked for further explanation of Capt. Feole's comment that he signed the plan but did not approve the plan. Mr. Sioras explained that when the Departments or TRC members sign the plan, it is only an indication that the information they requested is on the plan. It is not an indication that the various departments agree with the proposal. The plan now has enough information on it that the Board may be able to deem it complete enough to accept jurisdiction.

Motion by MacEachern to accept the revised plan set with the last revision date of April 15, 2019, seconded by Bartkiewicz.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the three lot subdivision plan before the Board for High Meadows, LLC, PID 29046, 46 High Street.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Mr. O'Connor asked the applicant's representatives to review the changes, compliance with VHB comments and other matters.

Craig Baily, of Bailey & Associates, advised changes had been made to the plan with regard to the raingarden drainage, and to correct some typographic issues. He stated there were no substantive geometric changes to the plan.

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

Lisa Joslin, 15 Aiken Street, also owns property at 39 High Street. She questioned the proposal to subdivide into three parcels of land. Did the town not rezone this area so that only one lot subdivisions could be created? Mr. Chirichiello explained the rezoning was to move the properties from the Medium High Density Residential zone to the Medium High Density Residential II zone, which is a bit more restrictive. There can be no multifamily developments in this zone. Ms. Joslin asked if this lot has the proper frontage and will variances be required for the proposal. Mr. O'Connor said the applicant would be applying for variances [waivers] as part of this application. As an abutter, Ms. Joslin stated she would not want to see more than two lots on this property; the corner is too congested with traffic.

Matt Hagopian, 10 Hillside Avenue, advised he is the current property owner; the map notes the former owner, Mr. Dyson. He spoke on behalf of John Janigian, his father in law, who lives next door at 9 Everett Street. The proposed access road on Hillside abuts Mr. Janigian's building. He would like to request the pavement come no closer than 5 feet to the building and that a barrier of stone or lawn be put in place to keep people from driving too close to the building. He would also like a stipulation added to any approval that the snow plow cannot put snow against the building in the winter when the access is plowed.

Charles and Cheryl Stanion, 5 Everett Street, also addressed the Board. Mr. Stanion stated at the last meeting there was discussion about the shared driveway being a hardship and that there is no need to prove a hardship. It seems like the Board is bypassing what was said at the last meeting. Mr. O'Connor explained the issue of the shared driveway will be addressed. Mr. Stanion asked if once this meeting is over, is the plan set in stone. Mr. O'Connor explained the plan for tonight is to have the abutters speak so that the Board can listen and perhaps make adjustment to the subdivision plan when the Board does discuss it. Mr. Stanion noted this project is in their backyard and will add light and noise to the block.

Cheryl Stanion advised they have lived in their home for 30 years. They are ideal citizens: they don't have children in the school systems, and don't utilize town services. They are invested in

the town and the neighborhood. They know almost everyone in the neighborhood which is a true neighborhood community. This project is being placed in the middle of what is the last bit of green space on a hill that places runoff into Horne's Pond, which is a fishing location identified by the State of New Hampshire. Amphibians breed here and herons frequent the area. She wants to protect a small gem in their neighborhood. Horne's Pond runs into Beaver Brook which runs to the Kendall Pond conservation area. All of the run off from 35 Maple Street went into Beaver Brook when the building there caught fire. The lot at 46 High Street was stripped of topsoil and it is all washing into the pond that is home to living things. The pond is not a catch basin. There is so much run off into Hood Pond, kids cannot swim there. Is that what the Board wants? A raingarden was mentioned at the last meeting. The property was a raingarden before it was stripped. When Ray Paquin died, the family still gardened on the lot. Now it all washes into Horne's Pond. Mr. Oven does not care about this neighborhood. There used to be amphibians in this area; they are not there now. Those creatures have value and should not be taken lightly. The property was clear cut, which he has a right to do, but it was not harvested; the trees were piled and left. When the house came down, the workers were not using protective gear. She called the EPA. Asbestos tiles were raked off and the fibers became airborne and went into the neighborhood. This was just after the shoe factory came down. She feels no one cares about west Derry. They are tax payers and pay the same amount as other residents in taxes and deserve to be treated the same as the people in east Derry. Why is it okay to cram things in this area? She would like to see green space at the shoe factory. She feels the beauty is being stripped from the neighborhood. No more than one really nice house should be built on this lot and there should only be one driveway on High Street. Any more than one driveway on High Street will be an issue. There are three stop signs there. This project will add at least 6 vehicles, delivery trucks and visitors. She went to the revitalization meeting and was told Exit 4A would alleviate traffic here. The sidewalks are not consistent on the sides of the road, so it is not very safe to walk. Old habits die hard, and people will still take the short cut and not use Exit 4A. Traffic travels fast on this road and she never sees a police presence. She is concerned about the plans for the neighborhood. There are many children here.

Ms. Stanion advised she provided drone images of the lot to show what the land looks like. When the Board walks the area, they need to also drive the neighborhood from several different angles at different times during the day to get a real picture. People will not be used to anyone accessing the road from this location. She wants the Board to understand the neighborhood the way she does. One of the drone photos shows where the traffic travels. This development will be a hazard. The applicant should use the original driveway and have only one house. People drive the wrong way on High Street and people need to drive into the middle of High Street to see past the embankment. She does not feel this development will work with more than one house. She would like to see one nice home with trees that buffer the light and the light from North High Street. This development is in the middle of a block where people have lived for a long time. She would like the Board to stand behind the neighborhood and to protect it. This is a hardworking, blue collar neighborhood. During construction, dust from the lot will be an issue. They would like to have construction occur at a reasonable time. The Board will be responsible for the decay of the neighborhood if they allow this development to happen.

Lisa and Fred Cyr stated they reside at 44 High Street and have since 1987. Mr. Cyr stated he agrees with many of the comments. He works in the heavy construction industry and knows in

other communities a developer cannot do anything without a permit. He watched the trees come down and a temporary road go in close to the stop sign, and the topsoil be stripped. A home that was on the Historical Registry was knocked down. That is a sin. He was told when he wanted to renovate the former home on 46 High Street that he would have to abate the asbestos properly. That did not happen when the house came down at 46 High Street. He stopped the workers, but the building came down anyway. There was asbestos all over his yard. It took a year to clean it up. He is upset with the town. He was told only one house could be built on this lot. Now they are proposing a landlocked home and two more. There are 100 trees stacked near his property line, rotting. It used to be like a forest. He is upset the town has no permit process for this; there is no silt fence on this property. He also thought it was illegal to park construction equipment for more than two years on residential property. He is concerned there are no permits, nor does there appear to be a town process. When the topsoil was removed, the family of groundhogs were destroyed, and a fox was displaced. In other towns, gravel can't be put down without a permit. The intersection is dangerous. It is not clear where the driveways will be located. It is heartbreaking to see that beautiful lot destroyed. He has no idea why the topsoil was removed and stockpiled and why the trees were just put in a pile. There was no scope of work for this lot. The former home was one of the first ten homes built in the town of Derry; it should have been protected – it has historical significance. The asbestos ended up in the neighborhood yards. He was told the density of the asbestos was not at a dangerous level, but he had heard previously that test results said differently. His issue is that they were of the understanding that with the zoning change, this lot could not be subdivided. He feels the driveway locations can be dangerous because of the rate of speed that people travel on these roads.

Mrs. Cyr stated she is against the creation of three lots. She wants only one lot. What has been done to this property is a sin. She would like to see this lot remain green space. When the wind blows, everything comes into their yard. The mess on the lot has not been removed. Mr. O'Connor commented the Planning Board does not have purview over the removal of the construction equipment. Mrs. Cyr felt this went along with what she has been told Mr. Oven has stated. Mr. Oven has stated he "has friends and will get what he wants through the various boards." Mr. O'Connor stated he will ask the developer to address the questions raised this evening by the abutters.

Chris Joslin, 15 Aiken Street, owns property at 39 High Street. Mr. Joslin stated he is opposed to this three lot development. Based on his personal experience with Mr. Oven on Aiken Street, Mr. Oven does not follow the rules or regulations of the town. When it is brought up to the town, they are told the issue will be addressed and nothing happens. Mr. Joslin stated he is against this development.

Robert Vanzant, 8 Ash Street, stated this development is in his backyard. He has pictures of the current backyard. {The photos were retained for the file} Before this happened, there was a forest on the lot. For two years, nothing has happened. The dirt washes water into his backyard; the wind blows material into his yard. At the last meeting, they were told three lots was too much and the Board said it would not happen. He has been here for a meeting four times and it appears his time does not matter. He understands the owner of the property has a right to do what he wants on his property. OSHA was called to the site – does anyone care about that? He wants some drainage in place that will prohibit the drainage from the three properties from going

onto his property. He can't see three homes being constructed on this lot. He would hope the Board would walk this lot. The plan is calling for an alley in his backyard, not an access road. Mr. O'Connor explained the Planning Board has a process. The Board cannot hold a public hearing on a plan for which they have not yet accepted jurisdiction. That is why they could not move forward at the other meetings. There will be a site walk but the Board felt it was important to hear from the abutters prior to scheduling one. Mr. Vanzant said he would like someone to walk the property and see if three homes can fit there. He does not want to see a house close to his house. The land used to be somewhat level; now there is a 50 foot high pile of dirt that flows down into his property. He wants the Board to look at what has been left on the lot for two years.

There was no further public comment.

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

Mr. O'Connor confirmed the Conservation Commission did not review this plan.

Attorney Brian Germaine, Germaine and Blaska, spoke on behalf of the applicant, Deni Oven, who was also present. Many lots surrounding 46 High Street are smaller than the lots proposed in this development. The real issue is the shared driveway. That will be addressed by the site walk. Many issues raised this evening are more master plan issues. With regard to the development of the lot, it was cleared several years ago when the zoning allowed multifamily development as the owner had intended to propose a multifamily development on the lot. It was cleared with that type of development in mind. MHDR became MHDR II at the end of 2017 and left the property owner scrambling. There is a great deal of multifamily housing in this area. Exit 4A has nothing to do with this development. The proposed lots meet all of the zoning requirements. The larger lot is nontraditional but it meets all the zoning requirements. He does not believe this application requires a variance from the ZBA for the proposed development. That has never been mentioned by any town official. He believes the one outstanding issue to be met is the LDCR requirement with regard to shared driveways and they can address that issue. In order to grant a waiver from a requirement, the Board needs to look at the land itself to see if it meets the purposes of the regulations. That is to be determined. He understands the concerns of the neighborhood. If they lost things they had been used to, that is unfortunate, but it was not their property. The Board operates under the terms of the LDCR. If the residents want the Master Plan or regulations changed, they can do that legislatively.

Mr. MacEachern stated he would like to suggest the Board hold a site walk. Mr. Sioras said the Board could continue the plan to May 15<sup>th</sup> and hold a site walk on May 11 so that the plan is fresh in the mind of the Board.

Motion by MacEachern to schedule a site walk for Saturday, May 11 beginning at 9:00 a.m.

He requested the applicant stake out where the proposed homes will be located, as well as the centerlines of the driveways so the Board can understand where the shared driveways will be

located. He would like to see the form of the shared driveway. Mr. McPherson asked that the property lines be marked out.

Attorney Germaine advised with regard to the shared driveway, they have no ability to drop out to Ash Street because of the sight line. The only other way to access the road safely is through a shared driveway. He did not believe there was a prohibition against a shared driveway.

Mr. MacEachern asked if the four lot corners could be staked out. Mr. O'Connor felt it was important to see the proposed location of the homes, especially the one off High Street because that lot will have an access easement over it. He would like to see what the parking arrangements might be on that lot because parking should be out of the shared driveway.

Mr. Bartkiewicz seconded the motion.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Mr. O'Connor advised for the home closest to High Street, he would like to know if that will be a one or two bedroom home and how the parking for vehicles belonging to that lot will be allocated and how they would fit in the driveway. He wants to make sure no vehicles have an ability to obstruct access to the other lots. He would want to see a Declaration of Common Access and Maintenance Agreement prior to occupancy as a condition of any approval granted by this Board.

Mr. Chirichiello asked with regard to the Janigian building – the building appears to be in the right of way. Mr. Bailey advised there is a recorded easement provided to the former owner of the building when it used to be a heavy equipment repair shop. The easement is to allow the building to remain over the property line; the deed acknowledges the easement. Mr. Chirichiello asked for a copy of the deed; he wants to ensure all parties are protected into the future. Mr. Bailey explained there is a minimum offset for driveways along the sideline that will be maintained. With regard to the snowplowing, it is reasonable for the abutter to make the request, but he is not sure how it would be regulated through an easement. Mr. MacEachern noted the Board does not have the authority to regulate how people plow or throw snow on their property. Mr. Chirichiello could understand the concern. Mr. Bailey said the building encroaches on the 46 High Street property. Permission was granted for the building to remain. Mr. Chirichiello said he would be interested in hearing how that concern will be addressed and asked the developer to be mindful of the dirt; he assumes that mountain of dirt will not remain on the lot. Mr. Bailey noted several of the abutters encroach on 46 High Street. There is a stockpile of material on the lot. If the abutter's shed has been removed from the 46 High Street lot, he will update the plan to reflect that. Mr. O'Connor advised snow removal is a concern for him. He observed the HVAC system for the apartment building on the abutting lot is low to the ground on that side. There are methods available to protect the systems from snow.

Mr. Chirichiello commented he is sure the applicant wants to be a good neighbor and will work with the Board and the neighbors with regard to buffers. Mr. Bailey noted this is a residential

zone with single family homes. The lots in this development are larger than the average in the neighborhood. Buffering is an item that is on the table.

Mr. O'Connor asked if abutters were allowed to attend the site walk. Attorney Germaine said they had no objection to the abutters attending, however the Chair needs to determine what will be allowed and what will not. Mr. O'Connor advised the public should bring their questions and comments to the next meeting. The site walk notes will reflect the Board discussion and questions. Attorney Germaine felt that was appropriate.

Ms. Levin asked if the plan will be updated to show the removal of the shed, etc., prior to the site walk as well as the address corrections for 2 and 8 Ash Street. Mr. MacEachern said the plans will be finalized, updated and corrected before any recording can occur at the registry, if the plan is approved.

Motion by MacEachern to continue the hearing to May 15, 2018, seconded by Bartkiewicz.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Mr. O'Connor advised that during the site walk on May 11, 2019, abutters may attend and ask questions, but their questions will not be documented and they should bring their questions back to the next meeting. Mr. Sioras suggested Board members park at 19 Elm Street for this site walk.

**Public Hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Section 165-32, General Commercial District to add Medical Office as a permitted use.**

Mr. Sioras provided the following staff report. The General Commercial zone allows Professional Office. Staff suggested adding Medical Office as a permitted use, similar to what was done on Tsienneto Road. Medical office was always considered a use under the term 'professional office' until it was given its own definition. The parking requirements are different for Medical Office and Professional Office. The intent of the change is to clean up the zone. Given the construction of Exit 4A and potential interest along that route on Folsom Road which is zoned General Commercial, it would be better to clean up the language now so that nothing is left to interpretation.

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

There was no public comment.

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

Motion by MacEachern, seconded by Bartkiewicz to amend Article VI, District Provisions, Section 165-32, General Commercial, to add Medical Office as a permitted use and to forward same to Town Council for their review and approval.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

**Public Hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Section 165-30, Zoning Map to move 20 properties from MHDR and 1 property from GC to the Office Business District.**

Mr. MacEachern stated after the public hearing discussion he will suggest the Board hold a site walk. Everyone would be invited. He is aware residents met with Councilor Chirichiello at the Master Plan meeting to discuss this change.

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

Tom May, 1 Valley Street, advised he has a letter signed by 63 residents who live in the area of Valley, Aiken, Clark, and St. Charles Street. {A copy was placed in the file}

Mr. May read the following into the record.

Dear Planning Board Members: We the following residents of Aiken St, Valley St and Clark St (St. Charles St. added), hereby state the following. In reference to the proposed amendment to move over 20 parcels of land on Aiken St., Valley St., and Clark St., from MHDR to Office Business District, please be advised that we strongly object to this proposal.

Given the fact that this action will adversely affect the amount of traffic on all these roads and the fact that there are no sidewalks on [any of them] all three narrow streets, we feel that a clear and present danger exists that may potentially increase the possibility for traffic accidents on these streets.

Currently vehicles speed on Aiken Street. Drivers use Aiken St. as a short cut to avoid the traffic light on the corner of Fordway and West Broadway. We have on many occasions over the years contacted the police department informing them of the excessive speed occurring on these streets. We feel this proposal will only increase these incidents.

There are a number of residents who walk their dogs, and the fact that there are no sidewalks on any of these streets, there exists an increased danger to not only the residents but their pets.

This has been a close knit residential community for years and we see no benefit to the residents or the town to change this area to commercial. The lower section of Aiken Street does not lend itself to any type of commercial development. The homes are situated too close to each other and they do not have any off street parking to speak of. Parking on Aiken St. would only increase the potential for traffic accidents. Five or six cars parked on the street

back to back will create a nightmare as it would effectively create a one way street. With on street parking two cars traveling east and west on Aiken St. would not be able to get through as the road is too narrow to allow for two way traffic.

The impact of additional lighting for any business located on Aiken St. will destroy the neighborhood as it presently exists. The homeowners located on the southern side of Aiken St will also be adversely affected by the increase in traffic and lighting. There is also a major concern that their property values may be devalued.

As you may know, several years ago a young child was killed in a traffic accident on Aiken St. Additional traffic will only increase the potential for pedestrian accidents. You may also be aware traffic has significantly increased with the construction of the condos on Ela Avenue. There have been several accidents at the intersection of Aiken St and Valley St. [The hydrant on his property was taken out by an accident.] Adding additional traffic to these narrow roads will only increase the potential for future accidents. Likewise, there have been several accidents at the intersection of Clark St and Aiken St. [A car overturned at that intersection.]

In short, we respectfully object to this proposal and ask the planning board to reject this proposed zoning amendment.

Ralph Valentine clarified the letter was signed by residents and not land owners in the district.

Mr. May stated he moved to Derry in 1979 and to this neighborhood in 1981. His neighbor, Mr. Madden, has lived here for 55 years. This is a stable neighborhood of older homes; the landowners take pride in their ownership. There is no benefit to putting a business on Aiken Street. The Board is proposing to expand the zone on one side of Aiken Street only. If a business goes in, it will adversely affect the properties on the other side of Aiken Street. He asked the Board to not pass this amendment. The neighborhood does not want this amendment.

Mr. O'Connor advised Board members would receive a copy of Mr. May's submittal from staff.

David McClane, 9 Aiken Street, appreciates the difficult position in which the Board finds itself and understands that planning for the future of the town is a not always easy. He thinks it is impractical to think that his lot would be a business. There is a mountain in his backyard a few feet outside the backdoor. There is little chance to combine properties on Aiken with those on Broadway. This does not make sense. They would need to be very small businesses. He would recommend a change like this to take place closer to the center of town where the land is more flat, such as near Oak, Park, Grove Streets and Wilson Avenue. There is more space there and he felt it would promote more of what the Board is looking for. He hopes the Board will consider what has been offered this evening.

Don McLaughlin, 4 Valley Street, stated he has lived here for over 24 years. He is against this change to something they don't recognize. There are locations in town available to business in established areas. What kind of study was performed to prove this change is a benefit to Derry and this neighborhood? Why does the Board think this would work here? Who filled out the rezoning request? Where did this change come from? How long have these plans been in place?

Why are the properties on the other side of Aiken Street not notified? Was it purposely hidden from them? His home is located across the street and will be affected. With all the empty lots in town, he is frustrated changes were initiated in this neighborhood that is not interested in changing. The neighbors have lived here a long time and contributed to Derry. Just because the homes are smaller and are not on acres of land does not mean the neighborhood is disposable. He does not want to live in a neighborhood zoned for businesses and believes this change is being pushed by non-residents and he does not believe they should dictate the quality of life of the neighborhood.

Joseph Pongratz, 9 Fordway, advised he just moved here. Derry was not their first choice but as they learned more about the town and area, they loved it. He will not be directly affected by the change, but to have the potential of a commercial business located across the narrow street is heartbreaking. They want to raise their children in this nice neighborhood. He would like to see more commercial and office space in town but not in this area, especially at the expense of property owners. That should be a consideration. Aiken Street does have higher speed traffic. Different zoning may increase traffic and create more issues.

Mark Vagos, 16 Aiken Street, has lived here for 32 years. He feels he will be impacted if this change goes through. It seems as though people feel like Aiken street is a country road. It is a busy road. Morning and evening commuter traffic can be heavy. He performed his own traffic count. On Tuesday, April 2, between 5:00 and 6:00, traffic came off West Broadway to St. Charles and Aiken Street to Fordway. He counted 264 cars. On Thursday, April 4<sup>th</sup> between 4:30 and 6:00 he counted 160 cars during the first hour and 242 cars by the end of the hour and a half. This is a lot of traffic that can be dangerous. This is a Class VI highway. Aiken Street is not the same width for the entire length of the road. At Clark and Aiken Street there is a hill and the road narrows to 21 feet, 2 inches. In the middle of the hill, the road narrows to 18 feet, 4 inches. At the bottom of the hill, the road is 17 feet, 3 inches wide. He brings this up because people need to be cautious of cars going up and down the street. Because of the blind spot, you can't see people coming up and down the hill; this is very dangerous. When residents park on the side of the road at the hill, only one car can pass in that area.

Geraldine Vagos asked why no one answered Mr. McLaughlin's question about where this proposal came from? Mr. O'Connor explained zoning changes can come from the Economic Development Committee, Economic Development Director, or the Board itself. Mrs. Robidoux said it was initiated by the Economic Development Department which includes Beverly Donovan and Mrs. Robidoux. Ms. Vargas asked if the Department received a recommendation to bring this up or did it come from the two of them. Mrs. Robidoux explained this area is designated an Opportunity Zone. The Economic Development office is looking at all areas of the Opportunity Zone; not just this area. They are looking at places where opportunities are available in town to equalize the tax rate. She believed Mr. Caron would discuss this later in the meeting. When she and Mrs. Donovan looked at this area, they saw an opportunity for small businesses to come in and increase the business district. This is an area that is near Exit 4.

Ms. Vagos advised she has been a teacher for 23 years. The homeowners met as a neighborhood when they heard there was a proposal to rezone the north side of the neighborhood. They organized and discussed their concerns. Most have lived in this neighborhood for 25-55 years

and have raised their children here. In order to spare repetition, the people speaking this evening represent not only their personal feelings but the concerns of the others in the Aiken Street neighborhood. They would like to know why did the town send notices to the homes on only one side of the road. All of the neighborhood will be affected by this proposal. Mr. O'Connor advised the notices were sent per the current rules and public notice is also published in the newspaper and the libraries. Ms. Vagos believed an "abutter" was someone who is an owner of an adjoining property. She noted there is a concern about the safety of the Aiken Street neighborhood. The rezoning will only increase danger to pedestrians and will affect both sides of the road, not just one. There is a lot of traffic on Aiken Street now and this will increase the amount of traffic. There are no sidewalks for the school children to walk to their bus stops. Commuters pass through while children walk to the bus stops. It is dangerous in the winter when the road has snow drifts. Residents walk their dogs on this road. One resident is legally blind and will not walk on the street without sidewalks. The Rail Trail is three blocks away but difficult to get to with traffic. If the neighborhood was impacted with businesses their quality of life will change for the worse. They would need to walk their pets elsewhere and walk their bikes to the rail trail. It would not be a safe neighborhood; is the Board considering the health of the neighborhood? The proposal to tear up a neighborhood so a business they don't need can destroy it with cars, noise, buildings and smells, is ridiculous. The Toki family purchased a home on Valley Street when it was a dead end. The town had promised it would remain a dead end and then it was connected to Ela Street, leading to condominiums and apartments. Can the homeowners trust the Board will walk the neighborhood and treat the proposal as if it was their own neighborhood and come up with a proposal that does not affect the quality of life? Will the entire neighborhood be notified in the future of potential changes?

Mrs. Robidoux explained the RSA states notice is to be sent to the affected landowners, which meant the landowners of the properties whose zoning is proposed to change. Ms. Vagos felt "affected" meant those that would feel the "effects" of the change. {A copy of Ms. Vagos' notes were provided for the file} Mr. Vagos asked if the properties were changed to OBD, would that affect the property values of the lots that remained residential and did not change. Mr. O'Connor stated he was not a real estate agent and could not answer that question.

Linda McLaughlin, 4 Valley Street, stated she is a real estate agent. This proposed change is a big concern for them and the neighborhood. As a local realtor she is aware a high traffic location is not appealing to home buyers and will hurt the residentially zoned homes. A property on a busy road with high traffic will always be valued lower than a comparable property in a quiet neighborhood. Mr. Chirichiello felt it depended more upon the buyer. Ms. McLaughlin stated the neighborhood is private and quiet except when it is used as a cut through. She deals mainly with residential listings but can't comprehend why the Board would think Aiken Street would be attractive to businesses. There are long waits in this area during commuter time. It has been said the town is trying to bring business to the downtown. Anyone coming to a business on Aiken Street is going to do their business and leave; not stay in the area and go downtown. There is no lack of available commercial property for lease or sale in Derry so the idea that this change opens the door for commercial use is ludicrous. There are numerous empty lots that can be built upon which would add value to Derry. This change makes no sense. The neighbors will not take advantage of the change in zoning and open a business. If the reality is that two to three businesses on West Broadway want to expand, they will be disappointed. No one will sell to the

business owners. There are other locations that can fill the growing needs of those companies. This is a neighborhood. Not one street located off of East or West Broadway is zoned OBD; streets off of Crystal are not zoned Central Business District. She is asking, what is the reason for this change? She suggests the Board concentrate on the empty lots rather than this well-established, much loved neighborhood.

Mr. O'Connor asked if it has ever been considered to make Aiken Street a one way street? It has not. Ms. Joslin said they have been denied sidewalks and crosswalks when they requested them by the Highway Safety Committee.

Mr. Chirichiello said since Exit 4A became a reality, there have been some discussion about changes in some areas with regard to one way streets and traffic flow. These smaller streets are impacted. The roads are not meant for that kind of traffic. One the exit comes into town, it benefits the town to look at this.

Delores Desiderio, 19 Aiken Street, purchased her home three years ago. She thought it was a nice, quiet neighborhood. She built a nice ranch, but this proposal may create an eye sore for her. This is not fair to her. If the area is zoned commercial, the value of her home will decrease. She could not ask for better neighbors, but she is disappointed in the town. Traffic will increase with the addition of business. This is not fair to her or the neighbors. She hopes the Board does not pass this. She does not feel like she should have to leave her home. Shawna Desisto said if Aiken Street is turned into a one way street, it will trap residents into the neighborhood; they will not be able to turn left off Valley or Clark onto West Broadway at any time of day. Mr. Chirichiello reiterated the town would look at the traffic patterns once Exit 4A is constructed; the town is not committing to anything.

Mr. O'Connor was asked to clarify the definition of "abutter". He stated it is someone right next to the building.

Chris and Lisa Joslin, 15 Aiken Street, provided pictures of their lot before and after the retaining wall was constructed on the back property line. Ms. Joslin presented a petition requesting the Board vote no, signed by 24 of the neighbors. {Document and photos were placed in the file} Ms. Joslin stated they have lived here for 34 years and love the community. They are asking the Board to vote no. This is an incredibly wholesome, old fashioned community. They are asking the Board to hold a site walk. On February 6, 2019, there was some discussion about apartments and condominiums on Aiken Street; that is not correct. The twenty properties proposed for rezoning are single family residential. All of the owners have pride of ownership. If the area is rezoned, the pride of ownership would go away and it would create an atmosphere like on Birch Street.

In 2006, the Office Business District was created and she had several concerns then with how it was dealt with and she has severe concerns now with how OBD could be expanded onto Aiken Street. The town has no follow up to make sure business owners are following the rules and regulations set by the Board's as the years pass.

Ms. Joslin discussed the retaining wall that was constructed by Northlight Glass on the rear property line between their two properties and the required buffer that was not completely constructed and since then, removed. The owner of Northlight Glass purchased a small property between the lots, removed the residential buffer and began construction of the retaining wall. She included details with regard to the construction of the retaining wall, lack of permits and oversight by the town, and her belief that the integrity of the wall is in jeopardy. She expressed her frustration with the town with regard to the lack of response to her concerns and inquiries about the wall. She is asking the Board to keep the land residential in this area, especially the land on which that wall sits. What happens if the change occurs? That should be discussed during the site walk. Mr. O'Connor advised he would look at the wall during the site walk but the Planning Board does not have authority to discuss the retaining wall and the wall does not have anything to do with the rezoning in the area. Mrs. Joslin said the wall exists now; if the property is rezoned to OBD a business can move onto the residential lot and it will all be grandfathered by the regulations.

Justin Marsh, 10 Valley Street, purchased because the neighborhood was quiet and in a good school district. He likes the neighborhood the way it is. Why is the town making this change? He would like the area to remain as is.

Marcia Toki, 5 Valley Street, questioned the definition of "abutter". When she applied for a shed on her property, she had to notice all the people around her which included people to left, right, behind and across the street. If the town was required to notice abutters for this change, why was she not included? Does the term "abutter" change? Mr. Sioras explained under state law for planning or zoning, "abutter" is defined as any property that directly touches the property under review or directly across the street. For the Derry Planning Board hearings, "abutter" is extended to property within 200 feet of the affected property. For zoning changes, the state law states the Board notifies the property owners who will have their property potentially rezoned. That is how the original list was generated. The Planning Board may elect to notify other people later. After the site walk, the Planning Board may decide to go beyond the current bounds and then there would be further notifications. Mrs. Toki advised she applauds what the other residents have already stated.

Richard Desisto, 18 Aiken Street, has lived there since January of 1986. He felt it was deceitful that the rest of the neighborhood was not notified. The Opportunity Zone is a smoke dream. If a business built here, there are no employees to work there. This whole thing is for the benefit of a few business owners to allow them to expand on more property. Northlight Glass built a wall that will come down. He hopes when that happens the town is taken to the cleaners for lack of oversight. He was told last week their homes look blighted. He takes offence to that statement. These homes are historically important as they were built by the French immigrants who came to work in the mills. He feels Mrs. Robidoux is being less than honest in her remarks. He discussed the paper road (Lowell Street), and suggested the town just make that a wetland.

Town Councilor Richard Tripp, Windham Road, advised he was asked to attend the hearing by his constituents. He asked the Board to consider the list of permitted uses noted under Section 165-34. This is a small list of uses: business office, single family dwellings, offices with sale of products and retail business with restrictions. He understands the Board is separately holding

discussions about expanding the list of permitted uses. People have discussed previously that the town is interested in expanding business. The Board may want to look at the feasibility of expanding in this area. The road is 22 feet wide, and expansion may be an issue in areas where the road width decreases to 17 feet. The topography is also an issue. If the Board wants to expand Broadway to Aiken, there is a big hill there. He assumes there will be another public hearing and that any questions raised will be addressed at that hearing.

David Caron, Town Administrator for the Town of Derry, advised he was speaking in place of the Economic Development Director, Beverly Donovan, who was one of two New Hampshire representatives at the White House today, where discussions were taking place with regard to Opportunity Zones. He wanted to provide an explanation of how this proposal came to be. It is the responsibility of staff to the Town Council to look at possible opportunities in the community. The Governor designated twenty-seven Opportunity Zones in New Hampshire. This particular census tract was selected in Derry by the Governor. The tract is essentially the south side of Broadway, down Birch Street and Kendall Pond. The other Census Tract that was eligible was to the north of Broadway. Staff looks at what may work for the community. Staff presents the proposal to the citizen body, in this case the Planning Board which is made up of residents. The Planning Board decides if the proposal makes sense for the community. Sometimes it does; sometimes it does not. A challenge for all communities is the transition areas between commercial and residential uses; those can be tough to manage. Exit 4A will be constructed in the next 18 months. This exit will be a reality by the spring of 2023. It will relieve some of the commuter traffic on Broadway, and it is believed that will create some economic opportunities. Staff looks at the zoning of properties and it is part of the job to look at what might work. The Planning Board decides if it will make sense for the Derry community. He believes the Board will take a site walk. There are some merits and some concerns. The Planning Board will weight those and make a decision. The town is looking at all pockets of land in the Opportunity Zone, including Abbott Court. The town received a Community Development Block Grant to look at that area and along the Rail Trail. That is another area the town is looking at. The Opportunity Zone, which was passed at the Federal level for tax relief, provides incentives for long term investments on the Federal Capital Gains Tax. There is a ten year period to bring stabilization to the area; that is the goal of the Federal Opportunity Zone process. Staff will continue to bring proposals to the Board; if the Planning Board supports the proposal, then the proposal is brought to the Town Council which makes the final policy decision as to whether this makes sense for Derry. Mr. Caron advised he does not live in Derry, and appointed a resident to act as his designee to the Planning Board because he feels it is important for the citizens of the town to make the decision as to whether a proposal presented by staff makes sense or not.

There was no further public comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review came back to the Board.

Mr. MacEachern suggested the Board hold a site walk in the Aiken Street area. Ms. Davison said there had been many comments about the commuter traffic and suggested the Board walk the area after work so they can observe that.

Motion by MacEachern, seconded by Chirichiello to schedule a site walk for Wednesday, April 24, 2019, beginning at 6 p.m.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Motion by MacEachern to continue the public hearing to May 1, 2019, seconded by Bartkiewicz.

Levin, Chirichiello, McPherson, Grabowski, Davison, Bartkiewicz, MacEachern, and O'Connor voted in favor and the motion passed.

Mr. O'Connor advised there will be no further notice of the public hearings.

### **Workshop**

Workshop #5 – to discuss the permitted uses in the Office Business District (Continued from April 03, 2019)

Mr. O'Connor suggested it might be beneficial to hold off on the workshop discussion until after the Board holds the site walk.

The discussion will be tabled to the next meeting.

### Other

Mr. O'Connor thanked Mr. MacEachern and Mr. Granese for the hard work they have provided to the Board over the years and hoped that they would continue to serve the Board.

Mr. O'Connor suggested the new members join PlanLink which is a list serve offered through the Office of Strategic Initiatives. A link will be sent to the Board members. There is a good deal of information made available to the members through the New Hampshire Municipal Association and there are very good resources available on that website. The Office of Strategic Initiatives also publishes a handbook that is extremely useful, and they publish the annual legislative updates as well. He asked members to become familiar with RSA 91-A as it is very important with regard to how the Board conducts its business. It would behoove the members to attend the training sessions that are offered periodically during the year such as the Law Lecture Series.

There was no further business before the Board.

Motion by MacEachern, seconded by Chirichiello to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:45 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_