

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 16, 2022, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice-Chair (7:03 p.m.); Brian Chirichiello, Town Council Representative; Randy Chase, Town Administrative Representative; David Granese, Secretary Pro-Temp; Andy Myers, Member; Richard Malaby, Alternate

Absent: David Nelson, Mark Connors, Joseph Tremper, John Morrison, Chris Feinauer

*Denotes virtual attendance.

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

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. He provided appropriate links for members of the public to join the meeting electronically via a MAC, PC or by phone. He then introduced the Board members.

Mr. Malaby was seated for Mr. Nelson.

Escrow

#22-20

Project Name: LaBelle Winery – Wine Bar

Developer: Fulcrum Associates, Inc.

Escrow Account: Same

Escrow Type: Performance Bond

Parcel ID/Location: 15002, 48 Conley's Grove Road

The request is to approve a final release of Performance Bond #SUR0064656, issued by Argonaut Insurance Company in the amount of \$90,609.84 for the above noted project. The amount to retain is zero.

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

Mr. MacEachern entered the meeting.

#22-21**Project Name: Subdivision of Map 06, Lots 086 & 086-15****Developer: John Cooper****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 06086 & 06086-015, Stoneleigh, Eastview & Jewell Lane**

The request is to establish cash escrow in the amount of \$15,837.12 for the above noted project. This escrow is non-interest bearing.

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

#22-22**Project Name: Subdivision of Map 06, Lots 086 & 086-15****Developer: Betty Cooper****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 06086 & 06086-015, Stoneleigh, Eastview & Jewell Lane**

The request is to establish cash escrow in the amount of \$15,837.12 for the above noted project. This escrow is non-interest bearing.

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

Minutes

The Board reviewed the minutes of the November 02, 2022, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the November 02, 2022, meeting. The motion passed with Chirichiello abstaining.

The Board reviewed the notes from the November 09, 2022, training workshop.

Motion by MacEachern, seconded by Chiricheillo to approve the notes of the November 09, 2022, training workshop. The motion passed with Granese and Myers abstaining.

Correspondence

Mr. Granese reported the Board is in receipt of the proposed dues for Southern New Hampshire Planning Commission for Fiscal 2024. The Board has also received a copy of *Supply Lines with the Source*.

Other BusinessVoluntary Merger, Shade Tree Farm, LLC., PID 07084, 66 Drew Road and PID 10112, 724 Route 121

Mr. O'Connor advised this is a simple lot merger and does not require a public hearing. Mr. Sioras confirmed there will be a subdivision plan forthcoming this year and staff recommends approval of the voluntary merger.

Motion by MacEachern, seconded by Granese to approve, pursuant to RSA 674:39-a, the voluntary merger of Parcel 07084, 66 Drew Road, and Parcel 10112, 724 Route 121, owned by Shade Tree Farm, LLC. Parcel 10112 will be deleted and Parcel 07084 retained.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

Board Discussion, PID 30070, 16 Franklin Street, 3 Unit Townhome, Redevelopment

Mr. Sioras provided an overview. The parcel is located on the corner of Franklin and Pearl Streets. The existing structure had a fire and is currently vacant. This item is for discussion only, the Board does not need to make any decisions this evening. When the Board expanded the Traditional Business Overlay District (TBOD), there were unintended consequences with regard to building setbacks on the side streets. It is a challenge for staff to apply the new setbacks to the lots. This developer has faced those challenges in trying to design the lot. The developer did see the Zoning Board of Adjustment for a variance. The development team has met with staff several times. Tonight, the developer is before the Board for a conceptual discussion to discuss the challenges of trying to meet the TBOD setbacks. The Board will have a workshop next month to discuss potential changes to the TBOD dimensional requirements. Mr. O'Connor confirmed this is a non-binding discussion.

Paul Chisholm, Keach-Nordstrom Associates, presented for the developer, Asim Ghani, who was also present. The proposal is for a three unit townhouse development at 16 Franklin Street. The lot sits on the corner of Franklin and Pearl and is located in the Central Business District and the TBOD. The discussion this evening is twofold: There is the issue with the setbacks, which is pertinent, given the upcoming discussion regarding a potential zoning change, and since the property is in the Overlay District, they are required to come before the Board to discuss parking. He is aware the Board is familiar with this lot as it is located very close to the Municipal Center. There are two existing structures on the property; the two unit residential structure was damaged by fire. The building is inhabitable. Mr. Ghani purchased the property last year. A variance was obtained to remove the existing structures and replace them with a three unit townhome that does not have a commercial component.

During the design phase, it was found there was an issue with the required setbacks. They realized in order to move forward they would need to obtain more variances from the ZBA. The

TBOD requires the front setback to have a maximum setback of zero, which would put the face of the building on Franklin Street. The pavement would be one foot away from the front doors, putting the building on the travel way which creates a safety concern. They tried to move the building back from the street, but the ZBA did not approve that request even with the safety issues. They have tried to get creative with design options. What the Board sees before it this evening is the next attempt. The building is placed 10 feet off Franklin Street so that there is room for the plows to push snow back off the road and to keep the building off the street. The Zoning Ordinance requires a maximum 5 foot setback to the side property lines. To meet this, they have created cantilevered overhangs over the doors on the 2nd floor which touch the 5 foot setback. The roadway on the corner of Franklin and Pearl encroaches on the property. They intend to dedicate a portion of the property to the town so that the town has the ability to perform maintenance in that location. This also assists them in meeting the 0 front setback requirement. This makes the Pearl Street right of way the frontage, because the access will come from Pearl. The front corner, after the dedication, would touch the street, meeting the 0 foot setback. There is a mailbox structure on the west side that will also be part of the development and that meets the side setback on the other side. Mr. Chisholm explained they have tried to be very creative in order to try to meet the requirements in the district. This project is a good example of why a zoning change might be beneficial. It is a good idea to have a zero foot setback on Broadway, as there is a wide right of way and there are sidewalks available and the businesses open to the sidewalks. However, Franklin and Pearl Streets are substandard and there are no sidewalks at this location. The structure cannot be placed there safely. Being familiar now with Franklin Street, Mr. Chisholm felt that is likely the case with any structure on that street.

With regard to a parking plan, in this zone the requirement is for one space per bedroom, or a minimum of 1.5 per dwelling unit. They are required to have 9 spaces for this project and are providing 12. For each unit, two spaces are in the garage and two spaces are outside the unit. The goal is to gain safe access to the site. The Franklin and Pearl intersection has issues with regard to safety today. They will remove the landscaping and fence along the Pearl side of the property to improve the sight line. The driveway will be aligned with Pearl Street. They will add a stop sign at the intersection to improve access to the right and to improve safety. Many of the homes in this area are residential in nature, so this blends in. They have minimized the site lighting to a residential scale so as not to be overbearing in the neighborhood. A stockage fence will be added on the south side to prevent headlights entering the property from shining on the property to the south. Mr. Chisholm stated these are the key issues. Moving forward, there are a number of steps that will be required, including dedicating the corner of the property to the town. Those discussions are ongoing and not set. He believes the proposal requires further discussion. It may make sense to wait and see what the Board proposes for zoning changes. Otherwise, they will need to apply for another variance, given the new location of the structure. It is hoped the Planning Board will offer support to the variance in that this plan is a safer condition than full compliance of the existing regulation. Mr. O'Connor confirmed the ZBA has not seen this rendition of the plan.

Mr. Granese asked with regard to the height of the structure. The townhomes will be three stories tall, for a height of around 38-42 feet. The garage is the ground floor, with the living areas on the second, and three bedrooms on the third floor.

Mr. Chase confirmed the height will be from Franklin Street. The garages are not subgrade.

Mr. MacEachern stated there is a lot of building on this small lot. He would be more in favor of a two unit rather than 3 unit townhome. The Board needs to look at the TBOD. The setback for homes should not be zero at the front setback. He would prefer residential setbacks to be set by the Planning Board to alleviate these type of issues. He is concerned with the utilization of the lot. They need to be cautious with the curb cuts because of the number of homes that are adjacent to this lot. This would be different if the proposal was for a commercial use because there would not be a lot of activity during the evening hours at this intersection and near the other homes. The close encroachment to the street is a concern. Two townhomes might make it fit better.

Mr. Myers confirmed the parking configuration and the size of the units which appeared small to him.

Mr. Chiricheillo noted there are no sidewalks along the frontage of this property but there is a sidewalk close by. Mr. O'Connor added work should be done on the sidewalks closer to Cumberland Farms. The sidewalks are only about 2.5' wide. Mr. Chirichiello noted most of the townhomes in this area are two bedroom; a three bedroom townhome would set a new standard in the area. Mr. Chisholm stated the size of the units is dictated by the living area; a two bedroom unit would create oversized bedrooms. Mr. Chirichiello stated townhomes are like "starter homes". A two bedroom might give more parking area. Mr. Chisholm commented they are supplying more than required by the regulation.

Mr. Granese agreed there is no sidewalk in front of this lot. Across the street is a rock wall. Across Franklin is a large home. He feels a three story building will fit in the neighborhood as there are other three story structures adjacent. He likes the plan and feels it would be a good fit.

Mr. O'Connor inquired how will the units meet the ADA requirement if there will be a set of stairs to enter the units from Franklin Street? Mr. Chisholm stated they are looking at that. The units are large enough that chair lifts can be utilized coming into the house from the garage and to get to the upper levels. They will have more information on that later.

Mr. O'Connor asked if the Juliet balconies will be over the sidewalks. Mr. Chisholm stated they will not. There will be slider doors on the living levels that lead to an 18" balcony with a railing. These will not be large enough for a chair. They are intended more for ventilation and light and are for more aesthetic purposes to break up the siding. The overhangs will be a cover over the back door to protect residents from the elements.

Mr. Chase stated the slab with wood frame construction will be more in keeping with the neighborhood.

Mr. Chisholm confirmed the location of the stop signs, noting the odd intersection configuration. The current structure is not that far off, with regard to location on the lot, than the proposed townhomes will be. The backyard of the units will basically be the drive aisle. In this district,

cars cannot back out onto the street. He stressed a smaller building will have the same setback considerations to be met, will need the same size drive aisle, and would create equal challenges.

Mr. O'Connor asked if the next step is to go back to the ZBA. Mr. Chisholm indicated they will need to decide if/how any proposed zoning changes will have an effect on what the developer would like to do with the lot. Their hope is that the Board sees that no matter what is done in this area, there will be the same challenges they have been facing. It does not matter if development is commercial or a single family home; the same setbacks need to be adhered to. They are planning for spring construction, so have a little bit of time to decide. The original site design had the townhomes moved back on the lot, which was much safer. Mr. O'Connor thought it would be safer with the cars coming out onto Franklin. Mr. Chisholm said they like this design in the respect that the driveway aligns perfectly with the intersection of Franklin and Pearl and the line of sight is good here, once the vegetation is cleared. He believes it makes more sense to line up with Pearl and not have another curb cut on Franklin, but there are other considerations.

Mr. Chase commented if the structure is moved back, it would not be in line with other structures on Franklin Street which are on the street line. His issue is with the stairs off Franklin having to go up a full story. Not having a full flight of stairs would make it easier to meet the setback. The building should not be right on the street, even though that is the regulation. Mr. Chisholm said even if the use were commercial, the doors would open right onto the street. The regulation is still a problem no matter what is done on the lot. Mr. Chase believed the building was positioned properly on the lot. He does not feel it would fit well if moved more to the west side of the lot. It needs to be on the east side. He believed this to be the most workable solution so far.

Public Hearing

BC Industries, LLC

PID 03034, 253 Rockingham Road

Acceptance/Review, Site Plan

Addition of 12,000 sf commercial building consisting of 6 bays plus parking

Mr. Sioras provided the following staff report. The purpose of the site plan is for the redevelopment of 253 Rockingham Road which will include the addition of a 12,000 square foot commercial building consisting of 6 bays. The project will retain the existing 1,900 square foot commercial building while expanding the parking. Connection to municipal water is proposed. The property is located in the General Commercial district. All town department have reviewed and signed the plan. SFC Engineering, on behalf of the applicant, is requesting several waivers which are provided in a letter dated October 31, 2022. The NH DOT revised driveway permit has been applied for and approval is pending. Staff recommends approval of both the waiver requests and the site plan application.

Dan Flores, SFC Engineering, presented for the applicant, Bryan Fowler, who was also present. The property abuts the Town of Windham and is located on Rockingham Road. There are other commercial properties surrounding this lot. The existing condition consists of two curb cuts on

Rockingham Road. There is a 1,920 square foot building in the lower left and an existing tree line. The septic is currently in the front yard. The water supply well is in the back corner of the building. There is an irregular wall in the front. The back of the lot gets steep and has ledge. There are overhead wires supplying electricity to the site. Today, the property operates as garage space for Rockingham Truck.

The plan set includes a phasing plan which shows how operations at the existing building can continue while the site is built out without any adverse impacts.

The proposal is for the addition of an 80' x 150' building, totaling 12,000 square feet. The building will contain 6, one story bays. Each bay has a garage door and man door, with a man door to the rear of each unit. The building meets all the applicable setbacks. Both curb cuts will be retained with the majority of the traffic entering and existing via the left hand access. The right hand access will be retained for emergency and Fire Department access. There will be a dumpster in the lower right hand side of the site. They are providing 23 parking spaces where 19 spaces are required. There are two retaining walls on the property. The front wall will be between 4 and 8 feet tall. They will rebuild the old wall and move it away from the frontage. The wall to the rear of the lot will be up to 12.5 feet tall. They did test pits in the area and found ledge. The wall may not be as large or constructed as shown; they will know better once they start construction, but are presenting a worst case scenario. They might be able to utilize the exiting ledge to hold the slope back. The lot coverage totals 37.9%. There is a total of 9,975 square feet of impervious area added to the size, which is mostly the new roof. They have reduced the pavement amount by 2,300 square feet.

Today, the lot is serviced by an on site well. The proposal adds municipal water which is on the other side of the street. They will bring the water utility through the right hand entrance. After discussion with Derry staff and NH DOT, they are showing an alternate route to get water to the site in the event the directional drilling does not work. This would involve an easement along the neighboring property (PID 03033, 255 Rockingham Road) where they would connect to the hydrant in front of that lot. They have written permission from that property owner if they need to utilize this option (in the package). The septic system will be moved to the rear of the property. A new tank will be placed on the right side of the building. They will plumb the new building into the system.

With regard to drainage, Mr. Flores explained most of the site drains to the upper left. They are adding an island which pipes to the bioretention area which has underdrains. They will treat the stormwater and send it to the closed drainage on Rockingham Road. Currently there is no stormwater treatment system on the property. The new design will capture 80% of the stormwater and reduce the peak flow for all storm events. A building is envisioned to provide space for electrical, and plumbing contractors, and perhaps another mechanic. A variance was granted on March 03, 2022, by the ZBA to allow the contractor use in the zone. A NH DOT amended driveway permit application has been submitted. They will wait to send the septic plan to the State for approval until they have completed the planning process.

Motion by MacEachern, seconded by Granese to accept jurisdiction of the site plan before the Board for BC Industries, LLC, PID 03034, 253 Rockingham Road.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to find, pursuant to RSA36:56 the proposal as presented meets the definition of a development of regional impact.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor all voted no, stating the application does not meet the definition of a development of regional impact. The motion failed.

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

There was no public comment.

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

Mr. L'Heureux stated the plan is fine as presented. He would recommend adding a few conditions to the approval. With regard to the retaining walls, the plan should note that a design be provided that is stamped by a structural engineer. Also, for the retaining wall that is located below the new septic system, the extent of the wall should be discussed with Public Works as the size may change during construction. There may be ledge in that area which will affect the construction of the wall. Mr. Flores noted the wall will likely happen but there is ledge on the face where the wall is intended to be constructed. He does not believe they will need to blast ledge; it appears the ledge can be easily pulled apart.

Mr. Chirichiello noted the intent is for 6 contractor bays. Will the public be coming in and out of the site, or will the bays mainly be used for storage? Also, where will the sign go? Mr. Flores explained the current sign is in the upper left hand corner of the lot and is over the property line; this is also true for some of the parking in that area. Per the request of the TRC, they conducted a boundary survey and will be correcting those issues. The sign will be moved to the right and the location is shown on the plan. The sign will increase in size. Mr. Chirichiello stated the sign should be reviewed with regard to the size and what it will look like, prior to the issuance of a sign permit. He asked which elevation view will be seen from the road as one travels north on Rockingham Road— is it the north or south elevation? Mr. Flores said the north elevation. Mr. Chirichiello asked if there had been any consideration to adding some faux windows or something to break up the blank wall. Mr. O'Connor noted this is also the entrance to Derry. Mr. MacEachern agreed some kind of element should be added to the wall. Mr. Fowler indicated he could do that; potentially adding some windows to add light into the bays. Mr. Chirichiello added the Town is currently discussing the extension of sewer down Rockingham

Road. The developer may want to take that into consideration as the site is being developed. His main concern at this point is the sign. Mr. Sioras suggested that be reviewed administratively.

Mr. MacEachern requested more detail be added to the building façade; that can be discussed with Planning and DPW. He commented this is a very nice lot. The final architectural approval could be handled administratively and did not require a public hearing.

Mr. Chase noticed the plan shows a fire service main and PIV, but the plan does not note the building will be sprinkled. Mr. Flores confirmed the building will have a sprinkler system. Mr. Chase commented that should be a note on the plan. Mrs. Robidoux requested that the lighting be reviewed to ensure the foot candles are zero at the property lines.

Motion by MacEachern, seconded by Granese to grant a waiver from LDCR Section 170-62 (A) (4) and LDCR Section 170-26 (A) (15) to allow an access drive with 21 feet of paved width, and along the side of the building, 20 feet of paved width rather than the required 24 feet. The proposed distance allows a fire truck to turn adequately around the building (per the turning plan provided), the back and side access drives are not meant for public use – only for emergency vehicle and dumpster access; and, constructing to 24 feet wide will add unnecessary impervious area to the lot. After review of the waiver request 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.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to find that pursuant to LDCR 170-85, that the application as presented demonstrates substantial compliance with the Architectural Design Regulations. This property is located in the General Commercial district and meets a medium level of compliance as outlined in Section 170-84.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese to find the proposed plan provides safe and efficient vehicular and pedestrian access, and the design and construction of the driveways and walkways are adequate to accommodate the anticipated volume of traffic proposed by the development; the proposed parking plan is adequate for the site, and meets the parking density requirements for the use; the landscape plan meets the intent of the regulations and a residential landscape buffer is not required as there are no abutting residential uses; the stormwater management as proposed is designed to control the post development runoff so that it does not exceed predevelopment runoff; the utility construction standards are met, the applicant is proposing to connect to municipal water and the property has a sufficient number of hydrants for the proposed use; and, exterior lighting, solid waste storage and snow storage provisions, and erosion and sediment control provisions are adequate.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Granese 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. Obtain written approval from the Planning Director/designee that the GIS disk is received and is operable and it complies with LDCR Section 170-61.C
6. Subject to receipt of applicable state or local permits relating to the project
7. Conditions precedent shall be met within 6 months.
8. Submission of the appropriate recording fees, payable to the Rockingham County
9. Ensure the design for the retaining walls are stamped by a structural engineer
10. Determine with the Town's Engineer, the extent of the rear retaining wall which is located below the proposed septic
11. Review of the proposed sign and revised architectural renderings will be conducted and approved by the Planning Director/staff
12. Add a note to the plan that the building will be serviced by a sprinkler system.

Discussion followed. Mrs. Robidoux noted the plan will not be recorded and the condition regarding recording fees can be removed. The conditions were amended accordingly.

Chase, Granese, Chirichiello, MacEachern, Myers, Malaby, and O'Connor voted in favor and the motion passed.

There were no Board member comments.

There was no further business before the Board.

Motion by MacEachern, seconded by Granese to adjourn. The motion passed with all in favor and the meeting adjourned at 8:10 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____