

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 17, 2014, 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; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Darrell Park, Jan Choiniere (7:19 p.m.), Ann Alongi, Members; Marc Flattes, Alternate

Absent: John O'Connor, Jim MacEachern, Lori Davison

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk;

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. Granese noted emergency exits, the location of meeting materials and introduced the Board members and staff.

Mr. Flattes was seated for Mr. O'Connor

Escrow

None.

Minutes

The Board reviewed the minutes of the August 20, 2014, meeting.

Motion by Bartkiewicz, seconded by Alongi to approve the minutes of the August 20, 2014, meeting as amended. The motion passed with Granese abstained.

The Board reviewed the site walk notes of September 06, 2014, for 30 Brook Street.

Motion by Bartkiewicz, seconded by Alongi to approve the September 06, 2014 site walk notes for 30 Brook Street, as written. The motion passed with Alongi, Flattes, and Park abstained.

The Board reviewed the site walks notes of September 06, 2014, for 19 Kendall Pond Road.

Motion by Bartkiewicz, seconded by Alongi to approve the September 06, 2014 site walk notes for 19 Kendall Pond Road, as written. The motion passed with Alongi, Flattes, and Park abstained.

The Board reviewed the site walk notes of September 13, 2014, for 125 Windham Road.

Motion by Bartkiewicz, seconded by Alongi to approve the September 13, 2014 site walk notes for 125 Windham Road, as written. The motion passed with Fairbanks, Flattes, and Park abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a copy of a letter from Frank Mazzuchelli advising he has resigned from the Planning Board effective August 25, 2014.

The Board has also received correspondence from Mr. Flattes and a zoning consideration request from Maureen Rose. Mr. Sioras asked the Board if it wished to take action on the request from Ms. Rose. In her letter she asks the Board to review the list of permitted uses in the Industrial V zone. Mr. Granese recalled there had been two similar requests from Ms. Rose in the past and the Board had decided not to move forward with any changes. He polled the Board, asking if the members would like to move forward with this. Chase, Park, Flattes, Alongi, Bartkiewicz and Granese answered no; Fairbanks abstained from an answer as he was not involved in the prior discussions.

Other Business

Rescheduling of hearing date

Mr. Sioras advised the Board is scheduled to hold a public hearing on October 1, 2014; he suggests rescheduling the meeting to Monday, October 13, 2014. The Municipal Law Lecture series is being held at the Municipal Center on October 1st and for the following two Wednesdays in the 3rd floor meeting room, necessitating a change in venue for the Planning Board. The Planning Board is scheduled to meet in the Cable TV Studio. On the agenda is the hearing for 19 Kendall Pond Road. Abutters on Magnolia who attended the site walk numbered over 30 persons. For safety reasons, the Board cannot hold the public hearing in the Cable TV Studio. The room cannot hold that many people. Mr. Sioras advised he has spoken with the applicant's representative, Cable TV staff and the Conservation Commission. The Conservation Commission has generously offered to move their meeting scheduled for Monday, October 13th to the Cable TV studio and allow the Planning Board to use the 3rd Floor Meeting room. The Planning Board meeting will begin at 6:30 p.m. New notices would be sent to the abutters of the 19 Kendall Pond Road plan to advise of the change in date.

Motion by Bartkiewicz, seconded by Alongi, to change the date of the October 1, 2014 meeting to Monday, October 13, 2014 beginning at 6:30 p.m.

Chase, Fairbanks, Park, Flattes, Alongi, Bartkiewicz, and Granese voted in favor and the motion passed.

Review of proposed façade improvements at Hood Commons, 55 Crystal Avenue

Mr. Sioras advised the new owners of Hood Plaza are planning cosmetic changes to the plaza. A drawing of the proposed façade improvements has been provided to the Board. The intent of the new owners is to upgrade the façade and repair the parking lot.

Tim Bristol, of Bristol Construction, was present representing Nightingale Properties. He stated the four current anchor stores, Big Lots, Shaw's, Tractor Supply, and Planet Fitness, will have their entryways redesigned. They will have full height columns with stone and stucco. The rest of the plaza will be repainted one common color. They will not do any work to the rear of the buildings and there will be no changes to any of the signs. They will temporarily remove the existing signs for the four anchor stores and then place them back on the building when the façade work is complete. With regard to the lights underneath, the lighting is not part of his scope of work for Nightingale but he understands that the owner of the property is aware of the issue and is working on it with an electrical contractor.

Mr. Fairbanks asked if there will be a new parking lot. Mr. Bristol said at this time, the focus is on the façade but he understands the owner plans to deal with the parking lot issues such as potholes. Ms. Alongi asked if the signs for the smaller businesses such as Papa Gino's and Riverside Cleaners will be replaced or be enlarged. Mr. Bristol said they will not change those signs and they will stay. Ms. Alongi asked if the trees will remain in the parking lot. Mr. Bristol said he did not have that information.

Mr. Flattes asked if the timing of this upgrade will coincide with the upgrade of the main pylon sign on Crystal Avenue. Mr. Bristol explained he is only working on the façade upgrade and there is a different contractor hired to handle the pylon sign. Mr. Flattes noted he liked the look of the improvements. Mr. Fairbanks also thought it looked nice. Procedurally, why was the Board hearing this information? Mr. Granese explained it is so the Planning Board can be aware of what will happen at the property; the Board does not need to vote on it. Mr. Granese asked Mr. Bristol when he would begin the work. Mr. Bristol said he is awaiting his building permit approval. Mr. Granese agreed the change would look nice.

Acceptance of Jurisdiction – 19 Kendall Pond Road

Mr. Sioras explained that with regard to the site plan for 19 Kendall Pond Road, the Board should have taken jurisdiction of the plan on August 20, 2014. That plan will be heard on October 13, 2014. The Board conducted business late into the night on August 20th and it was an oversight.

Motion by Bartkiewicz to accept jurisdiction of the 18 unit multifamily site plan application before the Board for James Taylor and Aaron Hill, PID 24037, 19 Kendall Pond Road, retroactive to August 20, 2014, acknowledging an oversight of the Board to accept jurisdiction of the plan pursuant to RSA 676:4, seconded by Alongi.

Chase, Fairbanks, Park, Flattes, Alongi, Bartkiewicz and Granese voted in favor and the motion passed.

Public Hearing

**Stage Crossing, LLC
PID 23016, 30 Brook Street
Acceptance/Review, Multifamily Site Plan
10 Unit Townhouse Development
Continued from July 16, 2014**

Mr. Sioras advised the applicant has requested the Board continue this hearing to November 05, 2014.

Motion by Bartkiewicz to continue review of the multifamily site plan application before the Board for Stage Crossing, LLC, 30 Brook Street, PID 23016, to November 05, 2014 at the request of the applicant. Alongi seconded the motion.

Chase, Fairbanks, Park, Flattes, Alongi, Bartkiewicz and Granese voted in favor and the motion passed.

Mrs. Choiniere entered the meeting and was seated.

FIRST public hearing to discuss the following proposed changes to the Town of Derry Zoning Ordinance:

To amend Article VI, District Provisions to add a new section, Section 165-32.2, General Commercial IV District and list the permitted uses in the new district;

To amend the following sections of Zoning Ordinance: Section 165-5, Definitions; Section 165-29, Enumeration of Districts. The Board will also discuss amending Section 165-30, Zoning Map, to remove the following three parcels from the Office Medical Business District and place them in the General Commercial IV zone: Parcel IDs 05039, 05039-001 and 05092, and to remove seventy-seven parcels from the General Commercial District located along Route 28 South and place them in the new General Commercial IV District.

The following amendments will also be discussed to add a new use, Commercial Performing and Fine Arts Schools and Studios, to the following: Section 165-32, General Commercial District, Section 165-33, Central Business District, Section 165-45, Medium High Density Residential District, and Section 165-49, Traditional Business Overlay District.

Mr. Sioras advised the request came from Town Council to look at the zoning in the area of Route 28 from Clam Haven area to the Windham town line. The town has been given the go ahead to bring water and sewer to Berry Road. Town Council asked the Board to look at the zoning all the way down to the town line and some of the permitted uses. The proposed changes have been highlighted in red on the document before the Board. There have been some additions and deletions with regard to uses. The Planning Office has received many phone calls with regard to auto uses. He directed the Board's attention to page 14, item A.3 which read, "Automobile and similar vehicle sales establishments existing as of the effective date of this amendment (insert date here) shall be considered legal, permitted uses." This means that any auto dealership in the zone today can expand and continue as a legal, permitted use. This change would apply to new dealerships or vacant land. The proposed permitted uses have been listed and the Planning Office has received many questions.

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

Marjorie Palmer, 91 Warner Hill Road, advised her family owns homestead properties on Rockingham and Stark Roads. Her husband's health is fragile and they have decided to appoint their daughter, Melissa Polk, who lives on one of the parcels, to represent them and their concerns. She urged the Board to listen to her with an open mind and to act with common sense, not with potential dollars on the mind.

Ms. Polk provided a packet of information to the Board; a copy was retained for the record.

She advised page one of the packet shows the three parcels owned by her family in the area of the proposed changes. Identified on this sheet as #1, Parcel 03074 is a 1 ½ acre lot, with an address of 2 Kilrea or 204 Rockingham Road. She has resided in the home there for 11 years; prior to that her brother lived there. Prior to that, her grandparent's lived there – her father was born in the home. The land is zoned General Commercial and is taxed as a single family residence and is one of the parcels that would be affected by the Board's proposal. Page 3 of the packet shows a picture of her grandfather on the property from the 1950s. Long before Kilrea Road was changed to General Commercial in 1969, her grandfather farmed this land. He raised livestock, grew and sold vegetables and flowers. Their ability to farm this land has been taken away due to the restriction of no farming on land zoned General Commercial. Identified as #2, Parcel 03076, 202 Rockingham Road, is approximately one acre in size and used to be part of Parcel 03074. This lot is zoned General Commercial and is taxed as farm land. By the time the Worcester-Nashua and Rochester Railroad came through and had been completed in 1874, it passed through her grandparent's land, dividing the parcels in two, leaving two separate pieces of land against the wishes of her grandparents. After the railroad closed, the land used for the railroad which divided the two parcels was never returned to them and the State of New Hampshire claimed ownership. This parcel of land was once used for farming as well as beekeeping. The ability to farm this land has been taken away from them due to the restriction of no farming on General Commercial land. The ability to build a single family dwelling on this lot was taken away as well commencing with the General Commercial zoning amendments passed in 2013. The parcel identified as #3 is Parcel 03129, 8 Stark Road. It has frontage on both Rockingham and Stark Roads. It contains 9 acres of land, zoned General Commercial and

is taxed as farm land. Stark Road is one of two remaining scenic roads in Derry and the parcels on Stark Road are zoned Low Medium Density Residential. The Board is proposing that this section of their land, which runs down Stark, to be changed to General Commercial IV. The parcel was purchased in 1873 by her great-great-grandparents. Page 5 has a photo of the original farm house that sat on this piece of land. The house, along with the barn used for livestock, burned in 1934 but the stone foundations remain on a ready-made house lot complete with lilac bushes, flowers, and fruit trees. It has long been her dream to build a house on this land. She would drive by this piece of land every Saturday with her father on her way to pick up her grandparent's trash for their weekly dump run. Since inhabiting the house at 2 Kilrea Road, she has maintained the lot, mowing the grass and pruning the fruit trees and lilacs and has picked grapes to make jam. It is devastating that the ability to farm this lot has been taken away due to the restriction of no farming on land zoned General Commercial. Also, their ability to build a single family residence on this parcel has been taken away from them commencing with the new General Commercial zoning passed in 2013. This lot has been used by her ancestors for farming and was purchased by her great-great-grandparents with the purpose of having land to pass on through the generations, so that they could build their own homesteads if they chose. By the zoning changes continually made by this town, their ability to use this land as intended by their ancestors has been taken away. By now proposing to change the land to General Commercial IV, the town is continuing to tell them what they can and cannot do with their property.

According to a publication of the Department of Environmental Services called Innovative Land Use Planning Techniques, a handbook for sustainable development, it states in Chapter 1.7 that agriculture has long been an important part of the economic, social and cultural fabric of New Hampshire. Farmers have been producing crops from New Hampshire soil for three hundred seventy-five years. Today, although agriculture is important to communities, it is facing significant challenges, not only from the increasing pressures of growth and development, but also from municipal regulations that may be inhospitable to many agricultural practices. According to the Farmland Trust, Rockingham, Hillsboro and Merrimack counties are part of the southern New England region that are ranked tenth on the list for the 20th most threatened high-value farmland regions. Many New Hampshire communities cite preserving rural character as one of their main goals. However, she feels the Derry Planning Board does not share that goal, as is evidenced by the constant development of the town, by changing so much of the land into General Commercial IV, and not even being open to mixed use as an option. There are many aspects of rural character in New England. The character of the Derry landscape used to be epitomized by the traditional village center surrounded by a landscape of working farms and open space. The character of the community used to be exemplified by people seeking to hold onto and promote the traditional rural or small town values of family, community, independence, responsibility, self-government, conservation, entrepreneurship and strong work ethic. It saddens her to see how the changes the Board has implemented has changed that. The Southern New Hampshire Planning Commission promotes mixed use in the publication *Mixed Use Ordinances* and states, "Mixed use has always been an important part of the American landscape." However, it seems the Planning Board remains focused on segregating land uses, attempting to distance rather than blend residential, commercial and industrial uses within specific areas. Derry continues to use conventional development based on zoning schemes designed to separate commercial uses from residential uses, rather than mixing uses in a well-conceived and planned manner. Mixed use development can better meet the goals of Smart

Growth and sustainable development than conventional forms of development. Mixing uses, or allowing residential, retail, commercial or other public uses to occur in one building or within a given area, if properly planned, can provide a sense of place, and contribute to vitality and viability of neighborhoods. It can also fulfill many Smart Growth goals by improving the balance of jobs to housing, as well as creating a healthy environment. The Planning Board does not share in the view of conserving rural character in this town as is evidenced by the ongoing zoning changes which are stripping landowners of their right to do with their land that they purchased and pay taxes on as they see fit. It is ironic that some of the Board members own minimal amounts of land, some own no land, yet they feel they know what is best for those who do. She can safely assume the Board members were not born or raised here but have chosen to make Derry their home because of its rural character. Yet it is their votes that contribute to its demise. She can only assume with the members' continued mindset that it will only be a matter of time before Derry ends up exactly like wherever they came from.

In 1969, Ms. Polk's family land was changed to General Commercial and the right to farm their land was taken away. In 2013 the Board restricted the ability to build a single family home, removing their right to develop the land as was intended by their ancestors. Now, the Board has gone a step further and minimized the list of viable choices for commercial applications they can put on their land from a list of twenty-seven, down to twenty-two, and there seems to be no end in sight. Ms. Polk advised she is here tonight to express disappointment in the zoning changes of the past and present and ask that the Planning Board place her family's three parcels of land she has addressed tonight in mixed use. Seeing the recent opinions of the Board on mixed use seem to gel with segregating land uses and attempting to distance rather than blend residential, commercial, and industrial uses, she is anticipating the Board will not consider this as a viable choice. At a minimum they would like to take 500 feet of frontage along the whole length of 8 Stark Road and change it to LMDR, so that they may build residentially and farm non-commercially as was the intended use of the land when it was purchased. The area they would like re-zoned is indicated by a dashed line in her packet. RSA 674:17, II, states "Every zoning ordinance shall be made with reasonable consideration to, among other things, the character of land involved, and its peculiar suitability for particular uses, as well as with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the municipality". She hopes the Board agrees that to change the considerable amount land they are proposing to General Commercial IV will do nothing more than continue the destruction of the rural character of Derry that is trying to survive.

Jerry and Beth Siragusa, 49 South Main Street and 45 South Main Street spoke with regard to the proposed changes. In the fall of 2012 they learned the Planning Board was conducting workshops concerning amendments to the Town of Derry Zoning Ordinance which would affect their properties. One of the items under consideration was implementation of a minimum distance between gas stations and automobile sale, the removal of single family residential as a permitted use and the adoption of a mixed use overlay zone. There was significant adverse reaction to the changes proposed by the Board and the property owners felt the changes would have an adverse effect on their property values. They engaged Attorney Morgan Hollis to represent their interests. Attorney Hollis sent a letter to the Board, dated December 5, 2012, and also testified before the Board with regard to the legal and financial implications if the changes were approved. A point made over and over again during the workshops and hearings was that

the Zoning Ordinance must reflect the goals of the town Master Plan and not zone out existing uses. A proposed zoning change may not make existing uses non-conforming uses when such existing uses clearly define the nature of the property use in the zoning district. It is illegal to try to change the character of an existing neighborhood by changing the zoning law and forcing upon those property owners the specific uses which the Town would prefer to see instead of those which actually exist, regardless of the reasons behind the proposed changes. Through all of the public hearings, it was clear that the property owners were opposed; no one testified in support of the changes. Members of the Board cited the Master Plan, but never discussed specific objectives of the Master Plan. Attorney Hollis again wrote to the Board in 2013 explaining the Siragusa's opposition to the proposed changes allowing existing uses to be classified as currently legal, yet non-conforming. They ask that both of the letters from Attorney Hollis be brought forth again and placed in the file. During previous testimony there was discussion regarding the proximity of gas stations and auto uses but the Board did not discuss removing them at that time. There currently exist a number of these uses within the General Commercial zoning district. The Board did decide to remove the distance restriction after numerous nights of hearings.

Now, the Board is proposing a new amendment, General Commercial IV, which will exclude single family residences that were not in place as of July 19, 2013, and auto uses that are not currently in existence. This new proposal is in place of amendments to the existing General Commercial zone. They are vehemently opposed to the proposed ordinance. What is the Board doing and what is it now proposing to do to the taxpayers and residents of this town? They pay taxes and try to use their properties based on the restrictions in the Zoning Ordinance. Since 2012, they have continued to follow the rules. Once a proposed ordinance is introduced, the property owners are locked out from going forward with a use that might be prohibited by the new ordinance. The time frame is unlimited until a final decision is made. The last time the Board changed the Ordinance, they removed single family residential but kept auto uses because there were already so many in existence. Because there were so many auto dealers in the area that made up the character of the area, they began to pursue a potential auto sale use for their property. Just as they came to an agreement with a potential new tenant, they found out at the last minute that the use is one of those that is proposed to be prohibited. They have a sense of frustration, disappointment and now almost anger that the town, after misleading them as owners over a period of two years, is attempting to stop them from making use of their property in the fashion which it so recently saw fit to say was and should remain permitted. This proposal protects those in place but does not allow them to expand and they will be non-conforming. The ordinance proposal attempts to illegally dictate what future uses must now be placed amidst these existing auto sale uses, uses which for some reason the town now thinks should no longer be permitted in this area. There has been enough mistreatment of owners in the area. Do not punish them. They would like to see uses compatible with the existing uses. They ask the Board to please withdraw the proposed changes and go back to workshop.

Dale Smith, 120 Rockingham Road, owns a 48 acre parcel in the proposed zone. He stated it was hard to do a better job than Ms. Polk and he supports her position. He asks the Board to put themselves in the landowners' shoes. A government entity is now working against us, rather than for us. One of the members last time said he represented 20,000 people; those 20,000 people are here because development of Derry was allowed to get out of hand, which is likely

why the town is looking for commercial development. The people who held onto their land and did not develop it, saved the town from further development but now the town is impacting them. He feels Ms. Polk's statements are appropriate. He urged the Board to go back to workshop. Some of these parcels are very deep and he does not understand why the whole parcel has to be General Commercial IV when the Board could just zone the frontage.

Sheldon Wolff and Rachel Wolff, 242 Rockingham Road, thanked Derry and the Board for notifying the affected property owners. He wanted to clear up what he felt to be a misconception; there is no General Commercial IV zone yet. He had 15 signatures from property owners who are opposed to the changes. He read the following aloud and then provided a copy of the signatures to the Board for the record. "To the Zoning Board of the town of Derry, NH, regarding the proposed changes for the properties located in section 165-32 General Commercial District, by creating a proposed General Commercial IV zoning district. We the undersigned property owners, business owners, residents and concerned citizens hereby request that no changes be allowed that limits or restricts the current allowable uses now in effect. By doing so will immediately diminish the property value, and would constitute a taking of the property owner's property rights which have been in effect ever since a formalization of the real estate laws and industry. This would limit a current allowable use in the future therefore discriminating and eliminating against the property owners rights while creating a probable financial loss. Adding additional uses to enhance the values on the town's limited commercial area is acceptable. Quite frankly, would you want to have portions of your property's currently allowable uses to be either limited or removed? Absolutely not."

Mr. Wolff said he visited many of the abutting neighbors. He is in the real estate industry and would like to see the best and highest use. This is an attack on the used car business. His understanding is the Town Council is driving the proposed changes because they are spending money on the area and do not want used cars there. The highest and best use will be dictated by the industry. It is great the town is putting sewer in that area; it is progressive and the whole face of the area will change. The north side of town is flourishing because there are utilities available. People make an investment; but limiting uses and creating a new GC zone just because someone does not like it is not good. Board members come and go. Mr. Wolff recognized the public service of the Board members but noted the decision of the Board affects the financial future of the landowners. He thinks it is a good idea to move the Office Medical Business lots to the General Commercial zone. That will increase the best and highest use. The best thing for the town is to add water and sewer in this area. While he was looking for previous Town Council meeting minutes he noted the vision for the Town of Derry. The tax rate is very high and the town needs to make it affordable to attract young people. That issue needs to be addressed town wide. During the meeting, it was said that the town needs to attract business. He feels the zoning changes are detrimental and drive businesses to Windham and Londonderry. He does not feel that by removing uses it will decrease the tax bills. He feels this is a taking.

Mr. Wolff cited portions of the Fifth, Ninth, and Fourteen Amendments to the Constitution of the United States. Those sections indicate government cannot deprive people of due process or the right to use their property; that would be a taking. This is the last commercial frontier in town. He feels it needs to be protected and left open to the free will of the Real Estate industry. He does not feel people should worry themselves over the fly by night people. He thanked the

Planning Board and Town Council members, but said again, they come and go. The residents have been here and pay taxes. He feels the citizenry should be paid back. He said if the Board makes it advantageous, people will want to come to the town. He knows the town is trying to do the right things but this will diminish the value of the area. He felt this was discrimination. He asked the Board to please say yes to the people here.

Arthur McHugh, 253 and 255 Rockingham Road, advised his family owns two used car dealerships. He asked the Board to tell him please, how these changes will benefit their ownership of the property. What benefits does he get from the change? They own property and pay taxes, and run a business, and now the town wants to change the zone. Mr. Granese advised anything there will be permitted if the Board approves these changes. There are only a few items the Board is removing from the General Commercial uses from the proposed General Commercial IV. Any current auto uses will be grandfathered in as permitted uses.

Gary Hamm, 88 and 90 Rockingham Road, stated he has owned 88 Rockingham Road since 1977. He bought the land because it was a commercial district; the zone has been taken away and put back on this property. He runs his business to some degree from this property; his trucks come in and out; he has sold equipment on the site over the years. He feared losing the ability to do that and opposed the changes. He pays a substantial amount of taxes and has just gotten water and sewer to his property. He finds it is appalling that now his property is in jeopardy even more after all the money he has paid to the town. He has been a business owner for 38 years. He has struggled, and he owns other properties. This is a tough economy. He will be impacted by this change. He thought he might do something such as a specialty car dealership and still be able to sell his heavy equipment, and add some auto sales and service. He has not done that on the property before, so now he will lose that option. The Board is limiting the democracy and will isolate and limit the property owners. The town is taking away the value and choice they have paid for over the years. This is an injustice. He also wanted to make one of his residences a two family as he has the area and now, sewer; he can't do that now either. The town is making it comfortable for people who have established dealerships because it is removing competition. He should be able to do what he thought he bought into. He opposes the change and hopes it does not happen.

George Kalil, employee at 133 Rockingham Road, has an automotive background. He sees the auto people are being discriminated against by Salem, Plaistow and in Haverhill, by changes in the zoning. In Haverhill, the use is allowed by special exception. He knows the town is trying to highlight the best and highest use. Water and sewer will make the land beautiful and attractive to large companies and he feels the town should allow commerce to dictate what will go there. He feels the town should not discriminate against the small business owners in this district. When they make the decision, he asks the Board to please consider the people who will be affected. This land will become attractive to the corporations and it will make the car dealerships go away. He felt the town should let the market dictate what happens.

Mark Loveski, 181 Rockingham Road, had a few questions. He will retire soon and promises were made to his General Manager that he could purchase the business. If this change occurs, will subsequent licenses be available to his employee when he retires? Mr. Granese read the applicable section, "Automobile and similar vehicle sales establishments existing as of the

effective date of this amendment (insert date here) shall be considered legal, permitted uses.” He explained this change does not have anything to do with licenses, but yes, the use would be a legal, permitted use and he could sell the business to another person. If the use stays the same, then it is allowed because it exists today, and he could sell it to him. In this case the use is auto repair and sales. If the employee purchased the business and wanted to do something else that is not permitted, then he could not.

Charles Sago, 208 Rockingham Road, is opposed to the proposed changes. He does not agree with the explanation made to Mr. Loveski. He feels a change in the entity would affect the permitted use because the definition of ‘existing’ changes. Otherwise, anything that is automotive along that road will be grandfathered forever. Mr. Granese said it would, if it was the same use. Mr. Sago thought if the owners kept changing but the use remained the same why have the GCIV? Mr. Granese explained the intent was to create another zone and clean up the zoning. Mr. Sago felt the changes would devalue the properties. When he eventually retires he would like to sell his business and not have it restricted any more than it is now. The property owners in this area don’t have water and sewer and won’t get the return other property owners get who do have water and sewer; however, the property owners along this area are a great windfall for the town because they pay their taxes.

Sheldon Wolff, 242 Rockingham Road, wanted it made clear ~~this~~there is no General Commercial IV zone at this point. He does not feel the town needs to clean up the uses. The theory is to be discriminatory, and he feels the intent is to make the area self-supporting for people who have water and sewer. By adding water and sewer to this area, the face of the zone will be changed. Creating a new zone does not fix anything; it is not broken. If the town wanted to add uses and make it more viable for landowners that would be beneficial. He provided some examples. The point is this Board is attacking land owners and taking away something they already have. The Board and Town Council are putting restrictions on property by taking away permitted uses. If the town said they would not allow something that was not allowed before, that is fine; but taking away something they have now, that is a taking. He stressed again there is no General Commercial IV zone and he feels this is a backdoor attempt to change what is there. He does not feel people would argue if the Board wanted to add uses. He confirmed with Mr. Granese that the Board is at the public hearing stage and there will be no more workshops. The Board has already held its workshops.

Steven Dilello, 198 Rockingham Road, asked with regard to home occupations. The Board has proposed removing them. Anything there will be grandfathered. When he moved into his home it was commercial/residential. He asked if the home occupation use would be grandfathered; this is something he and his wife would like to do in the future. Mr. Granese said only if the home occupation use is in place now. Mr. Dilello said it is not and therefore he disagreed with this.

Harland Brown, 190 Rockingham Road and 205 Rockingham Road, said his family owns two parcels that are affected by the proposed changes. One parcel is 43 acres and the other is 11 acres. He supports what the other residents have said. He attended all of the workshops and feels the residents are being dictated to as to what they can do on their property. He supports the 77 affected landowners. He asked the Board to take a look back at all the workshops and listen to what the property owners are saying. They are all hard workers and pay taxes. He asked the

Board to take the time to think about what they are proposing. He is not saying this is bad for the town. But, the owners have traditions and should be allowed to do what they wish so long as it is not detrimental to the abutters or the town as a whole. Time will dictate what happens south of the Robert Frost Farm. Those lots to the south of the Farm have no town support in that they don't have water or sewer or garbage pickup and they pay taxes. He supports the owners of the 77 parcels who are against this amendment.

There was no further public comment.

Motion by Bartkiewicz, seconded by Park to close the public hearing. The motion passed with all in favor and discussion came back to the Board.

Mr. Granese said he would like to see Daycare and Warehouse added as permitted uses to Section 135-32.3, Permitted Uses. Mr. Chase felt Home Occupation should also be added back in; it made no sense to eliminate it when there are homes in the district. Those property owners should be allowed to run a business from it. The Board members had no issues with adding these three uses as permitted uses in the proposed General Commercial IV zone.

Mr. Park said at this point, he has forgotten the purpose of creating the General Commercial IV zone. He is looking at the two zones, General Commercial and General Commercial IV and can detect what the goals were; he believes in free enterprise. Businesses should be allowed if they are not offensive to the general public. He feels the Board should kill General Commercial IV and maintain the General Commercial.

Mr. Chase said he has heard the residents this evening talk about the Board taking away uses. If they review the proposed changes, the Board is adding five uses and have really taken away one. The Board agrees to add Daycare, Warehouse and Home Occupation. They are trying to give more than they are taking away.

Mr. Flattes had no issues adding home occupations; he thought the reason the Board removed that had more to do with mixed use.

Mr. Fairbanks explained the reason the Town Council is behind the proposed changes. All of the taxpayers have invested ten million dollars in the water and sewer improvements to this area and the town needs to make sure there is a return on the investment for all of the taxpayers and get the best use out of the zone for the money that is being invested. He hears there is some taking and not taking, but the town is giving to that area by bringing water and sewer.

People in the audience indicated they would like to speak. Mr. Granese said that normal procedure is that once the public hearing is closed there is no further public comment. However, he would be open to allowing people to speak again so long as they are not repeating themselves and the other Board members had no objection.

Sheldon Wolff, 242 Rockingham Road, said if he reads the proposed changes correctly the Board is proposing to take at least three permitted uses away. Board members have said the town is giving. This town has a moral and legal obligation to give to the taxpayers and residents. If

there is a vision for the town in the commercial business zone, they need to make it amicable and attractive. He disagrees the town is not taking away. It is a sound business decision to get a return on an investment but people are paying taxes and not getting services. He does not feel warehouse benefits areas with water and sewer. Daycares need water and sewer. He suggested letting free enterprise work. It is the town's duty to do what is best for the town and to provide water and sewer and trash pickup; if the town wants this area to grow, the town can't be short sighted. He does not feel the town is doing anything to add or make it more advantageous for the people who have already invested in this area of town.

Harland Brown felt Mr. Wolff summed up what he wanted to say.

Ms. Alongi understood the town would like to see commercial business, but if someone owns 43 acres, why is the town restricting the entire 43 acres for general commercial use. The landowner could have a house to the rear of the property utilizing other entrances to the rear. Why is the Board stopping residential? She understands the idea of not increasing the number of students in the schools, but now there are apartment buildings going up all over the place, so what is the difference? Mr. Granese recalled Ms. Alongi had attended the workshops and had appeared to be in agreement with the proposed changes. Ms. Alongi said she is having a change of heart. She does not understand how the town can tell people what they can do after they have owned property for so long. Maybe the Board can look at taking only so many feet for commercial use. Do we need 43 acres for a small business? People want to be able to purchase and sell their property and she feels the board is restricting a whole area of town from growth.

Mr. Park said he has spent some time researching zoning in another town and had not thought about it before, but wondered why agricultural use is not permitted in the commercial zones. Is this an oversight or is that left out of the zone on purpose? Mr. Sioras said agricultural use is allowed in Residential zones not commercial zones. He provided a brief history of the zoning along Route 28. Originally, the first 600 feet on either side from the centerline of Route 28 was commercial. This created split zones for many lots. The General Commercial zone went halfway through the lots on Blunt Drive. In 1990, the Planning Board did not want to have split zones and moved the zone line to the back lot line of the frontage lots along Route 28. The Planning Board thought it did the right thing by putting the end of the zone at the back property line. For Mr. Brown and the Palmer's only the first 600 feet of the property was commercial. The General Commercial zone used to be (1960's) the area around Hood Plaza, down Crystal Avenue and Birch Street to Parkland Hospital. Then there was a break and it started again at Webster's Corner/Grandview down to the old Dollar Bill's and Smith property. There was another break in the zone and it began again in the area of Lawrence Road and continued down to the Windham town line. Two years ago, Town Council asked the Board to look at the General Commercial zoning. The Board took out single family residential as a permitted use because there is so little commercial area in town. Phase I of the sewer extension will go to Berry Road. That portion is under construction today. Someday, the improvements will continue down to the Windham town line. A few months ago, Town Council asked the Board to look at zoning down to the town line. This is not intended as disrespect to car dealers. Many people have asked if the vision of the town was to have an 'auto row'. Others say let the market dictate the uses. North of Route 28 near Applebee's is now developed because water and sewer was extended to the area

and the road was widened. The north side of Salem has also developed after water and sewer was brought to the area.

Ms. Alongi felt that people could not sell large parcels of land to a commercial company that would be large enough to be on the land because the area does not have access to Route 93; Salem does have highway access.

Mr. Sioras recalled at the Town Council meeting it was stated that retailers want easy access to the highway. The point is the town won't get many large retailers, but the town can get smaller office and retail; water and sewer will enhance the value of the properties. Ms. Alongi said the town should not restrict people from developing the back of their property on those larger lots with residential development. The commercial development will be along Route 28. She feels the land owners should be able to develop the back area of their property. Mr. Sioras explained in 1990, the Planning Board felt it would be better to make the whole lot General Commercial to alleviate the split zones.

Marjorie Palmer asked if it was legal to hold a public hearing prior to holding workshops. She felt this was a perfect example of why it would have been very important to hear from the public in a hearing before holding workshops. The Board needs to know what the property owners want. She felt the cart was before the horse. Mr. Granese advised the Board did hold workshops. All of the meetings are noticed on Cable and on the town website. The public is always invited to attend and speak at the workshops.

Mr. Chase felt the Board could not go to a certain depth or split the zones on the lot for commercial use because the residential to the rear of the lot would be developed first and then those residents would object to any commercial development in front of them. That is what has happened with development in this town and why the taxes are so high. People don't want commercial development in their backyard. Commercial land was swallowed up by residential development and that is always a tax negative.

Mr. Park asked if there was any objection to adding agriculture as a permitted use in the General Commercial IV zone. Mr. Sioras said the use has never been permitted in the General Commercial zone and was not excluded on purpose. Agriculture has always been allowed in the residential zones. Mrs. Robidoux said Route 28 up to Lawrence Road, is the Robert Frost/Old State Coach Scenic Byway. It might not hurt to allow agriculture for those lots that are undeveloped with the intent of retaining some of that rural character, but she would also not want to do that if it was at the detriment of the remainder of the town and the tax base.

Mr. Chase said on the face of it, he would have no problem adding it, but agricultural land is typically put in to current use, which is a lower tax rate, and the town won't get a return on its investment in the area. Mr. Flattes asked why is the use not grandfathered on some of these lots if the use went on for many years. For the Palmers, the land has been in the same family (for generations). Mr. Granese said agriculture has never been spelled out as a permitted use in the commercial zone. Mr. Sioras said when they originally created the zones the town did allow agriculture in the residential zones. The Palmer lot is a little unique in that it has frontage on Stark Road, so part of the lot used to be in a residential zone. One option is to split the lot and

the agricultural use can go to the rear in the residential zone. A question would be, knowing the character of Stark Road, does the town want commercial development on Stark Road which is one of the remaining scenic roads in Derry? Ms. Alongi said that is her question. Mr. Chase said there is frontage for that lot on Stark Road; the lot could be subdivided and the landowner can request the land on Stark Road return to residential use. He did not feel it would be spot zoning to zone that lot back to residential because there is residential all around the lot. Mr. Sioras said that had been the discussion he had had with the Palmers; the lot could be subdivided and a request made to put the back section of that lot back into the residential zone that would allow the agricultural use to remain and not destroy the character of Stark Road by putting commercial uses on it. The front end of the street on Route 28 would be commercial.

Mr. Granese polled the Board to see if agriculture should be allowed as a permitted use in General Commercial IV. Mr. Chase said no he was hesitant to do that; Mr. Fairbanks said on the face of it, it sounded good, but it needs to be looked at deeper, he would vote no; Mr. Park said he would like to say yes, but based on what he is hearing, he would say no; Mr. Flattes said no as he felt agriculture needed to stay out of the district, and this one case could be handled through a subdivision of the land; Mrs. Choiniere agreed, Ms. Alongi said she would need to look into this further but at this point she would say no at the moment; Mr. Bartkiewicz, and Mr. Granese both said no.

Melissa Polk said they did discuss subdividing this property but it would require \$40,000.00 of their own money to do that; that is why they are requesting the Board to consider changing the back half of that property to residential. It is hardship for them to come up with that money to subdivide the land. Mr. Park asked how 8 Stark Road is currently taxed. Ms. Polk said as farm land; but they are not allowed to farm on it.

The Board discussed when it would hold a second public hearing. Mr. Sioras said with substantial changes to the text, the Board will need to incorporate the changes and hold another public hearing. The Board would do that until it has a final, clean document.

Mr. Fairbanks asked why warehouse was being added. Mrs. Robidoux stated the definition of "warehouse" includes self-storage facility. There are two fairly large self-storage facilities in the zone and they did not want to make them non-conforming uses.

Motion by Bartkiewicz, seconded by Choiniere to continue the public hearing to November 19, 2014.

Chase, Fairbanks, Park, Flattes, Choiniere, Alongi, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. Granese said notice will be placed in the newspaper and the cable listing.

Workshop

Discussion regarding multifamily housing

Mr. Sioras said the Board held a workshop with Town Council to discuss multifamily use in the high density residential zone in the west part of Derry. The Town Council asked the Board to look at the zoning density; there have also been requests from citizens for the Board to take a look at the zone. The thought tonight was to start that discussion and look at items such as density, architectural design regulations, building height, and parking calculations. The Board has in its packet a copy of the current regulations for the zones, architectural regulations, and a map. The map shows the current MHDR zone, served by water and sewer, which is designated by the green color; the blue shows residential lots that have buildings that were constructed prior to 1970. The concern was that people could tear down the older structures, combine the lots and create larger multifamily developments. The Town of Derry currently exceeds its fair share of multifamily housing for the region. The town could have purchased the Carrie White Farm, and now the town has the Fairways. In 1970, Linlew Drive was zoned Industrial; now there are 600 apartments there. The town provides its share of this type of housing; how much more development does Derry need? West Derry was not developed with multifamily in mind; they were shoe factory neighborhoods where people walked to work. The Board needs to look at the character of the existing neighborhoods. Mr. Granese noted that as of today, all of the lots colored green or blue on the map provided could contain multifamily. Mr. Sioras advised multifamily is allowed in the Multifamily Residential zone and the Medium High Density Residential zone. Frontage is 150 feet. Water and sewer are required for multifamily development; that is why it is seen in that part of town. Mr. Fairbanks noted there is no water or sewer in East Derry. The market will bear and pay for the multifamily; the town can't eliminate it.

Mr. Granese said the Board can look at height restrictions and parking. The Boards needs to make sure there is enough parking on site for this type of use. The architectural design should reflect the existing neighborhood and not look out of place.

Mr. Chase agreed the town could not eliminate the use, but he would want to keep oversized buildings from being built on undersized lots. The Board is not discriminating against multifamily, but is trying to protect the old neighborhoods that are not designed for this type of structure. The Board should lower the density, regulate the height to that of the buildings surrounding it, change the parking calculations, and look at the architectural design regulations.

Mr. Park noted the current minimum lot size is 3630 square feet per unit. Where did that come from? Mr. Sioras said that has been in place since before his time, but he believed the original figure was derived from 12 units per one acre; that would result in 3630 per unit. He has reviewed the zoning from 1947 forward; interestingly, there are still things on the books from that time. Zoning changes used to be approved at Town Meeting by warrant until about 1984.

Mr. Park suggested changing the density requirement to 4,000 square feet per unit; Mr. Chase suggested 5,000 square feet. Mrs. Robidoux commented Mr. O'Connor had suggested 5,000 square feet per unit as well, but he was unable to attend tonight. Mr. Fairbanks cautioned the

Board that if it gets too extravagant – such as 10,000 square feet - it will open itself up to be challenged. Mr. Chase said he would like to perform the calculations and see what the result would be once the Board arrives at a final square foot amount. Mr. Fairbanks recalled at the site walk for 19 Kendall Pond, there had been some discussion about how the density figure should be calculated – gross land area or buildable land area. Mr. Sioras said on paper, if the gross land area is used, it might be someone could get 27 units. In the real world if $\frac{1}{4}$ of the property is wetland, then the wetland should not count toward the density. The Board members agreed that should be reviewed.

Mr. Flattes suggested decreasing the building height to two stories. He agreed that, along with 5,000 square feet per unit may solve the problem. Mr. Fairbanks noted a suggestion had been the building height should be based on the other structures in the area. On High Street, it might not look odd to have a three story building.

Mary Eisner, 21R Derryfield Road, said the impression from the Town Council workshop was that the Board was to reduce the limits so that the numbers of units would be reduced. She had expected the Board to have that number this evening. Mr. Granese explained the Board's process is to hold workshops to come up with the final text of changes that can be brought forward to public hearing. Ms. Eisner agreed that the building height should be reduced to two levels. It may not be the same height as all the other buildings in the area but the Board could then extend the allowed number of square feet reasonably, for example 7500 square feet, so that it conforms to the law for anti-snob zoning, but reduces the attractiveness for the developer.

Mr. Chase said the problem with the height is the Board really can't restrict the height to two stories when a duplex can be three stories tall on the next lot; that would not pass a court test. He would suggest that no multifamily development can be 10% higher than any structure within a 1000 foot circumference of the lot, ground to peak. Mr. Sioras said the Board did something similar in the General Commercial III zone to protect the Robert Frost Farm. Mr. Park asked why it could not be a 2000 foot circumference; he did not think 1000 feet was very far. Mr. Chase disagreed.

Mr. Granese noted the Board also needed to look at parking. There needs to be enough for the residents and the guests. There cannot be an 18 unit building with 20 parking spaces and one guest space. Mr. Sioras noted the Board and Technical Review Committee constantly gets push back on the parking calculation. For places such as CLM or the townhouses on the corner of Maple and High Street; the parking is constantly maxed out, especially on the weekend at the townhouses. The Board needs to look at the worst case scenario. Mr. Granese commented at his old condo, there were two parking spaces for each unit inside; two outside and 3 spaces for shared visitor parking per every four units. If people have more than a few guests, parking becomes a large issue. Mrs. Robidoux suggested requiring three parking spaces per bedroom. The number should be concrete, the wording unambiguous and waivers from this requirement not granted.

Ms. Eisner asked Mr. Chase to repeat his suggestion for the building height restriction. Mr. Fairbanks felt this should be clarified, and confirmed Mr. Chase meant ground to peak. This would make the height lower than the current 60 foot restriction for most projects and keep it

more in character with the existing neighborhoods. Mr. Sioras agreed that the buildings should not be much above the peak of the other buildings in the neighborhood. If the peak of the structure is much higher than the building next door, it takes away from the character. The peaks should be similar in height. Mr. Fairbanks commented at the recent site walks, proposed height of the building peak has been the number two or three complaint from abutters.

Ms. Eisner asked to be fair to the developer, where in the code does it allow this body to deny a request for an application. Mr. Sioras said in general terms under the Zoning Ordinance the Planning Board has a right to look at the character of the neighborhood, the impact of a development on the health, safety and welfare of the residents, as well as impacts on traffic and the environment. "Impact" is a key factor. Ms. Eisner said one developer maintains they are following all of the regulations and should not be denied approval. Mr. Sioras said under the land use RSAs, the state allows towns to create regulations within the parameters of what the state allows.

Mr. Chase suggested the Board look at the discrepancies between the Land Development Control Regulations and the Zoning Ordinance, specifically with regard to the required amount of recreational space (15%) and green space (1/3 of the lot). The two documents should be consistent; the Board should decide what it would like to do for those requirements. Mr. Fairbanks said that is one of his questions with regard to green space and recreation. The Board needs to apply these consistently and he is not sure they are defined. What do we consider green space and what do we consider recreational space? Mr. Chase did not feel the Board should be allowing the area inside parking lot islands to count toward green space. Mrs. Choiniere suggested stating green space must be so many square feet. Mr. Fairbanks said currently the regulation says it must be 33% percent of the gross area. Should it be 33% of the building area? There are some lots with 1/3 of the lot that is buildable and the rest of the lot is wetland. Mr. Fairbanks indicated page 64 of the LDCR. He read aloud Section 170-64.A.3. It does not limit the green space to the island in the parking lot. Mr. Flattes noted it does not limit or exclude wetlands from the calculation either. The Board members all agreed this regulation needs to be tightened up.

Mr. Sioras said staff would put together the comments from the workshop and draft something for the Board to review at the next workshop.

The next workshop will be held on November 05, 2014.

There was no further business before the Board.

Motion by Alongi, seconded by Choiniere to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:31 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____