

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 06, 2017, at 7:00 p.m., at the Derry Municipal Center (3<sup>rd</sup> Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Michael Fairbanks Secretary; Brian Chirichiello, Town Council Representative (7:16 p.m.); Jim MacEachern, Frank Bartkiewicz, Lori Davison; Maya Levin, Members; Elizabeth Carver, Mark Connors, Alternates

Absent: Randy Chase

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.

Mr. Granese welcomed Maya Levin to the Board.

### **Escrow**

#### **#17-32**

**Project Name: Derry Sr. Development**

**Developer: Same**

**Escrow Account: Same**

**Escrow Type: Cash Escrow**

**Parcel ID/Location: 07058, 6 Drew Road**

The request is to approve Release #2 in the amount of \$1,296.00 for the above noted project. The amount to retain is zero. This is the final release.

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

#### **#17-33**

**Project Name: Kendall Pond Apartments**

**Developer: DJ Development, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 24037, 19 Kendall Pond Road**

The request is to approve Release #2 in the amount of \$74,682.00 and request a replacement Letter of Credit in the amount of \$24,753.60 for the above noted project. Upon receipt of the

replacement Letter of Credit, the Board will release Letter of Credit #82248751 in the amount of \$99,435.60.

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

## **Minutes**

The Board reviewed the minutes of the August 16, 2017, meeting.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the August 16, 2017 meeting as written. The motion passed with O'Connor and Levin abstained.

## **Correspondence**

Mr. Fairbanks advised the Board is in receipt of an updated member listing which includes Ms. Levin. Southern New Hampshire Planning Commission has forwarded an invitation to the 51<sup>st</sup> Annual Meeting which will take place on September 8, 2017. The Board also has been provided copies of letters to David and Catherine Frahm and Crom, LLC., reminding both parties that their construction escrow will expire in October. NH Sustainable Forestry Initiative has sent information about an upcoming field day scheduled for September 22, 2017.

The Board has also received correspondence via email from Simply Orthodontics. Mr. Fairbanks read the letter into the record. "This letter serves the purpose of updating you on the exterior renovations that will be taking place at our property on 8 Crystal Avenue, Derry, NH. [former Kentucky Fried Chicken/Chicken & Biscuit]. No changes will be done to the dimensions of the building. We will be covering all brick on the front and side of the building with light gray, dark gray and blue stucco (Dryvit). We will be placing veneer stone on the front of the building and partially on the sides. Please refer to the attachment for a rough picture of how the renovations will look and material specifications."

## **Other Business**

### Municipal Law Lecture Series

Mr. Sioras advised the New Hampshire Municipal Association will be holding the Law Lecture Series in September and October. They are moving to a one day format held on a Saturday, rather than the three evening format they have had in the past. One of the days will be in Concord. Information with regard to the dates will be forwarded to the Planning Board members.

Planning Board Schedule

Mr. Granese advised the Board is back to its normal schedule. The Simply Orthodontic item will be placed on the next agenda under Other Business so that the Board can review the submission.

LP Street Enterprises, LLC, Change in Fire Protection

Mr. Sioras explained this is a single family residential lot which was approved in 2008. The water line is now in this area of Lawrence and Stark Road. Originally, the subdivision plan called for residential fire sprinklers. The applicant would like to connect to the water line and use a hydrant for fire protection. Assistant Chief Jackson signed off on the request. There have been several requests of this type before the Board recently for approval. Staff supports the request. Mr. L'Heureux confirmed the Department of Public Works has no issues with the request.

Motion by Fairbanks, seconded by Bartkiewicz to accept the Affidavit – Plan Note Change with regard to the subdivision plan approved for Kevin and Mark Cooper Development, LLC and Jane Palmer, on August 20, 2008 (recorded at the Rockingham County Registry of Deeds as Plan D-36014), and to have the Affidavit recorded at the Registry. Discussion followed.

Mr. Connors asked if the request conforms with the regulation with respect to the distance to the fire hydrant. It does.

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

**Public Hearing****Edward Smith****Owner: NSA Property Holdings****PID 01023-001, 125 Windham Road****Acceptance/Plan Review****Site Plan Revision****Removal of bollards, sound barrier panels, and proposed sign****(Continued from August 16, 2016)**

Mr. Granese advised this hearing had been continued at the request of the applicant as they did not have all of their documentation in place. Mr. Sioras confirmed the additional information has been received.

Mr. O'Connor reported to the Board he had been contacted by Mr. Smith as he had been the member who suggested adding the sound barrier panels around the HVAC units. When he spoke with Mr. Smith, they discussed the decibel levels. Mr. O'Connor advised he would not be

recusing himself from this hearing. Everything he discussed with Mr. Smith were items that were brought up at the last meeting and mentioned in the minutes of the meeting.

Attorney Christopher Swiniarski, McLane Middleton, PA, was present, along with Eric Mitchell of Eric C. Mitchell Associates, representing the applicant. Attorney Swiniarski advised the application is a minor amendment to the approved site plan. There are three clean up items the applicant feels have become unnecessary to be addressed. The first is the existing sign for the original facility. The applicant no longer owns that portion of the property and would like to leave the existing sign in place and make no changes. The second item is the elimination of the sound barrier. When they installed the HVAC units, they found the units were not very loud when they were running. An acoustical engineer performed a sound study and took readings at various distances. The Board has a copy of that report. The engineer concluded that at the property line, when the units are running maximum load (which would seldom occur) the average reading is 49 dB. The sound level is comparable to a quiet office or home. He was on site two times while the units were operating at maximum load and the noise was indistinguishable and inaudible at the residential structure on site that is owned by the applicant. The units are not heard at the property line. Adding sound barriers would be unnecessary and has no practical effect. The third item involves the removal of the 18 bollards surrounding the underground propane tanks that fuel the facility. They look absurd. There is no code requirement for the bollards because the tanks are not within 10 feet of the traffic area. They decrease the residential property value and serve no practical purpose. This could be a play area for the children who live in the house. The bollards do not provide protection from Windham Road traffic. There is a stone wall and trees between the road and the tanks. There is no reason for the bollards.

Mr. Mitchell advised he spoke with Mr. Smith today regarding the sign location. The existing sign is adequate for the current owner's needs, but the sign is in the sight line. They will remove the sign and place it in the location where the new sign was proposed. This removes that issue from the table. The maximum dB level at any property line should not be louder than 80 dB per the ordinance. The average here is at 49 or 50 dB at the property line.

Mr. Granese confirmed the bollards are in place. Would they know the average dB level of a home air conditioning unit? Mr. Mitchell said he did not; he is only aware of what was noted in the sound engineer's report.

*Mr. Chirichiello entered the meeting.*

Mr. Connors asked if the air conditioning units got louder as they got older. Attorney Swiniarski said they should not barring any mechanical malfunction. Any maintenance and repairs would be performed. He did not believe the output of sound changed as the units aged. Mr. Connors recalled the barrier was requested because the a/c units were not on the original plan. This was a compromise for a change the applicant requested. It does seem there are an inordinate number of bollards; how are those based in the ground? Attorney Swiniarski said they are placed about 4 feet into the ground. Mr. Connors said the applicant invested money to put in the 18 bollards. What was the original thought in putting them in the ground and now why would he want to remove them? Mr. Mitchell explained the bollards were not required by the Town but there are

underground tanks there and the bollards addressed the abutter's concerns for safety. Now they are in, the applicant is willing to pay to remove them. They look absurd. The bollards do not serve a necessary purpose. The air conditioning was proposed in a different location. The current position of the units created potential noise concerns for the abutters. When they were installed and were running, it was found they did not seem loud; that was verified with a sound study. They would like to remove the bollards because they are not necessary, and the noise of the a/c units is well below what was expected.

Mr. Connors asked Mr. L'Heureux if he thought the number of bollards should be reduced. Mr. L'Heureux stated there have been discussions about eliminating the bollards, reducing the number of bollards or additional alternatives such as having only the ones along the driveway. Assistant Fire Chief Jackson has submitted his recommendations with regard to the bollards. Not all of the bollards are necessary. They were left because they were set. Mr. Connors had a concern with regard to snow removal in this area near the underground tanks. There should be some form of protection for them.

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.

Maureen Rose, 115 Windham Road, provided pictures and other materials to the Board members. A copy of her submission was placed in the file.

Ms. Rose spoke with regard to the mention of a play area for the children. That should not count. This is an industrial site. There is a house in her 50 foot buffer for which the ZBA granted a variance. The decision should not be about making money; they are renting the property there. The sign change mentioned tonight: how can the Board accept a change at the last minute. That is not appropriate. The 2014 plans were approved for a building, propane placement and heating hung only on the inside of the building. Through the bid process, Ed Smith chose a different building that did not accommodate heating units inside and added air conditioning which had to be placed outside. Propane tanks were placed in the front yard of their existing house with 18 bollards placed by Suburban Propane experts. Mr. Mitchell misspoke this evening when he said the abutters had input about the bollards because the abutters never knew there would be propane tanks there. She saw bollards in December of last year and questioned the town. Meetings in January and March were for the after the fact placement of the propane tanks and the air conditioning units. The Planning Board approved the changes with conditions. The conditions were 13 trees around the propane tanks, the bollards were to remain, and sound barriers were to be placed around the air conditioning units. This is self-created hardship; they could have planned better on the three acres of land. The removal of parking spaces to accommodate propane tanks was never explored even though the parking waiver was granted. Now they don't want to meet the conditions of that approval and want to remove the bollards and not install the sound barrier panels. They are still waiting for the fence section between her house and the development in the area where the tree buffer could not be placed. Her research indicates it is best to keep the sound close to the units as they are placed in an open area and sound travels. Ms. Rose stated in January, the HVAC units proposed had a different model number than the ones shown in the sound study. Those units can be changed out at any time, which could change the noise level. There needs to be a sound barrier around those units. Sound

barriers should be mandated in an area where there was no sound before development. The town changed the zoning of a residential area to industrial. The industrial zone prohibits anything that can be deemed a nuisance by virtue of noise, dust, vibration, etc. The hours of operation should be addressed for the units and the applicant should consider putting them on a timer. The photos she provided show the poles on the bend on Windham Road. The pole at the end of her driveway has been hit twice, and now there is slack in her electrical wire leading to the house. A new pole has been placed at the end of the driveway leading to the new building. There have been 50 accidents in this area in the last ten years per the police reports. There are 4923 vehicles per day that drive this road. The tenant uses the front yard as a driveway which is another reason to keep the bollards which will protect the underground tanks and the well. This is an accident waiting to happen. The Board should be protecting the public, not accommodating the developer. The town hired an attorney to stop the development of a storage warehouse facility in East Derry that has no air conditioning, heating, noise, or propane tanks; the town should be hiring an attorney to protect the residents in this neighborhood. They deserve fair and reasonable treatment. Her on line research indicates that older a/c units can get loud when they get toward end of life. Compressors make noise when they get old. Pad mounted units tend to be larger and more noisy because they are cooling a larger area; some sort of barrier fence must be set up. The Industrial V zone prohibits certain uses. Ms. Rose read the applicable section aloud.

Ms. Rose stated if the Board wants to accommodate what the applicant wants to do, the Board should remove the sound barriers and bollards and make the developer put the propane tanks where they should have been in the first place, put the heat and a/c inside the building, and put the parking spaces back. That would be the ideal solution because that was what was supposed to have been done in the first place. She hopes the Board will do the right thing.

Mr. Granese asked with regard to the 36 photos provided. Ms. Rose explained they show the tenant parking beside the bollards and on the lawn, the bend in Windham Road and how the road curves near the entrance to this site, and she has also provided traffic counts. She felt the traffic counts alone justified the fact that all the bollards should remain.

Mr. Fairbanks asked about the fence that had not yet been installed. Mr. L'Heureux explained the decorative fence that is to be installed along a portion of the lot line shared with Ms. Rose is on backorder. The applicant is awaiting receipt; there is escrow to cover that.

Ms. Rose stated the Town did this to her. There were empty lots on either side of her when she built her house. The town rezoned the land to Industrial V. She fought the water and sewer expansion down Windham Road, and she also stopped a cell tower from going in on that property. No one told the applicant to make this building smaller. She has planted her own trees to protect her property from the homes on either side. It is so quiet at night, other than I-93. The Board should try to make this use the least intrusive for the neighborhood. She wants to make sure there is protection if there is an accident on Windham Road; the bollards will provide protection. No one appealed the March, 2017 decision. Five months later, the applicant is back with changes saying they don't want to do what the Board asked them to do.

Marc Flattes, Derry, stated he sat on this application when it was before the Planning Board in March. There were concerns in the neighborhood about potential noise. The storage company

made agreements to fence in the units, providing a sound barrier, and to keep the bollards in place. He would ask the Board to stand by its decision and hold the developer accountable. The Board should tell them to install the sound barrier and to keep the bollards. At some point the changes need to stop.

Donald Burgess, High Street, stated there are tenants that live next door to him and when they are on the porch talking during the day, it is not a problem. Voices carry at night and it can be annoying. He related that he used to live a mile and half from a railroad station and the train could be heard at night. In the evening it is difficult to filter sound. He feels sound barriers should be in place. He voted against granting this variance when it was before the ZBA. Removing the sound barriers is not a good idea. The Board wanted this done before and should stand its ground.

Peter Austin, 113 Windham Road found it interesting that they are at this point right now. He reminded the Board that at the last meeting, the neighbors did not get what they wanted and at the very least, got the sound barriers. This change does not seem fair to the neighbors. There are also new tenants in the home now. As they are parking on the lawn, he felt it appropriate to have additional protection for the future tenants over the underground tanks.

There was no further public comment.

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

Mr. L'Heureux stated Public Works is neutral with regard to landscape changes and the bollards. With regard to the bollards, there should be compliance with what is required for safety per the Fire Codes. Assistant Fire Chief Jackson requested that 8 bollards remain as noted on the information provided to the Board. The sign is a moot point. Mr. O'Connor confirmed the recommendation from the Fire Department is to keep 8 bollards and the ones to remain have been designated in the correspondence from Assistant Chief Jackson. Those are the 8 along the driveway.

Mr. MacEachern stated he is not in favor of the changes. The Board made a decision five months ago. This request concerns a few pieces of fence around the air conditioning units and the bollards are already installed in place. He would prefer a fence around the underground tanks if the eight are left. He would not want children to be playing near propane tanks. Safety is his concern. Now, the children likely won't play there because of the bollards. Yes, the bollards are unsightly, but a fence could be put around them. Trees wrap around the tanks, so he sees no need to remove the bollards. It is an expense to remove them. The Board is asking for a few pieces of fence around the a/c ~~tanks~~units. The builder has a right to ask for changes, but Mr. MacEachern did not feel these changes were necessary.

Mr. Fairbanks asked for clarification about the sign. Mr. L'Heureux said the developer will relocate the existing sign to where the new sign was to be placed. Mr. Fairbanks said he wanted to make sure the sign location was safe. He also does not support the changes. They went through the first hearing and there were many concerns discussed and addressed. The Board

made compromises and approved the plan, and then there were field changes. The Board held another hearing, listened to more concerns, approved the changes, and now the applicant is back before the Board again. He is not in support of the changes.

Mr. Granese confirmed a portion of the property has been sold. The Board did a site walk of this property during the original hearings. The original plan did not show a/c; the intent had been to hang heating units inside the building. Now there is a/c outside the building. The propane tanks were not installed in the original location. He also feels the bollards should stay where they are and that children should not be playing over propane tanks. He confirmed the a/c units are running at 49 dB.

Attorney Swiniarski said the a/c units have been up and running since the end of June. People have stated it is quiet. The reason they want the change to the plan, eliminating the sound barriers, is that there is no sound to mitigate. They are not achieving anything by installing them. Mr. Granese noted the applicant agreed to install the barriers. Attorney Swiniarski stated the sound level is 88 dB at the source when the units are running and 49 dB at the property line. Mr. Granese stated he can hear his neighbor's 4 ton a/c unit running at night from 1500 feet away. These are commercial units. Attorney Swiniarski stated they had the units tested and that is not the case. The logical assumptions made before the units were installed were found to not be true. The units are installed and running. They had them tested. No one is hearing these units, so it is hard to say they will be heard, because they are running and no one is hearing them. The units have not been changed. He was not sure the original site plan noted the type or model number of the units as that is normally an item noted on a building permit, not a site plan.

Mr. Mitchell stated the plan showed the location and were labeled a/c units; he does not recall the exact model number being noted on the plan. Mr. Granese thought the model number had been noted in the packets provided to the Planning Board for the previous hearing. Mr. Connors asked for the cost of the sound barrier panels. Attorney Swiniarski stated it is a few thousand dollars for the fencing, noting they are not sound barrier panels. It is a fence. Mr. Connors stated there had been negotiations. When negotiations are made in good faith, he does not see why items have to come back to the Board.

Attorney Swiniarski said the panels are not going to do anything for the neighbor. He is not sure this is a solution. If the abutter is concerned about sound and the units are running and are inaudible to the surrounding properties, this is not a solution. There is nothing to be solved here. Just because there was a negotiation does not justify placing something on the ground, adding bulk to the project, just because someone made some incorrect assumptions at that time. The panels were placed on the plan to mitigate sound. They had the units tested for sound and have concluded through testing the issue they thought would exist, does not exist. There is no reason to install these panels. Mr. Connors said the a/c units were not on the original plan. The Board said it was okay to install the units, but there had to be fencing around them.

Mr. Mitchell stated he has been involved in this plan during all stages. Since the beginning, there has been difficulty. The last time the plan was before the Board there had been some field changes made. The applicant came before the Board to get those changes in front of the Board and to verify the changes. There was not what he would call a negotiation. If the a/c units were



going to be outside the building and the abutter had concerns that there might be noise from the units, one way to abate that is to say they would install sound barriers. That is what they said they would do. Once the units were installed, it was found they were not loud. This was verified scientifically with a sound study. That is information, not a whim. The applicant is here now because the barriers do not seem to be needed to mitigate noise. It meets the town zoning requirements with regard to decibels. The bollards were installed because they wanted it to be safe. They don't feel all the bollards that are there add to the safety. The Fire Department suggests leaving a certain number of bollards in place and removing the rest. They are not trying to go against staff recommendation. They are not trying to nitpick. They are asking for consideration of two minor items that came up. They are asking to leave 8 bollards and to not install the sound barrier.

Motion by MacEachern to accept jurisdiction of the site plan amendment application before the Board for Edward Smith (property owner NSA Property Holdings) Parcel ID 01023-001, 125 Windham Road, seconded by Bartkiewicz.

MacEachern, Davison, Bartkiewicz, Fairbanks, and Granese voted in favor. O'Connor abstained because of the conversation he had with the owner; Levin abstained as she is a new member. The motion passed.

It was noted the sign issue is off the table at the request of the applicant. Attorney Swiniarski said they will relocate the existing sign to where the new sign is shown on the site plan. The existing sign has raised concerns with regard to sight lines. They will move it to the location noted as "proposed sign" on the site plan. No new sign will be erected.

Motion by MacEachern, seconded by Bartkiewicz to approve the request of the applicant to remove the bollards protecting the underground storage tanks, leaving remaining bollards as identified by the Fire Department; to not install the sound barrier panels around the three HVAC/Heating units; and to not relocate the proposed larger sign, allowing the smaller, existing sign to remain in its current location.

MacEachern voted no, citing all bollards should be kept in place because they exist; the HVAC was put in and the sound barrier should be installed to provide sound protection and for aesthetics; and he wants the sign relocated to an area where it is safer for travel on Windham Road.

Davison voted no, citing the applicant was before the Board in March and Mr. Smith offered to make concessions to satisfy all parties. In fairness to the other parties the concessions need to be made as promised.

Bartkiewicz voted no, citing the Board worked hard on this plan and he agrees with the statements made by MacEachern and Davison.

Fairbanks voted no; he has already stated his reasons.

Granese voted no, citing agreement with statements made by MacEachern, Davison, Bartkiewicz and Fairbanks.

O'Connor and Levin abstained for reasons previously stated. The motion failed and the applicant's request is denied.

Motion by MacEachern, seconded by Bartkiewicz to approve the request of the applicant to relocate the existing sign to the location designated on the site plan as what would have been the location for the new sign.

MacEachern, Davison, Bartkiewicz, Fairbanks, and Granese voted in favor; O'Connor and Levin abstained. The motion passed.

Attorney Swiniarski confirmed the Board has determined that all of the bollards will remain in place without the modification proposed by the Fire Department.

### **Town of Derry**

#### **PID 29189, 29 West Broadway**

#### **Replace the interior portion of the existing sign at the Adams Memorial Building with an electronic message center board.**

Mr. O'Connor advised he is neither for nor against this proposal. He contacted Peter Michaud of the NH Division of Historical Resources to determine if the addition of an LED sign would affect the status of the Adams Memorial Building on the National Register of Historic Places. He did this when the RFP for the sign went out. He spoke with Mr. Michaud and was advised that changes of this type could affect the Registry of the building. Mr. Michaud stated changes of this type are not encouraged; however this particular change would not delist the building when they perform the annual review. That is because the LED sign proposed is the same general size as the existing sign and will be away from the building. Mr. Michaud confirmed that information in an email, a copy of which has been placed in the file. Mr. O'Connor had a comment with regard to the Town of Derry and compliance with RSA 674:54, which speaks to government use and exemptions from the town's own regulations. He spoke with NHMA which has a document that speaks to when a town does need to comply with its own regulations. He asked how the law would apply if the Town owns the building but leases to private entities. NHMA's article in *Town and City, May 2007* states, "Even if the property is owned by a governmental unit, it will still be subject to zoning regulation if it is being used for any purpose that is not "governmental." Thus, a private business located in a town-owned building will probably have to comply with local zoning ordinance. The exception is intended to apply only when governmental units are carrying out governmental functions." Mr. O'Connor stated he did like the TRC comments with regard to the Zoning Ordinance. He recommends, because of economic development and the fact that this particular zone is restricted with regard to electronic message center signs that the Board reconsider allowing these types of signs in the Central Business District. The town would not want to see something like what is on South Willow Street in Manchester, but other businesses could benefit from an electronic message sign. He would recommend opening the use up in other districts with some restrictions.

Mr. Granese advised the Planning Board will not be voting on this matter this evening. The Board will hold a public hearing to obtain public input and submit recommendations to Town Council. The Council does not have to accept or take action on any of the input.

David Caron, Town Administrator, and Michael Fowler, Director of Public Works, presented.

Mr. Caron advised they are before the Board this evening under RSA 674:54 which sets forth the review process for government projects. Typically this applies to a major construction project or a substantial new use. The Town thought it best for the sake of transparency to categorize this as a substantial new use. He thanked the Planning Board for scheduling the public hearing so that they can receive comments from the public and Planning Board this evening and bring those back to Town Council.

The intent is to change the sign at the Adams Memorial Building/Opera House to an electronic message board. They are here this evening to request non-binding, written comments from the Board. The Opera House is owned by the Town of Derry and there are four entities in the building. The entities include the Chamber of Commerce, which is non-governmental; the Derry Housing and Redevelopment Authority which is a governmental use as defined under the statute, as is the Historic Museum operated by the Heritage Commission which is established under RSA 673:4-a. The building also houses the Opera House. RSA 674:54 defines a governmental use as those uses which are statutorily or traditionally governmental in nature by either the government or any of their agents. The Town's position is that the Opera House is a traditional governmental use. Years ago in the old town offices there was always a second floor to the town offices which included an opera house as operated by the governmental unit. There are only a few left in New Hampshire. The City of Rochester has an arrangement similar to the Town of Derry where they contract out to a non-profit to manage their opera house. Peterborough's town offices are called a Town House; they also have a similar arrangement. The City of Portland Parks and Recreation Department operates the Merrill Auditorium and Camden, Maine operates its Opera House on the second floor of its town office. Although a lot of communities have gotten away from the traditional nature of providing Arts and now contract it out, there are some that have retained it. It is good to see that Derry continues to provide that service to its residents.

The Town Council has approved an appropriation to install the sign. They feel this is consistent with their responsibilities as a landlord for the Adams Memorial Building. The Town is responsible through Public Works for all maintenance and improvements at that facility. Mr. Caron advised an Administrative Rule has been developed to make sure the sign is not injurious to abutters or passersby. The Administrative Regulation has three basic premises for operation. The first is to notify citizens of any emergencies. The second is to alert citizens of any town meetings, notices and activities and the third is to publicize any meetings or events at the location. Included in the Administrative Regulation is hours of operation for the sign which will be 6:30 a.m. to 10:00 p.m., with the exception of emergency notifications.

Mike Fowler stated his role in the process is mainly technical in nature. His department solicited the RFP in April/May of 2017. Three vendors responded and the result was a 12.4 square foot sign. The sign is two sided; one faces east, the other side faces west. The Greater Derry Arts

Council has to slide the letters into the sign manually. The LED sign will fit the frame of the existing sign. The LED sign is designed to be seen by people driving by the sign at 30 MPH. It is a small pitch sign (3' 1" x 3' 11" each side) and will replace the existing board. The sign has full color capacity with the ability to do graphics, scrolling, and static messages. There is a light sensor so that the brightness can be adjusted for day/night conditions. The programming is wireless and would fall under the Administrative Regulation. This sign is more advanced than the 1<sup>st</sup> generation signs (such as those at the fire station) which are red or amber text. A nice product can be created with this sign.

There has been a concern about compliance with the Zoning Ordinance. Section 165-101.11 (Electronic Message Center Signs) states, "All illumination elements on the face of an electronic message center sign shall remain at a fixed level of illumination for a period of not less than five seconds. Changes from one message to another shall be accomplished by the change of all illumination elements on the face of an electronic message center sign simultaneously, with the provision that the sign may fade to complete darkness and re-illuminate with or fade to the new message. Electronic message center signs shall be equipped with the ability to adjust the brightness of the sign, and shall not be operated at a brightness which is greater than 0.3 foot candles above ambient light conditions as measured by using a foot candle light meter ...."

Mr. Fowler said the town intends to operate the sign within the parameters of this particular ordinance. The sign is not meant to be a distraction to drivers or an obnoxious sign that can bring embarrassment to the Town. The purposes are elaborated within the Administrative Regulation and the Town intends to comply with the content of that particular regulation.

Motion by MacEachern, seconded by O'Connor to open the public hearing. The motion passed with all in favor and the floor was opened to the public.
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Marc Flattes, Derry, stated he has concerns about the placement of an electronic message board on an historic building. There are other town buildings nearby; could this be moved to another lot? The Derry Arts Council will utilize the sign and he is not sure that the statements made by the Town Administrator are accurate. Rochester has a town committee that oversees the arts, not a private organization. The sign should not be used by the Arts Council. What thought has been given to using the smaller LED signs that were just granted to the Fire Department? Why can't those be used for emergencies? How did this sign go out to bid before the new crosswalk improvements? How will that visually impact drivers between the sign and the crosswalk notification? He is against putting an electronic sign on an historic building.

Lisa Joselin, 15 Aiken Street, said this is the first she has heard of a sign. The look of the downtown is changing. A decade ago, Town Council approved improvements to the downtown. One of the priorities was that there were no lighted signs in the downtown. She is not in agreement with this move into the future. The historic buildings add to the charm of the downtown. An electronic message board will change the look the residents have been trying to achieve in this area. Who pays for the maintenance of the sign, or the salary of the person who is entering the content? Who approves what the employee puts up on the sign? Is there a liability for embarrassing content or accidents that are caused by the sign? Does this set a precedent for

other businesses on West Broadway to get their own electronic sign? That would be detrimental to the downtown. It is hard to see people on the crosswalk in the fall and winter. An electronic message board sign will make that worse. Mr. Caron advised the existing staff will program the sign as part of their normal duties. He suspects the Town will maintain the sign as part of the maintenance of the building for the tenants.

Ellie Sarcione, 134 Chester Road, said she was not in favor of this sign. This is an old building that housed the Police Station in the basement at one time. Millions of dollars have been poured into this building and the building is not paying the Town back. Now the Town is putting more money into the building. Accidents occur at this location. Now the Town wants to put up a distracting sign which will cause more accidents. People will be looking at the sign, not at the people on the crosswalk. She feels it is tacky to have a modern, blinking, flashing sign in front of an historic building. She does not feel the town should pay for it; the tenant should raise the money for the sign, not the taxpayers. The sign will be a safety hazard and the downtown will now have an ugly sign.

Steve Trefethen advised he has 15 residents near this location. The Town could have gone three ways to gain input and he feels it would have been better to have a full Planning Board public hearing. The Town Council brought this sign up during one of their meetings and one Councilor said it would be a great place to advertise businesses for economic development. Now this is before the Planning Board. He has an issue with the TRC comments which are very general. There should be restrictions on this sign and he believes it should not even be allowed. RSA 674:54 deals with governmental use of land. He read the definition of "governmental use" as defined in the RSA aloud. He also commented on the Administrative Regulations and felt the Regulation supported non-governmental uses. If the Derry Arts Council is taken out of the mix and the sign is only for notification of emergencies or town meetings, the sign does not need to be on until 10 p.m. at night. In the TRC notes Thomas Carrier said, "The following items will be allowed on the sign, in this order of precedence. Town emergency notifications, civic events sponsored by the town such as meetings, activities and meetings to be held at the Adams Memorial Building." The Derry Arts Council is a private organization with a Board of Directors, paying rent to the Town of Derry. They cannot use this sign. The Town cannot allow them to use it. Since the sign can't be used to advertise businesses in Derry, there is no need for the sign to be on after sunset. The Traditional Business Overlay District (TBOD) limitations with regard to the amount of signage should apply. If the Arts Council is taken away, they would need their own sign, but can't have one in this area of town because of the TBOD restrictions; that puts a hardship on them.

Mr. Trefethen advised he spoke with Attorney Christine Fillmore at NHMA. He asked if the case law with regard to governmental use would apply to the use of this sign. She said case law stands. He cited the NHMA *Town and City* 2007 article on governmental use. "Even if the property is owned by a governmental unit, it will still be subject to zoning regulation if it is being used for any purpose that is not "governmental." Thus, a private business located in a town-owned building will probably have to comply with the local zoning ordinance. The exception is intended to apply only when governmental units are carrying out governmental functions." So, the Opera House is out. The article goes on to say the Town does not have to follow the Zoning

Ordinance unless there is a Town regulation that states the Town has to follow the Ordinance. Derry has a regulation that states electronic signs are not allowed in the TBOD.

Mr. Trefethen said he would have been more comfortable if the Planning Board had the option to vote this up or down. The Town may have good intentions at first but a future Town Council may want to advertise other things like the Farmer's Market. The Planning Board should put conditions on this. The Planning Board could call Attorney Fillmore. This hearing should be postponed.

Donald Burgess, High Street, stated he was on the ZBA when a sign like this was approved for Cumberland Farms, so there is already one in the district. There is a crosswalk near Cumberland Farms. He does have a concern for the proximity of the sign to the crosswalk.

Mr. Chirichiello asked staff to discuss the beacon lights at the crosswalks and the safety issues.

Mr. Fowler stated last week, the Department of Public Works installed new signs at the crosswalks adjacent to Santander Bank and the Adams Memorial Building. There will be blinking amber lights that are pedestrian actuated. The pedestrian will push a button which activates the lights. The blinking light will alert a motorist that a pedestrian will be crossing the crosswalk. The signs were placed in the FY 2018 budget to address concerns for safety at these crosswalk locations. The lights should be in operation by the end of September. The Town monitored the crosswalks, and paints them annually. He is hoping the crosswalk enhancements will improve pedestrian safety.

Michael Gendron and Mark Beland, Trustees and Derry residents, spoke on behalf of the Derry Arts Council. The Adams Memorial Building/Derry Opera House was donated by Benjamin Adams so that the Town would have a viable entertainment venue. As Trustees, two of their objectives are to foster the arts in Derry and the surrounding area, and to maintain and preserve the historic Derry Opera House. They feel the Greater Derry Arts Council has done that.

Mr. Gendron stated affordable space is provided at the Opera House for outside organizations to advance their artistic craft in a well maintained building that has state of the art sound capabilities and lighting. The Council has invested money in the building; making balcony improvements and in sound technology. The use has grown to 220 days of use out of 365 between rehearsals and performances. The Adams Memorial Building looks like a court house or governmental building. They feel an electronic message board will attract attention to the building so that people will know interesting events are being held here. The Arts Council currently manually changes the letters on the antiquated marquee and only has the ability to promote one event at a time. This gets complicated and labor intensive when there are multiple events occurring on the same weekend. They manually change the letters all year long. This change would improve the aesthetics. The sign will serve the needs of the Opera House and all of Derry. They do not feel the aesthetic of the building will be changed by the installation of this sign. The intent of the Arts Council is to present a professional, understated, effective message board that is tasteful and consistent with the current aesthetic of the building. This is the gateway to the downtown. The Derry Arts Council supports this installation and feels Benjamin Adams would have supported this change.

Mark Beland stated the Arts Council has worked with the Town to make sure the sign does not look like others in the area. The technology has auto dimming and the ability to adjust to proper lumens for daytime or night time use. They have worked with the Town Administrator to make sure it is unobtrusive and benefits the town with regard to events. The sign should bring more people to the Opera House and into the downtown.

Mr. O'Connor reiterated the building's status on the National Register of Historic Places will not change with the addition of this sign. Mr. Beland felt the sign would fit in with the economic development goals of the Town as well.

Ms. Sarcione wanted to stress the Adams Memorial Building was donated by Ben Adams. She knew Mr. Adams. She is glad the Opera House is there but the Arts Council can use newspapers for advertising. There are many ways to get the word out that there are events at the Opera House without this sign. Cumberland Farms is not a 200 year old building and did not have the original courthouse in it. She feels this is tacky and distracting. She understands the need to protect citizens on the crosswalk but this sign will be a distraction.

Mr. Trefethen stated the Greater Derry Arts Council is a private business that leases the building for about \$3,000.00 per year. He is sure they need to maintain certain things in the building. It is clear per the RSA that the governmental land is not being used by the government and it is subject to the land use regulations. This is a private entity. The Town does not have a right to go against the RSAs. He is in favor of the Arts Council but not in favor of this sign at an historic building. He would like an electronic message center sign for his business. His building was built in 1898.

Mr. Flattes said Derry is great community because of our historic downtown. There are many communities creating downtowns. Derry has one; the buildings, architecture and signs are historic. He would like to see the downtown kept historic and eye pleasing.

Randall Kelly, 4 Hardy Court, said Parkland has an electronic sign that is two times the size of this proposed sign. The sign company can provide pollution setbacks. If the Planning Board or ZBA could say there should be no less than 1 minute between scrolling messages, that might be good. The sign is a good thing. He feels this sign proposal is opening a can of worms because now all businesses might want a sign of this type. Our downtown is plain compared to other downtowns.

There was no further public comment.

Motion by MacEachern, seconded by O'Connor to close the public hearing. The motion passed with all in favor and review returned to the Board.
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Mr. Granese reminded everyone that the Board is not voting or taking action on this item this evening. This is an opportunity for the public to speak so that the Town Council can gain input.

Mr. Connors asked for clarification on the size of the sign. Mr. Fowler explained the sign is taller than it is wide. There is room for six rows of text. Mr. Connors asked if the existing sign is original to the historic building. Mr. Fowler believes the current sign was erected around 2001 when the building was remodeled. Mr. Connors felt this type of sign would provide more control over the message on the sign board. In the past, pranks have been played with the manual letters. The current sign advertises the Farmer's Market and is a town owned property and sign. He feels it is sad the building does not get more use. The sign is a good idea to promote prosperity in the downtown and the Town should be promoting things that will bring money into the Town. This is approximately a 3 x 4 foot sign. This is not a large issue and the politics should be taken out of this request.

Mr. Fairbanks said he does not care about the politics; he is more concerned with the statutory regulations if the building is being used for non-governmental uses.

Mr. O'Connor stated the Heritage Commission and the Housing Authority are town entities, funded by the town. Mr. Fairbanks stressed he did not want to run afoul of the statute. Mr. MacEachern said two of the entities in the building are statutory, two are not. The sign was put in place in the early 2000's when the building was renovated. He likes the sign the way it is, but there is a need to be practical. He does not think replacing the insert is a bad idea. He does share concerns with some of what Mr. Trefethen raised. He wants to make sure the town is on solid, legal footing. He would also respectfully suggest the Town Council bring this back to the Planning Board for a vote. Typically, the Board has the opportunity to do an in depth review. He requests that in the future, the Board look at electronic message center signs in the downtown to see what fits in the downtown. He can understand some of the concerns raised about electronic message center signs because some of the older ones in existence are more intrusive. He is in favor of the sign, but feels this situation requires further legal review.

Mr. Connors confirmed there had been a bid for the project. He asked if all of the homework on the issue has been completed with regard to the legality. Mr. Caron stated the legal concerns were addressed; they can reaffirm that. The Chamber of Commerce is not a governmental entity but the other three uses in the building fall under what the RSA defines as a "governmental use". Two of the uses are in place by statute and the other use is an historic use of a governmental building. He is glad Derry has maintained the tradition of the Opera House.

Mr. MacEachern confirmed the sign would shut off at a certain time at night, unless there was an emergency notification.



## WORKSHOP

Mr. Granese thanked the public for their patience this evening. He advised the Planning Board allows the public to provide input during zoning workshops. He would ask members of the public to keep their comments to three minutes so that they can move the meeting along and allow everyone to speak. The Board will be taking no action this evening; it will only hold a discussion.

Mr. Chirichiello stated he lives in the district under consideration. The Board members did not feel he had to ~~excuse-recuse~~ himself from the discussion as the Board would not be taking any action on this item this evening. This is a workshop.

Mr. Granese advised the Zoning Ordinance outlines the requirements for the Medium High Density Residential (MHDR) zone under Section 165-45. The uses allowed in that district include single family residential, two family, multifamily, accessory dwelling units, and commercial performing fine arts schools and studios. If approved, the change the Board intends to make is to move the properties in this area that are currently MHDR to Medium High Density Residential II (MHDR II). That zone only allows single family residential and accessory dwelling units. Two family, multifamily/apartment buildings and commercial performing fine arts schools and studios would be removed as allowable uses. Anything that is in existence today would remain the same if this use is approved.

Mr. Sioras stated the Board has its own goals and had been given some goals by the Town Council to accomplish over the last few years. One of items the Town Council wanted the Board to look at was the amount of apartments, condos, and multifamily. The Board may change the zone to not allow multifamily in some of the older neighborhoods. The thought is that the existing density is too high in those neighborhoods on those lots. The lots that were created do not comply with today's regulations for streets, lot size, setbacks, etc. This Board has been asked in conjunction with the Economic Development Department and the Economic Development Advisory Committee to look at the zoning in this area and to eliminate multifamily. Any existing multifamily would still be considered a legal use if the Board moves forward with the intended change. Single family residential is still an allowed use. There are a handful of lots in the area that could be developed, but the density would be very high and could negatively impact the neighborhoods.

Mr. Granese added that Exit 4A will be coming through on the north side of this area (Madden/Folsom/Tsienneto). The Planning Board is looking at the area and this is the first step in restricting what could go there as an allowable use. Once the Board receives the final route from the State, the Board will go back and look at this area and the parcels in person to determine what could happen there over the next ten to twenty years. They want to see what would be the best for the Town of Derry. About 5-6 years ago, the Board worked on zoning changes in the area of the Frost Farm. The Board listened to the residents and put uses back into the ordinance the Board had removed during the process. Once again, this is the first step in the process of looking at the zoning in the area.

Mr. Connors stated rezoning this area does not preclude any future zoning changes for the lots. Elm Street has a town owned parcel; will this change affect that lot? Mr. Sioras stated the Town has placed an RFP out to see what developers might put on that lot. Mr. Chirichiello explained the Council would like to see what someone might develop on the lot if they had options based on the zones that surround the lot. Mr. Connors noted this change would restrict that lot to single family development only. The Board needs to do the right thing but he does not want to restrict that lot. Mr. Granese said the Board is going to change the larger chunk of lots and then go back and look at the area as a whole and review it in pieces.

Mr. Chirichiello stated his home was constructed in 1902. The town is trying to keep some of the traditional older neighborhoods. If a developer purchases a block of parcels, the developer could put up a big building. The Board is trying to help keep the neighborhood traditional with this zoning change.

Mr. Granese invited public comment.

Lisa Joselin, 15 Aiken Street, confirmed that any existing multifamily would be grandfathered, but this change would prohibit any new multifamily development on the lots, for example along High Street and Ash Street. Mr. Granese explained if a plan came in today, there could still be a development on one of the lots. After the zoning change is posted, a developer would have to conform to the new regulations. Any existing multifamily is grandfathered, even if it is destroyed by fire. The caveat would be that it would have to be rebuilt within 12 months in the same footprint to maintain the grandfathered status.

Al Dimmock, High Street, said what the Board is trying to do is to stop anyone from developing an overabundance of housing. He has lived on High Street for 35 years. When he first moved in, there was very little traffic. Now, tractor trailers and tour buses go past his home. If a builder is allowed to create apartment buildings, it will create a problem. A ten unit building on the street would mean an increase of 20 more vehicles in a congested area. It would also add school children which increases the cost of education. This should be considered in light of what the increase in tax revenue would be per unit. It could be detrimental to the town. There are multifamily units in town that are still not rented out. If the Board limits the number of building on a property in this area of town, the Board is doing the town a service. He is glad the town is doing something with the zoning and feels the Board is on the right path.

Donald Burgess, High Street, stated he has lived here since 1999. He feels this is a great idea. Unfortunately, the ZBA had no choice but to approve certain things. The change to single family residential in this area is a superb idea. Too many parcels could have apartments on them because it is allowed right now. He hopes the Elm Street property remains vacant. It is a good idea to not add any more multifamily. West Derry has taken its share of this kind of housing and does not need more.

Steve Vadney, Ferland Drive, stated there are a lot of MHDR zones in Derry. Why is the Board picking this particular area? Mr. Granese advised it is because Exit 4A will come through this area. The Board is looking at different parts of Derry for zoning, but wanted to focus on this area. Mr. Vadney asked if the Board is concerned with the potential for large apartments to be

constructed on land opening up near the exit. Mr. Granese said the Board is not sure what will happen once the exit opens. Mr. Vadney stated he purchased his property because it was in the MHDR. He hopes to build more on the property in the vacant land. He put in a duplex and created a cul de sac in anticipation of being able to construct another building on the lot. He has invested money in that property. He suggests the Board place a lot of record savings clause in the ordinance so that someone who owns a lot before the zoning change can still develop the lot.

Cheryl Stanion, 5 Everett Street, has lived in her home since 1986. Most of the homes on her block were constructed in the 1800 and 1900's. Along her block of Everett, Ash, High and Hillside there is a three family, two single families, a two family, a building with 6 apartments, a three family, a single family, two homes and a two family. Children in this neighborhood walk to school. This area is saturated. She is grateful the Board is considering this. She heard ten units were approved between all of these houses, but was told several times by the Town this is not the case. The shoe factory land [19 Elm Street] should not be developed. Traffic is crazy in this area. The neighborhood deserves a park and it is about time they got something back from the town. They are the forgotten area of Derry. Something needs to change. She is grateful the Planning Board is having the foresight to think about their neighborhood. Mr. Chirichiello said the side streets get traffic because the majority of traffic queues up on Broadway. Exit 4A should alleviate some of this traffic. The Planning Board is thinking this through and this is the first step.

Mr. Connors noted that for residents such as Mr. Vadney, if this change moves forward, there is a mechanism through which he could obtain a variance to develop his lot. Mr. Granese stated the plan is to hold public hearing on this change and then look at this area again.

Roscoe Diamond, 50 Hillside, purchased his home in 2014. He commends this move because he feels Exit 4A extension will be out of hand.

Mr. MacEachern commented there will be a public meeting in Londonderry within the next few weeks to discuss Exit 4A [September 14]. If members of the public have not seen the plans for Exit 4A they can be viewed on the Londonderry website. A copy of the Woodmont Orchards plan is available on the Derry Planning Board webpage so that people can see what Londonderry is planning for their side of the exit. There is a lot of land in Londonderry that is undeveloped.

William Carpeteter, 10 Ash Street, likes the sound of the changes. He confirmed the change would not affect the tax rate of the parcels.

Roger Levesque, 23 Wyman Street, is worried about what will go in at the orchard in Londonderry. He likes the idea of this zoning change. He lives in a home that was constructed in 1901. The value of his home is affected by the assessments in the neighborhood and rentals decrease that value.

Mr. Dimmock stated he has been on many Boards in this town and for 22 years did not miss a Town Council meeting. Exit 4A will be of benefit to Londonderry, not Derry. He does not feel the exit will relieve the traffic on High Street. People will still use High Street to avoid Broadway. If people are allowed to build rental units, it will be detrimental to Derry.

Eva Marvell, 53 Hillside, has the last house in Derry. On the other side in Londonderry, there are sixteen acres that can be developed. This land will need water and sewer from Derry. She hopes the Town Council will take that into consideration. Rezoning this area is a good thing.

There was no further public comment.

Mr. Granese advised the next step is to place this item under Other Business on the next agenda so that the Board can schedule a date for a public hearing. The public hearing in October will be advertised on the website and in the local paper; residents will receive individual notices. If the Board votes in favor of the change, it is then forwarded to Town Council which will hold its own public hearing.

Peter Pendak, 7 Linwood, stated this change is not what he expected to hear when he came to the meeting this evening. He thought MHDR II would bring more business. This district has been uneasy and this change will bring stability to the neighborhood. It is a positive change.

There was no further business before the Board. Mr. Granese expressed thanks from the Board to the members of the public who attended this evening.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting adjourned at 9:51 p.m.

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

\_\_\_\_\_  
Secretary

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