

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 05, 2021, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the majority of the members of the Board present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice Chair; David Nelson, Secretary; Brian Chirichiello, Town Council Liaison; Lori Davison, Mark Connors, David Clapp, Doug Danzey\*, Members

Absent: Dave Granese, Randy Chase

\*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Beverly Donovan\*, Economic Development Director; Craig Lazinsky\*, Net Zero Committee.

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor advised that although the Stay at Home order has expired, Emergency Order #12 as issued by Governor Sununu waives the requirement that all members be physically present. Members can attend the meeting electronically. He 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.

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the April 21, 2021, meeting.

Motion by MacEachern, seconded by Connors to approve the minutes of the April 21, 2021, meeting as written.

Clapp, Connors, Danzey, MacEachern, Nelson, Davison, and O'Connor voted in favor; Chirichiello abstained, and the motion passed.

### **Correspondence**

Mr. MacEachern reported Mrs. Davison has notified the Board that she will be stepping down as Vice Chair. She will be retiring at the end of the week and would like to leave post-career options open. She will remain on the Board as a regular member for the near future. Board

members congratulated Mrs. Davison on her retirement, noting she has been a great asset to Board and thanking her for her years of service.

### **Election of Officers**

Mr. O'Connor asked if there were any nominations from the floor for Vice Chairman.

Nomination by Davison to elect Jim MacEachern as Vice Chair, seconded by Chiricheillo. Discussion followed.

Mr. Connors confirmed if Mr. MacEachern was elected Vice Chairman, the position of Secretary would then be open for nomination.

Nomination by Connors to elect David Nelson as Vice Chair; seconded by Chiricheillo.

There were no other nominations.

Davison, Clapp, MacEachern, Nelson, and O'Connor voted for MacEachern; Connors and Danzey voted for Nelson; Chirichiello abstained; the vote ruled in favor of James MacEachern.

Motion by MacEachern, seconded by Connors, to elect Nelson as Secretary.

Chirichiello, Clapp, Davison, MacEachern, O'Connor, Danzey, Nelson, and Connors voted in favor and the motion passed.

### **Other Business**

#### Annual Review of Policy and Procedures – Third Reading

Mr. O'Connor advised this is the third reading of the revised Policy and Procedures for the Board. The main focus of the changes were related to training. If there are no other suggested changes, the Board can vote to accept and adopt the revised document.

Motion by Chiricheillo, seconded by Nelson to adopt the revised Policy and Procedures for the Planning Board, effective immediately.

Chirichiello, Davison, Danzey, Clapp, MacEachern, Nelson, Connors and O'Connor voted in favor and the motion passed.

#### Schedule Public Hearing – Town of Derry Zoning Ordinance, Article II, Word Usage and Definitions and Article XII, Signs

Mr. Sioras advised all changes have been incorporated into the document and the purpose this evening is to schedule a public hearing for May 19, 2021.

Motion by MacEachern, seconded by Chiricheillo to schedule a public hearing on May 19, 2021 to discuss proposed changes to the Town of Derry Zoning Ordinance, Article II, Word Usage and Definitions, to add definitions relating to types of signs; Article XII, Signs, Section 165-101.5, Signs in the Traditional Business Overlay District; Section 165-101.8, Off Premise Signs, and to create a new Section 165-101.12, Signs in the West Running Brook District.

Chirichiello, Davison, Danzey, Clapp, MacEachern, Nelson, Connors and O'Connor voted in favor and the motion passed.

Schedule Public Hearing – Town of Derry Land Development Control Regulations, Article V, Design and Circulation Standards; Article XI, Design and Construction Standards

Mr. O'Connor noted Mr. L'Heureux reviewed the proposed changes with the Board relative to the stormwater requirements. Mr. Sioras confirmed all changes have been incorporated into the document and the purpose this evening is to schedule a public hearing for May 19, 2021.

Motion by MacEachern, seconded by Connors to schedule a public hearing on May 19, 2021 to discuss proposed changes to the Town of Derry Land Development Control Regulations, Article V, Design and Construction Standards, Section 170-26, Streets; Section 170-29, Storm Drains; Article XI, Design and Construction Standards, Section 170-65, Storm Water Management Requirements.

Chirichiello, Davison, Danzey, Clapp, MacEachern, Nelson, Connors and O'Connor voted in favor and the motion passed.

## **Public Hearing**

**Planning Board SECOND hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, Subsection B, Permitted Uses, Subsection C, Area and Dimensional Requirements, and Subsection G, Parking Requirements. Continued from April 07, 2021.**

Mr. Sioras advised at the last public hearing, the Board agreed to the proposed changes which are noted in red in the document before the Board. Key discussions revolved around the studio units and how those might be calculated. Staff has suggested the following amendment. In Section 165-49.B.1.a, "The number of studio units shall be limited to 5% of the total allowable number of units for a single project. The number of allowable studio units shall be determined by calculating the total square feet of the building. The total square feet of the combined studio units shall not exceed 5% of the total building square feet. A minimum of one studio unit will be permitted per development, provided the development is comprised of more than 4 units in total. Numbers resulting in a fraction shall be rounded down to the nearest whole number. For example, if the result is 4.5 units, 4 units shall be permitted." Additionally, Mrs. Robidoux has

provided a sample calculation based on square feet so the Board can see how the calculation could be performed.

Mr. Connors clarified that in order to have at least one studio unit, there would need to be at least 5 units proposed in total in a building.

Motion by MacEachern to open the public hearing, seconded by Nelson.

Chirichiello, Davison, Danzey, Clapp, MacEachern, Nelson, Connors and O'Connor voted in favor, the motion passed, and the floor was open to the public.

There was no public comment.

Motion by MacEachern, seconded by Chirichiello to close the public hearing.

Chirichiello, Davison, Danzey, Clapp, MacEachern, Nelson, Connors and O'Connor voted in favor, the motion passed, and review of the amendments returned to the Board.

There was no Board discussion.

Motion by Nelson, seconded by Chirichiello to accept the following proposed amendments to the Town of Derry Zoning Ordinance and forward same to Town Council for review and recommended approval: Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, Subsection B, Permitted Uses, Subsection C, Area and Dimensional Requirements, and Subsection G, Parking Requirements.

Chirichiello, Davison, Danzey, Clapp, Nelson, Connors and O'Connor voted in favor, MacEachern voted no, and the motion passed.

## Workshop

### **Workshop #3: Planning Board discussion of proposed amendments to the Town of Derry Zoning Ordinance, Article III, General Provisions, to add a new section, Section 165-28.2, Solar Energy Systems.**

Mr. Sioras deferred to Mrs. Davison as Chair of the Solar Ordinance Subcommittee. Mrs. Davison advised the Subcommittee, comprised of herself, Craig Lazinsky, Mary Till, John O'Connor, and Mark Connors, met with Mr. Mackey and Mr. Wentworth in the Code Enforcement office, who provided language to the Subcommittee to ensure the ordinance complied with Life Safety and Building Codes. They wanted to make sure there were no conflicts between the proposed ordinance and the Codes. For example, on page 3, Subsection D.2 now notes, "Any Solar Collection System must meet all setback and height regulations of the Town of Derry and conform with requirements of the Building Permit and Electrical Permit applications." She noted the intent is to prevent people from having to go back and forth

between the Planning and Code Enforcement offices. They wanted this ordinance to be easy for people to navigate and provide clear rules. Craig Lazinsky added the Subcommittee strived to make this a framework to guide residents and business owners without being too restrictive.

Mrs. Davison reviewed the amendments included since the last workshop. The decibel level has been increased from 60 decibels at the property line to 80 decibels to be more in line with the Nuisance provisions.

Mr. MacEachern questioned the wording “a third party engineer” under Subsection C.d. Would that be an engineer the applicant has to hire? He did not want to add more burden to the applicant. Mrs. Davison said in this section, the intent was to make it clear that there needs to be review by an engineer and it will not be the Town Engineer doing the review. The engineer hired to oversee the solar installation could provide the appropriate report. Mr. MacEachern said he wanted to make it clear that this is not an extra step in the process. Mr. Nelson agreed with the concern; a first party would be the Town, a second party would be the applicant, and the third party would be someone else. Would ‘someone else’ be the applicant’s contractor?

Mr. MacEachern felt it should be the engineer installing the system. Mr. Connors said someone has to say the roof can handle the proposed load of the solar system and it needs to be clear this is not the responsibility of the Town’s engineer, but it does need to be an engineer hired by the applicant. Mr. Nelson suggested amending the wording to “a licensed structural engineer, hired by the applicant”. Mrs. Davison said it will not be the town engineer, but it also should not be someone handling the installation who might rubber stamp it. Mr. Nelson noted it may be that a third party engineer would be required because the person confirming the load requirements have been met should not be someone making money from the installation.

Mr. Connors commented a resident could install a solar system on his own roof, or hire someone to do it. The hired contractor would provide the calculations that say the roof is capable of handling the weight of the solar system. If the resident does the install himself, he would have to hire an outside person to conduct the review for the roof load. The ordinance should say this engineer is hired by the applicant.

Mr. MacEachern advised “third party” has legal connotations and did not believe it was the appropriate term. It should be a certified professional, hired by the applicant. Mr. Nelson said this would be a licensed engineer.

Mr. Nelson asked for clarification with regard to the definition for Solar Access. He wanted to make sure the intent is there can be no zoning action when one person’s trees grow over time and shade the neighbor’s solar array. Mr. Lazinsky thought that might be an issue for Code Enforcement. Mr. Nelson said that term is only used in the Definitions and for new developments. It does not seem to tie back to an established property. He wanted to clarify that once an array is up, a resident can’t force their neighbor to take down trees. The Board was not sure that type of request would be enforceable. Mr. Nelson advised he would like it on the record, the Board is not taking the position that someone can be forced to cut their trees later if they begin to block someone’s solar array. Mr. Lazinsky commented much of the wording in

this document came from OSI's model ordinance. Mr. MacEachern felt Mr. Nelson had a valid point, and it is not the intent of the Board to keep someone from growing trees.

The Board had no further changes, other than the amendment "third party engineer" would be changed to "licensed engineer, hired by the applicant".

The change will be incorporated, and the Board will be provided with a public hearing date at the next meeting.

There was no further business before the Board.

Motion by Connors, seconded by MacEachern to adjourn. The motion passed with all in favor and the meeting stood adjourned at 7:41 p.m.

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

\_\_\_\_\_  
Secretary

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