

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 15, 2020, 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: John O'Connor, Chairman; Lori Davison, Vice Chair; Brian Chirichiello, Town Council Liaison; David McPherson (Secretary Pro-Temp); Frank Bartkiewicz, Mark Connors, Members; Dave Granese, Alternate

Absent: Randy Chase, Mark Grabowski, Maya Levin, Jim MacEachern

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning & Economic Development Assistant, Robert Mackey, Code Enforcement Director

Mr. O'Connor called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor then noted the location of emergency exits and introduced the Board members and staff present.

Mr. McPherson was appointed Secretary Pro Temp

Mr. Granese was seated for Mr. Grabowski

Escrow

#20-01

Project: Health Service Facility

Developer: 29 Ashleigh Drive, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 08280-006, 29 Ashleigh Drive

The request is to renew Letter of Credit #43724, drawn on Enterprise Bank in the amount of \$198,434.45. The expiration date will be January 14, 2021.

Motion by Connors seconded by Bartkiewicz as presented. The motion passed with all in favor.
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#20-02**Project: Paul Doolittle, Patricia Hutchins, Robert Doolittle, 3 lot subdivision plan****Developer: Natural Energy Designs, Inc. (Craig Fowler)****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 09138, 33 Old Chester Road**

The request is to approve a final release of cash escrow in the amount of \$5,184.00 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

#20-03**Project: Sal's Pizza****Developer: Lupoli Brothers****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 32032, 2 Lenox Road**

The request is to approve a final release of cash escrow in the amount of \$55,915.92. The amount to retain is zero. This is a non-interest-bearing account.

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

#20-04**Project: 64 Lane Road Subdivision****Developer: Evan Tedeschi****Escrow Account: Same****Escrow Type: Performance Bond****Parcel ID/Location: 06060, 64 Lane Road**

The request is to establish a performance bond in the amount of \$7,788.96 for the above noted project. Performance Bond #72226038 – CNA Surety.

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

Minutes

The Board reviewed the minutes of the December 18, 2019, meeting.

Motion by Connors, seconded by Davison to approve the minutes of the December 18, 2019, meeting as written. The motion passed with Bartkiewicz, Chirichiello, Granese and McPherson abstaining.

Correspondence

Mr. McPherson advised the Board has received a letter from the residents of 2 Horseshoe Drive, addressed to the Code Enforcement Officer and the Planning Board relative to a complaint. The Planning Board does not need to take action on this item, and the matter is being handled through Code Enforcement. The Board has also received the most recent copy of *Town and City* and Supply Lines with the Source, the DES newsletter.

Other Business

Request to extend approval, 1st Request - MPV Development, PID 29149, 18 Maple Street

Mr. Sioras explained the request is to extend the conditional approval granted for MPV Development for the townhouse project located at 18 Maple Street. The applicant needs additional time to secure escrow and still plans to move forward with the project. Staff recommends approval of the request.

Motion by Chirichiello, seconded by McPherson to grant a six month extension of the conditional approval granted to MPV Development, for the site plan application approved on July 24, 2019, for 18 Maple Street, PID 29149. The new expiration date will be July 24, 2020.

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

Master Plan and Goal Setting

Mr. Sioras advised the Master Plan has been completed and the Board will need to hold a public hearing to adopt the Plan. The Plan is not adopted by the Town Council. The public hearing will be scheduled for February 05, 2020.

Also at the next meeting, the Board will hold a workshop to derive its annual goals. Members should send suggestions for goals to the Planning Department in advance of the meeting.

Mr. O'Connor asked if the Plan was available online. Mrs. Robidoux said the Plan is very large; it is three volumes. Volume I is the actual bulk of the plan, containing the vision and goals. It also contains the implementation plan. The second volume contains the summaries of all the input from staff – the inventory of existing conditions and assets in the town. The third volume contains a summary of the public forums that were held. Staff is taking care of the slight edits that needed to be made to the plan and it will be complete next week. The Plan will be shared with the Planning Board members and placed on the Planning Board page of the town website. Once the Plan is adopted, it will be sent out to be printed.

Public Hearing

None.

Workshop #2 – Proposed amendments to the Town of Derry Zoning Ordinance relative to Public Nuisance

Bob Mackey, Code Enforcement Director, presented. Just before the holiday, the Board held a workshop to discuss the proposed changes. Staff was charged by the Town Administrator and Town Council to make amendments to the Ordinance in order to assist Code Enforcement in their duties. Over the past year, Code Enforcement dealt with some situations that constitute a private nuisance. These types of complaints take up a lot of staff time. Some of the nuisance complaints were elevated to the Town Council. Private nuisances are subjective, and can be hard to enforce. Code Enforcement has been dealing with rooster and other complaints. The Town Attorney has reviewed the proposed amendments. The proposal is to add definitions for public and private nuisance. Public nuisances involve more of the neighborhood than just one or two abutters. Private nuisances have recourse through private civil action, but the town would only be involved with public nuisance complaints. The other proposed change is to add 'public' to the Nuisances Prohibited section of the Livestock Ordinance.

The Board opened the discussion to the public.

Carol Guerrin, 2 Horseshoe Drive, stated they have lived at this address for 35 years. Three years ago, new neighbors moved in on Tsienneto Road. The neighbors added sheds, poultry, dogs (6), goats and a rooster. The barking dogs can be heard quite a distance away. She feels this is a nuisance because the dogs bark when the Guerrins go out into their yard. There is also odor from the various animals. The side of the Guerrin's house abuts this new "farm". She is surprised the neighbors can have all those animals there. Mr. Granese asked if the dogs are left out at night; they are not. The dogs go out, cavort and bark when people go into their own yards or walk by. She has documented the complaints through the Dog Officer, but she does not want to bother the Police with the issue. They have tried speaking with the neighbor.

Mr. Granese believed there had been a provision created when the Board created the Livestock ordinance for complaints of this type. Mr. Mackey said nothing definitive was created at that

time. The Board did discuss it but did not put any specific restrictions on things like roosters and decided complaints could be handled under the nuisance provision. The ordinance does have specific restrictions relative to housing of livestock, and setbacks.

Mr. Granese asked under the proposed definition of Public Nuisance, who is responsible for determining what is “unreasonable”. Mr. Mackey explained it is likely Code Enforcement would make that determination as to whether it constitutes a public nuisance. If legal action followed, the judge would make the final determination. Under the nuisance provision of the Livestock ordinance, it states, “At no time shall a nuisance be created or allowed to continue.” That is very subjective. The wording needs to be tightened up; a lot of staff time is being allocated to these types of complaints. Mr. Connors asked if there is a fine structure attached to these types of complaints. Mr. Mackey explained the Zoning Ordinance has a chapter that outlines fines and penalties; that could apply. The language is in the ordinance, so staff can cite that specific provision and say the per the Zoning Ordinance fines would be assessed. For private nuisances, the final judgement amount would be up to the judge.

Mr. Connors noted 2 Horseshoe Drive is in the Medium Density Residential zone. There is a minimum acreage requirement to have animals, but there is no restriction on the number of animals one could have on the acreage. Should that be revised and is there any cap on the number of sheds one could have on a property? Mr. Mackey noted “livestock” does not include fowl. Only one acre is required to have livestock. Small coops might not need a permit but any shed would require a building permit.

Mr. Chirichiello noted if one has more than a certain number of dogs on the property, that could be defined as a kennel. If there has been an agreement and resolution between parties when there is a private nuisance, and one party does not hold up their end of the agreement, should there be documentation in the Code Enforcement file with regard to the nuisance to assist the private landowner if they take the matter to court? Mr. Mackey said he has been in discussions with the Animal Control Officer. The Code Enforcement Department keeps a record of all the complaints it receives, and the actions taken. RSA 147 deals with some types of nuisance; there are other specific laws the town can fall back on other than the Zoning Ordinance. Ms. Davison asked if there is a possibility the neighbors to Horseshoe Drive are conducting a commercial enterprise. Mr. Mackey said he is aware they occasionally sell duck eggs, but that is allowed per the state RSAs and the Zoning Ordinance.

Mr. Granese felt it would be beneficial to have these changes in place. He suggested placing the word “continual” in the definition. Mr. Mackey said for a public nuisance, it would have to affect the entire neighborhood and the public. Mr. Connors did not feel adding “continual” would help as that term would also then have to be defined.

Ms. Davison asked how would Code Enforcement quantify public and private nuisance. Would they have to receive a complaint from four or more neighbors? Mr. O’Connor stated the Supreme Court has made decisions with regard to public and private nuisance and that is why he wanted to add those into the ordinance. Public would be more than one or two. Ms. Davison asked if the number needs to be stated in the ordinance. The Board discussed the scope of private versus public nuisance.

Mr. McPherson asked if there is any other municipality that has a successful ordinance that works very well that Derry can model. Mr. Mackey said towns have varying language in their ordinances. For example, roosters are not permitted in some towns. Mr. McPherson said he does not want to expose the town to anything, so maybe the town should see if there is another town that has an ordinance that works. Mr. Mackey said the town's livestock ordinance is good; it sets acreage, dimensions, etc. The Board at a later date may want to look at the number of animals allowed per acre. The nuisance portion is open to interpretation and needs to be tightened up. Mr. McPherson said neighbors won't always agree and he feels this proposed amendment takes a big step in the right direction and could be codified.

Mr. Sioras asked if the Board was comfortable with the language as presented. Mr. Granese felt there should be some language with regard to documentation. If someone creates a nuisance it needs to be documented. He noted other towns have copied the Derry livestock ordinance. Mr. Mackey said if the ordinance moves forward as proposed, and Code Enforcement receives a complaint, they would advise the complainant they need to prove it is a public nuisance. Sometimes, other things come into play and the Department can use other laws. The nuisance needs to affect a group to be a public nuisance. As an example, in looking at the letter from the Guerrins there may be other items such as manure accumulation that would be addressed outside the Livestock Ordinance. Mr. Granese said if someone makes a complaint that is documented by Code Enforcement, and then a second complaint is made, that builds a case for something that might be continual. Mr. Chirichiello added that is why it is important to document and build a file. Mr. Mackey explained the policy in his office. If a complaint is received, staff will visit the property and document the visit. Most of the time, depending upon the type of complaint, the issue is resolved and handled by an informal discussion. Staff does follow up to make sure the issue is resolved. If it is not resolved, staff then follows up with a more formal letter and begins the enforcement process. Mr. Connors said his goal would be to have this amendment put in place to alleviate some of the work load that is placed on Code Enforcement staff. Mr. Mackey repeated there are other provisions under the Livestock ordinance that would not fall under this amendment. If a complaint becomes a legal matter and it is a private nuisance, the town is able to state it has done what it can do, because the complaint has been investigated.

The Board held further discussion and opted to amend the proposed wording as follows. "PUBLIC NUISANCE – An unreasonable **and continual** interference with a right common to the general public. It is behavior which substantially and unreasonably interferes with the health, safety, peace and comfort of the general community. An activity is considered to be a substantial interference when there is an appreciable and tangible **continual** interference with a property interest. An activity is unreasonable when the benefit of the activity/action is outweighed by the harm." Staff was asked to make sure legal counsel reviews the changes before a public hearing is scheduled. The Board will be given a date for the public hearing at the February 05, 2020 meeting.

Other

Mr. Sioras advised the Town Council public hearing relative to sports betting has been moved from January 21st to January 29, 2020.

Mr. Connors spoke with regard to Board member attendance. It was noted one member was appointed and has not attended a meeting. Mr. O'Connor stated he is in discussion with the Town Administrator with regard to that item.

There was no further business before the Board.

Motion by Granese, seconded by Chirichiello to adjourn. The motion passed with all in favor and the meeting stood adjourned at 7:53 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____