

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 02, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Lori Davison, Secretary; Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; James MacEachern, Frank Bartkiewicz, Maya Levin, Mark Connors, Members

Absent: Elizbeth Carver, Matthew Leavitt

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Beverly Donovan, Economic Development Director.

Mr. Granese called the meeting to order at 7:01 p.m. The meeting began with a salute to the flag. Mr. Granese then noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

## Escrow

### #19-01

**Project Name: Highland Place Condos**

**Developer: Extended Realty, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 26232, 37 Highland Avenue**

The request is to approve a release in the amount of \$92,371.10 and request a replacement Letter of Credit in the amount of \$5,054.41 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release Letter of Credit #27279 drawn on Enterprise Bank in the amount of \$97,425.51.

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

## Minutes

The Board reviewed the minutes of the December 19, 2018, meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the December 19, 2018, meeting as written. The motion passed with all in favor.

## Correspondence

Ms. Davison advised the Board has received two notices of public hearing from the Town of Salem and one from the Town of Atkinson. Projects in Salem include a gas station, convenience store, donut shop, car wash and two lot subdivision for Klemm at 4-6 Mall Road and an 800,000 square foot retail/restaurant/hotel/residential project at 71 Rockingham Park Boulevard for OMJ Realty. Those hearings will be held on January 22, February 19 and March 19. In Atkinson, the Zoning Board of Adjustment will hear a variance application on January 09, 2019, for a project located at 20 Waters Edge Road. This lot abuts the Derry town line.

## Other Business

### Voluntary Merger

Brian and Gisele Mercier, PID 51068, 42 Beaver Lake Road and PID 51070, 44 Beaver Lake Road

Mr. Sioras advised this is a straightforward application and staff would recommend approval.

Motion by O'Connor, seconded by Bartkiewicz to approve pursuant to RSA 674:39-a, a voluntary merger of PID 51068, 42 Beaver Lake Road and PID 51070, 44 Beaver Lake Road. Parcel 51070 shall be deleted, and Parcel 51068 shall be retained. Discussion followed.

Mr. Connors asked if there was a public right of way adjacent to these lots that led to the lake. Mr. Sioras said it could be a paper road or a boat ramp that is not plowed or maintained. There typically are no right of ways accessible to the public in this area. Mr. Chirichiello said it could be a private road, subject to gates and bars and were usually kept so the Fire Department had access to the lake for water. Mr. Sioras noted the area is noted as "Adams Avenue" on the 1976 plan. He will look into this; those lots used to be seasonal. Mr. Chirichiello felt the status of that road should be determined and to see if the abutters are using the land. Mr. Connors said he had no issue with the lot merger; he was just curious as to the status of the road noted on the plan. Mr. O'Connor concurred with Mr. Chirichiello and said if it is a paper street, that should be confirmed because the area could revert to the abutters.

Chase, Levin, Chirichiello, O'Connor, MacEachern, Davison, Connors, Bartkiewicz and Granese voted in favor and the motion passed.

## Workshop

### **Workshop #1 – Proposed West Running Brook Village District**

Mr. Sioras advised staff was asked to look at zoning in certain areas of town. The Board has a handout before it with a map outlining the proposed area which is in blue. The area includes the Grandview Flea Market lot/Clam Haven intersection and goes north to Humphrey and the lots just before the Fairways, west on Rockingham Road to 74 Rockingham Road on that side of the

street only, and south on Route 28 from Clam Haven to just above the Robert Frost Farm on both sides of the road. Staff was asked to look at this area with regard to the potential for future development. In the last few years, the town has expanded water and sewer to this area, spending money to increase economic development opportunities. There is an Opportunity Zone in this area and there are land owners and developers interested in developing the area. The new zone was named 'West Running Brook' to capture the history of the area. The Robert Frost Farm is to the south and the West Running Brook cuts through the proposed zone. Staff came up with a draft for the Board to review and comment to start the discussion. The proposal has some mixed use elements, connects sidewalks, open space, the Frost Farm, and farm lands. Some examples of mixed use development in other towns have been provided as examples. The proposed zone encompasses about 170 acres; it is not on the same scale as other regional mixed use developments, but it maintains the character of this area. Aesthetically, this is a nice part of town. Beverly Donovan is present this evening and can discuss the economic development aspects of the proposal.

Mr. O'Connor asked who specifically requested staff to look at this. Mr. Sioras explained the Town Administrator requested the Economic Development and Planning Offices to look at it. Mr. O'Connor stated the Board was requested by Town Council to look at this area a few years ago and thus created the General Commercial IV zone. Where the Board has just initiated the Master Plan update, should the Board wait and see what the residents want?

Mr. Granese advised he has spoken with the Town Council Chairman and as recently as two to three months ago provided a brief on Planning Board activities to the whole Council. He was asked by Council with regard to the proposed changes in the Central Business District and this area, and he had advised Town Council the Board would be holding workshops and discussion on these matters.

Mr. Connors asked if the affected property owners would be advised of the proposed changes or have an option to provide input. Mr. Granese explained the Board would hold public hearings and landowners and abutters would be notified to attend the meeting.

Mr. MacEachern said this area has been discussed a few times; he is not against looking at this as a district, but the area may not be defined enough for what he would like. He would not support some of the proposed uses; there are enough of them in town already and located nearby. The renditions are not close to anything that could go here and do not match the area. He knows people are looking at this area and the Board needs to review what they feel is right going forward. What is in this area and how is it best defined? He may want to add a few properties and is not sure why certain properties were included. Most of these properties are already developed with few exceptions. It is easier to define zones using streets as the border. The Board needs to be sensitive to what is already there. He is willing to discuss the proposed zone.

Mr. Connors confirmed the lots currently reside in the General Commercial IV zone. Is this zone intended to be more restrictive? Mr. Sioras said the thinking was that the uses would not be as broad as what is currently allowed. There are a handful of undeveloped, larger lots, but the existing lots could be redeveloped. Mr. Connors understood the town was looking to control what might be developed and this is a positive move, although he is not in agreement with some

of the proposed uses. Is there any thought to expanding the proposed zone to include the other side of the road on Rockingham Road? Mr. Sioras said this draft is to start the process.

Mr. Granese asked if a list of the current permitted uses in the General Commercial IV zone is available for the Board to compare against the list of proposed uses. Mrs. Robidoux placed a copy of the current zoning ordinance on the projection screen queued to the General Commercial IV district. He agreed the zone should include Commercial Performing and Fine Arts Schools and Studios, Conference Center and Hotel; those uses would work. Mr. MacEachern suggested Filling Station, Manufacturing, Movie and Recording Studios, Publishing, and Warehouse should be removed. Multifamily Housing could also be removed. Mr. Chase would remove Single Family Detached Dwellings. Mr. MacEachern did not believe there was enough room on the lots for the proposed uses. Mr. Granese said he would like to ask Mrs. Donovan if there was anything in the pipeline in line with the suggested uses.

Mr. O'Connor asked that the Board be provided with a comparison showing the allowed uses in the General Commercial zone in 2014, the current General Commercial IV uses, and the proposed uses. Mr. MacEachern wanted to know what led to the proposed zone because the Board did not vote on any of it; this did not come from the Board.

Mr. Connors asked why one manufactured home park was included and one was not, especially given manufactured housing was not to be considered a permitted new use. Mr. Sioras said the one across from the Robert Frost Farm, Frost Acres, now has town water and sewer through a grant. The park adjacent to Clam Haven, in theory, could be purchased along with adjacent lots for one larger development. The thought was to include that park; it is older and does not have water or sewer. That is not in the pipeline, but they were looking at it in terms of future development opportunities. Mr. Connors agreed the Board is zoning for the future; that does not mean the park has to go away.

Mr. MacEachern asked that a larger map of the area be provided for the next discussion.

The Board reviewed the difference between the existing General Commercial IV uses and the proposed uses.

Mr. MacEachern asked if the prior drafts are available outlining the Board's vision when it previously looked at this zone. Mrs. Robidoux said at that time, the Board was looking at commercial uses, not necessarily village district uses. The Board looked more at the form, rather than the uses. The Board talked about the ability to have mixed use, but other than discussing the wish to have mixed use, did not get in depth as to the allowed uses. Then the direction changed. This is more in line with what the Board had wanted to do. Mr. MacEachern recalled when the Board was working on the creation of the General Commercial IV zone, at one point Southern New Hampshire Planning Commission provided a presentation on mixed use. Mrs. Robidoux explained much of the material in this draft comes from the Innovative Land Use Techniques that were provided to the Board back in 2015 from Southern New Hampshire Planning Commission.

Mr. Chirichiello said Governor Sununu proposed two Opportunity Zones in Derry; Senator Birdsell was instrumental in bringing the areas suggested by Town Administrator Dave Caron to the attention of the Governor. This is one of those areas.

Mrs. Donovan advised only one zone was selected in the Town of Derry. Portions of the proposed West Running Brook Village District are in that Census Tract (33015003500). Mr. Chirichiello stated it is important the Opportunity Zone is in this area because it creates development opportunities and the Town is trying to attract developers to this area.

Mrs. Donovan said one of the reasons the town hired an Economic Development Director was to look at the potential opportunities that exist in Derry that will enhance commercial development and hopefully offset and stabilize some of the tax rate. She is looking at the areas where that is possible. She has four major areas of focus in town and this is one of the areas. She worked with Mr. Sioras and Mrs. Robidoux on the zones in depth and in the context of the entire town. Where are the opportunities? Which can be maximized? Is the timing and location right? What should go where? They looked at this holistically and considered the uses in the zone. There are two schools in the area, a dense housing complex, recreational parks, the splash pad, conservation uses and trails; the zone backs up to the Alexander Eastman Park and Parkland Medical Center. The area is bounded by the Robert Frost Farm, and in the middle has some very nice natural features including West Running Brook and the historic properties in the area.

Staff looked at this area and created the draft. The draft did not come from property owners. She did engage with property owners to see if they would be amenable with retaining the historic features staff thought were important; and the property owners are amenable as part of overall master planning for their parcels. The intent is to create a village district where people will come and visit, linking the trails such as the rail trail downtown and some of the nearby parks, up through the developments and over to the Robert Frost Farm. It creates a nice feature for the town. It is important to retain the terrain. Some of the properties are hilly and not easy to develop commercially without a village concept. Then they started looking at some of the things people complain about along Route 28. People don't like the one story car dealership type buildings, the sameness and lack of variety. What kind of buildings will attract development or bring in tax revenue? They are mixed use buildings with a higher architectural standard that are multi story; different from what one might typically see in the GC IV district. A large commercial entity will not locate in this area; they might locate further down Route 28 as water and sewer comes down the road. Focusing on the smaller area makes sense; it could be a true village district. The intent was to keep the character of the area without losing the historic aspects, to make it walkable, tie into the school and recreational areas, and to create redevelopment opportunities. There are many reasons to look at this area differently from the past. She acknowledged the work of the Board in looking at this area over the course of several years and that the Board is being asked to look at it again. Sometimes things change. One of the things that has changed in this area is the Opportunity Zone. Investors can come in and use assets they have (not related to a real estate transfer) and defer the taxes. This is an incentive to bring high quality projects because it can save developers money on federal taxes on the other end. This area is only partially in the Opportunity Zone. The Opportunity Zone starts at the town line on Broadway and goes east to Cemetery Road. It crosses Humphrey and goes south on Route 28 across Island Pond Road and heads west along Rockingham Road to Kendall Pond,

ending again at the Londonderry town line. This is the area encompassed by the Federal Census Tract 003500. The nice thing is that development in this area will be incremental and master planned for the future. It allows for things to happen over time, but to be directed. She has been asked how the Board would make sure that more than just housing was constructed. Under the proposed Section 165-32.4.G, the Board can phase development so that there is no occupancy in the housing units until the commercial is built. The Board gets to decide the percentage of commercial development prior to the occupancy of housing. The uses are allowed by Conditional Use Permit and the Planning Board has a lot of control over how the lots are developed. If the Board does not like a project for some of the reasons they have been talking about, they don't have to approve it.

Mr. Granese said if the uses such as housing are allowed in the zone, and the Board denies a proposed use, the applicant could appeal it. Has there been any interest expressed to the Economic Development Department in development in this area? Mrs. Donovan said several landowners are interested in seeing what can happen if the zoning changes and there have been outside developers who have inquired about parcels in this area.

Mr. MacEachern asked if the interest in the area has been for uses different than what is currently allowed. Mrs. Donovan said the larger developers will see the list of Opportunity Zones (there are 27 in New Hampshire) and they want to know what they can build in those areas. There has been inquiry about uses that are currently not allowed on these lots, but nothing that would be appropriate for this area can be done without a housing component. That is where the demand is; developers want to build mixed use. Not one person has said they would like to build a manufacturing plant or office building.

Mr. MacEachern asked that the Opportunity Zone map be emailed to all of the members. He would like to review the rules and regulations of that zone. He felt the Board should make sure there are rules in place so that if a developer came in and wanted to do a project in phases, with for example 10 houses and a retail store and some other uses, that the language is not too ambiguous. Maybe the Board needs to look at something like a mini-Growth Management Ordinance where developers get points for the housing; it all needs to have a legal basis. The Board needs to think about this.

Mr. Connors asked if the the Board could control the residential versus commercial development on a single parcel so that the developer has to open the retail first. He was not sure the Board had control if it was just housing on one lot or shopping on another. Mrs. Donovan explained a proposal would come in as one concept similar to Tuscan in Salem, with money tied up in it. Mr. Connors thought the properties would still be developed individually. Mrs. Donovan commented that is how it is today.

Mr. O'Connor asked Mrs. Donovan to explain the Opportunity Zone. What is it and what is the benefit for people in this area? He has not seen this area in Derry noted in the most recent lists of zones. Mrs. Donovan said the Opportunity Zone is the entire census tract. Only a portion of what is being proposed as the West Running Brook Village is in the Opportunity Zone. Mr. Sioras said the census tract is designated at a Federal level based on household incomes. Mr. Granese said he would like to have the previous minutes from when the Board looked at this area

a few years ago to review. Mr. MacEachern said he would like to see part of the area defined by Humphrey Road to Cemetery Road, over to Island Pond. It should be defined by the roads; the lots may or may not be sold in the future, but the lots could be developed per this concept. Mr. Chirichiello noted water and sewer do not go down Island Pond Road to the Grinnell properties. Mr. MacEachern said that would be an issue for a future developer to address. He did not want to limit the thinking. The Board should be planning for 20-30 years down the road. It should be defined by streets if they are going to allow it. Mr. Sioras suggested sitting as a group with large maps and looking at the area around a table, as opposed to trying to define the area in a meeting room setting. This would allow the Board members an opportunity to understand the parcels. Mr. Granese noted that might exclude public participation. Mr. MacEachern felt it was the Planning Board's job to come up with something to present to the public. He agreed with Mr. Connors; how far does the Board go down this road without the input from the Master Plan process; or how does the Board integrate this into the process. The work needs to be done cohesively. The Master Plan will take about a year, but the Board might not want to wait a year for this. Mr. Granese thought the Board should start the conversation instead of waiting until the Master Plan is done. Mr. MacEachern did not feel there was anything new proposed in this zone that was not already allowed; if that is the case, the Board is okay to move forward. That is why it is important to have the comparison. Housing is not currently allowed; maybe the Board tackles that first and then works with the Master Plan consultants.

Mrs. Donovan agreed there should be input from the Master Plan process. The input provided at the Master Plan meeting in November indicated the town is looking for more economic and commercial development. The town will not get calls nor attract big manufacturing companies because there is no available land for that use; the town won't have new large office buildings for the same reason and developers are not building offices now. There is a big potential to redevelop this area with mixed use which will bring younger workers to the area. She is hearing from the existing employers such as Fireye and PICA that their workers need places to live. When people are being paid \$13 -14.00 an hour, commuting distance becomes a reality. The town needs to address a myriad of problems. This one small area can address or look at several of them. It might take years to develop this area. The economy is headed for an economic downtown in the near future; the town can prepare for that and get all of its ducks in a row, or it can wait. She does not feel waiting two years for the Master Plan process is the best thing to do.

Mr. O'Connor questioned that there was not enough housing. The Board removed single family housing from the zone as a permitted use along with multi family, and now the Board is being asked to consider putting it back as a permitted use. There is a House Bill (HB 312) pending in the legislature which would allow towns to authorize tiny houses in all zones which could provide housing for veterans, homeless veterans, retirees and young people.

Mr. Granese felt the Board had held a good discussion on the proposed changes and looked forward to receiving the requested information for the next workshop. Mr. Connors said he felt this has been a useful discussion and asked how the Board would revisit it. Mr. Sioras said this workshop was to get something on paper to the Board for the Board to begin discussion. This is an introduction to the proposed change. Mr. Connors noted there had been a fire on one of the lots on Rockingham Road that is not included in this zone; it is across the street from the proposed zone. The owner of the property will need to rebuild something there; should the

Board be looking at adding the lots on the other side of the street to the zone? Those property owners should be involved in the discussion to see if they are interested. Mr. Sioras felt that was an open point of discussion. Mr. Granese said at the next workshop the Board will have the information on the previous discussions.

### **Workshop #2 – Review permitted uses in the CBD and review the definitions of those uses**

Mr. Granese said the purpose of this workshop is to look at the permitted uses in the Central Business District. The current zoning states there can be no residential below the third floor. Since the change was put in place, no one charged forward to put commercial uses on the second floor, and it looks like it would be a good idea to allow smaller apartments on the second floor for business people and recent college graduates to keep the Live Work Play vibe so that people can live in nice apartments and walk downtown to the establishments.

Mr. Connors asked how long does it take to effect a zoning change. Mr. Granese explained the Board will continue with workshops until the Board agrees with a final draft at which point it will be scheduled for a public hearing. Affected property owners and abutters will be noticed at that time. It could take three to four months or it could take two years to get to a final draft; the Board does not like to rush zoning changes so that they can be thorough.

Mr. MacEachern shared Mr. Granese's sentiments with regard to the proposed changes to Section 165-33, Central Business District. His concerns are relative to the proposed changes to Section 165-34, Office Business District. He does not want to discuss that tonight.

Mr. MacEachern was aware some of the proposed change in the CBD was driven by the open land on Elm Street. While he supports removing the second floor restriction, the Elm Street lot is in the Central Business District (CBD); it used to be in MHDR. About a year ago, the Board changed the zone to MHDR II, which does not allow multifamily housing. The Board then moved 19 Elm Street to the CBD. It would be nice to extend the line of townhouse condominiums that are there, but the CBD restrictions do not allow that type of development. He still has an issue with some of the lots in that area because multifamily is not allowed. The Board needs to decide if it wants to move some of those lots out of the CBD. Retail will not go on the first floor of buildings in this area. In this case, the best possible use would be multifamily.

Mr. Granese agreed it would be ideal to extend condominium use up to 19 Elm Street. Mr. MacEachern said a developer could do it at this time, but it would require a variance. Maybe the Board needs to put some of those lots back in the Medium High Density Residential district.

Mr. Sioras reviewed the prior zoning change which rezoned lots along Beacon, Jefferson and Cedar to not allow multifamily. The lots are allowed to have single family only. The Town put out an RFP on 19 Elm Street and there were no responses. The lot was then moved into the Central Business District. In looking at that zone in that area, he agrees there would likely not be first floor commercial use that far up Elm Street; there needs to be a creative way to allow townhouses. Mr. MacEachern suggested moving five lots back to the Medium High Density Residential zone. Mr. Connors felt that a three story apartment building could go on the 19 Elm



Street lot if the lot was rezoned. Mr. MacEachern noted the town has control of the lot and could put covenants on the type of development to restrict that. Mr. Sioras noted the topography constrains development on these lots. Ms. Davison asked if there is a mechanism by which the lot could be developed as the Board would like to see it, but not change the zone. Mr. Chirichiello said the only way that could happen would be by variance. The Board was polled, and it was decided to move the following lots into the MHDR: 29130, 29128, 29129, 29150 and 29149. This will help the owner of the vacant lot in the area who had a prior approval for multifamily which was never constructed. During the poll, Mr. Chase noted the lots described would likely not have garden style development because of the existing density requirements. Mr. Sioras explained the density requirement is 12 units per acre, and this is after the open space, and wetlands are removed from the calculation. Mr. Connors confirmed Parcel 29151 will remain in the CBD.

Mr. Granese asked that this change be brought to the Board under correspondence next meeting so that the Board can move forward with scheduling a public hearing.

Mr. Chirichiello spoke with regard to the Central Business District. The town is in a different position than it was twenty years ago. The number of students in the school system has dropped. He feels it is time to remove the second floor restriction from the CBD. The number of children in the schools is not going to increase and the town needs to create some housing to bring people who will utilize the downtown. Mr. MacEachern agreed the Board should move forward with the suggested change to Section 165-33 and remove the second floor restriction. Mr. Sioras pointed out to the Board that if the Board is removing the second floor restriction in the CBD, it needs to also look at the TBOD which overlays that zone. The restriction would also need to be removed in the TBOD which is along Broadway. This will also be brought to the next meeting as a change.

Mr. MacEachern noted some of this had been discussed at the subcommittee level. The subcommittee was suspended pending the outcome of the Master Plan process. Mr. MacEachern felt the vision for Broadway should include all of Broadway, East and West, from the town line to the traffic circle. He believed this should all be one zone. This had been discussed at the subcommittee level with Mr. Chirichiello and Mr. Chase. He feels the Board needs to wait to see what the outcome of the Master Plan vision is before making any extensive changes to these areas. He did feel the TBOD could be reviewed to assist with economic development. The owner of the property on the Londonderry town line has commercial plans for his property and there is an existing restaurant along the town line. There is a lot of opportunity in this area.

Mr. Connors did not have a problem with removing the second floor restriction, but what about the other restrictions in Section 165-33.B.5.b? For example, the size of the apartments and the limit on the number of units. Mr. Granese asked that the Board look at that section and that any suggested changes be presented at the next meeting's workshop.

Mrs. Donovan advised she has been meeting with the owners and property managers of parcels in this district. They have been providing insight on buyers and the renters such as who is renting and when. People who are downsizing are looking for property in Litchfield and Hudson because they can't afford this area. There are a backlog of people looking for rental units in

Derry who are employed as teachers, nurses and in the technical fields. The rental companies are not taking people with a credit score of less than 650. She does not hear that they are looking for micro apartments; those are really only workable in dense, urban areas with public transportation and a lot of activity, cultural opportunities and outdoor space in the area. Smaller, one bedroom (600-850 square feet) apartments are in demand. There is a market for them from people who want to live here. The Granary has a wait list. Parkland is having a hard time finding nurses and technicians because of the lack of housing. People need a place to live. We have the opportunity to take care of our own people here. Mr. Connors asked if people are living on the second floors in the downtown, where do they park. Mr. Sioras explained in this area, parking is a combination of on site, off street, and private relationship, and public parking.

There was no further business before the Board.

A 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: \_\_\_\_\_