

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 06, 2021, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with a majority of the members of the Board physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice Chair; David Nelson*, Secretary; Randy Chase, Town Administrative Representative; Mark Connors, David Clapp, Members; Dave Granese*, Andy Myers, Alternate

Absent: James Hultgren; Brian Chirichiello

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; 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 Emergency Order #12, as issued by Governor Sununu has expired, Board members are allowed to attend the meeting remotely, provided there is a quorum of members physically present in the meeting room. 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.

Mr. Granese was seated for Mr. Hultgren; Mr. Myers was seated for the vacant full member position.

Escrow

#21-15

Project Name: Subdivision Plan Map 9, Lot 139

Developer: Kevin Coyle

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 09139, 40 Old Chester Road

The request is to approve a final release of cash escrow in the amount of \$5,572.80 for the above noted project. The amount to retain is zero.

Motion by MacEachern, seconded by Granese to approve as presented.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese, and O'Connor voted in favor and the motion passed.

#21-16**Project Name: Brookview Estates****Developer: MPV Development****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 29149, 18 Maple Street**

The request is to approve Release #2 in the amount of \$45,489.60, for the above noted project. The amount to retain is \$14,029.20.

Motion by MacEachern, seconded by Connors to approve as presented.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese, and O'Connor voted in favor and the motion passed.

Minutes

The Board reviewed the minutes of the September 15, 2021, meeting. Mr. O'Connor noted the minutes will be revised to reflect Mr. Chirichiello was not present for the meeting.

Motion by MacEachern, seconded by Clapp to approve the minutes of the September 15, 2021, meeting as amended.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, and O'Connor voted in favor; Granese abstained, and the motion passed.

Correspondence

Mr. O'Connor advised there was one piece of correspondence relating to one of the public hearings and asked Mr. Sioras to discuss it.

Mr. Sioras explained Doug MacGuire, engineer for The Grindhouse project, wrote to staff last week requesting the hearing be continued to October 20, 2021, as Mr. MacGuire was unavailable this evening due to family matters. The applicants are in favor of the continuance. Mr. Sioras advised the Board would need to vote to continue the hearings, and abutters would not be re-notified of the new date.

Motion by MacEachern, seconded by Granese, to continue the public hearing for The Grindhouse, PID 32025-003, 43.5 Crystal Avenue, to October 20, 2021.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the motion passed.

Other Business

Chairman/Planning Director Updates

Mr. Sioras had nothing to report.

Mr. O'Connor explained why Mr. Myers is now seated as an alternate rather than a full member. The Town Charter requires the Town Council to select an alternate to fill a vacant full member position. When Mr. Myers applied to the Board, the Council appointed him as a full member in error. Currently, the Board has two alternates. The Town Council has not yet made the appointment to move one of the alternates to the full member position.

The second item is that Mr. O'Connor would like to implement a Board Member comment/request period prior to adjourning the meeting. Discussion would be limited to two - three minutes per member, provided the meeting ends prior to 10:00 PM. The Board would allow two, ten minutes extensions of the meeting at that time.

Public Hearing

Town of Derry

PID 20022, 15 Collette's Grove Road & PID 07090, 10 Collette's Grove Road

Micha Barnum

PID 20005, 2 Sanborn Road

Acceptance/Review, Lot Line Adjustment

Mr. Sioras provided the following staff report. Attorney Jonathan Boutin is present this evening to represent the Town of Derry for this application. Attorney Timothy Britton is representing the co-applicant, Mr. Barnum. The two properties are 10 Collette's Grove Road and 2 Sanborn Road. The purpose of the plan is a lot line adjustment for the two properties located in the Low Density Residential District. The plan is pursuant to a settlement of litigation between the Town of Derry and Mr. Barnum. Lot Line changes to do not require staff signatures on the plan. Attorney Boutin has requested waivers from the LDCR for two foot contours, HISS mapping, and wetland mapping. Staff recommends approval of the waiver requests and the lot line adjustment application.

Attorney Boutin explained the history of the dispute which goes back many years involving Collette's Mountain (owned by the Town), and a parcel of land owned by Mr. Barnum. Following review of many deeds, it was felt the property line should be adjusted. The result is that a portion of the property on the south side of Sanborn Road will be attributed to Mr. Barnum's property, cleaning up the property lines so the properties will go to the road frontage. As part of the agreements, the parties have worked out trail easements so that the access to Collette's Mountain will remain in place. If there are any changes to Mr. Barnum's property in the future, he will appear before this Board and will follow the appropriate regulations. This is an incidental lot line adjustment resulting from the boundary settlement agreement.

Attorney Britton advised he concurred with Attorney Boutin's presentation. If the Board has any questions, Daniel Mullen, who prepared the plan, is available this evening via Zoom. Essentially, Parcel A as shown on the plan becomes Barnum land, and Parcel B becomes Town of Derry land.

Motion by MacEachern, seconded by Granese, to accept jurisdiction of the lot line adjustment plan before the Board for the Town of Derry, PID 09070, 10 Collette's Grove Road, and Micha Barnum, PID 20005, 2 Sanborn Road.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the motion passed.

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

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor, the motion passed, and the floor was open to the public.

David Dyson, 164 North Shore Road, advised he was notified as an abutter and questioned why he would be notified since he was a distance away from the parcels. Mr. Sioras explained the distance utilized for Planning Board notification. Mr. Dyson and many others fell in that distance.

Daniel Mullen confirmed he was available if there were any questions about the plan.

There was no further comment from the public.

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

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the motion passed, turning review of the plan back to the Board.

Mr. Connors stated the agreement has no bearing on the Board. Attorney Boutin advised the new common boundary pushed the bound across the street, which resulted in this lot line adjustment. Mr. Connors confirmed the areas being traded are fairly close in size.

Motion by MacEachern, seconded by Granese, to grant the following waiver requests as the Board finds after review that strict conformity to the regulations would pose an unnecessary hardship to the applicants and the waivers would not be contrary to the spirit and intent of the regulations:

Waiver from LDCR Section 170-24.A.11 to not require two foot contours to be included;
Waiver from LDCR Section 170-24.A.12 to not require the soil survey (HISS) mapping
Waiver from LDCR Section 170-24.A.13 to not require wetland mapping

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese 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, Note approved waiver (s) on the plan, Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-24.C, Conditions precedent shall be met within 6 months, Submission of the appropriate recording fees, payable to the Rockingham County Registry of Deeds. [This includes the \$25.00 LCHIP fee, recording fees for the mylar and the Notice of Decision.]

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the motion passed.

Board Member Comments

Mr. Connors stated he understands the Board is working to move the town forward in a positive manner and has made some good decisions. With turnover on the Board between initial phases of discussion and final votes, some of the members of the Board have expressed they were unaware of some of the past discussions and decisions, especially with regard to the newer zones, specifically the West Running Brook District. That zone was created after a lot of good discussion and back and forth between the Board members. He believes that any new Board member should research the history of anything they are voting on and avail themselves of watching the prior meetings having to do with the zone, not just read the minutes of the meeting. This allows the Board members to see the interaction with the public, particularly with the flexible zoning that is useful in moving the community forward. The town has limited land available for development and is figuring out how to best position itself moving forward to meet the market. He encourages the members to review the history and the commitments that were made to the public and abutters on TV when these zones were created. He stated when the Board was seeking permission to create the flexible zones, commitments were made to the public to gain their support. The commitments may not be legally binding, but he believes especially with flexible zoning, if the Board wants to be entrusted to do this elsewhere in town, when members make commitments to the public, the commitments need to be honored by the following Board. The lots in this zone are being looked at individually, as agreed. He just wants to make sure that what was said in public and committed to, is followed through. His concern is that any future attempts to create flexible zoning will be met with resistance from the public which may require stringent standards in zones, if there is no follow through in this particular zone. For the West Running Brook district, there were long discussions and detailed restrictions were put in place on purpose. For this Board to now 'throw out' some of those restrictions would not be honoring what was stated in the past.

Mr. O'Connor and Mr. Sioras advised if any of the members require information on the establishment of a zone to reach out to the Planning Office. Mrs. Robidoux can forward the information.

Mr. Myers indicated he did not appreciate being referred to as ignorant. He was on the Zoning Board for a number of years. He does follow the news in the Town and does watch the televised meetings. If there were any specific commitments that were made, he is happy to have those brought to his attention at any future meetings.

Mr. Connors explained he was not referring to Mr. Myers, but to some of the other sitting Board members who during meetings questioned how the zone was allowed to be so flexible. He encourages anyone new to a Board to not just look forward, but to look back at the history of what they are voting on.

Mr. Nelson thanked Mr. Connors for bringing up the legislative history, which is important, especially for a zone that is parcel specific. It would be hard for any Board member to apply personal opinion equally to the different projects in the zone. The Board should be aware of promises made but those are not legally binding if they are not in the black letter law of the ordinance. The Board acts in a quasi-judicial manner and needs to make sure the decisions are supportable. The Board needs to be extra diligent in any submission in a zone this flexible.

There was no further business before the Board.

Motion by MacEachern, seconded by Connors to adjourn.

Chase, Connors, MacEachern, Clapp, Myers, Nelson, Granese and O'Connor voted in favor and the meeting stood adjourned at 7:28 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____