

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 19, 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; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor 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 May 05, 2021, meeting.

Motion by Connors, seconded by Nelson to approve the minutes of the May 05, 2021, meeting as written.

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

Correspondence

Mr. Nelson advised the Board has received the final version of the Board's Policy and Procedures. There is a signature sheet being passed for the members to acknowledge receipt and understanding of the document. The Board has also received the May/June edition of *Town and City*.

Other Business

Conceptual Discussion – Appolo Vineyards, PID 06046-004, 49 Lawrence Road

Michael Appolo, Owner; David Ely, Architect; and Earl Sanford, Engineer, joined the meeting virtually.

Mr. Sioras advised staff from the Planning, Code, and Public Works departments have met with Mr. Appolo and his team to discuss concepts for the expansion of the winery. Proposed plans are included in the packet before the Board this evening. Mr. O'Connor noted as this is a conceptual discussion, the Board will not make any commitments this evening. Mr. Sioras agreed the Board would not be voting anything up or down, and would not make decisions about waivers, but would provide general comments about the concept.

Mr. Appolo advised he would like to expand the winery. He understands a more detailed plan will need to be provided to the Board for review in the future. Board members acknowledged they had the opportunity to review the materials he submitted in advance of the meeting. Mr. Appolo said he would like to create a covered patio, expand the indoor tasting space, add a bathroom, and create an indoor kitchen so that he can operate in extreme weather conditions such as heat or rain. Anytime inclement weather is threatened, he needs to cease his operation. This will allow him to expand his season, provide protection from the elements, and bring more people to Derry. The proposed expansion would bring capacity from 75 to 90 persons, which would add about 5 cars. He wants to park all cars on site. In order to do that, the creation of the parking lot will necessitate him removing grapevines. This is an outdoor space. Farms are normally considered nuisance uses by Planning Boards because of odors, etc. A vineyard is not a nuisance use. The State of New Hampshire has taken steps to protect agricultural uses. Those sources have been cited for the Board. People drive from all over New England to come to the winery. They like the rustic atmosphere. Last year, the vines produced 300 cases of wine. Part of the rationale from DPW staff was that this expansion creates a commercial operation and needs to comply with the regulations. For wineries, "produced" is a Federal definition.

Mr. Appolo explained his labels have to explicitly indicate where the wine is grown, produced, and bottled. Some wines are produced and bottled on site; others are produced on site, but bottled elsewhere. Some are produced and bottled on site but grown elsewhere. In New Hampshire, wineries need to produce on site. He would like to discuss with the Board why it is necessary to pave the parking lot. No other farm in Derry has a paved parking lot. Pavement causes more problems than it solves for his type of operation. Pavement could disrupt his farming operations. He would like to know how the Board would feel about forcing him to pave the parking lot. The materials he provided go over the reasons he would prefer not to pave the parking lot.

Earl Sanford advised whatever surface is created for the parking will be treated as if it were pavement with regard to runoff. As a farm, they have the ability to use methods to capture runoff and use it for irrigation. Pavement could cut off oxygen to the vine roots, which could be a problem. He will make sure the drainage plan works and will also add a new septic system.

Pavement is a make or break for this project. They proposed a paved apron into the parking lot with access off Duck Pond Road. Some portions of the access and lot will be paved, the others gravel. They will ensure the site is ADA compliant. They met with the representative from DPW who acknowledged hardships may be just cause to not pave the parking lot, but that decision had to be made by the Planning Board. He reiterated pavement would be detrimental to the project. He is prepared to do what is necessary to treat the runoff. They are looking for some direction from the Board before moving too far forward in the process. The location of the proposed expansion is also noted on the concept plan. They would like some preemptive guidance from the Board to help guide the project.

Mr. O'Connor asked if the water flows naturally from Lawrence Road along Duck Pond Road toward the abutter. Mr. Sanford agreed it did, and they will put in a paved swale so that the water does not run into the road. Mr. O'Connor believed cars now parked along the side of the road in the location of the proposed entrance. Mr. Sanford said they did, and there is an agreement with the landowner to the north to allow parking there. Mr. Appolo indicated that area is noted as "Parcel A" on the plans. The area is in a long term lease and the abutter is thrilled to have all the cars moved on site. All of the discussions with the Town have stressed the cars will all park on site.

Mr. O'Connor asked about options for pavement. Mr. Sanford explained they are looking at different options such as loam mixed with gravel. Whatever the surface ends up being, they will treat the runoff as if it were coming off pavement. It is a balancing act to make the least impactful changes for the agricultural use. The vine roots fan out about 30 feet.

Mr. Appolo advised paving the parking lot will create a heat island which causes the buds on the vines to break in early spring and they would be susceptible to frost. The grapes need to be able to cool off in the evening so they can fully ripen. They like heat and sun during the day and cool evenings.

Mr. L'Heureux advised he met on site with Mr. Appolo and Mr. Sanford to discuss the parking area. The Department's position is that there is a specification in the regulations that the Board works from. In order to waive the regulation, the applicant needs to prove a hardship so the Board can vote for or against the request. This early in the project he would not advocate for or against. The staff also looks at the public safety aspects and makes sure the Fire Department and other emergency responders can get in and out of the site. There will be more traffic with this expansion and there needs to be good delineation for the parking. Pavement provides a stable, year round surface. He understands the issues for the vines and the character of the business, but the town needs to look at the safety portion of the project. He confirmed this project has not been submitted to the Technical Review Committee.

Mr. Chiricheillo noted when he goes to J & F Farms, that parking lot is not paved; are they grandfathered? Mr. L'Heureux noted all of the farms are likely gravel based as they began operations prior to regulations being put in place. The pavement requirement is for commercial and retail uses. Mr. Chirichiello noted the lower right hand corner of the property where the existing vines overlap the proposed gravel area. Mr. Sanford stated they would prefer to not lose the vines in that location, but will do that in order to put all of the cars on site. Mr.

Chirichiello understands they would prefer gravel because the water will drain through right away, where pavement will cause run off. Mr. Sanford explained there is value in aeration of the gravel, especially if it not used as often. They will make efforts to ensure the gravel does not get compacted. Mr. Chirichiello asked how often the parking would be used during the winter months. Mr. Appolo explained he normally works three seasons. Currently, people park in his driveway and go into the small space in the garage for tastings; one third of the garage is a tasting area. Business does slow to small family groups in the winter or people shopping for holiday gifts. He operates as long as he can into the fall. Mr. Chirichiello asked about mud season – would there be an issue with the gravel. Mr. L’Heureux said there is some sloping toward Duck Pond Road from the barn. There is a 4-6 foot elevation change. In the winter, on warmer or rainy days, gravel surfaces can get rutted and some gravel can get into the swale; the same thing can happen during a major rain event. He considers the maintenance stability. He understands their position, but staff tries to protect life safety; the decision is up to the Board.

Mr. Connors had several questions for Mr. L’Heureux relating to regulatory compliance. Mr. L’Heureux indicated driveways or entrances needed to be 75 feet from an intersection, and the new driveway regulations would be required if there is a culvert required. In this area, however, the swale is gentle and with good grading and paving, the applicant could use a paved swale to carry the water. Regarding the dip in the road at the entrance location, the applicant will need to look at the parking lot design to see how best to grade that area. The permeability of gravel is very low; and it is typically treated the same as pavement. It becomes a tight surface because people drive over it. Normally, there is one foot of gravel for a driveway; the applicant can ask for a waiver for the pavement. They will need at least 12-16 inches of gravel.

Mr. Connors asked how the flow of traffic will work; will they have one way in and out, with one curb cut on Lawrence Road? He knows Mr. Appolo wants to protect the vines and he is not sure how the depth of gravel will affect them. Regarding the flow of traffic, how will that work? Will they have one way in and out? Mr. Sanford said they would like to make it as much of a one way as they can to minimize the use and keep the flow on Duck Pond Road. They will research and find what works best and present that to the Board. They want to preserve the historic use as much as possible. It is still very early in their process. Mr. Connors asked if the abutting property owner will be part of the process as some of the vines project onto the abutting property. Mr. Sanford indicated they will make sure everything is legal. He believes the land there is revertible if Duck Pond Road ever gets extended; the leased area would at that point, revert back to Mr. Appolo. Mr. Connors asked if the proposed parking will accommodate the increased number of users in the new portion of the building. Mr. Sioras explained that will be discussed at TRC and based on preliminary discussions with staff, it appears what is being proposed meets the regulation.

Mr. Nelson confirmed the prime issue Mr. Appolo wanted to discuss with the Board was the potential to obtain a waiver for the pavement. Mr. Appolo advised he is ten years into a thirty year land lease. The prime question this evening is the parking lot. This is an outdoor space used three seasons with little use in the winter because right now, there is not a sustainable indoor space. Mr. Nelson asked with regard to the RSAs provided to support the request for a waiver. Is the production and selling of wine covered under these sections? Mr. Appolo said viticulture is mentioned; the preparation of wine is not that different than the preparation of

maple syrup. No one has problems with those types of farms having gravel driveways. Viticulture is mentioned in the RSA but wineries were a new industry when the RSAs were written. This is an active farm; they produced 300 cases of wine last year. Mr. Nelson noted any expansion of farming requires town permitting; even though this is an agricultural use, it is reasonable for the project to be subject to site plan review; to look at parking and public safety, so long as the Board does not prevent the agricultural use.

Mr. Appolo believed in some ways, requiring pavement makes the farm infeasible because it causes a ripple effect for the farm. With hot spots, the grapes may not ripen.

Mr. O'Connor questioned the use of permeable asphalt. Mr. L'Heureux believed that to be a more costly alternative and it was more of a detriment to the vines because crushed rock would need to be 2-3 feet deep. There are no regulations in place for permeable pavement and he does not support the use of it. It needs to be vacuumed frequently and when it fails, there is no place for the water to go.

Mr. Connors referenced RSA 674:32 C. He heard Mr. Appolo say pavement would have a negative effect on the vineyard and it does not appear they want to not pave the entire lot, just portions of the lot that affect the vineyard. Is that correct? The RSA seems to say the Board can grant a waiver because of hardship, but only so long as the use remains agricultural. Mr. Sioras noted any change in use would require staff and possibly Planning Board review and continuation of the agricultural use would be an item for review. Mr. Connors believed it was within the purview of the Board to grant a waiver based on the argument the pavement would negatively affect the vineyard. Mr. Sioras advised the regulations include language that allows an applicant to ask for a waiver from any of the regulations. The State statute is giving the Board that leeway as well. He suggested the Board may not want to go too much further in discussion because this will be before the Board as a formal application.

Mr. Nelson stated if the applicant meets the burden of proof of impact, the Board *shall* grant a waiver per the RSA. Mr. O'Connor suggested reaching out to UNH or other universities to see if they had documentation that would support Mr. Appolo's argument. Mr. O'Connor asked if the Board needed to make a recommendation to the TRC. Mr. Sioras advised Mr. Appolo will make a formal waiver request to the Board when he submits the Planning Board site plan application. He material can be presented again then.

Mr. Appolo advised he wanted to check the temperature of the Board for the waiver before moving too much further on this application.

Recommend Road Acceptance – Stoneleigh Drive

Mr. Sioras advised Town Council received a letter from Attorney John Korbey on April 28, 2021 requesting the Town accept a short stub of land as a Class VI roadway. The stub is located at the end of Stoneleigh Drive, just beyond the limits of the cul de sac and abuts Parcel 06086. The town would have no maintenance responsibility. Attorney Korbey has asked Town Council to take action on the request. The process is the Planning Board recommends acceptance of the

Road and Town Council then votes to accept it. All town departments have reviewed the request and the Director of Public Works has requested the Board recommend acceptance.

Mr. L'Heureux explained this is an extension of the right of way that ends at the cul de sac. The cul de sac was built as an easement as part of Stoneleigh. There is a gap dedicated on a plan, but not accepted by the Town. The developer is asking the Town to accept the stub to the next piece of property as a Class VI roadway so that they can use it as a public way to access the adjacent property. The TRC has seen the plan, which is proposed to create two lots with access off the Class VI roadway.

Mr. Connors noted it is 50 feet to the stonewall from the end of the cul de sac. At the October 01, 2020, Zoning Board of Adjustment meeting, the intent of the subdivision was discussed. His question is rather than having a Class V road with a Class VI stub, why not sell the fifty foot section? Mr. L'Heureux explained it is a right of way and the land reverts back to the landowners on either end of the cul de sac. Mr. Connors felt if there was a shared driveway, there would need to be an access easement.

Mr. Nelson asked what was the purpose of the ZBA granting the variance. Mr. Peloquin of Promised Land Survey advised he represented the applicant at the ZBA meeting. There had been two options on the table. One was to extend Stoneleigh Drive and create 12 lots. The other option was to subdivide the lot into five lots, with access on Jewell, Eastview and Stoneleigh. They are using the frontage and not creating a road. The variance was to allow less than sufficient frontage for the two lots. Each lot was allowed to have 25 feet of frontage. The proposed subdivision has two driveways at the end of the cul de sac. But because of the stub, and the road only being accepted to the end of the cul de sac, the developer can't access the lot through the right of way. If it is a Class VI roadway, the town has no liability. Mr. Nelson advised a home cannot be constructed unless it has frontage on a Class V roadway; this is a Class VI roadway. If the Town accepts the stub as a Class VI roadway, will the lot meet the permitting requirements for the town? Mr. Peloquin said it will. Mr. Connors asked why the cul de sac did not butt up to the property line. Mr. Peloquin advised it is normal to leave a stub and he confirmed the Board would be seeing a subdivision plan for the abutting lot in the future.

Motion by Connors, seconded by Davison (as amended), to recommend the Derry Town Council accept the short stub of right of way located at the end of Stoneleigh Drive from the end of the cul de sac to the property boundary with Lot 06086 (as depicted on the recorded Plan D-31181) as a Class VI road with no maintenance responsibilities or liability, and to have the release of municipal liability recorded at the RCRD as per RSA 674:41. The improved portion of Stoneleigh Drive, from the intersection of Warner Hill Road to the end of the paved section remains a Class V road, as previously accepted by the Town of Derry. Discussion followed.

Mr. Nelson said he recollects that Class VI highways are historically discontinued subject to gates and bars. Mr. Peloquin stated roads closed subject to gates and bars are one classification of Class VI roadways; the roadway can also be classified as Class VI without that designation.

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

Schedule Public Hearing – Town of Derry Zoning Ordinance, Article III, General Provisions, to add a new section, Section 165-28.2, Small Business and Residential Solar Energy Systems

Mr. Sioras advised all changes have been incorporated into the document and the purpose this evening is to schedule a public hearing for June 02, 2021.

Motion by Chirichiello, seconded by Davison to schedule a public hearing on June 02, 2021 to discuss proposed changes to the Town of Derry Zoning Ordinance, Article III, General Provisions, to add a new section, Section 165-28.2, Small Business and Residential Solar Energy Systems.

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

Public Hearing

Arthur Caras, Diane M. Caras, Shaun M. Geary & Ashley A. Fox

PID 09043, 09043-004, and 09090-002

50 North Shore Road, 48 North Shore Road and 44 North Shore Road

Acceptance/Review

Lot Line Adjustment

Mr. Sioras provided the following staff report. The purpose of this plan is for a lot line adjustment between the above referenced parcels. The properties are located in the Low Density Residential District. All town departments have reviewed and signed the plan. There is waiver request letter dated May 03, 2021 from Promised Land Survey. Staff recommends approval of both the wavier and the lot line adjustment plan. These waivers are standard waiver requests for existing lots of record with a lot line change.

Tim Peloquin, Promised Land Survey presented. Arthur Caras was also present. Mr. Peloquin advised there are three lots that will become two lots with the lot line adjustment, and the plan also creates an agricultural easement. Parcel 09090-002 is currently 13.8 acres in size with an existing home and barn. Five acres will be added to this lot from Parcel 09043-004 which is located to the right. The new lot will contain 18.8 acres. 50 North Shore Road (Parcel 09043) currently has 4.1 acres and will combine some land with 09043-004. There was an old right of way area leading to Parcel 09043-004; part of that area will be combined into 09043 and the lot will become 6.039 acres. Sheet 2 shows the agricultural easement area. The intent of the easement is to allow agricultural use to continue on that portion of the road. It burdens Parcel 09043 and is for the benefit of 09090-002. The easement is entirely part of Parcel 09043.

Mr. Connors confirmed the agricultural easement was between the owners and did not involve the Conservation Commission. Mr. L'Heureux had no comments on this plan.

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

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

There was no public comment. Mr. Sioras reported he received a call from Margaret Ives, an abutter, who indicated she could not attend the meeting, but had no objection to the proposed plan.

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

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

There was no Board discussion.

Motion by Connors, seconded by Chirichiello to accept jurisdiction of the Lot Line Adjustment and Easement Overview plan application before the Board for Arthur Caras, Diane Caras, Shaun Geary and Ashley Fox; PIDs 09043, 09043-004 and 09090-002, 44, 48 & 50 North Shore Road.

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

Motion by Nelson, seconded by Chirichiello to grant a waiver from LDCR Section 170-24.A.11 to not require two foot contours, Section 170-24.A.12, to not provide HISS mapping, and Section 170-24.A.13, to not provide wetland mapping as strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Motion by Chirichiello, seconded by Davison, to grant a waiver from LDCR Section 170-25.G to not require the replacement of an existing pin with a granite bound, as specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

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

Motion by Nelson, seconded by Chirichiello to approve pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: Subject to owner's signature, subject to on-site inspection by the Town's Engineer, establish escrow for the setting of bounds or certify the bounds have been set; note approved waivers on the plan; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-24.C;

subject to receipt of applicable state or local permits relating to the project; conditions precedent shall be met within 6 months.

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

Public Hearing to discuss potential changes to Article II, Word Usage and Definitions, Section 165-5, Definitions, to add definitions relating to types of signs; Article XII, Signs, Section 165-101.5, Signs in the TBOD; Section 165-101.8, Off Premise Signs; and to create a new Section 165-101.12, Signs in the West Running Brook District

Mr. Sioras advised the proposed changes are highlighted in the document before the Board. Following the last workshop, the Board asked staff to clarify off premise signs with legal counsel. That discussion has been summarized in the memo to the Board, compiled by Mrs. Robidoux. He read from the memo, "In a nutshell, we can't regulate the *message* on a sign, unless the content is blatantly slanderous or could be defined in Article III, Section 165-27, Sexually Oriented Businesses. If someone wants an off premise sign, they need an easement for the location; content on that sign would be at the will of the sign owner. For On Premise Signs, the owner of the sign has the right to lease advertising space on the sign, but any agreements between the parties are civil agreement and outside the scope of this Board."

Mr. Sioras stated staff felt the Board could vote on this amendment this evening and forward it to Town Council.

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

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

There was no public comment.

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

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

Motion by Connors, seconded by Davison 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 II, Word Usage and Definitions, Section 165-5, Definitions, to ADD definitions for Banner Sign and On Premise Sign; Article XII, Signs, Section 165-101.5.A.(1), Signs in the Traditional Business Overlay District, to add provisions applicable to signs in this district; Section 165-101.8, Off Premise Signs, to revise provisions for off premise signs; and to ADD a new section, Section 165-101.12, Signs in the West Running Brook District.

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

Mr. Sioras acknowledged this amendment was a difficult one and appreciated the Board's efforts.

Public Hearing to discuss proposed changes to the 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

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

Clapp, Chirichiello, Davison, Danzey, Connors, Nelson, MacEachern 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 Connors to close the public hearing.

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

Motion by Connors, seconded by Chirichiello to approve the 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. The amendment becomes effective immediately.

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

There was no further business before the Board.

Motion by Chirichiello, seconded by Connors to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:38 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____