

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 4, 2023, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room, with a virtual option.

Members present: John O'Connor*, Chair, David Nelson*, Vice Chair, Andy Myers, Secretary, Dave Granese, Town Council Liaison, Randy Chase, Town Administrator's Representative, Richard Malaby, Dan Healey, Chris Feinauer, Members.

Absent: Mark Connors, Member, John Morrison, Town Council Liaison (Alternate).

Also present: George Sioras, Planning Director; Mark L'Heureux, Town Engineering Coordinator, Lisa Carvalho, Planning Clerk*

*Denotes virtual attendance.

Mr. Myers opened the meeting at 7:00 p.m. The meeting began with a salute to the flag.

Mr. Myers stated that he would be Chair Pro-Tem this evening as Mr. O'Connor and Mr. Nelson are participating virtually. Mr. Malaby served as Secretary Pro-Tem.

Escrow

#23-13

Project Name: Starbucks

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit, Camden National Bank

Parcel ID/Location: 35018, 68 Crystal Ave.

The request is to approve a final release in the amount of \$148,113.36 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

Roll Call Vote: Chase, Healey, Granese, Feinhauer, Malaby, O'Connor, Nelson, Myers, vote Yes. The motion passed.

#23-14

Project Name: Subdivision Mill Rd/Alyssa Dr.

Developer: NIKKO Land, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 06040-001, 45 Mill Rd.

The request is to renew Letter of Credit #2, drawn on Washington Savings Bank, in the amount of \$15,422.40 for the above noted project. The Letter of Credit has an automatic renewal provision. The expiration date will be October 8, 2024.

Motion by Granese, seconded by Malaby to approve as presented.
Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers vote Yes.
The motion passed.

Minutes

The Board reviewed the minutes of the September 20, 2023, meeting.

Motion by Granese, seconded by Malaby to approve the minutes of the September 20, 2023, meeting as amended.
Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

Correspondence

There was no correspondence.

Other Business

There is no other business.

Planning Director/Chairman Updates

Mr. Sioras stated a reminder of two currently vacant Alternate seats on the Town of Derry Planning Board. Mark Connors may be resigning due to a move out of Derry. In that case, John Morrison would become a Member of the Board and open a third vacancy. Residents interested should reach out to Sheila Bodenrader, Executive Secretary to the Town Administrator. The Town Council will make the appointments.

Mr. Myers encouraged online applications at www.derrynh.org/town-clerk/webforms/board-committee-vacancies.

Public Hearing

A public hearing to discuss Hoyadocs, LLC, PID 36026, 32 Pinkerton Street, Acceptance/Review, site plan, 2085 s.f. additions and associate parking lot expansion

Mr. Sioras stated that the project is Hearn Nichols Dental Office and is located in the General Commercial District. All Town Departments have reviewed and signed the plan. There are three waiver requests. There is a State NHDS Wetlands permit pending. The Town has a copy on Feyl, waiting for final approval. Staff would recommend approval of both the waiver requests and the site plan applications.

Mr. Paul Chisolm, Keach-Nordstrom Associates, Inc., Civil Engineer, was recognized. Mr. Chisolm introduced Ken Feyl, Project Architect, John Ahern, and Don Hersey, of Ahern,

Nichols, Hersey, and Butterfield Family Dentistry. The office has been practicing for over 35 years. The site is just over 1.5 acres. The project is to add a 31x31 foot wing from the south side of the building and a parking lot expansion that goes through a wet area of the site and outlets onto Corwin Street. The site is a triple frontage lot, on Pinkerton Street to the north, Peabody Road to the west, and Corwin Street to the south. It is an eclectic neighborhood containing commercial, residential elements as well as Pinkerton Academy. The Shaw's Plaza is nearby and is where all the water from the site drains to and through as it leaves the neighborhood block. Regarding the Wetland Permit, the first step in the development process for the project was to review the Regulatory requirements to gain approval through the State of NH Wetland Bureau and the local Conservation Commission. Mr. Chisolm met with the Conservation Commission first, in 2022. The pending State NHDS Wetlands permit is near approval. It contains a mitigation fee of about \$45,000.00 that is associated with this project. Once the project is formally approved, the fee will be paid, and the company will obtain the permit. We keep filing extensions and the State is happy to grant them.

The existing site building was built in approximately the 1960's. The parking lot extends up to the existing right-of-way line at the corner of Pinkerton and Peabody. There was an expansion in the mid-1980's. The east side of the parking lot adjacent to Pinkerton Street is set further back and will be landscape buffered. The existing parking lot to the south currently exits to Peabody Road only. The expansion will add parking spaces to this area, additional connectivity and a second driveway for the backlot out to Corwin Street. To account for the additional impervious areas and developmental impact from the storm water perspective, there are two bioretention ponds, that are small scale and very shallow. Although there are TSS and certain pollutant removal efficiencies, the area will be landscaped. The project will include additional lighting and some landscaped areas will be enhanced.

Mr. Chisolm read the waivers into the record:

Article V Section 170-29(K) states, "Minimum pipe size shall be 12 inches in diameter for privately maintained storm drainage systems and 15 inches in diameter for publicly maintained storm drainage systems. The minimum depth of cover from the road or ground surface to the crown of the pipe shall not be less than 3 feet."

The project proposes two 12" drainage pipes that do not meet the minimum cover requirements of three feet. To remedy this, the design calls for the installation of more rigid PVC SDR-26 pipes in place of standard, flexible HDPE pipes. It is also important to note that a minimum of two feet of cover is maintained for both pipes in the worst-case scenario. Strict conformity with the regulation would pose a hardship to the applicant as the site is constricted by the invert of the 15" outlet pipe in the southwest corner of the lot. Furthermore, granting this waiver would not be contrary to the spirit and intent of the regulation as proposed drainage pipes will function as intended on the privately owned and maintained parking lot and the material upgrade will provide sufficient structural integrity.

Article IX Section 170-63(A)(2) states, "All on site parking spaces, service or delivery aisles, interior drives, aisles, and vehicular access ways shall be set back a minimum of 10 feet from all side and rear property lines and a minimum of 15 feet from all front property lines in all zoning

districts of the Town of Derry except within the Central Business District. Within the Central Business District set back dimensions shall be five feet from all property lines.

The project proposes a parking lot expansion that will add 22 additional parking spaces, two of which are proposed within 15 feet of the front property line along Corwin Street. The lot is currently developed with 16 parking spaces that do not meet this regulation along Pinkerton Street and Peabody Road. Additionally, the lot is bound by public streets on three sides making it more challenging to conform with the regulation. Strict conformity would pose a hardship to the applicant as there is not adequate space between the street and the existing building, which was constructed in 1969. Furthermore, granting this waiver would not be contrary to the spirit and intent of the regulation as the character of the property will be maintained.

Article IX Section 170-64(B)(1) states, "A street tree strip, 15-feet in width, running parallel to the frontage of any nonresidential or multi-family residential property shall be provided in all zoning districts except the Central Business District and the Traditional Business Overlay District. Within any street tree strip, a minimum of one indigenous shade tree (such as Oak, Maple, Elm, Ash, Linden, etc.) with a minimum caliper of 2.5 inches and branching height of not less than 8 feet at the time of planting shall be provided for each 50 feet of street frontage. Street trees shall be planted not closer than 25 feet to one another."

The project proposes six street trees where 14 street trees are required by regulation. As the property has frontage on three public streets totaling 718 linear feet, an exorbitant amount of trees is required. Strict conformity with the regulation would pose a hardship to the applicant as the current driveway and parking lot layout does not provide adequate space for planting street trees. Furthermore, granting this waiver would not be contrary to the spirit and intent of the regulation as street trees are proposed wherever practicable along the frontage and a natural woodland buffer will be maintained along Corwin Street.

Mr. Chisolm stated that the heart of the issue is that the development was built in the 1960's. In terms of the drainage, for example, the way the area was constructed. We must make things flow downhill with that, so something had to give in this case. Working with Mr. L'Heureux, we determined that the pipe cover made the most sense. They did not want to cut down more trees in the naturally wooded area to plant new trees in their place. Mr. Chisolm yielded to Mr. Feyl

Mr. Ken Feyl, Owner, and Architect of LYF Architects. This is a 2-story addition matching the roofline of the existing south L portion of the building. It is to create a new entry from the new main parking lot. There will be an accessible lift to the second floor. On the second floor there will be more treatment rooms and a laboratory. All the vinyl siding will be replaced with new blue/gray siding and black window trim will be added to the existing windows. The entry will be a black storefront entry system with a canopy. Above the entry will be simulated wood composite panel to provide accent to the front entry. Wood simulated black metal siding will easily identify the new entrance. There will be a similar employee entrance at an existing door.

Accept Jurisdiction

Motion by Granese, seconded by Malaby to accept jurisdiction of the site plan before the Board for Hoyadocs, LLC, PID 36025, 32 Pinkerton Street.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

Determination of Regional Impact

Motion by Granese, seconded by Malaby, pursuant to RSA 36:56, the Board finds the proposal as presented at this time meets the definition of a development of regional impact.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote No, no regional impact. This small project DOES NOT meet the definition of a development of regional impact.

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

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

The **Public Hearing** is now open.

None rise online.

Mr. Doug Stevens, owner of the property at 28 Pinkerton Street stepped forward. Mr. Stevens' property abuts the site. He has owned his property for 7.5 years. As he stated to the ZBA, he could not ask for better neighbors. It is quiet at night. They take great pride in the appearance of their property, and it is well maintained, including flowers and shrubs. The front walkway was recently repainted. As a growing small business, this is good for the Town. Mr. Stevens supports the project without reservation and hopes the Board supports them as well.

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

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

The **Public Hearing** is now closed.

Mr. Myers entertained questions from the Board.

Mr. Granese stated that all looks good and recognized the positive review from the abutter. Mr. Granese yielded to Mr. L'Heureux. Mr. L'Heureux commented that he and Mr. Chisolm have worked out all the details and the project is "good to go."

Mr. Myers asked, regarding the 3rd waiver, why cannot you not comply with additional trees?

Mr. Chisolm responded that there are small amounts of landscaped areas where we do put in street trees where we can. In the NE corner of the site along Pinkerton Street, there are three street trees. Around the corner there is a large frontage where pavement comes to the edge of the property. There is not enough room. Continuing around, the further one goes, the more the code says there should be trees. Perhaps in 1965 that regulation didn't exist in that fashion. To make the area complaint would significantly reduce the number of parking spaces. Although it is well above what the code requires for parking spaces, the business practice requires as much parking as possible.

John Ahern, of Ahern, Nichols, Hersey, and Butterfield Family Dentistry was recognized. He stated that this is a highly travelled street. To have trees out front would make this a safety issue when the roots start growing up. There are site distance issues. The wooded area in the back is preserved to compensate for the lack of trees in other areas of the site.

Grant Waivers

Motion by Granese, seconded by Malaby, to Grant waivers LDCR section 170-29(K) – three foot pipe covering for drainage, LDCR section 170-63(A)(2) – parking spaces closer than 15 feet from the property line, LDCR section 170-64(B)(1) – Allow for six trees where 14 are required.

After review of the waiver requests the Board finds that strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

Finding of Facts

The Board finds the proposed plan does not alter the existing conditions which would affect access to the lots, ensuring the health, safety, and welfare of the neighborhood remains unchanged as a result of the site plan. The proposed site plan would allow for the expansion of the dental offices and the need for additional parking at the site.

Motion to agree with the above noted findings of fact by Granese, seconded by Malaby.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

Approve pursuant to

Motion by Granese, seconded by Malaby, to approve pursuant to RSA 676:4 I – Completed Application with the following conditions:

1. Subject to owner's signature.
2. Subject to on-site inspection by the Town's engineer.
3. Establish appropriate escrow as required to complete the project.
4. Note approved waiver(s) on the plan.
5. Subject to receipt of applicable state or local permits (NHDES wetlands permit).

6. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-24-14.C
7. Conditions precedent shall be met within six months.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed.

Motion by Granese, seconded by Malaby, to adjourn.

Roll Call Vote: Chase, Healey, Granese, Malaby, Feinhauer, O'Connor, Nelson, Myers, vote Yes. The motion passed and the meeting was adjourned at 7:33 p.m.

Approved by: Darin B. Nelson by A.H. Healey
Chairman/Vice Chairman

Andy Myers by Ben H. Healey
Secretary

Approval date: 10/18/23