

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 06, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: John O'Connor, Chairman; Lori Davison, Vice Chair; Maya Levin (Secretary); Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Mark Grabowski, Mark Connors (8:02 p.m.), Frank Bartkiewicz, Members; Jim MacEachern, Dave Granese, Alternates

Absent: David McPherson

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor then noted the location of emergency exits and introduced the Board members and staff present.

Mr. MacEachern was seated for Mr. McPherson

Escrow

#19-31

Project Name: Subdivision Mill Road/Alyssa

Developer: NIKKO Land, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 06040-001, 45 Mill Road

The request is to establish Letter of Credit #1, drawn on Washington Savings Bank, in the amount of \$30,100.00. The expiration date will be October 08, 2020.

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

#19-32

Project Name: Shepard Landing
Developer: Healyford Realty, LLC
Escrow Account: Same
Escrow Type: Letter of Credit
Parcel ID/Location: 27094, 3 Nutfield Court

The request is to approve Release #1 in the amount of \$422,860.18 for the above noted project. The amount to retain is \$125,647.20.

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

#19-33

Project Name: Lordon Commons, LLC
Developer: Same
Escrow Account: Same
Escrow Type: Performance Bond
Parcel ID/Location: 016-038, 17 Old Derry Road, Londonderry

The request is to establish a performance bond in the amount of \$42,768.00 for the above noted project. Bond #565409 – The Main Street America Group.

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

#19-34

Project Name: Valerie Estates
Developer: American Excavating Corp.
Escrow Account: Same
Escrow Type: Performance Bond
Parcel ID/Location: 02081, 62.5 Bedard Ave

The request is to establish a performance bond in the amount of \$294,720.77 for the above noted project. Bond #837075552- Ohio Casualty Insurance Group.

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

#19-35**Project Name: Cowbell Corner****Developer: David & Catherine Frahm****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 04126 and 04127, Route 111 and Island Pond Road**

Please approve a release in the amount of \$136,080.00 for Letter of Credit Number FHA-1015P-P, drawn on Merrimack County Savings Bank. 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.

Minutes

The Board reviewed the minutes of the October 02, 2019, meeting.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the October 02, 2019, meeting as written. The motion passed with Chase abstained.

Mr. Granese was seated for Mr. Connors

Correspondence

Ms. Levin advised the Board is in receipt of the November/December issue of *Town and City*. Copies of the Master Plan Inventory and Assessment of Existing Conditions chapter summaries have also been provided to the Board. Mr. O'Connor noted that the Master Plan Consultants are working on the final portion of the Plan which should be available to the Board in December.

Other Business**Boards and Social Media**

Mr. O'Connor advised he had been asked by the Town Council to forward information relative to Board members and social media. The City of Manchester Planning Board recently lost a Superior Court case where the applicant appealed the denial of the application citing a Board member should have recused himself because he prejudged the application on social media. Mr. O'Connor noted that making comments on social media about a project without recusing oneself can put the town in legal jeopardy. He asked the Board members to read the article and court decision that had been copied to them and to be very careful about what they post on social media.

Mr. Chirichiello advised the Town Council will arrange to have a training session for all Board and Committee members on this topic. Mr. O'Connor felt this was important enough to perhaps amend the Policy and Procedures of the Board to make it mandatory for all Board members to attend at least one land use training session per year.

Recommend acceptance of a portion of Nathan Road

Mr. L'Heureux advised this request is to recommend acceptance of a small sliver of Nathan Road. This is part of a 100 lot subdivision called Spruce Pond Estates in Windham. There are two lots in the Town of Derry at the end of Nathan Road. The Board is being asked to recommend acceptance of 175 feet of the cul-de-sac and forward the recommendation to Town Council. The Town of Windham maintains the road and the maintenance agreement is recorded at the registry. The Town of Derry would be responsible for some of the cost when the road needs to be resurfaced.

Motion by MacEachern, seconded by Bartkiewicz to recommend the Derry Town Council accept a portion of the Nathan Road cul-de-sac as a Class V town road as shown on Plan D-39756, recorded at the Rockingham County Registry of Deeds on September 19, 2016.

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

Informational Discussion – So. New Hampshire Regional Water Project – Pump Station, Manchester Road

Tom Carrier, Deputy Director of Public Works, presented. The proposed pump station is part of the regional water project, which he discussed with the Board in July. The Town is working with the State to provide water from Manchester Water Works through Derry to the towns to the south including Windham, Salem, Atkinson and Plaistow. The Town of Derry has two contracts with the State. The first is to construct 16" pipeline along Route 28, beginning at Ryan's Hill, to the Windham town line, including a pressure reducing valve station at 205 Rockingham Road. The Board discussed the PRV station at their July 24, 2019 meeting, and that work is underway. The second contract is to upgrade Derry's existing water booster pump station on Rockingham Road, and to construct a new water booster pump station at 44 Manchester Road; the property is currently owned by Chris Nacos Auto Sales.

The new booster pump station will be constructed on an easement located to the rear of the property with access from an existing modified curb cut on Manchester Road, approved by NH DOT. An easement is also proposed on Mr. Higgin's property which will connect the new station to the Town's existing water mains on Manchester Road. The Town is in the process of securing that easement. The building will be a 36' x 50' concrete structure. The façade will be in line with the neighborhood. A facsimile of what the building will look like has been provided to the Board. The Town is in the process of securing access for the new building.

Mr. O'Connor asked if the water pressure for the neighbors will change when these lines are hooked up. Mr. Carrier explained the booster pump station ensures the water pressure remains the same; without the pump station, when the line is connected to Windham, the water pressure would drop.

Public Hearing

John Lanzafame
PID 24003, 66 Fordway
Acceptance/Review
2 Lot Subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for a two-lot subdivision located in the MHDR district. One new single-family home is to be constructed. There is an existing house on the parcel. The new lot will have frontage on Pinehurst Street. The new lot will be serviced by municipal water, with a private septic system. All town departments have reviewed and signed the plan. There are two waiver requests. Staff supports the waiver requests as the lots are serviced by town water. The NH DES approval for the septic system has been received and is in the file. Staff recommends approval of the waiver request and the subdivision plan.

Robert Balquist, of Meisner Brem, presented for the applicant. The intent is to create a two lot subdivision at 66 Fordway. The lot has double frontage – on Fordway and on Pinehurst. The subdivision was granted a variance in August for the lot area (see note 10). This is a 24,000 square foot parcel. The proposal is to create a 10,000 sf lot containing the existing home which is on town water and sewer. The remaining 14,000 sf lot needed an area variance so that the house could be serviced by water and a septic system. The owner would like to construct a 3 bedroom, single family split entry house which is in character with the neighborhood. The lot is flag shaped for area purposes only. The driveway will be off Pinehurst. They are asking for a waiver from wetland mapping as there are no wetlands on the property.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the two-lot subdivision plan before the Board for John Lanzafame, PID 24003, 66 Fordway.

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

Motion by MacEachern, seconded by Bartkiewicz to open the public hearing. The motion passed with all in favor and the floor was opened to the public.

There was no public comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.

Motion by MacEachern to grant a waiver from LDCR Section 170-24.A.12, HISS mapping and LDCR Section 170-24.A.13, Wetland mapping as after review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Mr. L'Heureux asked that the note stating there is a 6" water main be changed to reflect the 10" water main in the road so that there is no confusion in the field. He asked that this be part of the Board's motion.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to RSA 676:4, III, Expedited Review, with the following conditions: subject to owner's signature, subject to onsite inspection by the Town's Engineer, establish escrow for the setting of bounds, or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-24.C; note approved waivers on the plan; subject to receipt of state or local permits relating to the project; correct the note on the plan to reflect the 10" water main; the above conditions shall be met within 6 months; a \$25.00 check payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement; submission of the appropriate recording fees, payable to RCRD.

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

Paul the Plumber

PID 35004, 111 Franklin Street Ext.

Acceptance/Review

Site Plan – 3264 SF commercial building

Mr. Grabowski recused himself from this application.

Mr. Sioras provided the following staff report. The purpose of the plan is for 3264 square foot commercial building located on Franklin Street Ext in the Industrial IV District which allows commercial and industrial uses. All town departments have signed the plan and there are no waivers. Staff recommends approval of the site plan application.

Doug McGuire, of The Dubay Group, presented for the applicant who was present. Mr. McGuire explained the one-acre lot is located in the Industrial IV zone. The lot had a residential building on it with an in-house office; that building has been razed and the lot is vacant. The applicant is proposing to construct a 3264 square foot commercial building. The applicant is a

local Derry business; Mr. Bear would like to expand his business in Derry. They are proposing a two phase development. Sheet 5 shows the site layout. The shaded area will be the future second phase. The applicant wanted to make sure there was room on the site. The grading and drainage have been accounted for and master planned with respect to the future phase. They will grade that area and keep the area loamed and seeded until it is needed for Phase II. Sheet 6 shows the landscape plan. There is a good buffer to the rear, the east and the front. There is an existing, non conforming multifamily use abutting the lot and the applicant will buffer that use. A variance was granted to allow a 6 foot tall stockade fence with a single row of trees for that buffer. There is good, well drained material on site. They will infiltrate and recharge the stormwater. There are emergency overflow basins located to the southeast and northwest. No water is proposed to be in those basins, even during a 50 year storm event. The lighting will be LED, flush mounted and will provide enough light in the area to light the area and the yard behind the building. The yard is where the service vehicles will be stored and where deliveries will occur.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the site plan application before the Board for Paul the Plumber, PID 35004, 111 Franklin Street Ext.

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

Motion by MacEachern, seconded by Bartkiewicz to open the public hearing. The motion passed with all in favor and the floor was opened to the public.

There was no public comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.

Mr. MacEachern noted there had been some correspondence with staff with regard to the fencing material for the residential buffer; there had been confusion as to what the ZBA meant when it conditioned a "composite stockade" fence and also mentioned "vinyl stockade". Staff clarified that the fence should be a vinyl stockade fence. That should be noted on the plan.

Mr. L'Heureux had some comments about the phasing of the project. This has been discussed with the applicant and the work for the second phase will be escrowed in Phase I. For Phase II, the applicant should obtain a new curb cut permit from DPW. On sheet 3, a utility easement is shown. The easement has been placed for the benefit of the abutters so that the utilities leading to their building can stay in place. The applicant was willing to do that. Legal counsel should review the language of the easement and pay for the legal fees. That should be a condition of approval.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to RSA 676:4, I Completed Application, with the following conditions: comply with the Vanasse Hangen

Brustlin reports, subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received, is operable, and complies with LDCR Section 170-61.C; subject to receipt of state or local permits relating to the project; Phase I will have separate escrow; Phase II of the project will be revisited by the Department of Public Works for the second curb cut and associated work which will be reviewed by the Town's Engineer; the utility easement for the existing utilities on the property will be reviewed by Town's legal counsel and the cost for the review will be paid by the applicant; the above conditions shall be met within 6 months; snow and ice removal shall be performed by a Green Sno Pro certified contractor following Best Management Practices for the application of de-icing materials.

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

Mastriano Group, LLC
PID 06047-010, 11 Stone Fence Drive
Acceptance/Review
2 lot subdivision

Ms. Levin recused herself from this application.

Mr. Sioras gave the following staff report. The purpose of this plan is for a two-lot subdivision located in the Low Density Residential District. The two lots existed as part of the original subdivision back in 2004 and were merged by a previous owner in 2014. The lots changed ownership and the present owner would like to put the existing lot back to the original, two lot status. This plan was approved by the Board in October of 2018 and the approval has expired. The owner is re-submitting the plan. One parcel will be 4 acres and the second lot will be 3.86 acres. There are several waiver requests that were supported by the Board previously. This is the same plan that was approved in 2018.

Tim Lavelle, of James Lavelle Associates, presented for the applicant. The plans before the Board show a different proposed lot number for one of the lots. Per the town requirements they have adjusted the proposed lot number. His office did dig new test pits for the lots with good results.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the two-lot subdivision application before the Board for Mastriano Group, LLC, PID 06047-010, 11 Stone Fence Drive.

Chase, Grabowski, Chirichiello, Davison, MacEachern, Granese, Bartkiewicz and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to open the public hearing. The motion passed with all in favor and the floor was opened to the public.

There was no public comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed with all in favor and review of the plan came back to the Board.

Mr. L'Heureux had no comments.

Mr. MacEachern asked if this lot will be developed soon so that the Board does not have to see the application again. Mr. Lavelle assured him it would.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-23.B.9, Topography, Section 170-23.B.14, HISS mapping, Section 170-23.B.15, Wetland mapping, and Section 170-25.A.5 to allow a common driveway for both lots as after review of the waivers request the Board finds specific circumstances relative to the plan, or conditions of the land in such plan, indicate the waivers will properly carry out the spirit and intent of the regulations.

Chase, Grabowski, Chirichiello, Davison, MacEachern, Granese, Bartkiewicz and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to RSA 676:4, III, Expedited Review, with the following conditions: subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-24.C; note approved waivers on the plan; ensure the correct addresses and PIDs are on the plan (11 Stone Fence is 06047-010, 13 Stone Fence is 06047-011); conditions precedent shall be met within 6 months; a \$25.00 check payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirements; submission of the appropriate recording fees payable to RCRD.

Chase, Grabowski, Chirichiello, Davison, MacEachern, Granese, Bartkiewicz and O'Connor voted in favor and the motion passed.

Workshop #4 – to refine proposed changes to the Land Development Control Regulations, relative to the West Running Brook District

Mr. Sioras explained the West Running Brook district has been approved and this is the last piece. Architectural design regulations need to be created for this unique district. The attorney reviewed the proposed changes and had a few suggestions. The Board agreed to all of the proposed changes with the exception of the height of new buildings. The question was raised,

what would the maximum height look like given the varying topography. If the Board agrees to changes this evening, the document can be moved forward for public hearing.

Mr. Grabowski felt the objective of this district is to encourage development and to maintain quality. He thought about the use of the words “continuity” and “continuous”. At the last meeting, it was suggested that there be specific height restrictions depending on whether the building was in a low point or a high point with regard to topography. He is okay with the proposed wording. Mr. MacEachern said he would rather see the restrictions noted as a maximum number of stories. The Board could say there should be x number of stories when the land dips and x number of stories when the land is higher in elevation. He would like to define it by a set parameter.

Mr. Sioras said staff did an exercise to see what this would look like. The lowest point is at 254 feet in elevation. Staff suggests setting parameters such that between 250 and 300 feet in elevation the maximum height is five stories, between 300 and 350 feet of elevation the maximum height is 4 stories, between 350 and 500 feet in elevation the maximum height is 3 stories and anything above 500 feet in elevation would have to be 2 stories. This would keep a developer from constructing a five-story building on the highest point in the district.

Mr. MacEachern thought it was okay to tie the maximum height to sea level. This would allow a varying range of height that is relative. No one wants to see a five-story building near the Frost Farm. Mr. Sioras agreed, noting the highest point in the district is the near the Farm. In that area only a two-story building would be allowed.

The Board members felt it would work better to use a range of heights. It was noted the Board does have the opportunity to review waiver requests. Mr. Granese felt that spelling out the varying heights would make the area flow and not look jumbled.

Mr. Connors entered the meeting.

The Board was polled and all agreed to amend the wording in Section 170-86.1.B to include the range as suggested by Mr. Sioras. The document will be revised and brought back to the Board at the next meeting so that the Board can schedule the public hearing.

Workshop #2 – To determine zones where Sports Betting could be allowed as a permitted use.

Mr. Sioras reminded the Board that they had agreed previously on the zones where sports betting could be allowed. The next step is to add the appropriate language to the Zoning Ordinance. Staff has used the definitions formulated by the State and included that wording. There would need to be an amendment to the Definitions to add language and then the General Commercial, General Commercial IV and Industrial IV zones would need to be amended to add Sports Wagering as a permitted use. Town Council would like to put a question on the ballot in March and it would be good if this amendment was in place.

Ms. Davison asked if sports wagering would be incorporated into an existing business or would it be a stand-alone business. Mr. Chirichieillo thought it could be both. Board members noted the State is allowing 10 sites in the State and Derry may not be selected. It is possible an existing facility could be converted for this use.

The Chairman conducted a straw poll and the Board agreed on the proposed wording and would like the proposed changes to move forward.

There was no further business before the Board.

Motion by MacEachern, seconded by Davison to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:06 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____