

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 20, 2013, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; Randy Chase, Administrative Representative; Darrell Park, Jim MacEachern, Jan Choiniere (7:18 p.m.), Ann Marie Alongi, Members

Absent: Al Dimmock, Frank Mazzuchelli, and Lori Davison

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; 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. Mr. Granese then introduced the staff and Board members present, and noted the location of the exits, and meeting materials.

Escrow

#13-32

Project Name: Spruce Pond Estates – Nathan Road

Developer: H & B Homes

Escrow Account: Same

Escrow Type: Cash escrow

Parcel ID/Location: 03039, 7 Linda Drive

The request is to establish cash escrow in the amount of \$4,250.88 for the above noted project.

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

#13-33

Project Name: Hampstead Road & Harvest Drive (Harvest Estates)

Developer: Robert MacCormack

Escrow Account: Hampstead Road and Harvest Drive

Escrow Type: Letter of Credit

Parcel ID/Location: 10015, 10025, 10024, Hampstead Road

The request is to renew Letter of Credit #19959 in the amount of \$174,286.08 for the above noted project. The new expiration date will be December 10, 2014.

Motion by O'Connor, seconded by MacEachern. The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the November 06, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the November 06, 2013, meeting as written. The motion passed with all in favor.

Correspondence

Mr. Bartkiewicz advised the Board has received from the Town of Deerfield a notice that there will be a public hearing on November 20, 2013 to discuss an application for a 150 foot monopole telecommunication tower. The second item is correspondence from the Derry ZBA regarding their decision relative to 41 Ashleigh Drive.

Mr. Granese stated that with regard to the 41 Ashleigh Drive matter, there will be no further discussion on this issue pending consultation with legal counsel. No member can speak on the matter other than himself or Mr. Sioras. Any questions should be directed to Mr. Sioras or Mrs. Robidoux.

Mr. MacEachern had a question regarding the notice from the Town of Deerfield. Why is Derry being notified? Mr. Sioras advised that state statutes relating to telecommunication towers require that any town within a 20 mile radius be notified of any public hearings.

Other Business

Mr. Sioras reminded the Board members of the joint workshop scheduled with the Town Council on Tuesday, December 3, 2013. Town Council will be holding its regular meeting prior to the workshop. Their meeting begins at 7:00 p.m.

Public Hearing

Paul George/Donahue Family, LLC PID 09045, 2 Beaver Lake Road Acceptance/Review, 8 lot subdivision

Mr. Sioras provided the following staff report. The project has frontage on both Beaver Lake Road and Old Chester Road. The purpose of the plan is for an 8 lot subdivision. Seven lots will be for single family homes and one lot will be for conservation to be deeded to the Town of Derry. The parcel is located in the Low Density Residential district which requires three acre minimum lots. The ZBA granted a variance on September 5, 2013 to allow the creation of one new building lot to have less than the required 200 feet of road frontage. All town departments have reviewed and signed the plan. There are several waiver requests: one from LDCR Section

170-29.J, for the minimum pipe size, depth of cover and the other from Section 170-25.5, driveway access and lots. NHDES state subdivision and wetlands dredge and fill permits have been applied for and are pending. There are copies of the applications in the file. He would recommend approval of both the waiver and subdivision plan. In discussion with Public Works and in light of abutter concerns, the Planning Board may wish to hold a site walk.

James Hanley of Civil Design Consultants, Inc., presented for the applicant in the absence of Tim Peloquin. Paul George was also present this evening. Mr. Hanley advised the parcel is located at 2 Beaver Lake Road, in the LDR zone. There are a handful of overlay districts on the property to include the Wetland Conservation District, the floodplain and the aquifer protection district. The total lot size is 37.6 acres with frontage on both Old Chester and Beaver Lake Roads. This is a straightforward application. The plan is for eight lots total, with only seven buildable lots. There will be three frontage lots on Beaver Lake Road, each with the required 200 feet of frontage and three acres of land. There are four buildable lots on Old Chester Road. The eighth lot is proposed as permanent open space and abuts the water body and wetland area. They have received the first letter from VHB. There are two to three comments to work through with them; the remainder are reasonable comments and will be addressed.

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

George Mayernick, 74 Old Chester Road, said he was in favor of the subdivision and wanted to publicly thank Mr. George and Mr. Peloquin for listening to his concerns. They put in an easement on Lot 09045-005 so that the driveway for 09045-004 will not go directly along his property line, but will meander onto Lot 5. They worked with him to make that happen. Mr. O'Connor asked if the buffer to be installed on his property line is sufficient for Mr. Mayernick's needs? Mr. Mayernick said it is. They have agreed to put in the buffer. He would prefer not to have trees put in such as Pine that would grow very tall, but he has been assured that they will do the right thing and make it look nice.

There were no further comments from the public.

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

Mr. L'Heureux had questions regarding the driveway easement benefiting lot 004. Mr. George said it will veer slightly off the property to lot 005 and swing back around to lot 004 so that the driveway is not straight. The intent is to skew it away from Mr. Mayernick's property and then bring it back to lot 004. Mr. L'Heureux said that will need to be very clear because driveways must be on their own lot. A waiver should be requested. Mr. George said they would do whatever they needed to do. Mrs. Robidoux advised the Board has received that waiver request. Mr. L'Heureux said other than that specific access issue, there were only some plan edits and missing details that were noted by VHB to be addressed.

Mr. O'Connor asked what will happen with the eighth lot? Mr. George said the lot is intended to be used for farming but they would like to get the land to the Conservation Commission in some

manner. The plan notes the lot is not for residential use. Mr. Sioras felt that should be made clear in a note on the plan. Mr. George said for now, the land will continue to be used by J & F Farms for farming purposes until they know what exactly is happening with it.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the 8 lot subdivision plan before the Board for Paul George/Donahue Family LLC, 2 Beaver Lake Road, PID 09045. Discussion followed.

Mrs. Choiniere entered the meeting.

Mr. Granese asked with regard to the suggested site walk? Mr. Sioras said the suggestion was made knowing there had been concerns from the abutter; the abutter seems to be fine with the proposal. Mr. L'Heureux said he brought up the site walk because of the concern the abutter had with one of the new driveways being so close to his house. He wanted the Board to be able to see the area of concern. Mr. O'Connor asked if Mr. L'Heureux was satisfied with the access easement? Mr. L'Heureux said he was if the Board was okay with it.

Chase, Park, Alongi, O'Connor, MacEachern, Bartkiewicz and Granese voted in favor; Choiniere abstained and the motion passed in the affirmative.

Motion by MacEachern to grant a waiver from LDCR Section 170-29.J to allow a minimum of 2 feet of cover over drainage pipes along Old Chester Road, as after review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations; to grant a waiver from LDCR Section 170-25.5 to allow the 25 foot access benefitting parcel 09045 to be over parcel 09045-001 as after review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations, and to grant a waiver from LDCR Section 170-25.5 to allow the 25 foot access easement benefitting 09045-004 over lot 09045-005 as after review of the waiver request the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Alongi seconded the motion.

Chase, Park, Alongi, O'Connor, MacEachern, Bartkiewicz and Granese voted in favor; Choiniere abstained and the motion passed in the affirmative.

Motion by MacEachern, seconded by Bartkiewicz to grant a conditional use permit pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2A, to allow driveway crossings for proposed lots 09045-002 and 09045-003 on areas of poorly drained or very poorly drained soils, other than prime wetlands, with conditions. After review of the proposal, the Board finds the proposed construction is essential to the productive use of land not within the Wetlands Conservation District; design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition; no alternative which does not cross a wetland, or has less detrimental impact in the

wetland is feasible, and economic advantage alone is not reason for the proposed construction. A note regarding approval of the conditional use permit shall be added to the plan.

Chase, Alongi, Park, O'Connor, MacEachern, Bartkiewicz and Granese voted in favor; Choiniere abstained and the motion passed in the affirmative.

Motion by MacEachern, seconded by Bartkiewicz to grant approval pursuant to RSA 676:4, I, Completed Application, with the following conditions: comply with the Vanasse Hangen Brustlin report dated November 14, 2013; subject to owner's 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; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; treed buffer is constructed along the lot line between 09045-004 and 09046; note approved waivers on the plan; subject to receipt of permits relating to the project (NH DES Dredge and Fill; NH DES Subdivision; Town of Derry Driveway Permits); conditions shall be met within 6 months; improvements shall be completed by May 31, 2015; a \$25.00 check, payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirements, along with the appropriate recording fees; and, make a note on the plan regarding the use of the conservation land for Lot 09045.

Chase, Alongi, Park, O'Connor, MacEachern, Bartkiewicz and Granese voted in favor; Choiniere abstained and the motion passed in the affirmative.

A SECOND public hearing, continued from October 02, 2013 to discuss proposed amendments to the Town of Derry Zoning Ordinance to amend Article II, Word Usage and Definitions, Section 165-5, Definitions, to ADD definitions for Advertising Device, Billboard, Marquee, Sign Permit, Abandoned Sign, Awning Sign, Directional Sign, Digital Sign, Electronic Message Center Sign, Government Sign, Ground Sign, Interactive Digital Sign, Non-Conforming Sign, Official Sign, Off Premise Sign, Political Sign, Residential Neighborhood Identification Sign, Sandwich Board Sign, Special Event Sign, Temporary Sign, Unsafe Sign, Wall Sign, and Warning Sign.

And to AMEND the definitions for Flashing Sign, Projecting Sign, and Window Sign.

To amend Article VI, District Provisions, to repeal the following sections of the Article and to renumber them accordingly: Section 165-32.2.E, General Commercial III; Section 165-34L, Office Business District; Section 165-37G.3, Neighborhood Commercial District; Section 165-45D.2.f, Medium High Density Residential Special Exceptions; Section 165-45.1.C.2.f, Medium High Density Residential II Special Exceptions; Section 165-46B.2.f, Medium Density Residential Special Exceptions; Section 165-46E.5, Medium Density Residential Campgrounds; and Section 165-49H, Traditional Business Overlay District Signs.

To repeal Article XII, Signs and Billboards in its entirety and replace it with the following: Article XII, Signs, Section 165-100, Purpose; Section 165-101, General Provisions; Section 165-101.1, Signs in Residential Districts; Section 165-101.2, Signs in Neighborhood Commercial Districts; Section 165-101.3, Signs in Business, Commercial and Industrial Districts; Section 165-101.4, Signs in the General Commercial III District; Section 165-101.5, Signs in the Traditional Business Overlay District; Section 165-101.6, Campground Signs; Section 165-101.7, Political Signs; Section 165-

101.8, Off Premise Signs; Section 165-101.9, Nuisance Signs; Section 165-101.10, Interactive Digital Signs; Section 165-101.11, Electronic Message Center Signs, Section 165-102, Non-Conforming Use Signs, and Section 165-103, (Reserved for Future Use).

Mr. Sioras turned the discussion over to Bob Mackey, Code Enforcement Officer, as he and Mrs. Robidoux worked on the proposed changes.

Mr. Mackey said the sign regulations have been revised since the first public hearing which was held back in September. The purpose of the revisions is to enhance the regulations and consolidate provisions for signs that are currently found throughout the Ordinance and to make the Ordinance more user friendly. Definitions have been added to help clarify the terms; billboards have been removed from the title as they are not permitted in any zone. Other revisions include revisions to different types of signs such as church signs, sandwich boards, special events, and signs for shopping malls where there are multiple tenants. The changes have made the regulations more business friendly, and are flexible in the business and Traditional Business Overlay Districts where there are often multiple tenants in one building. Electronic Message Center signs have been added with certain restrictions. At the last workshop, the Board made changes with regard to real estate signs to allow two signs on a large commercial lot. It is up to the discretion of the Code Enforcement Officer to allow the second sign. The same realtor who brought up the issue of signage on large commercial lots also contacted Mr. Mackey and expressed reservations with the language and the fact that it was up to the Code Enforcement Officer. The realtor wanted it to read that approvals would not be withheld if the site could reasonably accommodate more than one sign.

Mr. O'Connor asked about the placement of real estate signs on a one way street. Where the regulation only allows one real estate sign per lot, could there be a for sale sign at the end of the street? Mr. Mackey said that particular situation was overlooked when the Board was working on the Ordinance. Typically, if it does not get out of hand, that would be allowed. He could see the need for a sign on the corner to direct people and to have one on the lot itself. Mr. O'Connor asked if the Board should add language to address that? He knows Mr. Mackey shows good judgment. Mr. Mackey said it is not an uncommon situation and it might be advisable to cover that situation. Mr. O'Connor noted there was discussion at the Town Council meeting last evening regarding the Zoning Ordinance. Is there enough language under the nuisance provisions to give Mr. Mackey the authority to have a sign removed? Mr. Mackey explained the regulations now reference the enforcement section of the Zoning Ordinance directly and these changes will give a better definition of what is allowed and what is not, which gives him more enforcement power. It makes the Ordinance more enforceable.

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

Mr. Granese spoke with regard to Mr. O'Connor's question. He recalled the Board spoke about a situation where if a lot was for sale on a corner, there could be one sign or two signs. Why can't it be left up to Mr. Mackey's discretion? Mr. Mackey noted permits are not required for real estate signs. The regulation says there can only be one real estate sign on the lot; the sign on the corner would not technically be on the lot. Mr. Granese asked what happens when a building is for sale on the corner of Birch and Crystal? Mr. Mackey said commercial lots can have up to two signs if the situation warrants it and the Code Enforcement Officer approves it. So long as there are not too many signs, his office would allow it. Mr. Granese asked what about the corner signs that are seen all over town that direct one to a specific location; many times there is a sign every few hundred feet. Mr. Mackey felt that would be an example of something that was excessive and would not be allowed. Signs for an open house are okay, but if there ended up being a string of 15 signs going down the road, that is out of control.

Mrs. Choiniere asked if it matters what color the text is on the electronic signs? Mr. Mackey said there is nothing in the regulations that prohibits color. The way the regulation is written now, there could be words and pictures, but they can't animate, scroll or flash. It could fade in and out at five second intervals. With the technology available today, the sign could run the range of color. There is a foot candle restriction. Mr. O'Connor said that would take care of the signs that cause one to feel blind or to develop a migraine.

Motion by O'Connor to accept the proposed changes to the sign regulations as discussed this evening and to forward those changes to the Town Council for their consideration and approval; the motion was seconded by Bartkiewicz.

Chase, Alongi, Park, O'Connor, Choiniere, Bartkiewicz and Granese voted in favor; MacEachern abstained and the motion passed.

WORKSHOP – Citizen requests for Zoning Amendments

This portion of the meeting was not televised.

Mr. Sioras advised the Board has received two requests to rezone property. The first is at 19 Folsom Road, PID 35020, and was received from Priscilla Flynn. The property is located across the street from the Police Department and car wash, adjacent to the Monster Gas station. It is the lot with the pond. Mr. Sioras read the request dated July 27, 2013 into the record. A copy of the letter is on file. In summary, the land is currently zoned medium density residential and the family would like to rezone the land to commercial. The majority of the surrounding lots are commercial. Mr. Sioras advised he spoke with Mrs. Flynn. A map of the area is attached in the member packets. There used to be a single family home where the gas station is now. That corner has changed over the years. In his professional opinion, the lot should be changed to commercial.

Mr. MacEachern asked if it would be appropriate to add the next lot to the change where there is currently an in home business. Mr. Sioras thought that might be more controversial since that

side of the road is all single family residences. The next lot does have an in home business; that might be something to look at. Mr. MacEachern felt it made sense because in looking at the map, the whole block would then be commercial. Mr. Sioras noted there had been discussions in the past that if Exit 4A went in, it would travel down Folsom Road and the thought had been to rezone the frontage lots in this area. Mr. MacEachern asked if staff could contact the owner of the next lot where the electrolysis business is and see if they would like their property rezoned. Mr. Sioras said staff could write a letter and see what the response is. Mr. MacEachern said then the first two blocks would be one zone. He felt the request to rezone 19 Folsom Road was reasonable.

Mr. Granese said once staff has heard from the owners of the next lot, the Board can discuss the rezoning at the next workshop. Mr. Sioras asked if there could be a straw poll to see if the Board was leaning in favor of rezoning 19 Folsom? Mr. O'Connor asked if Mr. Sioras knew if there was a pressing need by the family to change this? Mr. Sioras advised he spoke with both sisters. They would like to sell the property; it is difficult to have a house next to a gas station. Mrs. Choiniere thought they might want to be able to sell the property as commercial land. Mr. Granese said he did not see an issue with rezoning this lot, but he would like to know if the next lot would like to change as well. Mr. Sioras said staff can make the contact and come back to the Board with this issue in January.

Mr. O'Connor recused himself from the following discussion.

Mr. Sioras said the next request is to rezone two parcels currently located in the General Commercial II zone. The request came from the Shovlins who live on Old Coache Road. He read into the record the letter from the Shovlins dated July 25, 2013. The letter is in the file. In summary, the letter requests a rezoning of 67 and 69 By Pass 28 to medium density residential. Reasons cited for the change include the opinion that commercial development of those properties would decrease property values in the abutting residential neighborhood, depending on the type of commercial use; traffic, safety of the children walking on By Pass 28 to and from school; and visual or noise issues that may be of detriment to the residences in the area.

Mr. Sioras also read two letters in to the record, submitted by the landowners of 67 and 69 By Pass 28 who were in strong opposition to the requested change. Those letters are also in the file.

In addition, Mr. Sioras read a letter dated November 14, 2013 from the Shovlins. The letter expanded upon the original request to rezone the properties and included the following reasons: the surrounding properties are either zoned residential or the current use of the property is residential; almost all the allowed uses under GCII would reduce surrounding property values; any kind of business on these lots would be located immediately across from high quality, sought after Derry neighborhoods; the By Pass is a major through road and any business would increase traffic; safety concerns of children walking on the By Pass to and from school; and negative impacts resulting from noise or visual aesthetics resulting from a GCII business. The Shovlins suggested an alternative zoning if the Board did not want to convert the land to residential and provided an excerpt from the Town of Stratham's Zoning Ordinance relating to Stratham's Professional/Residential district.

Mr. Sioras advised a map of the area relating to the rezoning request was attached to the member packets. The history of the area is as follows. The land used to be zoned industrial (areas where it is GCII now) and professional office. There was the Irving gas station, the veterinary clinic, and the church. A landowner requested the land be changed to commercial and it was changed.

Mr. Granese confirmed the request to rezone 67 and 69 By Pass 28 came from an abutter and not from the property owner. Mr. Sioras further explained that the Board will take up requests for rezoning from any citizen; it does not have to be the property owner. The property owners were notified of the request and they sent the letters. Ms. Alongi asked what is on those properties now? Mr. Sioras said one parcel is vacant; the other has a ranch style home on it. The family recently subdivided the parcels. Mr. Chase recalled the lot containing the home used to house a rubbish business. Mr. Sioras noted the abutter would like to see this rezoned to residential.

Mr. Granese recalled the last time the Board had a request from an abutter and the owner was not in favor of the change, the Board did not act on the change. Mr. MacEachern thought it had to be a landowner request to rezone for the Board to act on it. Mr. Sioras said anyone can request rezoning; it does not happen often. He explained the process the Board uses to rezone property.

Mr. Granese asked if the Board was supposed to hold a public hearing on this request? Mr. Sioras said the Board would not move forward to a public hearing unless it wanted to move forward with the request.

Ms. Alongi asked why, if the landowner did not want the change, would the Board move forward with it? Mr. Chase said he did not see any benefit to the town as a whole if the two properties were rezoned. Mr. Park said he saw no reason to rezone the properties. Mr. Bartkiewicz agreed. Ms. Alongi saw no reason to rezone the properties. Mr. MacEachern said if the landowner does not request the change and is opposed to it, he would not be in favor of moving forward with rezoning. Mrs. Choiniere and Mr. Granese both did not want to move forward with the request.

Mr. Sioras said he would notify the Shovlins and the property owners of the Board's decision.

Mrs. Choiniere asked if the Board should look at the suggestion for the alternative zone? Mr. Sioras said that was a suggestion from Mrs. Shovlin. She had suggested the Board look at this down the road. Mr. MacEachern said the Board can't just change two properties; otherwise it is spot zoning. Mrs. Choiniere felt Stratham's zone was similar to Derry's GCIII.

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 Board stood adjourned at 8:00 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____