

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 04, 2020, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room.

Members present: John O'Connor, Chairman; Lori Davison, Vice Chair; Doug Danzey, Secretary Pro-Temp; Richard Tripp, Town Council Liaison; Randy Chase, Town Administrative Representative; Jim MacEachern (7:17 p.m.), Member

Absent: Mark Grabowski, Mark Connors, Jennifer Carrier, Dave Granese

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux*, Planning and Economic Development Assistant; Robert Mackey, Code Enforcement Officer; Mary Till, Craig Lazinsky*, Net Zero Subcommittee

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.

Escrow

#20-27

Project Name: Grand View Farm Site Plan

Developer: B & H Oil

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 05053, 36 South Main Street

The request is to renew Letter of Credit #44535-2, drawn on Enterprise Bank in the amount of \$213,458.98 for the above noted project. The expiration date will be October 31, 2021.

Motion by Tripp, seconded by Davison to approve as presented.

Chase, Tripp, Danzey, Davison, and O'Connor voted in favor and the motion passed.

Minutes

The Board reviewed the minutes of the October 21, 2020, meeting.

Motion by Tripp, seconded by Danzey to approve the minutes of the October 21, 2020, meeting as written.

Chase, Tripp, Danzey, Davison, and O'Connor voted in favor and the motion passed.

Correspondence

Mr. O'Connor advised the Board is in receipt of a Notice of Public hearing from the City of Nashua Zoning Board of Adjustment. There will be a public hearing on November 10, 2020 to discuss the request for a variance to allow the installation of a single wireless telecommunication tower.

Other Business

Mr. Tripp confirmed the process for the Planning Board members to receive materials in advance of the meeting. Mrs. Robidoux stated she would confirm Mr. Tripp was on the distribution list.

Net Zero Presentation – Proposed Renewable Energy Ordinance

Mr. O'Connor explained the Net Zero Committee has initiated a proposed solar ordinance. Mary Till and Craig Lazinsky of the Committee are here to present the proposal to the Board. Also in attendance is Robert Mackey, Code Enforcement Officer.

Mr. Sioras said he and Mr. Mackey worked with Ms. Till and Mr. Lazinsky on the draft ordinance. The content was drafted by the Net Zero Committee and staff made some suggestions.

Mary Till, Net Zero Committee, presented. The proposal is to create a renewable energy ordinance. There is a need for renewable energy sources as the technology advances and the energy demands increase. Climate change affects and service disruptions are increasing, and this can influence the economy. There will be a greater demand for alternative energy sources. Derry is a renewable energy forward community, and the Town needs to be ready to address the demands of the future.

The purpose of the ordinance is twofold. The first is to meet the goals of the updated Derry Master Plan. The second is to meet the goals of the regional Master Plan. The Derry Master Plan sets forth goals, in particular Objective 6.1.3, where the goal is to incorporate energy efficiency standards and renewable energy generation requirements into the zoning ordinance. Other goals include the conservation of energy, the movement toward renewable sources of energy, the promotion of sustainable development and to mitigate the negative impacts of climate change. The regional Master Plan does the same but adds a goal of adopting language and regulations requiring sustainable site development that optimizes solar, heating, and cooling opportunities.

The goal of this ordinance is to regulate solar and wind land use to protect natural resources, open spaces, and wetlands, and to minimize visual impacts. Additionally, the goal is to set the stage for group net metering in an orderly fashion and to put in place siting requirements that allow current and future building owners to take advantage of solar resources, and keep energy dollars local to benefit our economy. Members of the Net Zero Committee drafted the ordinance and were guided by the Clean Energy New Hampshire Model Solar Ordinance of 2018. The draft was reviewed by Henry Herndon of Clean Energy New Hampshire. The Committee also used guidance obtained from the Office of Strategic Initiatives' model Wind Ordinance published in 2008, as well as the ordinances in place in other communities in New Hampshire.

The Ordinance sets forth the legislative authority for this type of ordinance, the purpose, and then sets forth the regulations for solar collection systems. The ordinance primarily addresses ground and roof mounted systems, as well as the location and size of the installations. Planning, Zoning, and utility company approvals are included, and the ordinance also discusses the process to decommission an installation and the available waivers. The draft also discusses solar ready zoning which addresses the regional objectives. For example, a new subdivision should be designed and oriented to take advantage of solar resources and not block any one residence from the ability to utilize the solar resource. Regulations for community solar systems are just now being discussed at the legislative level but are mentioned in the ordinance. From a municipal perspective, solar may be a way to lower utility costs in Derry. Ms. Till noted municipal systems would be exempt from this ordinance.

Ms. Till explained the small wind power (100 MW or less) section is not as in depth. Derry is not particularly suited for large wind systems, so the ordinance provides guidance and regulations for residents who might want to install a small windmill. She is happy to work with the Board if the Board would like to expand on this section of the ordinance.

Ms. Till stated the town needs to set the framework for renewable energy development so that Derry is ahead of the curve, can develop a coherent strategies, avoid piecemeal installations, and avoid non-compliant grandfathered installations because they were constructed prior to an ordinance being adopted. She is happy to see a subcommittee has been formed to work on this ordinance and looks forward to working with the subcommittee.

Craig Lazinsky explained the Net Zero Committee approached this from the standpoint that it is better to have an ordinance in place before the town is faced with difficulties from residents or businesses that want to erect solar installations and there is no ordinance in place. They looked at other towns and consulted with Clean Energy of New Hampshire.

Robert Mackey advised the Net Zero Committee was putting this draft ordinance forward and it is likely it will be placed in the Zoning Ordinance, under Article III, General Provisions. The drafts would go through the Planning Board subcommittee, workshops, and public hearing process for recommendation to Town Council for approval.

Mr. MacEachern was seated.

Mr. O'Connor reported Ms. Davison is leading the subcommittee that will review this ordinance. The public meetings will be posted. He suggested the possibility of separating out the Solar and Wind Powered Energy portions into two different ordinances. There are very few places in New Hampshire outside of areas along the seacoast and in the White Mountains where there is an ability to maintain a large wind system. The other issue of concern for him would be the use of "shall" and "will" with regard to the siting of homes in a new subdivision. It might be better to handle that through architectural design. He agrees with the solar movement and is supportive but does not want to require developers to orient a site in any particular way.

Mr. Tripp asked about the subcommittee process. Mr. O'Connor advised the subcommittee meetings are open to the public and all members of the Board. The subcommittee for this particular request is being led by Ms. Davison. Other members of the subcommittee include Mr. Connors, Mr. Grabowski, Ms. Till and Mr. O'Connor. Ms. Davison said the meetings can be held via Zoom and a public notice will be posted prior to the meetings. Mr. Tripp said he would like to listen in on the meetings, but not participate as a member. This will help him prepare for when it is presented to the Town Council.

Ms. Davison asked if the draft ordinance distinguishes between solar panels and solar farms. Is there a direction that would be more beneficial for the ordinance to go? Ms. Till said most of the ordinance deals with residential installations, but there is some language for larger projects. Mr. Lazinsky noted a typical residential installation would be under 15 kWh where a major installation would be closer to 100 kWh, similar to what the Town has at the Transfer Station. He does not believe the ordinance was meant to address solar farms. Ms. Till added the installation at Tupelo Music Hall is an example of a non-residential use. Ms. Davison inquired if the ordinance can be crafted to address solar installations zone by zone. For example, the West Running Brook district might have different, specific requirements. Mr. Sioras said the ordinance can address the permissibility of the use zone by zone.

Mr. O'Connor thanked Ms. Till and Mr. Lazinsky for attending and presenting the proposal.

Request to Extend Approval, 1st Request – Jeric Realty, LLC, PID 04129, 16 Route 111

Mr. Sioras advised the applicant is 90% in compliance with the conditions of approval. The project, the subdivision of lots at the Brookstone property, was approved in May. The applicant needs a little more time to complete a few items and has asked for an extension. Staff recommends approval of the request.

Motion by Davison, seconded by MacEachern to extend the conditional approval granted on May 06, 2020, to Jeric Realty, LLC, PID 04129, 16 Route 111 for an addition six months. The new expiration date will be May 06, 2021.

Chase, Tripp, Danzey, MacEachern, Davison, and O'Connor voted in favor and the motion passed.

Workshop

Workshop #3: Planning Board discussion of potential changes to Article XII, Signs, specifically the regulations concerning Electronic Message Center Signs and sign requirements for the West Running Brook district

Mr. Sioras advised the first part of the proposal deals with electronic message center signs. The Board had been asked by Town Council to look at the possibility of allowing off premise advertising. He and Mrs. Robidoux worked with Mr. Mackey on the current ordinance and they are providing the suggested recommendations to change the ordinance if this is the direction in which the Board wants to go. The West Running Brook sign regulations can be a separate discussion.

Mr. O'Connor recalled Mr. Connors and Mr. MacEachern had suggested at the last workshop that the Board review and update the entire sign ordinance. He advised the Board would review this set of suggested changes and then a subcommittee can be formed to review the sign ordinance as a whole. He is aware a legal opinion was provided to the town with regard to off premise signs and he would like to see that. He wants to make sure the Board is not moving forward in the wrong direction or finds itself in the middle of a legal issue. If the document cannot be shared, he would appreciate any information that is possible. He still has a copy of the legal advice rendered by Attorney Boutin following the Reed v. Gilbert Supreme Court ruling. He wants to avoid any potential for litigation over the sign ordinance.

Mr. Mackey acknowledged the Board is looking at a few proposals under Article XII, Signs. If there is interest to look at the entire sign ordinance, at some point a subcommittee can focus on that. For now, the focus is on the electronic message center signs to determine whether off premise advertising should be allowed. The ordinance is also missing sign regulations for the newly created West Running Brook district as outside of the general sign provisions, there is no guidance for signs in that district.

An issue came up with regard to a sign on Crystal Avenue. The electronic message center sign was advertising off premise businesses which are businesses that are not located on the same lot as the sign. There was some back and forth with the landowner and a legal opinion was issued from the town's counsel that stated off premise advertising was not permitted in the current ordinance. Town Council had a discussion and requested the Planning Board consider whether that is something the town wants to allow.

Does the Board want to allow the advertising of off premise businesses that are either located in town or out of town on electronic message center or other types of signs in Derry? There are some pros and cons to the idea. Advertising can bring revenue to a business, but the town likely does not want to lose control and have a number of these types of signs up and down the street. Page 11 of the document before the Board has the suggested wording if the Board wants to move forward with off premise advertisement. The existing ordinance states, "Off-premise signs are permitted, provided that the owner of the lot on which the sign is to be placed, has granted a recorded easement for the sign." This section, Section 165-101.8 addresses signs such as the

Walmart pylon that is located off its own property. Staff is suggesting adding a section B, that states, *“The use of on premise signs for the advertisement of off premise businesses and activities is permitted in the General Commercial, General Commercial IV, and Industrial IV Districts only.”* This is being suggested in districts that already allow electronic message center signs. This type of advertising would likely occur on an electronic sign, but the wording does not limit it to those types of signs. There are some electronic message center signs located outside of these three districts; those are there by variance. If the Board wants to limit off premise advertising to electronic message center signs only, that wording can be added. Staff is also suggesting the addition of a definition for On Premise Signs to make more clear the distinction between on and off premise signs.

Mr. O’Connor asked if Code Enforcement gets involved with regulating the content of signs. Mr. Mackey said they do not, other than in this situation because the content was advertising something off the premises. His department stays away from regulating content because of the Supreme Court decision.

Mr. MacEachern thought it was a decent idea to allow off premise advertising. People are spending money on electronic message center signs. He hopes people are not putting capital into these types of signs with the intent they will be used solely for advertising revenue. He is not one hundred percent sure about it. He wonders how this can be regulated and not have the signs constantly advertising things outside of Derry. He would not mind having these in a limited fashion. He does not want to see a sign such as the one at the Mortgage Specialists in Manchester at Exit 2. There are advantages to being allowed to do this type of advertising but there is a fine line between allowing it and not getting overloaded with it. He is struggling with how to handle that. Mr. O’Connor noted that the ZBA has been granting variances for these types of signs. Should the Board look at expanding the number of zones permitting electronic message center signs. The Supreme Court has cautioned municipalities against stifling the content on signs.

Mr. Mackey suggested when the Board gets to the review of the entire sign ordinance down the road, the Board could then look to see if there are other areas where the electronic message center signs might be allowed. For example, the Board might allow them in the Central Business District but not the Traditional Business Overlay District which has specific regulations and is more restrictive in the size and type of sign allowed. When the ZBA grants a variance to allow an electronic message center sign, he always recommends the ZBA attach conditions to the decision such as the sign has to operate per the provisions in the Zoning Ordinance for this particular type of sign which has limitations on the illumination level and the speed at which the message can change, as well as how the message can appear on the sign.

Ms. Davison asked if the Board is required to regulate by zone. Can it be done by street? There are certain streets in Derry where this type of sign or advertising might be visually distracting to motorists. Mr. Mackey thought the Board could do that, which would narrow the scope. There are overall rules which apply for commercial and industrial lots but then there are more restrictive requirements in the various districts. When the Board looks at the ordinance as a whole, it could look at that.

Mr. Tripp asked, how is the Walmart sign an off premise sign. Mr. Mackey advised it is located off premise because it does not sit on the Walmart lot; it is located on the lot owned by Woof Meow. Mr. Tripp felt the sign on Crystal Avenue was an on premise sign because it was located on the lot, but it advertised off premise businesses. Mr. Mackey explained Walmart has an easement with Woof Meow to locate the sign in that location; that sign is also a fixed message sign. If the Board allows electronic message center signs to advertise other businesses; there would not be a need for an easement. Tupelo is another example of an off premise sign that is allowed through an easement.

Mr. Tripp thought the Walmart and Crystal Avenue sign are similar. He asked if Walmart would be allowed to advertise off premise businesses on its sign? Mr. Mackey said at this time, that is not allowed per the ordinance. Mr. MacEachern noted if the Board changes the language, Walmart would be permitted to do that.

Mr. O'Connor recalled the Board discussing placing a restriction that if off premise advertising was to be allowed, the sign could only advertise businesses located in Derry. Ms. Davison felt that might run afoul of the content restrictions and interfere with free speech.

Mr. MacEachern felt this proposal needed more work and consideration. He is not sure that the proposal as written protects the town and felt the Board needed to decide the best avenue. There should be stipulations in place for any approvals of this type. He is not against allowing it

Mr. O'Connor noted the suggestion to add the terms "banner sign" and "on premise sign" to the definitions. Both suggestions look reasonable at this point. He suggested placing the proposed changes on page 11 on hold for the time being, so that the Board can review the suggested sign regulations for the West Running Brook district.

The Board, after a short poll of the members, agreed to place the suggested changes on page 11 (Off Premise Signs and Off Premise Advertising) on hold for the time being. Mr. Mackey asked Mr. O'Connor to clarify "on hold" as the Town Council will be looking for a recommendation from the Board on this matter. Mr. MacEachern stated the Board needs to look at this issue specifically and it would be helpful to see the legal opinion. The Board needs to understand this proposed change and make sure that the Board is not opening a can of worms by recommending this change. Mr. O'Connor agreed, adding he still has a copy of the legal opinion offered by Attorney Ed Boutin from January of 2017 in which Attorney Boutin went into details about what the Board can and cannot do regarding signs. Mr. Mackey confirmed the Board members might be open to the change but wants to ensure the town is covered from a legal standpoint.

Mr. MacEachern asked that data be collected for the Board to review and perhaps this could be scheduled for another workshop. Mr. Sioras said it can be placed on the agenda for the next meeting. Staff had provided a simple change to bring to the Board based on the Town Council directive to start the discussion. This will be placed on the next agenda.

The Board moved on to review of the proposed sign regulations specific to the West Running Brook district. Mr. Tripp noted the regulations for the West Running Brook are very flexible,

but it seems the proposed sign regulations for the district are rigid; there seems to be a discontinuity between the two.

Mr. Mackey advised most of the proposed changes were drafted by Mrs. Robidoux and Mrs. Donovan. The definition for 'banner signs' was added because those types of signs are proposed to be a prohibited use in the zone. The thought was to differentiate between banners and decorative flags. Mr. O'Connor had a concern that this would interfere with the Church service signs that go up on the weekends in this district. Mr. MacEachern said as he thought about the concept the Siragusa family discussed with the Board, their event concept lends itself to banner signs. Given what the Board heard from them, he cannot support the restriction (Section 165-101.12.8). The types of events planned lend themselves to a temporary banner type sign. The Board could add stipulations on how long banner signs can be displayed. Ms. Davison agreed especially if the banner is directional. Mr. Mackey agreed the wording could be tweaked; the intent is to avoid the pole-in-the-ground type signs. Mr. O'Connor said those are what the Church puts up. Mr. MacEachern believed businesses in the district need the ability to advertise special events that are occurring in the district.

Ms. Davison commented the regulations in the West Running Brook district are more proscriptive than other districts. She felt more language should be added to this section that is more specific. For example, instead of saying banners are prohibited, perhaps say they need to be used in a specific manner, such as temporary banner signs would need to be removed within 24 hours of the event. Mr. MacEachern agreed that type of sign should be allowed, and rules put in place about their use, such as the size, and a time limitation. The character of the district should be maintained with rules about the type of sign. Ms. Davison added those stipulations should be for the West Running Brook district only.

Mr. Mackey said there is some flexibility. The wording for this district is similar to what it allowed in the Traditional Business Overlay District. The original thought was to not allow internally illuminated signs. But the current technology allows for a nice-looking sign. Rather than saying none are allowed, it would be left to the discretion of the Planning Board as part of the process for these developments. The same thing applies for the size of the signs. In the Traditional Business Overlay District, a property is allowed up to 50 square feet of area. This is okay for a smaller lot, but for a building such as the Aubuchon building, that size is very limiting. The thought was to set a maximum size in the West Running Brook district that is not too large, but the sign should be in proportion to the size of the building so that the sign is a percentage of the face of the building.

Mrs. Robidoux said the hope was that the Board would look at the maximum allowable size for the district. When looking at a size based on the linear square feet of road frontage or the square feet of the face of a building, in the case of a long building, fronting on Route 28, the end result could be a very large sign that would be detrimental to the vision of the district. That is something that needs to be looked at. She agreed with the comments relating to banner signs. The intent was to not have too many of them such as every business having three or four of them. She does agree they should be allowed and there should be parameters. The suggested wording was supplied so that the Board would have topics to discuss and to open the discussion to see if the Board wanted to allow or not allow certain types of signs. What does the Board want signs

in this district to look like? It is all open for discussion. The intent is to have regulations in place that have enough parameters to keep the vision of what the district will look like, and to not have it too cluttered with signage.

Mr. O'Connor asked Mrs. Robidoux how the minimum and maximum square foot size was determined. Is it comparable to what is allowed in other zones? Mrs. Robidoux said language was used from other districts. She and Mr. Mackey had several discussions about what the maximum size should be. They did some calculations based on different scenarios and in some cases the result could have been a 600 square foot sign which would not fit the district.

Mr. Mackey explained in rules for commercial properties, three signs are allowed, the total area of all of the signs is based on the linear square feet of frontage, but no individual sign may be larger than 100 square feet. That was the starting point for the West Running Brook size restriction. Then they tried to look at proportions and what would be appropriate on a three-story building. There is also the thought to allow internally illuminated signs since with the new technology, there is an ability to have a nice-looking sign.

Mr. O'Connor asked that the use of banner signs be revisited, and some rules added. Are there time restrictions on sandwich boards? Mr. Mackey pointed out the general provisions for all signs allow the use of temporary signs for events which are allowed to be in place for 14 days without a permit. A thirty-day temporary sign requires a permit. Mr. O'Connor suggested continuing the workshop to the next meeting and the Board can take time to review the proposed regulations. Mr. Mackey suggested forwarding any comments or suggestions to Mrs. Robidoux for inclusion in the next draft.

Mr. MacEachern brought the Board's attention to the sandwich board restrictions. They direct back to the General Sign Provisions found at Section 165-101. Mr. Mackey said it is likely a typo and should reference Section 165-101.20 which speaks specifically about sandwich boards. Mr. MacEachern said the General Provisions apply to all 23 subsections which are the basis of regulations for all signs. If the intent is to be a bit more restrictive than what is allowed in 1 through 23, then it should be pointed out which items in 1 to 23 do not apply in the West Running Brook district and add an exclusionary statement. It would be important to include subsection 19 in the West Running Brook district.

A revised draft will be prepared and presented to the Board for the next workshop to be held on November 18.

Mr. Sioras reminded Mr. O'Connor a Secretary needs to be appointed this evening.

Mr. Danzey was appointed Secretary Pro-Temp.

There was no further business before the Board.

Mr. O'Connor thanked Owen Provencher for assisting with the meeting. Ms. Davison noted the Town Clerk's Office did an outstanding job on Sunday handling last minute ballots. They were

organized, patient, and good humored. Mr. Tripp acknowledged the efforts of the Town Moderator and her crew. They did a wonderful job handling election day.

Motion by MacEachern, seconded by Davison to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:14 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____