

The Planning Board for the Town of Derry held a virtual public meeting on Wednesday, May 06, 2020, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room.

Members digitally present: John O'Connor, Chairman; Lori Davison, Vice Chair; David McPherson, Secretary; Randy Chase, Town Administrative Representative, Mark Connors, Mark Grabowski, Jim MacEachern (7:15 p.m.), Members; Dave Granese, Alternate

Members physically present: Richard Tripp, Town Council Liaison.

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

Mr. O'Connor called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor then advised the listening public, it is possible, in light of the COVID-19 pandemic situation and the state of emergency declaration in New Hampshire, that most or all Board members will be unable to attend our Derry public meetings in person because they are concerned about getting sick, or perhaps are already sick. Governor Sununu has issued Emergency Order #16, which waives the requirement that a quorum be physically present in the meeting room. A meeting of a public body may be conducted with all or most of the members participating electronically.

To maintain the Governor's Directive that no more than 10 people shall gather, the public is not allowed into the meeting room. A phone number was being provided on the DerryCAM screen so that members of the public could listen in and participate in the Public Hearing portions of the meeting. This access number was also posted along with the agenda and posted on the exterior doors of the Municipal Center. Due to the physical absence of some members, all votes taken shall be done by roll call.

Mr. O'Connor introduced members of the Board and staff. Mr. Granese was seated to fill the vacant member position.

Election of Officers

Motion by Connors, seconded by Granese to nominate John O'Connor as Chairman.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Motion by O'Connor, seconded by Granese to nominate Lori Davison as Vice Chairman. There were no other nominations.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Motion by O'Connor, seconded by Granese to nominate David McPherson as Secretary. There were no other nominations.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Mr. O'Connor advised Mr. MacEachern has been appointed as a full member of the Board by the Town Council. There is still one full member position and one alternate position open on the Board.

Escrow

#20-09

Annual Review of Cash Escrow Accounts

The Board reviewed the status of the current cash escrows.

#11-12 T-Mobile Northeast	\$17,391.30
#14-16 Samuel Kershaw	\$44,909.84
#17-17 Bella Vista Homes, LLC	\$10,000.00
#17-36 Donahue Family LLC	\$ 3,179.36
#18-15 Kevin Coyle- 40 Chester Rd	\$16,167.60
#19-16 Linda Rutter	\$23,801.04
#19-20 DJ Development	\$ 6,804.00
#19-28 Pathway Homes	\$11,988.00
#19-41 John Lanzafame	\$10,199.52
#19-39 11 Tsienneto Rd.	\$22,777.20

Motion by O'Connor seconded by Davison to find the list of open cash escrows are held in amounts which provide adequate security for the proposed length of the projects. The amounts listed are the ending principal and interest amounts as of March, 2020. Discussion followed.

Mr. Granese asked for an explanation of the T-Mobile escrow. Mr. Sioras explained it was for the cell tower on Lawrence Road. Mr. Connors asked why there were so many escrows held going back for this duration? Some of them were established in 2011. Is there an expectation that the funds will be held for an extended period of time; do they expire? Mrs. Robidoux explained that the escrow is held until the project is complete. The funds are held to make sure there is money available in the event a developer walks away, so that the town can finish the project. For some, they have not begun the project yet. For example, the escrow for Bella Vista is to install sprinklers in the home; there is no permit for that lot yet. Mr. Connors asked if the

applicant had to come back to the town after a certain amount of time. Mr. L'Heureux said he is aware Peter Kershaw intends to complete his project. Sometimes the projects are done in stages and it takes several years for a it to be completed. The town does keep on top of the cash escrows. Contractors commit to do the work and then can't meet timetables, so construction gets pushed out.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

[Note: Mr. MacEachern was present for the meeting at this time but experiencing technical difficulties with the audio feature.]

Mr. O'Connor welcomed Mr. Tripp to the Board as the Town Council Liaison, and Mr. Chase back to the Board as the Town Administrative Representative.

Minutes

The Board reviewed the minutes of the March 04, 2020, meeting.

Motion by Granese, seconded by Davison to approve the minutes of the March 04, 2020, meeting as amended.

Chase, Grabowski, Davison, Connors, Granese and O'Connor voted in favor; McPherson and Tripp abstained. The motion passed.

Correspondence

None.

Other Business

Review of Planning Board Policies and Procedures – First Reading.

Mr. O'Connor requested the Board members review the Policy and Procedure document. Any changes should be sent to Mrs. Robidoux or Mr. Sioras to incorporate for discussion at the next meeting. Comments should be forwarded no later than Thursday, May 14, 2020.

Permission to Sign Plans

Mr. O'Connor explained that due to the social distancing restrictions currently in place, the ability to sign mylars for applicants has been curtailed. He read the following into the record.

WHEREAS, a state of emergency has been declared in the State of New Hampshire because of the COVID-19 pandemic; and

WHEREAS, Governor Sununu has issued Emergency Order #16, which waives the requirement that a quorum be physically present; and

WHEREAS, the May 06, 2020 meeting of the Derry Planning Board is taking place electronically; and

WHEREAS, the business of the Board must continue to facilitate a healthy economy once this state of emergency is lifted

NOW, THEREFORE, as Chairman of the Derry Planning Board, I authorize Planning Board staff, namely George Sioras or Elizabeth Robidoux, to execute mylars and Planning Board documents in my name and that of the sitting Secretary, for the duration of this state of emergency, until such time as the ban on public gatherings of more than 10 people is lifted in the State of New Hampshire.

Mr. O'Connor noted this will allow applicants the ability to get plans recorded.

Request to allow an additional three months to comply with conditions of approval

Mr. O'Connor noted the requests would be read as one, unless there were any objections.

Mr. Connors asked given the current state of construction because of COVID -19, would the Board continue to add extensions for applicants? Mr. Sioras explained these plans are already conditionally approved and the mylars will need to be signed once the conditions are met. Some will expire soon. Given the current virus situation, staff felt it was advisable to grant an additional 90 days to the existing conditional approval so that the applicants can meet the conditions. Some need to work with their banks to get escrow.

Motion by Connors, seconded by Granese to approve a three month extension of the conditional approvals granted for the following projects: PID 35004, 111 Franklin Street Ext., Paul the Plumber, for a commercial site plan; PID 06060, 64 Lane Road, Joanne Curran for a two lot subdivision plan; PID 29046, 46 High Street, High Meadows, LLC, for a three lot subdivision plan; and, PID 08280-004, 23 Ashleigh Drive, Yvon Cormier Construction/Prime Storage for a commercial site plan amendment.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Mrs. Robidoux noted an abutter to one of the projects listed had "raised a hand" during the Board's discussion of the extension requests. She did not want the member of the public to feel ignored. For administrative items like this, the Board does not take public comment.

Public Hearing

**Jeric Realty, LLC
PID 04129, 16 State Route 111
Acceptance/Review
Three Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a three-lot subdivision at Brookstone Park, located in the General Commercial district. It is the owner's intent to have each of the three existing office buildings on the parcel to be on their own, individual lot. No new development is being proposed. All town departments have reviewed and signed the plan. There is an extensive waiver request letter from SFC Engineering in the packets. Staff would recommend approval of the waiver requests and the subdivision plan.

George Fredette, of SFC Engineering, joined the virtual meeting and presented for the applicant. The property is located in the southeast corner of Derry and abuts the Atkinson town line. The buildings were developed in the late 1990s/early 2000s. The lot to be subdivided this evening was created in 2003 when the three existing buildings were separated from the event center and golf course. The driveway access to the golf course goes through the new parcels. The parent lot is a 7.63 acre lot and is built out with three buildings and associated parking. Mr. Fredette noted the location of the event center and the three buildings

Building 2 has its own well and leach field. Buildings 3 and 4 share a well and leach field. All of the buildings have propane, overhead power, and underground utilities. The location of the underground utilities is approximate; when they were installed, good records were not kept of the exact location. There are existing easements in place.

The well easement for Building 2 has a protective radius that extends onto Lot 3 which is the golf course lot. The well for Buildings 3 and 4 also has a protective radius that extends onto Lot 3.

There is a primary access easement off Route 111 that turns into this project over Lot 3. The easement services all three buildings and one building located in Atkinson (also owed by Jeric Realty), just over the town line. The second access easement runs through the lot and is the other access to the event center. There is a protective well radius on the lot that is provided for the well located in Atkinson.

The purpose of this plan is to subdivide the lot into three lots so that each building sits on a single lot, rather than three buildings on one lot [creating Lots 4, 5 and 6]. The lot calculations show all lots meet the minimum lot size, frontage and parking requirements. The lot sizing chart explains why there are some irregular lot lines. The pump house will be removed from the first lot as it has been abandoned.

Each lot has been assigned a parcel ID number and a street address from Assessing and the Fire Department. Those will be in place once the lot has been subdivided.

The previous approval (2003) was for a three building campus with shared parking. This plan will create a new access easement so that Lot 5 can go through Lot 4. Lot 6 will need access through Lots 4 and 5. There is a triangle area shown in the lower right-hand corner of the subdivision plan. This shows the parking easement area that benefits the lot in Atkinson for parking and access. The well easements will be extended to the new lots. It would be difficult to define the underground utilities by metes and bounds, but they are noted on the plan and defined by their location.

An easement summary has been provided in the plan set. There is a sign easement on Lot 4 so that the other buildings can be identified. There is a water service easement from Lot 5 to service Lot 6. A sewage disposal system on Lot 6 is in use by Lot 5 today; that also has an easement. There is a fire pump house and cistern on Lot 5 that supplies water for the sprinkler system for all of the lots, including the lot located in Atkinson. There is a landscape irrigation easement. The pump house on Lot 3 waters Lot 4 and part of Lot 5.

Mr. Fredette explained because there are so many easements and interdependencies between the property owners, draft covenants have been prepared and submitted to the Board. It outlines the maintenance and cost sharing requirements and other items, such as plowing of the access, that shall be shared between the three lots.

Motion by Granese, seconded by Davison, to accept jurisdiction of the three-lot subdivision application before the Board for Jeric Realty, LLC, 16 Route 111, PID 04129.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Motion by Granese, seconded by Connors, to open the public hearing.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

The Board paused to allow members of the public to phone in with comments. There was no public comment.

Motion by Granese, seconded by Grabowski to close the public hearing.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, Granese and O'Connor voted in favor and the motion passed.

Mr. MacEachern was at this point able to be heard by the other Board members.

Mr. Fredette reviewed the requested waivers. It was noted during the discussion that the waiver recommendations outlined in the staff report were not in the same order as presented by Mr. Fredette.

Mr. Fredette explained the first group of waivers requested (from LDCR Section 170-24A.4, Benchmark; 170-24.A.11, topographical data; 170-24.A.12, High Intensity Soil Mapping Survey; 170-24.A.14, drainage calculations and 170-24.A.15, erosion and sediment control), do not have the effect of nullifying the purpose of the regulations as the physical characteristics of the existing lot is not modified with this plan. There is no new development proposed. Some of these items have been field verified recently.

Mr. Connors asked if this was to be a subdivision of a lot without existing features, would these items be required to be included, and would the applicant be able to meet those requirements? Mr. L'Heureux said in this case where everything is preexisting, it is difficult to meet the criteria for a new subdivision. Mr. Connors did not think that the subdivision as proposed would meet much of today's criteria. Mr. O'Connor noted the original development of the lot occurred in the 1990s. Mr. L'Heureux said at that time, the applicant did meet those plan requirements. It is harder to meet them with this type of subdivision, which is not one that the Board normally sees. The plan does meet the standards of the regulations as best it can. It would be important to note that two corner bounds for Lot 4 would need to be included on this plan; that is one of the proposed conditions of approval.

The next waiver is from LDCR Section 170-25.A.5, which requires each lot have access through its own frontage. The access to the three new lots is through a driveway permit issued by NH DOT. In that approval, DOT specifically stated that 'one driveway entrance was permissible' and 'other access to the highway from the premises is to be prevented'. During the TRC discussion, the Police Department supported this waiver request. A similar waiver requested was granted by the Planning Board in 2003 when the existing lot was created.

Mr. Connors noted the access through these lots is also the access to the lot located in Atkinson and it appears to be the only access for the Atkinson lot. There is not really a road, it is access through parking lots. Would that be allowed today and did the fire department sign off on it? Mr. L'Heureux stated the access is built to the town standard of 24 feet wide and it meets all of the town requirements.

Mr. Tripp had a question with regard to the covenants. Will a condition be attached to the sale of any of these lots that the new owner is held to the covenants? Mr. O'Connor stated yes, and he would request that an additional condition of approval be added that the town legal counsel review the draft covenants prior to them being executed.

Mr. Fredette discussed the next waiver request from LDCR Section 170-62.A.1 to allow a common driveway for more than three building units. The common driveway will service five building units and will allow the existing condition to continue.

The next waiver is to allow the existing access in place of constructing a new one (LDCR Section 170-62.A.4). The access is 24 feet wide and currently operates safely. A legal access

agreement will be put in place with the covenants. The access drive will remain as it is and there will be no physical changes to the physical characteristics. Mr. Fredette confirmed that maintenance of the access drive is covered in the covenant document.

Mr. MacEachern asked if there are no tenants in Lot 4 and 5, who is responsible for making sure the access is plowed for Lot 6. Mr. Fredette explained that whoever owns the three lots has a shared responsibility for the access, whether there are tenants in the building or not. Snow removal is required so that the Fire Department can safety access all the buildings on the lot. Mr. MacEachern stated he agreed with Mr. O'Connor there should be legal review of the covenants.

Mr. Fredette advised they are asking for a waiver from LDCR Section 170-63.A.2 because they can't meet the minimum setback of 10 feet to the drive aisles from the property lines as a result of the way the lots are currently configured. Mr. Connors noted the total square feet of the buildings on the plan and questioned whether the current parking calculations could be met or not? There are parking spaces in Derry that service the building in Atkinson. Were those spaces also used for the parking calculation for Building 4? Mr. Fredette said he did not know the answer to that question, but for Lot 6, there are 50 spaces required and they have provided 81. The daycare use on the Atkinson lot has enough spaces for its use and meets the Town of Atkinson requirements. The parking easement area in Derry benefits the lot in Atkinson, but taxes for that area are being paid to the Town of Derry. The daycare users have permission to park there. Mr. Connors questioned what appeared to be a property line through parking spaces which was clarified to be a painted island.

Mr. Fredette advised the last waiver request is from the requirement that they provide a raised, landscaped island ten feet in width between groupings of 20 or more parking spaces (LDCR 170-63.A.7). The only place that would likely occur would be in front of Building 3. This is an existing condition. There is existing landscaping on the property including a large water feature and the majority of the buildings cannot be seen from Route 111 because of the existing trees.

Mr. O'Connor acknowledged that lot is nicely landscaped. Mr. Connors commented he felt there was room to add a landscaped island to the plan. Mr. L'Heureux advised he had no further comments.

Motion by Granese, seconded by Tripp, to grant a waiver from LDCR Section 170-24.A.4, Benchmark referencing USGS datum; 170-24.A.11, topographical survey information; 170-24.A.12, HISS Mapping; 170-24.A.13, Wetland Mapping; 170-24.A.14, Drainage Calculations; 170-24.A.15, Erosion and Sediment Control; 170-63.A.2, parking, interior drive aisles, access ways 10 feet from side and rear property lines, 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.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, MacEachern, Granese and O'Connor voted in favor and the motion passed.

Motion by Granese, seconded by Grabowski, to grant a waiver from LDCR Section 170-25.A.5, driveway access through lot's own frontage; 170-62.A.1, common driveways permitted for up to three building units, 170-62.A.4, driveway construction specifications; 170-63.A.7, curbed, raised, landscaped islands, as after review of the waiver request the Board finds that 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, McPherson, Grabowski, Davison, Connors, Tripp, MacEachern, Granese and O'Connor voted in favor and the motion passed.

Motion by Granese, seconded by Grabowski to approve, pursuant to RSA 676:4, I, completed application, with the following conditions: subject to owners' signature; subject to onsite inspection by the Town's Engineer; establish bounds at the lot corners (see Lot 004); the sign for the entrance to the lots must include the address numbers for the lots, to include the lot located in Atkinson (i.e., Brookstone 14-72, Route 111); submission of a fully executed copy of the covenants and Easements related to the subdivision; review by Town of Derry legal counsel, cost born by applicant, shall occur prior to execution of the Covenant and Easements; establish escrow for the setting of bounds or certify the bounds have been set; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-24.C; note approved waivers on the plan; subject to receipt of state or local permits relating to the project; the above conditions are met within 6 months; snow and ice removal shall be performed by a Green Sno Pro certified contractor following Best Management Practices for the application of de-icing materials; a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement as well as submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. Discussion followed.

Mr. Connors confirmed that once legal reviews the covenants, it will be recorded after all changes have been made; it does not need to come back to the Board.

Mr. Chase noted that the draft covenants appeared to be missing a few pages and he wanted to be certain that maintenance of the wells, septic and the fire pumps are included in the covenants and that the maintenance costs would be shared. Mr. Fredette explained the covenants lay out the cost sharing provisions for maintenance and repair of those items (Items # 5 and 6). Mr. Sioras recalled during the TRC discussions, Lt. Stanhope had stated, "The fire service pump is the water source for the sprinkler systems.....it has to be maintained and that needs to be clearly defined and documented." Mr. Chase wanted it clearly reflected in the minutes or conditions that the cost sharing of the maintenance of fire service pump and wells had to be clearly noted in the covenants and maintenance agreements. Mrs. Robidoux noted the town attorney will receive a copy of these minutes for the review of covenants.

Chase, McPherson, Grabowski, Davison, Connors, Tripp, MacEachern, Granese and O'Connor voted in favor and the motion passed.

Mr. Connors noted there was a discussion at the recent Town Council meeting with regard to the potential sale of 12 Peabody Road. He had concerns with regard to the how that came about and believes the Planning Board should join the Town Council in drafting a letter stating the Board would also like this investigated. Mr. O'Connor said he did not want misinformation to be presented. Mr. Sioras reminded the Board that any member of the Board who voiced an opinion about the use of the property would have to recuse themselves from any public hearing on the matter. It is possible that a use for that property might be before the Board under RSA 674:54. Mr. O'Connor suggested the Board members familiarize themselves with that statute. He is on the Executive Committee at the County and is maintaining his neutrality. Mr. Connors acknowledged that if this did come before the Board it would be for information only.

Motion by Granese, seconded by MacEachern to adjourn. The motion passed with Chase, McPherson, Grabowski, Davison, Tripp, MacEachern, and Granese in favor and Connors opposed. The motion passed and the meeting stood adjourned at 8:46 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____