

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 07, 2016, at 7:00 p.m., at the Derry Municipal Center (3<sup>rd</sup> Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman, Michael Fairbanks, Secretary; Charles Foote, Town Council Liaison; Frank Bartkiewicz, Lori Davison, Mirjam Ijtsma, Jim MacEachern (7:02 p.m.), Members, Mark Connors, Marc Flattes, Elizabeth Carver, Alternates

Absent: Randy Chase

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

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Following that, Mr. Granese asked for a moment of silence to pay respect to those who have and who continue to serve, and in remembrance of Pearl Harbor.

Mr. Granese then noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

## **Escrow**

### **#16-39**

**Project Name: Kendall Pond Apartments**

**Developer: DJ Development LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 24037, 19 Kendall Pond Road**

The request is to approve Release #1 in the amount of \$67,340.16 and request a replacement letter of credit in the amount of \$99,435.60 for the above noted project. Upon receipt of the replacement letter of credit, the Board will release Letter of Credit #2505311601 drawn on Merrimack Valley Credit Union in the amount of \$166,775.76.

Motion by O'Connor, seconded by Bartkiewicz to approve as presented. The motion passed with all in favor.
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**#16-40****Project Name: 70 Fordway- 13 Unit Apartment Building****Developer: 70 Fordway LLC****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 24005, 70 Fordway**

The request is to approve Release #1 in the amount of \$159,106.03 and request a replacement letter of credit in the amount of \$4,536.00 for the above noted project. Upon receipt of the replacement letter of credit, the Board will release Letter of Credit #26281 drawn on Enterprise Bank in the amount of \$163,642.03.

Motion by MacEachern, seconded by O'Connor to approve as presented. The motion passed with Fairbanks abstained.

**#16-41****Project Name: Varsity Wireless Cell Tower****Developer: Varsity Wireless Investors, LLC****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 08102-001, 69 By Pass 28**

The request is to establish cash escrow in the amount of \$26,166.24 for the above noted project. This escrow is non-interest bearing.

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

**#16-42****Project Name: Varsity Wireless Cell Tower****Developer: Varsity Wireless Investors, LLC****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 08102-001, 69 By Pass 28**

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

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

**#16-43****Project Name: Martin Gate LLC****Developer: Same****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 30047, 1 West Broadway**

The request is to renew Letter of Credit #19981 in the amount of \$45,961.34 for the above noted project. The new expiration date will be December 04, 2017.

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 November 16, 2016 meeting.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the November 16, 2016 meeting as written. The motion passed with Ijstma abstained.

The Board reviewed the minutes of the November 19, 2016 site walk.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the November 19, 2016 site walk as written. The motion passed with Ijstma, O'Connor, and Fairbanks abstained.

**Correspondence**

Mr. Fairbanks advised the Board is in receipt of a copy of the updated Change in Use list for 2016 and a copy of the most recent edition of *Town and City*. Mr. Granese noted there have been some good changes.

**Other Business**

Abutters to the DAR Builders application were invited to discuss the plan with Mr. Mitchell in advance of the public hearing.

**Planning Board meeting schedule**

Mr. Sioras advised the Board will not meet on December 21, 2016. The next meeting of the Board is scheduled for January 04, 2017.

**Public Hearing****New Wave Diversified, LLC  
154 Hampstead Road, PID 09081  
Acceptance/Review, 2 Lot Subdivision  
Continued from November 02, 2016**

Mr. Granese noted several members were present this evening who were absent on the date the Board first heard this application. In the interest of keeping the process clean, he would like to know if Mr. MacEachern, Mr. O'Connor, and Ms. Ijstma had an opportunity to review the tape of the meeting, the minutes, and the minutes of the site walk, and did they feel comfortable sitting for the public hearing this evening with an unbiased opinion.

Ms. Ijstma advised she reviewed all the applicable material and felt comfortable sitting for the hearing this evening. Mr. O'Connor said he would recuse himself as he reviewed the minutes, but had some concerns. Mr. MacEachern advised he attended the site walk and reviewed the minutes. He felt comfortable sitting for the hearing this evening.

*Mr. Flattes was seated for Mr. O'Connor.*

Tim Peloquin, of Promised Land Survey, presented for the applicant, Gal Peretz, who was in the audience. To recap, this is a two lot subdivision. They are creating a 3.6 acre lot and a 2 acre lot. This is a function of a ZBA variance which created a long driveway. A site walk was held on November 19<sup>th</sup> at which the attendees noted the up and down topography in the back land. They also viewed the wetland in the middle of the lot, and the proposed building area. There is an adequate turnaround for a fire truck and they have met the town's regulations. There is a 24 foot wide driveway entrance on Hampstead Road. This is a shared driveway on a State road with an access easement for one lot. The attendees at the site walk also viewed the land around the perimeter of the lot. They are proposing a 240 foot arbor vitae buffer line between the driveway and the abutting lot. The intent is to shield the abutter. The trees will have a three to five foot spacing as noted in Note 10 on the plan. The affected abutter viewed the proposed buffer line at the site walk. Upon plan approval, the owner plans to fix up the existing dwelling on the lot and will either sell or build on the back lot.

Mr. Connors had a question about the ZBA decision. Once the ZBA grants a variance, is there anything the Planning Board can do about the decision? Mr. Granese explained there is not as the appeal period has passed on this particular decision.

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

James Kelly, 7 Penny Lane, asked if the owner intended to build the new home himself or sell the land. Mr. Peloquin said the owner has the opportunity to either sell the land to someone who

will build, or build on it himself. Mr. Peretz stated if someone wants to purchase the new lot, he would sell it. Otherwise he will build the new home. Mr. Peloquin explained any conditions of approval placed on this plan, would be assumed by any new owner of the property.

Herb Goodrich, 6 Penny Lane, said the ZBA originally denied this application and that decision was appealed. He does not agree there was a hardship. Upon appeal, the ZBA heard that a town road could be constructed to the back lot and then they would not need a variance. If that is the case, he would like to see a road constructed to town standards.

Greg Dunton, 160 Hampstead Road, wanted to clarify statements made about the tree line. At the last public hearing, it was stated that the trees should all be one height, not a range of heights, and there should be an exact number of trees for the 240 foot distance at a 5 foot spacing. He just heard a range in the height. Is there anything else the applicant has not adhered to?

There was no further public comment.

Motion by Fairbanks, 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 noted the change of language in the waiver letter; he appreciated that. He did not feel the prior wording was appropriate with regard to comments about the water system. Public Works is neutral on the waiver regarding the extension of water service. The Board will need to determine if the applicant has proven a hardship. With regard to the landscape buffer, Note 10 on sheet 3 states the trees in the buffer will be between 3 and 5 feet tall with four to five foot spacing. That note needs to be modified. Also, a more descriptive detail should be added as well as a finite height as discussed at the last meeting.

Mr. Connors added to Mr. L'Heureux's comments. The original packet includes a letter from Promised Land Survey which speaks of inadequate water pressure at a hydrant within 500 feet of the lot as the reason to not tie into the water system. It appears that this is not correct information and the Fire Department did not represent that information. Mr. Connors does not feel a hardship exists with regard to connecting to the water system. With regard to the ZBA hardship comment from the abutter, he reviewed the ZBA minutes and did not understand how it changed from one hearing to the next. He is concerned about that but understands there is no way to undo that decision. The proposed layout of the lot is unfortunate and he would feel more comfortable with a different lot layout. He can see how the topography and wetlands affected the design of the lot and understands the Planning Board does not have a vote on the frontage. He is not sure how the Board can say no to this application, but is not sure this plan is in the best interest of the town as a whole and the neighbors. Mr. Connors said he can see both sides of the issue and this is a tough application. He is not voting tonight, but feels if this is approved it sets a poor precedent for lot design and development. He feels the Planning Board may have been hamstrung by the Zoning Board. He does not feel the Board should approve the waiver for the water connection as there is a hydrant 500 feet away; he does not see a hardship.

Mr. Flattes also questioned the variance but has a concern for the waiver request as there is a fire hydrant so close to the lot. He feels the applicant should connect to the system.

Mr. Granese confirmed there have been no changes to the plan set that is before the Board this evening. Mr. Peloquin asked for permission to reword Note 10 such that "A protective tree buffer shall be provided for additional privacy for the proposed driveway. American arbor vitae, a minimum of 4 feet tall, with no less than 5 foot spacing, center to center."

Mr. L'Heureux said he would like to see the total number of trees noted on the plan. Mr. Peloquin stated currently, they are proposing 48 trees in the 240 foot buffer.

Mr. Fairbanks asked if the purpose of the waiver request to not extend the water main for fire protection was because there was not enough water pressure. Will they then sprinkle the house?

Mr. L'Heureux said that is not a documented statement. From the water system perspective, there has to be adequate pressure because there is a hydrant at the corner. The statement about the water flow is inaccurate. Mr. Fairbanks asked why the Board would then approve a waiver to not extend the system. Mr. Peloquin explained he himself did not state the Fire Department said there was no pressure at that hydrant; that was represented at the Zoning Board meeting. Pennichuck owns this water system. Pennichuck is a private water system and requires permission to make a connection to their system. It is a PUC governed franchise. Mr. L'Heureux stated the Town of Derry considers Pennichuck Water Works to be a public water system owned by the City of Nashua. It serves water to the residents in the right of way. Mr. Peloquin stressed applicants are not granted automatic hook up rights to the Pennichuck system. Mr. Fairbanks asked if the waiver is not granted, where will the water for the sprinkler system come from. A cistern? Mr. Granese explained residential sprinkler systems typically have a tank in the basement. Mr. Fairbanks asked where in the record is it noted there was discussion about the water pressure. Mr. Granese said it is noted in the November 2<sup>nd</sup> minutes on page 7.

Mr. MacEachern concurred with Mr. L'Heureux's statements. He is not aware of anyone having an issue dealing with Pennichuck. He does not see a hardship with regard to connecting to the water system. The Fire Department uses the system all the time. Connections have been made multiple times over the years and the Town of Derry has taken over some of Pennichuck's systems. He sees no hardship with adding this water line.

Mr. Peloquin felt Pennichuck was a private water supplier and they would still need permission to connect to the Pennichuck system. Mr. MacEachern said they may need permission but Derry has agreements with Pennichuck to serve Derry's residents. Mr. Peloquin advised he was not privy to the early conversations with Fire Department staff. Mr. Peretz recalls a different discussion.

Mr. Peretz said he recalls during the meeting with staff the Fire Department representative said they would not use the hydrant because there is no pressure there. They would prefer a residential sprinkler. They would not put a hose over the state road to fight a fire even if a hydrant was close enough. He spoke many times to the Fire Department and heard the same thing. Mr. Connors had comments about the fire suppression regulation. He believes part of the

intent of the regulation is to extend the water system as well as to provide fire protection. Granting waivers to this regulation does not further the goals of the Town with regard to expansion of the water systems.

Mr. Sioras advised FF Kersten reviewed the first TRC submission in 2015. Assistant Chief Jackson now reviews the plans and he would prefer to have a connection to the water line. The town's Master Plan and Master Water Plan recommends the town eventually take over private water systems and encourages hooking into the town's system. AC Jackson would utilize a hydrant if it were available at this location.

Mr. MacEachern said the Board could delay further discussion until the applicant can verify with AC Jackson whether he would use the hydrant or not so that the Board can decide to grant the waiver or not; or the Board could vote on the waiver tonight. He agrees with Mr. Sioras and Mr. L'Heureux but understands the Board may not be comfortable making a decision based on conflicting statements. Mr. Sioras stated Mrs. Robidoux spoke with AC Jackson. He prefers the connection to the water line. A sprinkler system would also work. AC Jackson is not taking a position on it. Ms. Ijtsma indicated she did not see documentation that the Fire Department said there was no pressure. Mr. Peretz repeated the Fire Department said they would not put a hose across the road even if there was a hydrant there.

Mr. Sioras reminded the Board there were two TRC meetings for this project, spaced over a year apart. Mr. Granese noted Mr. Sioras has provided the most up to date information from the Fire Department. Mr. Sioras reiterated there was a gap between the two staff reviews. When it came back to staff for the most recent review a few months ago, that is when AC Jackson provided comment. Mr. Peretz said there are two new houses on this road not connected to the system and it is not feasible to connect to the water system for one lot. Mr. Peloquin confirmed the Dunton's are not connected to the water system. This lot is further away from the water system. Mr. Connors confirmed the Dunton's have a sprinkler system. He asked if the Board does not approve this waiver request, can the Board proceed to a vote on the plan. Mr. Granese reviewed the approval procedure. The Board first accepts jurisdiction of the plan, votes on any waiver requests and then, if any waivers fail, gives the applicant the option to continue or not.

Motion by Fairbanks to accept jurisdiction of the two lot subdivision application before the Board for New Wave Diversified, LLC, 154 Hampstead Road, PID 09081, seconded by Bartkiewicz.

Ijtsma, Foote, Flattes, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Fairbanks to grant a waiver from LDCR Section 170-30.1 and 170-28.D. The request is to not require the extension of the water main to within 500 feet of the proposed development. 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.

MacEachern voted no. He feels the applicant can meet the spirit and intent of the regulation and the Board needs to uphold the regulations. Having sat as a Water/Sewer Commissioner for many years, he is fully aware of the intent of the regulations. The applicant does not have a hardship. Flattes voted no. He feels the applicant has not met the spirit and intent of the regulation. Davison voted no for the same reason and based on the advice of town officials. Bartkiewicz voted no for the reasons stated. Fairbanks voted no for the same reasons. Foote voted no for the same reasons. Ijtsma voted no for the reasons stated by other members. Granese voted no for the reasons already stated. The motion failed.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from LDCR Section 170-25.A.5 to allow a common driveway. After review of the waiver request the Board finds that specific circumstances relative to the plan, or the conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Discussion followed.

Mr. Sioras advised Hampstead Road is a State road. NH DOT has jurisdiction and likes to limit the curb cuts and encourages common driveways. Staff supports fewer curb cuts on this road and would support this waiver request. Mr. Connors asked if this waiver is approved would the applicant have to form an association to handle maintenance of the driveway. Mr. Sioras said no. The State gives the curb cut and there are easements on the plan for the driveway access. Ms. Carver asked who would maintain the driveway. Mr. Granese explained the beginning of the driveway would be deeded to both property owners. The two owners would work out the details for the shared portion of the driveway.

Ijtsma, Foote, Flattes, Davison, and Bartkiewicz voted in favor; MacEachern voted no as he felt there was no hardship and the property should have the required amount of frontage. Fairbanks agreed with the frontage issue but as there was no recourse for the Planning Board, he voted yes. Granese voted no as the Town's regulations call for no common driveways and he sees no hardship. The motion passed.

Mr. MacEachern asked Mr. Granese if the Board should discuss with the applicant if he wanted to move forward tonight or continue the hearing so that he could add the water details onto the plan. Mr. Peloquin asked if the Board could continue discussions and requested that if approved, a condition be placed that the approval is subject to Pennichuck Water Works and the Fire Department agreeing to the connection to the water service. If there is any change, they would of course come back before the Board. Mr. L'Heureux recommended the plan be resubmitted to the Board with the addition of the water line details as this will affect the abutters and road restoration. Mr. MacEachern commented this is a significant change to the plan and he would recommend the applicant make the changes to the plan so the Board can review them. Mr. L'Heureux confirmed the water line can be tapped off Olesen Road and there would not need to be a trench cut to cross Hampstead Road. Mr. MacEachern felt as there would now be significant changes to the plan, the Board should give the applicant the opportunity to amend the plan.

Motion by MacEachern to continue the public hearing for New Wave Diversified, LLC, 154 Hampstead Road, PID 09081, to January 04, 2017, given the amount of changes in the plan that



need to take place due to the failure of the Board to grant a waiver to Section 170-30.1 and 170-28.D. Bartkiewicz seconded the motion.

Ijtsma, Foote, Flattes, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Mr. Granese advised this is the notification of the continuation and there will be no further public notice.

*Mr. Flattes stepped down and Mr. O'Connor resumed his seat.*

**DAR Builders, LLC**

**149 Island Pond Road, PID 03162**

**Acceptance/Review, 4 Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a 4 lot subdivision located on the corner of Island Pond and Gulf Road. The property is located in the low density residential district, which requires a three acre minimum lot size. All town departments have reviewed and signed the plan. There is a waiver request letter dated November 22, 2016 submitted by Eric Mitchell's office for topography and wetland mapping. NH DES State subdivision approval has been received and a copy is in the file. Staff would recommend approval of the waiver requests and of the subdivision plan.

Eric Mitchell, of Eric C. Mitchell & Associates, presented for the applicant. The lot consists of 43 acres. They are proposing three new, three acre lots; the parent lot will remain at 34 acres. The lots will be serviced by on site septs and wells. They have received State subdivision approval. Frontage for the lot is on Gulf and Island Pond Road; access to all of the lots will be off Gulf Road. There are no wetland crossings. They did perform HISS and topography mapping in the area of the proposed four lots. They are asking for a waiver for the remaining topography and wetland mapping of the larger parcel. They show the mapping for the affected three acres. The lot size calculations are at 200% of the requirement so the soils are good. They have spoken with Public Works and will relocate existing utility poles. The edge of the right of way will be moved back about 12 feet from the existing edge of pavement to assist with snow plowing in the winter and for visibility.

Mr. Connors felt the plan was a bit odd. There is a large, U shaped lot. Why did they not shift the lot lines to make the land on that lot more contiguous? Mr. Mitchell said they designed the lots as they are shown because the last lot has 200 feet of frontage. There are prime wetlands on the lot (PID 03162) which requires a 150 foot setback, wetlands, and a floodplain which has a 125 foot setback. The setbacks would make construction difficult on the five acres of upland. They could have put in a road. However, they thought it best to create this design which meets the zoning, even though it looks unusual, and they can create four lots. Mr. Connors noted there is a parcel (PID 03159) to the rear of the lots that goes back to Kilrea Road. Are there any restrictions that can be placed on the subdivision approval so that the remaining 34 acre lot cannot be further subdivided? The spirit of the regulations is the 200 foot frontage. This lot

(03162) meets that requirement but he has a fear it may get orphaned in the future. Mr. Mitchell said there are no plans or provisions to add a road to reach the adjacent lot to the rear. The lot measures between 60-70 feet at the driveway location which would not accommodate a road to connect to Kilrea. The other portion of the lot is all wetland. They thought this was the best design option. Mr. Connors asked if this subdivision is approved, is there any way to require that 200 feet of frontage is maintained in perpetuity with the 60 feet so that a future Board cannot overrule this decision. Mr. Sioras said any change to an approved subdivision would need to go back to the Planning Board for approval. An applicant could ask for a variance but that land is prime wetland and very wet. He does not feel that portion of the lot will ever be developed. Someone cannot build on a prime wetland.

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

There was no public comment.

Motion by O'Connor, seconded by MacEachern to close the public hearing. The motion passed in favor and review of the plan returned to the Board.

Mr. Granese confirmed the intent is to construct four new homes. What size homes? Mark Cooper advised they ~~intent~~ intend to construct 2200-3500 square foot, three to four bedroom Craftsman style colonials. Mr. MacEachern had a question about the larger lot. There is a stone wall that cuts across the lot. Where is the driveway cut? Mr. Mitchell said it is closer to the wetland for lot 03162. Sheet 7 shows the driveway location. Mr. MacEachern asked if there was enough distance between the driveway and wetland. Mr. Mitchell said the plan shows the physical edge of the wetland. Mr. Sioras confirmed a driveway can go right up to the edge of wetland. Mr. Mitchell said they will stay as far away from the wetland as possible. Mr. O'Connor asked if Mr. Mitchell had a chance to review the Keach Nordstrom report. Additionally, are they prepared to extend the additional 4 feet off the road toward the property line? Mr. Mitchell responded he has reviewed the report and has no issues with it. They agreed to the four foot shoulder work and know that it will need to be constructed. Those improvements are shown on the plan.

Mr. L'Heureux reported all issues raised by Public Works were addressed on the plan. Mr. Connors inquired if this application would also require a waiver to not connect to the water system. Mr. MacEachern advised there is no town water within 1000 feet. Mr. Connors said the separation of the frontage concerns him because the frontage is on two different roads. 200 feet is located on Island Pond Road with the driveway on Gulf Road. Is this setting a precedent? Mr. Sioras explained the regulations say there must be 200 feet of frontage on a public road. Mr. Connors confirmed that a developer would have to have the frontage on the same lot and not on a lot two streets over, under common ownership.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the four lot subdivision plan before the Board for DAR Builders, LLC, 149 Island Pond Road, PID 03162.

Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern to grant waivers from the following sections of the LDCR, Section 170-170-24.A.11, Topography and Section 170-24.A.12, HISS mapping of the remaining 31 acres as after review of the waiver request, the Board finds that specific circumstance relative to the plan, or conditions of the land in such plan, indicate the waiver will ~~property~~ properly carry out the spirit and intent of the regulations.

Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: comply with the Keach Nordstrom report; subject to owners signature; subject to on-site inspection by the Town's engineer; establish escrow for the setting of bounds or certify the bounds have been set; the bounds along the right of way shall be reset at the property corners after removal of the stone wall, removal of brush/trees and construction of the gravel shoulder; 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 170-24/170-61; note approved waivers on the plan; subject to receipt of state or local permits relating to the project; conditions precedent shall be met within 6 months; a \$25.00 check, payable to 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 the Town of Derry.

Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

## Workshop

### Review of Article XII, Sections 165-101 to 165-103, Signs

Mrs. Robidoux reviewed the information provided to the Board. In 2015, the Supreme Court issued a decision with regard to *Reed v Town of Gilbert* in Arizona. It has been strongly recommended the municipalities in New Hampshire review their sign ordinances to ensure they are in compliance with this decision. Essentially the decision stated that ordinances must be content neutral, but municipalities can regulate location, and size. A review of the Derry ordinance was performed to ensure the existing ordinance is content neutral. New Hampshire Municipal Association has prepared recommendations for municipalities as part of the ordinance review. They have provided a list of elements that are required for a good sign code that is in compliance with the Supreme Court decision. The applicable sections of Derry's ordinance are listed beside each item. A red flag for an ordinance would be if the municipality creates categories for specific types of signs such as political, religious, real estate, or temporary signs. The Derry ordinance does this, however, the town only regulates the size, if they are lighted or unlighted, if they are fixed message or electronic, the placement on public or private property, on

premise or off premise, etc. When the Board reviewed the sign ordinance two years ago, the Board was very careful. She does not see any conflicts with the *Reed* decision, but the Board should review the ordinance and make that determination.

Mr. O'Connor stated a few years ago, a subcommittee spent a considerable amount of time revising the sign ordinance. The Supreme Court ruling is complicated. Several members have attended Law Lectures on this topic. There are serious consequences if the town misses something. He recommends town counsel review the ordinance to ensure the town is not at risk. Overall, he feels comfortable the town did its due diligence. He does have some concerns about the political based signs.

Mr. MacEachern recalled going through the sign ordinance two years ago. He does attend the Law Lectures. He does not feel the sign ordinance needs to be reviewed by the town attorney; he feels the town is in compliance. The Board does look at its ordinances and revises them as necessary. He trusted Mrs. Robidoux's assessment and the team members who crafted the ordinance. Mr. Granese asked if the Board need to take action on anything involving the sign ordinance as there are no changes. Mr. Sioras said the Board should state for the record it did review the ordinance. Mr. MacEachern suggested making a statement at the next meeting that the Board reviewed the ordinance and did not feel changes were necessary at this time. Mr. O'Connor asked that the Board receive confirmation from the Code Enforcement Officer that he concurs there are no issues with the existing ordinance as written. Mr. Sioras reported the Code Enforcement Officer was very involved in the re-write of the sign ordinance.

Mr. Fairbanks had a question with regard Section 165-27, Sexually Oriented Businesses. In that section, the town does limit the content. Mrs. Robidoux felt that was acceptable, given the type of business.

#### Review of proposed changes to Article III, Section 165-25, Accessory Dwelling Units

Mrs. Robidoux reviewed the memorandum prepared for the Board concerning Accessory Dwelling Units (ADUs). There are several amendments to the current ordinance proposed. The RSA recently changed and will become effective in June of 2017. The intent of the proposed changes is to be proactive in compliance with the new law. The RSA now spells out where ADUs can be located, design standards to maintain architectural continuity, parking, owner occupancy, the size, and the number of bedrooms.

Mrs. Robidoux explained the reason the legislature changed the laws was to allow for an increase in the supply of affordable housing without increasing the need for more infrastructure, or further land development. The changes benefit the aging population, single parents, recent college graduates, caregivers and disabled persons. The change should result in minimal negative impact to the community and provide the elderly with an opportunity to live in a family environment. The town needs to be in compliance with the new law. There are very specific limitations on what the town can and cannot allow in relation to ADUs.

Mrs. Robidoux reviewed the proposed changes. A definition for Accessory Dwelling Unit has been added. She worked with Mr. Mackey on the proposed changes. Under Section 165-25,

they made the following changes. The requirement for a minimum lot area has been removed as these units are being added to existing single family homes and all setbacks must be met; new single family homes with ADUs will meet the applicable building setbacks. The maximum increase in total floor area requirement should be removed as there will be an increase in the allowable size, which may affect that. The town can no longer limit the size of an ADU to less than 750 square feet by law. The current size limit is 600 square feet. The town can cap the maximum size and should discuss that option. Other changes included the number of bedrooms allowed, the design of any additions which would need to match the existing structure, and that the owner of the property could occupy either the main dwelling or the ADU. The various zoning districts were amended to allow ADUs where single family dwellings are a permitted use.

There was some discussion about the size limit. Mr. Granese noted 900 square feet is about a 30 x 30 addition which is a nice size. Mr. Fairbanks suggested amending the wording to state a minimum size of 750 and a maximum size of 900 square feet; it would be more clear. The ordinance can establish size limits for ADUs but cannot limit the ADU to less than 750 square feet. That is not to say that an applicant cannot request something smaller, but the town cannot make them smaller. A minimum size may be unnecessary, but including a maximum size would be a good idea so that someone with a 2000 square foot home cannot add a 5000 square foot ADU. Mr. Connors thought the law was written that way so that a Board could not set a minimum size that was too small. Mr. Flattes said the Board needs to consider the aesthetics; people could add additional floors, which would hurt the neighborhood. The aesthetic component is addressed in the ordinance.

Mr. O'Connor quoted from a recent Law Lecture Series, "While a municipality can establish minimum and maximum square feet for an ADU, it cannot require an ADU to be smaller than 750 square feet. In absence of a local minimum, an applicant can establish one smaller than 750 square feet." He also noted that if something is left to interpretation, it will end up at the ZBA and the ZBA will be making the decision. The Board should make sure it establishes clear criteria. The town cannot require anything smaller than 750 square feet, but an owner can apply for something smaller than that. Mr. MacEachern wanted to clarify that if the town sets the minimum at 750 square feet, anything smaller than that would require a variance. Mr. O'Connor advised some towns have set the minimum size at 750 square feet.

Mr. O'Connor felt it was not appropriate to mandate two bedrooms. He suggested changing the wording to "up to two bedrooms" so that someone who would like only one bedroom would not have to request a variance. Many of the aging or young adults are only looking for one bedroom. Other Board members had a different interpretation of the proposed wording. It was decided to change the wording to "and no more than 2 bedrooms" to make it more clear. Mr. O'Connor wanted to address the issue of parking and the number of cars. Mr. MacEachern did not think the Board could require a familial relationship. He did have a fear these types of dwellings would become rental units. This is an unintended consequence of the law. Anyone could add an ADU to their home and rent it out. Mr. Granese confirmed the law no longer allows the town to restrict ADUs to family members.

Mr. O'Connor said he was not sure if at this time anyone would be proposing changes to the law. Mr. MacEachern recommended the legislature require a family relationship; it could be

detrimental if it is not restricted and it could increase the number of rental units. Mr. O'Connor noted Derry is one of the few towns that exceeds its fair share of affordable housing.

Mr. Connors asked about the change the Board made in 2013 to the commercial districts and how this law will affect the residences currently existing in those zones. Mr. Sioras explained the law states that ADUs are allowed anywhere single family homes are allowed. Mr. O'Connor said the purpose and intent of the law was to provide housing for the elderly and student population. Mr. Granese confirmed the building setbacks will not change. Mr. MacEachern thought the Board should look at the lots in Derry; there are not many houses that will have restrictions on them. Many existing homes can accommodate an accessory dwelling unit. There are some lots that are too small. A single car garage meets the 750 square foot requirement and that could be attached to a residence by means of a breezeway. ADUs have to be attached to the house unless detached units are expressly permitted in the ordinance.

Ms. Ijtsma asked if the septic loading would need to be adjusted. It would be. There are requirements set out by the state for septic loading.

Mr. Granese asked the Board members to review the proposed changes. The Board will hold another workshop on these changes next month.

Ms. Carver had a few questions. What distinguishes these types of units from a multi-family dwelling unit? Multi-family is defined in Derry as three units; this would be two. Ms. Carver asked if there can be more than one ADU on a property. There can only be one. Ms. Carver asked if someone could own a home with an ADU and not live there and just rent out the two units. Mr. O'Connor said the owner has to live in one of the units. Ms. Carver asked if someone had a basement that was 500 square feet, which had direct access to a 300 square foot garage, could it be turned into an ADU. It was thought that would be possible if the space was contiguous and separated from the main house by a door. There needs to be a bedroom, kitchen and living area.

Mr. Flattes asked if the Board should form a subcommittee to work on these changes and to meet with the legislature so they could work on changes suggested by the Board. This law is imposing unique conditions on the community. As the Board is adding to an existing ordinance, Mr. Granese felt it would be best to work on it as a Board rather than in subcommittee. There are time constraints for these changes. Mr. Fairbanks noted that an existing two family dwelling unit could not have an ADU as they are only allowed in conjunction with a single family residence. The Board changed the owner occupancy requirement to "owner occupancy must occur in either the primary or accessory dwelling unit" rather than "can occur".

Mr. Connors noted the town cannot require the connecting door to remain unlocked. Should that be in the ordinance? Mrs. Robidoux explained the law states that the town shall not require a connecting door to remain unlocked.

Ms. Ijtsma asked if the Board could set limits such that people cannot create an Airbnb. Mr. O'Connor advised the legislature is working on regulations for those types of rental units.

Mr. Granese asked the Board members to make any changes they felt necessary and forward them to Mrs. Robidoux for discussion at the next workshop. This will be discussed on January 4, 2017.

Article VI, Section 170-19 and Article IX, Section 170-58, General Provisions (Planning Submission Deadlines)

Mr. Sioras advised the state legislature changed the laws with regard to the timelines for plan submissions. It was formerly 15 days and has been changed to 21 days. This change is in the Land Development Control Regulations so will not need to go before Town Council for approval. The changes can be read at the next meeting and then a date set for public hearing. If approved, the change takes place immediately.

Mr. Granese confirmed the Board members did not have an issue with the proposed change. Mr. O'Connor explained many of the smaller towns do not have professional planning staff. They are being penalized because they need more time to review the plans. The intent of the regulation change was to help the smaller towns.

Mr. Granese advised the changes would be read at the next meeting.

Discussion of amendment priorities

Mr. Granese advised several members forwarded their prioritized list of amendments to Mrs. Robidoux. She compiled them and the majority of those responding felt zoning definitions should be first, zoning uses discussed second, and a review of the TIF zones should be third. Zoning definitions will be discussed at the next workshop.

He asked the Board members to look at the list of definitions, uses in the TIF zones and uses in the various zones. Any changes should be sent to Mrs. Robidoux for discussion at the next meeting.

Mr. Granese wished everyone a safe and happy holiday season. The Board will reconvene in January.

There was no further business before the Board.

Motion by MacEachern, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:03 p.m.
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Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_