

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 15, 2014, at 7:00 p.m., at the Derry Municipal Center (Cable TV Studio) 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 (7:22 p.m.); Ann Alongi, Members; Lori Davison, Alternates

Absent: John O'Connor, Jim MacEachern, Marc Flattes

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Janice Mobsby, Controller

Mr. Granese called the meeting to order at 7:04 p.m. The meeting began with a salute to the flag. Mr. Granese noted the emergency exit, the location of meeting materials and introduced the Board members and staff.

Ms. Davison was seated for Mr. MacEachern

Escrow

#14-19

Project Name: Deer Run

Developer: JEMCO Building and Development

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 12119-001, Adams Pond Road

The request is to approve the final release of Letter of Credit #20005314 in the amount of \$98,735.76 for the above noted project. The amount to retain is zero. This is the final release.

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

Minutes

The Board will review the minutes of October 13, 2014, at the next meeting of the Board.

Correspondence

Mr. Bartkiewicz read aloud correspondence received from Janis DelPozzo, who is a 42 year resident of Derry and a member of the Housing and Redevelopment Authority. Ms. DelPozzo was copying the Board on an email she sent to the Palmer family regarding the proposed zoning changes the Board is reviewing in the General Commercial zone along ByPass 28 south.

Other BusinessRequest to accept Deer Run as a Town Road

Mr. L'Heureux advised the request is to accept Deer Run as a Class V town road of approximately 1320 feet in length off Adams Pond Road. The Board has just approved the release of the final escrow, and the work has been completed per the approved plan. The Department of Public Works asks the Board to accept the road and forward it to Town Council for final acceptance. Mr. Granese noted the development looks nice. Mr. L'Heureux stated the homes are mostly built.

Motion by Park, seconded by Bartkiewicz to accept Deer Run as a Class V town road and forward consideration of same to Town Council for approval.

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

Voluntary Merger of Lots – 15, 17, and 19 South Avenue

Mr. Sioras advised the three parcels, 15, 17 and 19 South Avenue, are owned by David Barka. The intent is to combine the lot containing the single family residence, and the lot with the two family, with the lot that currently contains the 4 unit townhouse to the rear. They will be combining all three lots, owned by the same person. This is a prelude to the site plan application the Board will hear this evening.

Mr. Granese asked if Public Works had any issues with the merger. They had none. Ms. Alongi asked if these are the same parcels the Board will be reviewing for the site plan application. They are, and the merger needs to take place first. Mr. Fairbanks asked if the combination of the lots will create a non conformity. Mr. Sioras said it would not as a variance was granted by the ZBA to allow the units to all be on one parcel. The ZBA allowed the two units on the street and the townhouse to be on one lot. The second part of this will be the site plan application. Mr. Fairbanks felt if the lot would be more non-conforming after the merger, then a variance would be required. Mr. Sioras said the ZBA has already granted the variance to allow all parcels to become one parcel. There was an overlap of parking and water/sewer easements. In some ways, it makes the lots more conforming. None of the lots meet the current zoning requirements. The merger and site plan will clean this up by putting everything on one parcel.

Motion by Bartkiewicz, seconded by Park to approve the voluntary merger of Parcel 30013 (15 South Avenue), Parcel 27137 (19 South Avenue), and 30012 (17 South Avenue). Parcels 30013 and 27137 will be deleted and Parcel 30012 will be retained.

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

Other

Mr. Sioras reminded the Board that a subcommittee is being formed to draft proposed changes to the Central Business District. An email was sent yesterday. If anyone would like to volunteer they should contact Mrs. Robidoux. Meeting times will be during the day so that staff can attend. Ms. Davison and Mr. Flattes have expressed an interest. Mr. Fairbanks verified that he could participate even though he was the Town Council liaison.

Public Hearing**David Barka****PID 30012, 30013 and 27137****15, 17 & 19 South Avenue****Acceptance/Review, 5 Unit Townhouse Site Plan**

Mr. Sioras provided the following staff report. The properties are owned by David Barka. The purpose of the plan is for an expansion to an existing multi-family development. The new development will be a 5-unit townhouse. A picture of what the townhouses will look like are on the cover of the plan. The parcel is located in the Medium-High Density Residential district. The five unit building will be constructed between the existing 4 unit and the 2 unit buildings on the street. This replaces the former car wash facility which was located on the site. All town departments have reviewed and signed the plan. There are four waiver requests. No state permits are required for this project. Mr. Sioras recommends approval of both the waiver requests and the site plan application. Mr. MacGuire will speak to the waivers and why the lots were consolidated; this was to make the lot more conforming and to alleviate parking issues.

Doug MacGuire of The Dubai Group, presented for the applicant who was present in the audience. Mr. MacGuire explained the existing conditions. There are three parcels of land all owned by Mr. Barka; he rents all three: the two family, located in the lower left, the single family located in the lower right, and the four unit townhouse. Mr. Barka would like to consolidate the parcels to create one community. They are substandard lots to the front with shared parking. The building on the left has two curb cuts and the residents back out onto South Avenue. The proposal is to consolidate the lots and bring the parking all on site, eliminating three curb cuts. They will remove the two curb cuts to the left, the curb cut to the right and retain the exiting curb cut to the four unit townhouse. This access will be expanded to serve all of the lots so that all the units will have shared access and parking.

The two family unit has been updated inside and outside and the architecture designed to match the four unit townhouse. They did go to the ZBA to consolidate the lots to allow the two unit building and the single family building to be on the same parcel as a multifamily building. They will remove the lots lines. Sheet 4 shows the proposed new five unit multifamily building located between the existing two family and the 4 unit building. This brings the parcel together as one and blends it as one community.

With regard to density requirements, the parcel with the consolidation allows a maximum of 14 units; they are proposing 12 units. There are 7 existing and they propose to add five units. They have met the green space requirement and are providing 60% total green space. The recreation requirement has been met as well. Ms. Alongi confirmed the proposal is to add units to create a total of 12 units on site. Will there be parking in the townhouses? There will not.

Mr. Granese asked Mr. MacGuire to go over the waiver requests and the rationale behind the requests. Mr. MacGuire said the first waiver is from Section 170-63.A.2, which is the 15 foot parking separation from the front lot line. Section 170-63A.6 regarding the front fifteen foot landscaped island is a similar request. They don't meet the 15 foot separation from the front lot line because they are closing the two driveways and bringing the parking on site; there is not enough room to meet the separation. Their proposal is a significant improvement to the current condition with access occurring at one point into the lot and eliminating the backing maneuvers onto South Avenue. They felt that would not be contrary to intent of the regulation.

Mrs. Choiniere entered the meeting at 7:22 p.m.

Mr. Granese stated he liked the idea of one access point.

Mr. Granese asked Mr. MacGuire to explain the stormwater design. Mr. MacGuire said they need to match the pre-construction drainage conditions and they are proposing an infiltration pipe with two catch basins. Currently there is no catch basin on site; everything sheet flows out either to the west portion of the site or to South Avenue. They will intercept several areas into one infiltration system which will recharge the stormwater. There will also be an emergency overflow leading to an existing catch basin. They will reduce the overall runoff on site. Mr. L'Heureux stated the soils on site are sandy so this is a good application for the site.

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

Mr. Granese asked if DPW had any issues with the plan. Mr. L'Heureux advised he spoke with Mr. MacGuire today and they will need to finalize some items. They will be eliminating the curb cuts and need to determine if the pavement will be cut and tie into the existing pavement or if they will do a foot offset and hot mix to bind to the existing pavement. They will need to work out those details. This should be a condition of approval as well as the items noted in the KNA report. They will need to add a detail for the water and sewer drainage pipe installations. They have modified the grade on the drainage pipe to Catch Basin 2, so they do not need to request the waiver from Section 170-65.I. He will need to see if they get a waiver for the parking setbacks they are requesting.

Mr. Granese confirmed these will be rental units, not condominiums. He likes that the recreation space is close to the units. Mr. MacGuire said they tried to make the recreation area contiguous. There is an existing gate for the benefit of the residents leading directly to the rail trail.

Mr. Fairbanks noted the KNA letter references the wrong date for the ZBA hearing. Mr. Chase asked where the calculation for the green space was coming from; behind the building the land is unusable and it has a very steep grade. Mr. MacGuire acknowledged the grade is steep but green space is the lack of impervious area. Sheet 10 in the plan set, item #2 shows the proposed impervious cover diagram and shows how they calculated the green space.

Mr. Chase asked with regard to the variance that was granted by the ZBA. The ZBA minutes from June indicate they were limited to 11 units and they are proposing 12 units. Mr. MacGuire explained the original intention was to consolidate the two family and the four family. The ZBA approved that. After they received that approval, the TRC recommended that they bring the single family unit into the development as well. They went back to the ZBA and were granted the variance to consolidate the three lots and allow up to 12 units. The Board had minutes from the first ZBA variance, granted on June 5th in their packets, but not the minutes from August 21, 2014. Two members were able to pull up the minutes electronically and it was confirmed the variance granted on August 21, 2014, was to allow the consolidation of the three lots, and the consolidation was limited to no more than 12 units. Mr. Chase asked with regard to the recreation density. Mr. MacGuire explained the requirement is for 15% recreational space. Sheet 4 shows the area set aside for recreation which is 18% of the total lot area.

With regard to the waiver requests, Mr. MacGuire advised in his review Steve Keach noted that there is a minor encroachment of existing pavement on the east property line. There should be a 10 foot setback in that location; they are at 7 feet. This is in the area of the four unit building that was approved in 2004. When that site plan was approved, the lot area was in the Central Business District which had a setback of 5 feet, so they were in compliance. Since 2004, the zone for that area of the lot has changed to MHDR. As the Board considers the waiver request from Section 170-63A.2, he would ask that this area also be included in that waiver request. Mrs. Robidoux had suggested he bring this up so that it is on the record. Mr. L'Heureux confirmed the side and rear setbacks fall under Section 170-63A.2. Mr. MacGuire further explained their original request on that particular waiver was from the front of the lot on the left side; they are asking to include this area to the right side behind the single family as part of the original waiver request.

Mr. L'Heureux said he had no issues with the waiver requests. He did note the water service issue for the fire suppression system needs to be incorporated into the design. This needs either an outdoor closet on a unit or an outside unit attached to the structure so that the service can be separate from the individual units.

Mr. Chase asked what is the alternative if the first waiver is not granted (170-63A.2). Mr. MacGuire said the goal in requesting the waiver is to allow the four parking spaces that encroach to be on the site. This will allow them to eliminate the two curb cuts and backing maneuvers which will make it safer. With regard to the landscape island waiver, they are conforming to all the other requirements of that section of the regulation such as street trees and buffering; they

just can't meet the fifteen foot distance requirement. Mr. Chase felt they were placing too much on too little; if the five unit building was decreased to a four unit building, would they need the waiver? Mr. MacGuire explained based on the density requirements, if they demolished the two existing buildings, they could have 14 units of multifamily. The 12 units is not over reaching with the development. Mr. Barka wanted to make sure the lot was not overcrowded. Mr. Fairbanks said they are taking away the other outlets to the street and making it safer.

Mr. MacGuire said he did not believe it would make any difference if they took away a unit; they would still want the four spaces closest to the two family dwelling; those residents are used to parking on either side of the existing building and they don't want to drastically change that for them. They want to keep the spaces in the vicinity of the dwelling unit. They have put a lot of time into planning this site. They meet all the density calculations, green space, separation between buildings, parking requirements and recreational space requirements. He feels they are meeting the intent of the regulations. The answer to Mr. Chase's question would be no. Mr. Fairbanks noted they could eliminate a unit and move the parking. Mr. MacGuire said they could keep the 2 curb cuts and not require the waiver.

Mr. Chase asked for further clarification of the area of land noted on the plan to the left of 27137 that states it is part of parcel 27137. Mr. MacGuire said they believe that area to be a portion of Parcel 27137. The surveyor has said the records show that piece of land has been conveyed forward with Parcel 27137 for several decades but there is a break in the conveyance. They would need to pursue that further. Mr. Chase said the parking on that side of lot 27137 should not be occurring because they don't know for certain that is Mr. Barka's property. Mr. MacGuire said this land has been used with the property for over 50 years. They could have a case for adverse possession. They did not feel it was necessary to pursue the title for that portion of the lot for this application. Mr. Chase said if they did own that portion then they would not need the waiver. He is looking at all avenues. Mr. Fairbanks said landscaping is planned for that piece of land that may or may not belong to Mr. Barka, per Sheet 3 in the plan set. The plan proposes the removal of the gravel and then loaming and seeding of the area. Mr. MacGuire said that was for elimination of the existing driveway area. Mr. Chase said they need to meet current regulations. That curb cut can't stay there. Whether it is Mr. Barka's lot or not, it cannot be considered with this plan because it was not part of the variance. That portion of area cannot be used. If the waiver does not pass, he does not want it on record that they can use that piece of land. Mr. MacGuire said the tenants are using that side now and the area would be cleaned up. They could continue to use the driveway on the other side of the dwelling unit and it could be used for both.

Mr. Sioras confirmed this plan went before the Highway Safety Committee. Mr. MacGuire said they did go before the Highway Safety Committee and they were pleased to see the curb cuts eliminated. There is a lack of visibility on the left side because of the V intersection. The existing driveway meets the current sight distance. They deemed this change to be positive. Mr. Fairbanks thought it was okay to eliminate the driveways, but one of them may be an illegal driveway that does not belong to Mr. Barka; he is not against what they are doing. Mr. MacGuire said they could close the curb cut as it is in the right of way, and just not loam and seed the area.

Mr. Granese asked how large is the area of land. Mr. MacGuire said it is 30 x 100'. It has been used by the tenants in the two family since before Mr. Barka took ownership in 1990. The discrepancy was just discovered by the Dubai survey department. The parcel was conveyed forward and they would need to go through a different legal process to confirm ownership. They did not feel ownership of that adjacent piece of land had bearing on the site plan. Mr. Granese felt it would be cleaner if Mr. Barka had clear title but this is not in the Board's purview. Mr. Sioras asked why the entire area was not surveyed. Mr. MacGuire said they did survey the entire area. In 2004, the plans for the four unit building had no mention of this parcel. It was a judgment call on the part of their survey department to put the area in question on the plan. They know it is a separate parcel. The question is can Mr. Barka claim it under adverse possession. Since they propose to remove development on that lot, they did not include it. The legal process to claim the land is costly. The parcel is not able to be developed; it is too small. Mr. Sioras asked if they knew the whereabouts of Lorna Kiley. Mr. Barka stated she was the previous owner of the two family dwelling. Mr. Fairbanks said it looked like as the last owner, she transferred it to Mr. Barka; it is likely that parcel of land has always been conveyed as a handshake between owners. Mr. MacGuire advised this parcel is not on the tax cards in Derry as a separate lot. Map 27137 was conveyed forward with the 30 x 100' parcel as the same ownership and then the conveyance stopped. The Town of Derry does not have the 30 x 100' piece of land as owned by anyone. They added it to show why they had parking there; they wanted to be accurate on their plan. The tax map is incorrect in how the lot line is shown. In 2004, they cleaned that up. The solution to this issue is they can eliminate the proposed work, such as the loam and seed, until Mr. Barka decides to move forward with the legal claim. The Board may be correct he has no legal right to park on the parcel if it was not legally conveyed to him. They can remove the construction notes for that parcel; they would not park on that area.

Mr. Chase explained he does not mean that they can't clean up this area for the benefit of the tenants. Mr. MacGuire felt if the Board was not comfortable with the area being noted, they can take it off the plan and Mr. Barka can pursue it at a later date. Mrs. Choiniere asked if the area is removed from the plan, will it interfere with proposed setbacks. Mr. Fairbanks said the lot is an existing non-conforming lot. Mr. Granese confirmed that the area in question is not on the tax cards. Mr. MacGuire suggested it may be best to remove the dotted line from the plan to make the plan cleaner. Mr. Granese said they would still need the waivers. Mr. L'Heureux said they could remove the curb cut but the town can't enforce the loam and seed in that area. Mr. Granese asked if it would create issues later if they removed the curb cut and someone came forward later and protested. Mr. L'Heureux advised it is not a lot of record.

Mr. MacGuire explained that area was not included in the density calculations or setback. Parcel 27137 is .011 acres without the area outlined as a dotted line. It is only shown on the plan to indicate Mr. Barka may have a claim to that 30 x 100 foot area. He confirmed the 30 x 100 area was not included in the voluntary merger.

Motion by Chase to accept jurisdiction of the multifamily townhouse site plan application before the Board for David Barka, PID 30012, 30013, and 27137, 15, 17 and 19 South Avenue, seconded by Park.

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

Motion by Bartkiewicz, seconded by Fairbanks, to grant a waiver from Section 170-63.A.2, Parking Requirements, 15' Separation.

Chase voted no, as he felt the need for the waiver is self-imposed; if the density was decreased there would be no need for the waiver. Fairbanks voted yes as he felt the public safety advantage outweighed the detriment; Park, Davison, Alongi, Bartkiewicz and Granese voted yes and the motion passed.

Motion by Bartkiewicz, seconded by Park to grant a waiver from Section 170-63.A.6, Parking Requirements. 15' Landscape Island.

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

Motion by Bartkiewicz, seconded by Park to grant a waiver from Section 170-61A.12, Final Application Phase Submittals, HISS mapping.

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

Motion by Bartkiewicz, seconded by Park to grant a waiver from Section 170-61A.13, Final Application Phase Submittals, wetland mapping, as after review of the waiver request the Board finds that strict conformity to the regulation would pose unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

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

Motion by Bartkiewicz, seconded by Park to approve, pursuant to RSA 676:4, I, Completed Application with the following conditions: Comply with the Keach Nordstrom report dated October 13, 2014; ensure the size and location of the sprinkler service is shown on the plan and that the water main limits have been adjusted accordingly; subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable, and it complies with LDCR Section 170-24.C/170-61.C; note approved waivers on the plan; subject to receipt of state or local permits relating to the project; that the above conditions be met within 6 months; snow and ice removal shall be performed by a "Green Sno-Pro" certified contractor following Best Management Practices for the application of de-icing materials; a \$25.00 check, payable to the Rockingham County Registry of Deeds, shall be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees; final approval by the Department of Public Works for the granite curb installation detail relative to the

vertical granite curbing that will be placed at the former driveway locations along the length of the street; remove the additional area shown on the plan as “Last Deeded to Lorna Kiley, Book 1701, Page 224” and remove the detail in the plan where it says this area will be loamed and seeded.

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

Mrs. Choiniere was seated.

Workshop

Discussion regarding proposed changes to the internal cash escrow process

Mr. Sioras advised that the previous Treasurer had set up the process for how the town handled cash escrows many years ago. The escrow funds collected from developers are placed in an interest bearing account for the duration of the project. Mrs. Mobsby will describe the changes proposed by the Finance Department.

Janice Mobsby, Controller, advised that in July, she looked at the escrow interest earned on the 19 escrow accounts for the last fiscal year. The total interest earned was \$46.90 for the year. This is an average of \$2.40 per escrow customer. The amount of work to accrue the interest and record the interest on the financial statements each month far outweighs that. It may have made good sense in prior years to have the interest bearing accounts when the interest rate was much higher at 5-6%. RSA 674:36-III, C, outlines the authority for the Planning Board. The Board is only required to keep the escrow balance in a separate account. The town does that and will continue to do that. She is asking the Board to choose whether those accounts will be interest bearing or not. The workbook process states the Board will keep the escrow in an interest bearing account; the Finance Department is asking the Board to eliminate that wording from the workbook. This change would still allow the Board to be in compliance with state law, and make it more efficient for the town Planning and Finance Department. She feels the \$2.40 per year on average per account is *de minimis* and won't make a large impact on whether a developer chooses to post a Letter of Credit or provide cash escrow.

Mr. Granese asked if the town received interest on these accounts. It does not. He confirmed the interest goes to the developer and the town does not gain money; it just loses money on the staff time that goes into maintaining it, which occurs during the 40 hour work week. He felt the funds should be kept in an interest bearing account; it is more business friendly. When people were reaping the benefits of interest, this is something that may have put Derry above other towns. What if things turn around again? They could again reap the benefit.

Mrs. Mobsby said in working with the new Treasurer, they are trying to bring everything in line with what they are doing today. Decisions made many years ago may be different from where the town is today. They want to be business friendly but do not feel that \$2.40 will make a difference; developers can still post Letters of Credit.

Mr. Fairbanks confirmed all of the interest goes back to the developer; the issue is the cost in man hours. Mrs. Mobsby said approximately half an hour a month is spent for all of the staff who touch this. Mr. Fairbanks said the town is spending \$30.00 to give the developer back \$2.00. Mrs. Mobsby explained the interest rate is 1/10th of a %; in the 1980s, the average was 18%. The interest rate has not varied much in the last three years from 1/10th to 2/10th of a percent. Mr. Fairbanks thought the interest rate would need to be around 7% in order for the town to break even. Mrs. Mobsby said the point is not the cost benefit. Administratively, they need to look at how they can create new efficiencies in the Finance Department. This is one way. The alternate discussion is how the developer looks at business-friendly Derry.

Mrs. Choiniere asked if escrow in and of itself is to be placed in a non-interest bearing account. Mrs. Mobsby said no, but they can be. The State law does not require the accounts be kept in an interest bearing account. The town has it in an interest bearing account because the workbook approved by the Planning Board says it will be. That is why she is here tonight; she is asking the Board to amend that.

Mr. Chase asked if the Board makes this change and the interest rates turn around again, can the Finance Department change the accounts to interest bearing accounts without coming back to the Board. Mrs. Mobsby said if the workbook remains silent on it, they could put them into an interest bearing account if it made sense. Mr. Chase felt the town could streamline the process, and then Finance can change it as needed. Mrs. Mobsby said this could be a discussion between the Planning Department and the developer when they are setting up the escrow account.

Mr. L'Heureux had no comments. Mr. Sioras said this is an internal document that is managed by the Planning Board and Public Works. He recollected when the former Treasurer set the system up, she felt it was only fair the developers gain interest while the town was holding their funds for two or more years.

Mr. Fairbanks asked if the change to the workbook in 2011 had to do with escrow? Mr. Sioras explained the changes were for something else. The escrow process has been in place for many years.

Mr. Granese asked for a straw vote of the Board to see how they felt about changing the workbook. Mr. Chase, Mr. Fairbanks, Mr. Park, Ms. Davison, Ms. Alongi, Mrs. Choiniere, and Mr. Bartkiewicz were in favor of the change. Mr. Granese was not in favor of the change as he felt the accounts should earn interest.

There was no further business before the Board.

Motion was made and seconded to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:33 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____