

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 07, 2020, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room.

Members physically present: John O'Connor, Chairman; Lori Davison, Vice Chair; Mark Connors, Secretary Pro-Temp; Randy Chase, Town Administrative Representative; Doug Danzey, Jennifer Carrier, Jim MacEachern (7:58 p.m.), Members

Members digitally present: Dave Granese

Absent: Richard Tripp, Mark Grabowski

Also present: George Sioras, Planning Director; Robert Mackey, Code Enforcement Officer

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor advised that although the Stay at Home order has expired, Emergency Order #12 as issued by Governor Sununu waives the requirement that all members be physically present. Members can attend the meeting electronically. He provided the appropriate links for members of the public to join the meeting virtually via a MAC, PC, or by phone. He then introduced the staff and Board members.

Mr. Granese was seated for Mark Grabowski.

Escrow

#20-24

Project Name: Varsity Wireless Cell Tower

Developer: Varsity Wireless Investors, LLC

Escrow Account: Same

Escrow Type: Removal Bond

Parcel ID/Location: 08102-001, 69 ByPass 28

The request is to renew a removal bond #014215249 in the amount of \$25,000.00 to be held in perpetuity, or until such time as the telecommunication tower requires replacement, removal, or relocation. (Varsity Wireless Site Number VW-NH-0015A (Derry 1)). This replaces Bond #1073241.

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

Mr. MacEachern attempted to join the meeting via phone.

Minutes

The Board reviewed the minutes of the September 16, 2020, meeting. Mr. Granese noted although he was present at the meeting virtually, he was not seated and therefore did not vote. The record should be amended to remove him from any votes.

Motion by Granese, seconded by Connors to approve the minutes of the September 16, 2020, meeting as amended.

Chase, Connors, Carrier, Danzey, Davison, Granese, and O'Connor voted in favor and the motion carried.

The Board reviewed a request to amend the minutes of the August 19, 2020 meeting. It was brought to Mrs. Robidoux's attention there was an error in the record. A decimal point was in the wrong place. On page 7, paragraph 4, it incorrectly reads "1.5 children". Attorney Cronin said, "0.15 children". As the minutes have already been approved and this constitutes a substantial change as opposed to a scrivener's error, the Board is asked to re-approve the minutes as corrected.

Motion by Granese, seconded by Connors to approve the minutes of the August 19, 2020 meeting as amended this evening.

Chase, Connors, Carrier, Danzey, Davison, Granese, and O'Connor voted in favor and the motion carried.

Correspondence

None.

Other Business

None

Workshop

Workshop #2 - Planning Board discussion of potential changes to Article XII, Signs, specifically the regulations concerning Electronic Message Center Signs

Mr. O'Connor noted at a recent Town Council meeting, the Council discussed issues with signs and were unaware the Planning Board had begun the process to review the sign ordinance. There had been numerous phone calls to Town Hall with regard to political signage not being removed in a timely manner. He spoke with the Town Council Chairman today and at some

point in the future, the Board will need to look at tightening up the enforcement actions for these signs. The Town employees are having to spend a lot of time picking up the signs which takes away from their daily duties.

Mr. Sioras advised the Town Council had asked the staff to look at electronic message center sign regulations. Mr. Mackey has been asked to attend the meeting to explain the history of how this was brought to the attention of Town Council, and the legal action the town had to take. The Board can decide if it wants to move forward with any changes to the ordinance.

Mr. Mackey, Code Enforcement Officer, clarified this issue was brought up at Town Council and it was requested the Planning Board take another look at it. The Sign regulations are found in the Zoning Ordinance and can be amended by the Planning Board. A few years ago, the Planning Board added provisions to the regulations for electronic message center signs. The Board put restrictions in place regarding the brightness, the length of time text can scroll, animation, no flashing, etc. The intent was to keep the signs from being too distracting, but to allow for changing technology. Currently, the electronic message center signs are allowed in the General Commercial zone (Lenox Road to the Police Station), Industrial IV (Walmart to the Londonderry town line), and GC IV (Ryan's Hill to the Windham town line). An issue that has recently developed involves the large electronic message center sign that was erected on Crystal Avenue this past year. The sign was depicted on the site plan that was reviewed by the Planning Board. The minutes of the hearings do not reflect any particular discussion about the sign, and he believes it was assumed the sign would advertise businesses located on that lot. It was noted that other businesses not located on the site, some in town, some out of town, were also being advertised on that sign. That issue was brought to his attention. In checking the regulations, it was his conclusion that was not a permitted use. The electronic message center sign regulations talk about on-premise signs. The Ordinance does not define "on premise" sign, but it does define "off premise sign". His determination was that off premise advertising is not allowed. The owner of the lot was contacted, and a legal opinion rendered from the town attorney which agreed with Mr. Mackey's interpretation of the Ordinance. Subsequently, that issue came up at the Town Council meeting and the thought was the Planning Board may want to adjust the ordinance to allow off site advertising on electronic message center signs.

Mr. Connors initially thought the Board would focus on electronic message center signs. He had suggested that the Board might want to look at the entire sign ordinance. There are only a few districts that are called out specifically. Does the Board need to look at this zone by zone, so that it is clear within each zone what is required? He felt the current ordinance leads to confusion. Page 171 of the Ordinance speaks to General Commercial III which does not allow illuminated signs; Parkland Medical Center now has an electronic message center sign which make it non-conforming. Mr. O'Connor noted there are several like that approved by variance. Mr. Connors noted there are some zones not mentioned at all, such as the West Running Brook District. Mr. O'Connor agreed and recalled some of the zones had not yet been created when this ordinance was established. He would not have a problem looking at all of these. Mr. Mackey said that is a larger issue and the Board may want to take another look to see where these types of signs are allowed. Parkland is in the Office Medical District, but they received a variance for their sign. Also on Birch Street, Derry Plumbing and Heating received a variance for their sign. Dalpe Electric also received a variance. Mr. Connors felt some of the sign definitions could be cleaned

up as well and consolidated. Mr. Mackey said at one point, in the Ordinance, sign regulations for each zone were scattered. When the Board amended the ordinance, it consolidated the regulations into one chapter. Different zones have different requirements.

Mr. Connors recalled when the project on Crystal Ave was approved by the Board, and recalls the Board looking at the size of the sign but not discussing that it would be electronic. Does the Board have the authority at site plan approval to review what will be on the sign and decide if it should be electronic or not? Mr. Mackey said typically the elevations for the sign are shown on the site plan and if there is something the Board does not like, it can be discussed at the hearings. The Board works with the developer to adjust it. Mr. Connors asked if the Board could control what is within the sign? Mr. O'Connor said yes with regard to intensity, illumination, frequency, etc. There are some towns with very specific regulations. Mr. Connors said he was open to discussing regulations for each of the districts. Are the signs supposed to adjust brightness during the day? How are the signs enforced? Mr. Mackey said the electronic signs do have adjustments for ambient light. Code Enforcement does speak with applicants and let them know that certain things are not allowed. Does the town want to allow for the advertisement of off premise events and business? Other communities do allow the advertisement of off premise business. Mr. Danzey asked how an electronic message center sign is different from a billboard which is not permitted. Ms. Davison thought a lot of the issue has to do with the animation. A billboard is static and not as distracting as an animated sign. Some electronic signs are very dangerous.

Mr. Granese recalled the Board agreed that no business that is not on the lot should be advertised on a sign. He would not have a problem allowing off premise advertising if the sign were advertising businesses located in Derry. He would not want to see a Manchester, Londonderry or Windham business advertised.

Mr. Connors thought there were two things for the Board to look at, the first being clarification of regulations in different zones. The second item would be the advertisement of off premise businesses on an electronic message center sign. If it is allowed and the business could generate revenue from the advertising, it that considered a positive and should it be considered? How does the Board evaluate that? Mr. O'Connor noted the Board needs to keep in mind constitutional rights and it may be the Board does not have the authority to limit what is advertised on a sign.

Mr. Sioras said both sides of the issue are apparent. Businesses are hurting and allowing off site advertising offers an opportunity for a revenue stream, especially during the pandemic. Mr. Danzey said he would be concerned with everyone having an electronic message center sign with multiple advertisements on the same street. He is not sure that is the direction Derry wants to go in. Mr. Connors did not disagree, but technology is moving forward, and the town needs to move with the times. Mr. Danzey said his issue is not with the electronic message center signs, it is with the advertising on them. He would not want to see Crystal Ave become an area that has a continuous row of advertising with all businesses capitalizing on the ability to sell advertising.

Ms. Davison asked if signs were a form of free speech for business owners. If the signs are a protected form of free speech, the Board would have a hard time limiting the content of the signs without infringing on the rights of the business owner. Mr. Connors also wondered what rights

the Board had to limit content on a sign. Mr. O'Connor indicated the New Hampshire Municipal Association has a publication that speaks to what Boards can and cannot do to limit content on signs. The publication speaks to the Supreme Court ruling on the issue. Mr. Mackey said political sign content cannot be restricted, but business advertising might be something the Board can restrict. That would require further research. Mr. Connors said if there is a road that is full of content that changes continuously, advertising businesses that are on site; is that any more distracting than content that advertises businesses located out of town? He thought the Board should keep in mind there is the visual effect and then the content itself. Mr. Mackey explained the Ordinance does contain some limitations with regard to how content appears on the sign (no flashing, five second delay between messages, no animation, etc.).

Mr. Chase said the Board would need to be careful that they are not being prejudice against electronic signs with regard to advertising. There is nothing in the regulations that limits advertising on manual signs. The Board would need to make sure advertising restrictions applied to all types of signs. Mr. Danzey asked when a business owner applied for a sign permit, at the time of application is it stated that the sign will be used to advertise other businesses? If not, should that not be part of the permit process? Mr. Chase felt that spoke to the constitutionality of the content. The Board does not have broad power to say, "You can say this on your sign, but not that." Mr. Mackey said the sign ordinance operates on the premise that signs will be for on premise businesses. That is what happens 99% of the time. When he reviewed the sign permit for Crystal Avenue, it did not cross his mind that off site businesses might be advertised.

Mr. O'Connor asked what happened with the legal opinions. Mr. Mackey said he had received the opinion from the town attorney and informed the business owner that it was believed the sign was being used in a manner that was not permitted in the ordinance. Since then, the matter has been on hold. If the business owner wanted to continue the use, the matter could be appealed to the ZBA to request a variance to allow off site advertising.

Mr. Connors acknowledged the Board cannot interfere with freedom of speech, but is it possible to require a certain percentage of advertising for in town business or nonprofits for every out of town business that is advertised? That might be creative way to benefit Derry and allow the business owner the opportunity for additional revenue. Mr. Mackey was not sure how that would be enforced.

Mr. Sioras thought this will take a few more workshops to work through all the questions. In the meantime, he suggested Planning and Code Enforcement staff work together to come up with some suggested wording and then review that with the town attorney. The draft can then come back to the Board for further discussion. Mr. Mackey felt Mr. Chase had a good point about the inability to limit free speech on all signs, but there may be a way to allow for some off-premise advertising. Ms. Davison noted a business could put a sandwich board out in front of their business and say whatever they want on it. Mr. Sioras said staff will be looking for assistance in drafting amendments from the Board members and members should feel free to reach out by email, and a meeting can be arranged in the Planning office. Mr. Connors asked if the Board could be provided examples of sign ordinances other towns have used with success. Mr. O'Connor reminded the Board they can look at the rest of ordinance as well to see if there are

areas to be amended. He noted the Ordinance references State RSAs in many places, and especially with regard to the regulation of political signs. Mr. Mackey commented this year there seemed to be an unusual number of political signs left in place by losing candidates and staff spent a lot of time collecting the signs.

Mr. O'Connor asked Mr. Mackey if he would be available to attend a Planning Board meeting with members of the Net Zero Committee to discuss the proposed Renewable Energy Ordinance prior to Ms. Davison scheduling the first subcommittee meeting to review the proposal. The subcommittee is comprised of Ms. Davison, Mary Till, Mr. Grabowski, and Mr. Connors.

Mr. O'Connor thanked Mr. Mackey for attending the workshop.

Workshop #2: Planning Board discussion of potential changes to the Traditional Business Overlay District, specifically relating to housing. Article IV, Districts, Section 165-30, Zoning Map; Article VI, District Provisions, Section 165-49, Traditional Business Overlay District; Article XI, Design and Construction Standards, Section 170-63, Parking Requirements

Mr. O'Connor confirmed Mrs. Donovan, the Economic Development Director, will have input on this process. Mr. Sioras said there is a lot to be reviewed and it may be that staff will work on the proposed amendments and bring them to the board. He noted Town Council sets annual goals. This year, one of the goals was to look at the density of housing in the downtown and perhaps increase it to attract development in the downtown. Prior to the pandemic, there had been interest in redeveloping the Abbott Court lot with mixed use. The town, through the Economic Development Office, has been trying to market the lot. There is also redevelopment interest on the north side of Broadway. He was asked to reach out to other communities - Manchester, Rochester, Dover - to see how they handle parking requirements and housing density. One of Town Council's long-range goals is to have a parking garage in the downtown.

There are a few items before the Board for this discussion. Does the Board want to increase the housing density in the downtown which could trigger redevelopment as part of a mixed-use development? The second item would be the amendment of the boundary of the Traditional Business Overlay District (TBOD). A proposed map has been provided to the Board in its handouts. The light blue color is the existing TBOD which encompasses the frontage lots on the north side of West Broadway between the First Baptist Church and the Opera House and then on the southern side from Storer Court to the intersection at Crystal and Birch Streets. The Overlay Zone was created about twenty years ago and allows what might be found in a traditional downtown such as zero setbacks for the front lot lines. The intent is to retain the character of a traditional downtown. Last year the second-floor residential restriction was removed, and now residential uses are allowed on the second floor and above. There has been discussion about redevelopment of the block of lots between the Opera House and the salon on the corner of Martin Street. On the south side, the town has been trying to market the Abbott Court lot for years. The thought process was to increase the TBOD boundary (the proposed area is shown in green) which would encourage redevelopment of the lots. There are some lots that are vacant and lots that could be combined. The housing requirements tie into parking calculations. It might be the parking calculations need to become less stringent to allow for greater housing

density. No decisions would be made this evening and it is anticipated any amendments might take a few months. Changes to the TBOD would contemplate density, parking, sign requirements, the building height restriction (currently restricted to no taller than the Adams Memorial Building). Staff has been instructed by Council to bring this to the attention of the Board. He would like to discuss the proposal with the Board and then staff can work on drafting amendments, perhaps with the help of some Board members.

Mr. Danzey felt increasing housing density goes hand in hand with increasing the success of the downtown area. Today, people want to be able to walk to banks, restaurants, and shops. Areas that have walkability are attracting people. If the housing density is increased properly and tastefully, it will only increase benefits for the businesses in the downtown and attract more business to the area.

Mr. Connors noted the Overlay districts do not appear on the town's GIS system and it would be helpful to have that available. He suggested expanding the area near Storer Court – is there any reason to not go all the way back to South Ave with the Overlay? Mr. Sioras said streets are typically used to create clean boundaries so that there are no split zones. With regard to density, Mr. Connor recalled the Board amended that a few years ago to 800 square feet after lengthy discussion and now the Board is being asked to look at a minimum of 700 square feet. Mr. Sioras said there seems to be a need for smaller units; but Beverly Donovan could be asked to provide input for the Board. Mr. Connors agreed there is a need to bring people, especially younger people to the downtown, but the Board had discussed the minimum size of apartments and did not want the size too small.

Mr. MacEachern physically entered the meeting.

With regard to parking, Mr. Connors felt if the density was reduced too much, there could be many apartments with no parking, taking up spaces that business owners need for their customers. If a garage is constructed, it would be nice if one floor could be set aside for residents in the downtown rather than lowering the density. Mr. O'Connor said ten years ago, the Downtown Committee did a parking analysis. Mrs. Robidoux forwarded that prior capacity analysis to him. The analysis took the parking requirements in the LDCR and compared them to the physical parking for the businesses and residential uses in the downtown. The analysis stated there was a parking deficit then and it has not changed. In the winter, there is no winter overnight parking in the downtown. He will forward Mrs. Robidoux's email to the Board members. A similar analysis may need to be done again. The parking calculations for Woodmont and Tuscan Village are helpful, but those are developments that are being created from vacant land. Communities with shared parking such as Hanover, Manchester, Dover, Portsmouth, and Rochester all have public transportation, which Derry does not have. He agrees walkability is an element, but if people come to live in Derry, how are they getting to work? Maybe before allowing any density changes, a requirement is added for underground parking. Mr. Danzey said walkability does not necessarily mean there are no cars, it just means when people come home, they want to park and then have the ability to walk to the amenities. There is a large population of empty nesters that are looking for walkability and they are not getting up and going to work in the morning. They want that downtown appeal. Parking needs to be

considered because they do have cars. Ms. Davison added that walkability needs to be pedestrian friendly and have traffic calming elements.

Mr. Sioras explained Dover has parking garage and leases out spaces for businesses and residents. Mr. O'Connor likes the idea of expanding the TBOD. Would the residents be notified of any zoning change? Mr. Sioras said they would notify property owners of zoning changes at some point. Mr. Connors said he was not keen on changing density requirements based on the construction of a hypothetical garage. Is there a way to say the Board is willing to change the parking density but there first needs to be a parking garage? Mr. O'Connor asked if the downtown was in a TIF district. Mr. Sioras said there is a TIF district in place and in theory there is an ability to fund public improvements. The ironic piece of this is that the Abbott Court municipal parking lot is underutilized; the same is true for the Wall Street lot. Currently in the regulations, parking in the downtown can be a combination of on-site, off-site, municipal lot and private property agreements for parking. Sabatino's and Martingate/Benson's, during their site plan reviews, included private partnerships for parking as well as spaces in municipal lots to meet their parking calculation. There is flexibility to meet the requirement. The Town Council hopes at some point a developer will come in and redevelop an entire block with mixed use. This just happened in Dover and Exeter. Town Council is acknowledging there needs to be an incentive for redevelopment in the downtown. Mr. Connors said the Board might have the right intentions but may create the wrong effect and just wanted to be cautious in how the Board did this. He felt there needed to be some form of assurance there would be available parking within a certain time frame if the Board were to relax the regulations.

Mr. Sioras said it is relative. He believed a study had been done by a private contractor last year, to look at the downtown parking. It is all perception. When looking at the maps and all of the available municipal and on street parking, there is physical availability, but the perception at the west end of the district near the Opera House is that there is not enough parking; and that is correct when there are events. If a parking garage is constructed it will assist with the parking and allow greater housing density. Mr. O'Connor noted some of the issue involves convenience as well. He asked about the Town Ordinance Chapter 150-4, Prohibited Parking, which speaks to prohibited parking spaces on each street in Derry. Maybe some of those restricted spaces need to be made available. Mr. Sioras said he would talk to Mike Fowler and Alan Côté in Public Works and obtain input from them about that section of the Town Ordinance.

Mr. Chase said citizens bring concerns about parking restrictions to the Highway Safety Committee. The concern is studied and if necessary, a recommendation is made to Town Council to amend the Ordinance and restrict parking in certain areas. The Planning Board does not have the authority to release public parking on a public way. That is a matter for the Town Council.

Mr. Sioras suggested spending the winter months working on these amendments. If a few Board members would like to assist staff and Mrs. Donovan, it would be helpful in drafting an amendment.

Mr. MacEachern felt it was important to allow Mr. Sioras to collect his data and bring information back to the Board.

Ms. Davison inquired if the postponement of the construction of Exit 4A would impact the work of the Planning Board in any way. Mr. O'Connor said the focus now is finding the funding for it, but the project is still moving forward.

There was no further business before the Board.

Motion by MacEachern, seconded by Connors to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:10 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____