

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 07, 2017, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Lori Davison, Secretary Pro-Temp, Jim MacEachern (7:05 p.m.), Members; Mark Connors (7:38 p.m.), Alternate

Absent: Michael Fairbanks, Mirjam Ijtsma; Elizabeth Carver

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

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese then noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

Ms. Davison was appointed Secretary Pro-Temp in the absence of Mr. Fairbanks.

Escrow

#17-18

Project Name: 70 Fordway – 13 Unit Apartment Building

Developer: 70 Fordway, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 24005, 70 Fordway

The request is to approve a release in the amount of \$4,536.00 on Letter of Credit #26281 drawn on Enterprise Bank for the above noted project. The amount to retain is zero. This is the final release.

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

#17-19

Project Name: Subdivision plan of 130 North Shore Road

Developer: OSP Realty, Inc.

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 07094, 130 North Shore Road

The request is to approve a release of cash escrow in the amount of \$12,992.40 for the above noted project. The amount to retain is \$7,711.20.

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

Minutes

The Board reviewed the minutes of the May 17, 2017, meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the May 17, 2017 meeting as amended. The motion passed with Chase abstained.

Correspondence

Ms. Davison reported the Board is in receipt of an invitation for members to attend a Summer Erosion Control Field Day in June 21 and June 22, 2017. Registration for the workshop closes on June 14th.

Other Business

Zoning Amendments – Definitions and Accessory Dwelling Units

Mr. Sioras reported the Town Council has scheduled a public hearing for June 20, 2017 to discuss the proposed changes to the Town of Derry Zoning Ordinance, specifically changes to the Definitions and the section pertaining to Accessory Dwelling Units.

Mr. MacEachern entered the meeting and was seated.

Public Hearing

**Stephen J. & Tracy A. Lannan
Bernard N. & Janet L. Colby
William P. & Donna L. Markie
PIDs 39041, 39042 & 39039
4 & 6 Old Chester Road and 66 East Derry Road
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of the plan is for a lot line adjustment between the parcels. Town department signatures are not required. Staff recommends approval of the lot line adjustment plan.

Tim Peloquin, Promised Land Survey, presented for the applicants. Mr. Peloquin reminded the Board members he had been before them a month ago for a lot line adjustment request to adjust

the line between 4 & 6 Old Chester Road, which the Board approved. At that time, he had advised the Board he would be bringing another plan before the Board for a lot line change on the other side of the lot. The existing stone walls have been held as the property line on both sides of the lot for 20 plus years. All the abutters believed the walls to be the property line and structures were added to the lots accordingly. The abutters have all agreed to the lot line adjustment. As previously noted, the adjustment of the line between 4 & 6 Old Chester Road was approved by the Board on May 3rd. Tonight, he is presenting the adjustment of the line between 4 Old Chester and 66 East Derry Road. All of the line adjustments are noted on the plan. With the permission of the Board, he would prefer to record one mylar, showing both lot line adjustments. This will alleviate any confusion at the Registry or on future title on the lots. All of the lots meet the required frontage, acreage and lot size.

There are three waivers requested which have been noted on the plan. A formal written request was not submitted. There are no wetlands on this property.

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

There was no 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 returned to the Board.

Mrs. Robidoux suggested that as the three waivers had been approved for the same lots on May 3rd, it might be appropriate, in this specific case, to vote on the waivers without the written request. They are noted on the plan. Mr. MacEachern felt the Board could reference the waivers as they were part of the plan package. Mr. O'Connor noted a correction to specific sections for the waiver requests. They should be amended to Section 170-24.A.11, 2 foot contours; Section 170-24.A.12, HISS mapping and Section 170-24.A.13, wetland mapping. The note on the plan refers to the same waivers, but from the site plan regulations, not subdivision regulations.

Mr. L'Heureux stated Public Works has no issues with the plan before the Board.

Motion by MacEachern to accept jurisdiction of the lot line adjustment application before the Board for Stephen and Tracy Lannan, 4 Old Chester Road, PID 39041 and Bernard and Janet Colby, 6 Old Chester Road, PID 39042 and William and Donna Markie, 66 East Derry Road, PID 39039, seconded by Bartkiewicz.

Chase, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz, to approve, pursuant to RSA 676:4, III, Expedited Review, with 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, obtain written approval from the IT Director that the GIS disk is received,

is operable and complies with LDCR Section 170-24, conditions precedent shall be met within 6 months, a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar, and submission of the appropriate recording fees, payable to the Town of Derry. For the record, the waiver requests previously granted are noted as approved. They are waivers from Section 170-24.A.11, two foot contours, Section 170-24.A.12, HISS mapping and Section 170-24.A.13, mapping of jurisdictional wetlands.

Chase, Chirichiello O'Connor, MacEachern, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

DJ Development of Derry LLC
19 Kendall Pond Road
PID 24037
Acceptance/Review, Site Plan Amendment
Recreation Area

Mr. Sioras provided the following staff report. This development is located on the corner of Kendall Pond and Magnolia. The 18 unit apartment building is currently under construction. The developer came to staff, speaking with Code, Planning, and Public Works, asking if he could make a change to the originally approved recreation area. Mr. Sioras met with the Steinhoffs who expressed concerns about the development. The purpose of the amendment is to eliminate the proposed picnic tables, benches, walkway, fence, and tree cutting to the rear of the lot. The recreation area is to the left of the development and there is a brook in that location. A few members may recall walking that area during the site walk when the plan was first under consideration.

Eric Mitchell, of Eric C. Mitchell and Associates, Inc., presented for the applicant, David Haddad, who was in the audience. Mr. Mitchell provided a handout to the Board members and the public, a copy of which has been retained for the file. The handout included pictures taken from 6 locations around the property. Those locations were noted in relation to the site plan, on the second sheet of the handout. He noted the handout was being provided for the first time this evening.

Photo 1 shows the proposed trail area. The area can be walked but one could not get a large excavator down it. Photo 2 is looking toward the abutting homes; the new building can be seen in the photo. Photo 3 was taken looking from the building to the far left corner of the lot. In Photo 4, one can see the pool and part of the house from the trail side. Photos 5 and 6 show the abutters' homes through the tree line.

Mr. Mitchell advised as the construction portion of the project is beginning on the outside of the building, they have the walkway to the picnic area and the installation of the fence to complete. The original intent was to show a recreation area. Concerns were expressed at the time the site plan was originally being reviewed that the residents of the building should have a place to go, so that they did not need to walk on Kendall Pond to get to the Rail Trail. The fence was added to protect the abutters. There were also concerns expressed that the area could be used in a positive or negative fashion. Mr. Haddad has noted it is heavily brushed out back in the area proposed

for the picnic tables. He would need to cut a lot of trees for the picnic area and to install the fence. Much of it may need to be done by hand. It is not certain how many people would use this area. Is it worth it to construct the area? Would people from outside the development come in and use the area to the detriment of the neighborhood? The proposal is to keep the fence between the project and the Steinhoff's lot, but eliminate the fence along the back of the lots, adjacent to the proposed recreation area. They would also eliminate the tables and benches. Mr. Mitchell and Mr. Haddad have both spoken with staff on this matter.

Mr. Mitchell indicated the area is very green at this time of year and the houses cannot be seen well from that portion of the property. They feel it is best to leave the area as it is today.

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

Dennis and Sarah Steinhoff, 4 Magnolia Lane advised they have concerns with the proposed changes. Mr. Steinhoff said the original plan was to have the fence. The developer had to meet a certain regulation in order to get the 18 units. They needed a specific amount of green space and a specific amount of recreation area. What does that do to the calculation if they eliminate the recreation area? Obviously, they can't eliminate any units at this point. If the recreation area is eliminated, then the apartment building should not have been constructed. They are saying there is too much foliage to put in a fence. Equipment can get back there or a fence could be put in manually. The Steinhoff's would prefer to not have a path behind their house. Mr. Haddad is saying the rental rates he will charge will not attract the type of person who will cause a problem there. Mr. Steinhoff stated he is not opposed to the elimination of the recreation area; he disagrees with the elimination of the fence. If anyone is back in that area, all they would need to do is walk around the fence between his lot and the parking lot. He would prefer to have the fence installed along the back of the lots, straddling the three property lines.

Mrs. Steinhoff directed the Board's attention to Photo 3. Her pool is very close to the property line. Mr. Haddad's property is too small for the number of residents proposed on it. If there is no fence in the back yard, there is a probability that any children living in the apartment building will want to use their pool and may sneak into it. She said she did not want to be liable for people coming onto her property. The plan says there should be a fence. She is not okay with changing anything if the fence is eliminated. She does not have an issue with eliminating the recreation area because there was never enough room for that anyway. For safety concerns, there needs to be a fence; she has no preference if the fence is in the middle of the woods or if it is on her property, so long as one is there. The pool is too close to the property line for her liking. Mr. Steinhoff agreed the fence should be installed per the plan. Mrs. Steinhoff said the fence should also be constructed for the full length proposed on the site plan. She understands it is inconvenient and costly to construct the fence, but she is losing value on her home as a result of the construction of the apartment building.

Mukesh Kapadia and Taru Kapadia of 6 Magnolia also wanted the fence constructed per the plan. Mr. Kapadia recalled many people attended the site walk when this plan was first under consideration. A lot of people pushed to have the recreation area created and it was required so that the developer could get the density for the units he wanted in the building. Now, the

developer does not want the recreation space or fence. He feels the intent all along was to not create the recreation space and that corners are being cut. He and his sister would like the fence that was proposed and the fence should be maintained by the builder. They do not have an issue if the walking path and picnic tables are eliminated but the fence needs to be installed.

Ms. Kapadia said many concerns were raised a few years ago during the public hearings. The recreation area gained the builder the density calculation he needed. Their concerns have not changed. Now the developer does not want to build the recreation area, the developer is citing the same concerns the abutters raised. She has no issue with eliminating the recreation area but the fence needs to be constructed as proposed and it needs to be maintained by the developer as originally agreed.

Mr. Kapadia asked why was this not brought up during the site walk. Ms. Kapadia said nothing has changed in that back area for two years. The developer should have known two years ago that it would be difficult to put in the recreational elements when the plan was under review at that time. She reiterated the fence has to be maintained by the developer.

There was no further comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the proposal came back to the Board for discussion.
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Mr. L'Heureux stated Public Works is neutral with regard to the elimination of the picnic table area. He did want to point out that he did not understand the purpose of constructing the section of fence that goes from the lot line out to the wetland. That area is wooded.

Mr. MacEachern confirmed the fence starts at Magnolia, goes along the Steinhoff's property line, takes a 90° to the right, running along the property lines of the three properties and then takes a 90° angle to the left and goes into the woods toward the wetland. The fence does not go to the left near the parking lot for the apartment building. The recreation area is the area shown with the picnic table and benches.

Mark Connors entered the meeting.

Mr. MacEachern confirmed the path was proposed to be located behind two of the abutting homes on Magnolia. The path does not go down the parking lot and out to Kendall Pond Road. Mr. Mitchell explained the path goes from the top left edge of the parking lot and heads north behind the homes. Someone could walk to the path from Kendall Pond Road, but they would have to walk in the middle of the parking lot to reach the path. Mr. MacEachern confirmed there was no design to have a walkway to Kendall Pond. His concern was the creation of a walkway directly from Kendall Pond that went behind the homes on Magnolia.

Mr. O'Connor noted that due west of the parking lot is a slope that leads down to the lagoon area. What kind of barrier is there? Mr. Mitchell advised it is a retaining wall made of raised concrete with a guardrail on top. This is 4-6 feet tall. Mr. MacEachern said he had a concern for

the residents. If they are okay with it, he agrees with the elimination of the path and picnic tables. The fence however, is still necessary. Mr. Granese and Mr. Bartkiewicz agreed.

Mr. Mitchell noted the two abutters who spoke live at 3 and 6 Magnolia. If the fence is to remain and be constructed, he would request the fence go behind 3 and 6 Magnolia and then stop.

Mr. Granese felt the fence should be constructed as shown. He pointed out the developer who received approval from the Board a few years ago was not Mr. Haddad. Mr. Haddad purchased the project and has been constructing it. There had been many discussions during the public hearings for this project. Mr. Granese agreed that the plan should remain as originally proposed but the picnic area could be eliminated.

Mr. O'Connor recalled discussing the proposed recreation area at length during the original public hearings. The Steinhoffs are correct, without the 15% recreation area the Board would not have voted on the plan. The intent was to create passive recreation and that an area could be created where the residents could walk. The fence under discussion is a six foot tall fence. There is another four foot tall fence proposed between the building itself and the Steinhoff's side property line which tapers down to Magnolia Lane. He recalled the residents at 6 Magnolia indicating the fence was a big item for them.

Ms. Kapadia wanted confirmation from the Board that maintenance of the fence had been approved by the Board as part of its original approval. Mr. O'Connor recalled the maintenance of the fence was to take place for two years. After that time, as the fence is on the site plan, if it fell into disrepair, Code Enforcement would be notified and the necessary enforcement actions would be put into motion.

Mark Connors said he has looked at this project for a while in relation to the Rail Trail. He believed the recreation area behind the residents on Magnolia was seen as a problem as it could become a place for people to hang out. The wall next to the parking lot is steep. He does not feel people would walk back there. Could the fence be put across the back of the property? Mr. Granese stated the residents have indicated they don't want the recreation area but do want the fence as proposed.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the site plan amendment application before the Board for DJ Development of Derry, LLC, 19 Kendall Pond Road, PID 24037.

Chase, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: This approval amends the previously approved recreation area composition – picnic tables, walkway and tree cutting – these items are no longer required. The fence originally proposed shall remain as shown on the original plan. Subject to onsite inspection by the Town's Engineer. Obtain written approval from the IT

Director that the GIS disk is received and is operable and complies with LDCR Section 170-61. Conditions precedent shall be met within 6 months. Maintenance of said fence is the responsibility of the apartment owner.

Chase, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. L'Heureux requested a copy of the revised, amended plan be provided to town staff prior to the construction of the fence.

WORKSHOP

Workshop #2 – Discussion of Exit 4A, CBD, TBOD proposed zoning amendments and the projected time frame.

Mr. MacEachern reported the subcommittee, comprised of himself, Mr. Sioras, Mrs. Robidoux and Ms. Struthers met last week in the Planning Office. The committee will continue to meet. There had been initial discussion at the first workshop relative to Exit 4A and the downtown. The committee came up with the project scope and timeline provided to the Board this evening. This was developed based on the experience of those present.

It appears the opening of Exit 4A will occur in the 2022 timeframe. In order to be effective with the changes on Tsienneto Road and the downtown, several things need to occur first.

The first item is to assess the impact of regional developments that are currently in progress. Anything that the Town of Derry puts in place needs to be complimentary to Woodmont Commons and Tuscan Village. The Wyn Casino in Massachusetts is a multibillion dollar development that is pulling the trade and craftspeople out of New Hampshire. The people working on the casino development are being offered good incentives to work on the project and this will make the NH market tight. The Woodmont and Tuscan projects will have the same effect. The Board needs to understand those developments and the effects they will have on the region. Data will need to be gathered and a list of uses devised that will enhance Derry and compliment the regional developments.

With regard to the 4A area, the subcommittee is taking a look at the Exit to the Irving gas station. The land past that has individual homes and is not readily developed into anything other than housing stock. The subcommittee will look at the current zoning and how deep the zone or overlay should go. The Salvation Army side of the road is commercial. The other side of the road is residential. They will walk the neighborhoods and get an idea for the depths of the lots to see how far back the overlay or zone needs to go in order to maximize the potential for future development. Part of the purpose of walking the area is to get a flavor for the feel of the neighborhood and housing stock. The Board will need to look at the area near North High Street where a T intersection will be constructed and determine how the lots along that intersection can be enhanced.

All of this work will be coordinated with a review of the existing Central Business and Traditional Business Overlay Districts with an eye to how that can work. The town has some very good entertainment venues: the Upper Village Hall, the Opera House, and Tupelo. Maybe the town can do something to enhance the arts. This could all be tied in with the Rail Trail and maybe enhance that and make a package. Mr. MacEachern stressed data will need to be collected and a proposal prepared. By the third quarter, the subcommittee will have identified the lots to be rezoned or included in an overlay and begun a list of permitted uses. That has received a kick start with the list Mr. Needham suggested at the first workshop. During quarter 4, there will be drafts to bring to the Planning Board and the Board will go through the process to try and get everything approved and effective by early 2018. He is aware this is an aggressive schedule. The proposed changes will affect many of the residents along Tsienneto Road, therefore the Board needs to take its time. He believes the landowners in the downtown will understand the changes, which may be fairly minimal, such as allowing residential use on the second floor in the TBOD or deleting uses that are no longer needed.

The changes along Tsienneto Road will affect many people and it may be challenging to get all of this done by January. The process can be facilitated by involving the public and inviting them to the workshops as the Board has done in the past. He stressed all of the changes need to be tied into what is happening in the surrounding area. This needs to get done, but the Board needs to take its time with it. The subcommittee will provide feedback to the Board as it makes progress.

Ms. Davison asked what can the Planning Board expect to see from the subcommittee. Mr. Granese thought the subcommittee will bring draft amendments to the Board for discussion and review. The process will remain the same as for any zoning amendment. Mr. MacEachern said the data sources will be highlighted. The subcommittee will work with the regional Planning Commissions, Senator Birdsell, and the State Representatives. It will work with the Towns of Londonderry and Salem to obtain copies of the plans in those communities. Derry will need to see what the other towns are doing.

Mr. Chase asked if the route for Exit 4A had been decided. Mr. MacEachern said the entrance off of 93 is obvious, where it goes is not certain, but he is 95% sure it will go along Tsienneto. Mr. Chirichiello said he is not 100% certain, but agreed that might be the route.

Mr. Chirichiello went on to report he, along with Mr. O'Connor and Jim Rausch, attended the groundbreaking for Woodmont Commons yesterday. Mr. O'Connor was provided a detailed map and information about the project which will be shared with the subcommittee. This will be a four phase project and it currently is 20 years out. Phase 1 includes a brewery, apartments and assisted living. Exit 4A is several years out as well. Mr. Chirichiello said he likes the subcommittee's schedule and that it is aggressive.

Mr. Connors spoke with regard to the CBD/TBOD. Although he likes the project scope that was prepared, he felt the downtown portion of the amendments should be broken off. Those changes could be done quicker than the Tsienneto Road area. Should that be a separate subcommittee? He noticed there are 40 acres of land for sale near Ryder Field. Should that land be considered for inclusion in the overlay? Mr. Granese said this is one of the reasons the Board needs to walk

the area; so that the Board can decide where the area should be extended. Mr. MacEachern said he is aware of that parcel of land; the land has one acre zoning. Mr. Chirichiello felt the two zoning amendment areas went hand in hand and should be considered together. This is the perfect opportunity to revitalize the downtown. Exit 4A should alleviate some of the traffic in the downtown. Mr. MacEachern recalled Mr. Morgan had mentioned that there might be an opportunity to expand the sidewalks in the downtown and potentially eliminate some of the parking to accommodate that. That can't be done until Exit 4A happens and there has been a lessening of the traffic in the downtown as a result of the opening of Exit 4A. Highlighting the town's venues and making Derry art friendly creates some of the ancillary uses such as outside dining and a walkable downtown. At this time, there is no project plan. The subcommittee needs to map out the goals, objectives and steps. The subcommittee would like to create a project plan and adjust the timeline accordingly.

Mr. O'Connor advised per the plan for Woodmont, the Exit 4A side has tentatively planned a hospital and hotel which would be parallel to Ash Street and North Franklin. A follow up meeting for the Environmental Impact Study is scheduled in Derry for September 21.

There was no further business before the Board.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed and the meeting was adjourned at 8:08 p.m.

Approved by: _____
 Chairman/Vice Chairman

 Secretary

Approval date: _____