

The Planning Board for the Town of Derry held a public meeting on Wednesday, February 01, 2017, at 7:00 p.m., at the Derry Municipal Center (3<sup>rd</sup> Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman, Michael Fairbanks, Secretary; Charles Foote, Town Council Liaison; Frank Bartkiewicz, Lori Davison, Jim MacEachern (7:04 p.m.), Mirjam Ijtsma, Members; Mark Connors, Marc Flattes, Elizabeth Carver (7:03 p.m.), Alternates

Absent: Randy Chase

Also present: George Sioras, Planning Director, Elizabeth Robidoux, Planning Assistant; Mark L'Heureux, Engineering Coordinator.

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

*Mr. Connors was seated for Mr. MacEachern*

## **Escrow**

### **#17-03**

**Project Name: Tupelo Music Hall**

**Developer: Tupelo Music Hall, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 08001-002004, 10 A Street**

The request is to approve Release #1 in the amount of \$59,097.60 and request a replacement Letter of Credit in the amount of \$34,795.01 for the above noted project. Upon receipt of a replacement letter of credit, the Board will release Letter of Credit #28901 in the amount of \$93,892.61.

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

### **#17-04**

**Project Name: Derry Sr. Development**

**Developer: Same**

**Escrow Account: Same**

**Escrow Type: Cash Escrow**

**Parcel ID/Location: 07058, 6 Drew Road**

The request is to approve Release #1 in the amount of \$25,401.60 for the above noted project. The amount to retain is \$1,296.00.

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

*Ms. Carver entered the meeting.*

## **Minutes**

The Board reviewed the minutes of the January 18, 2017, meeting.

Motion by Fairbanks, seconded by Bartkiewicz to approve the minutes of the January 18, 2017, meeting as amended. The motion passed with all in favor.

*Mr. MacEachern entered the meeting. Mr. Connors stepped down.*

## **Correspondence**

Mr. Fairbanks advised the Board is in receipt of an email from Maureen Rose regarding 125 Windham Road, which will be addressed later this evening. The Town of Londonderry ZBA has sent a notice of public hearing for a variance request to allow a telecommunications tower on Mammoth Road. DES has forwarded a copy of a request for more information regarding an application for an Alteration of Terrain permit for Watts Auto Salvage. Southern New Hampshire Planning Commission has forwarded to the town the 2016 traffic counts. The counts will be available on line shortly.

Mr. Connors asked with regard to the DES correspondence. There are many alterations that took place on that site without notice to abutters. Is this application for work that has already taken place, or for work that is proposed? Mr. Sioras explained Code Enforcement and the State of New Hampshire have been working with the property owner. As legal action is pending, he is not at liberty to discuss it. He believes this permit is for work that has already taken place.

## **Other Business**

Mr. Sioras reminded Board members that any member with a term expiring in March of this year who wishes to be reappointed should contact Sheila Bodenrader in the Town Administrator's office prior to the end of February.

PID 01023-001, 125 Windham Road, Crom, LLC; discussion of relocation of propane tanks and installation of concrete pads

Mr. Granese stated that normally outside of a public hearing, the public does not speak. This evening, he will allow Ms. Rose to speak on this matter.

Mr. Sioras reminded the Board that a month ago, it held a discussion about the site changes at 125 Windham Road. The changes were brought to the attention of the Board by Ms. Rose and Mr. Fairbanks. Mr. L'Heureux at that time explained the changes and gave an explanation as to why they were allowed to occur. Mr. Sioras has spoken with Code Enforcement and Fire Prevention. Staff decided, in consultation with the Chair, to bring the matter back to the Planning Board under Other Business. It seemed that would be the best way to handle the situation and provide the developer an opportunity to explain the changes and for Ms. Rose to discuss her concerns.

Mr. Granese stated following the discussion this evening, he will poll the Board to determine the direction the Board would like to take. He would like to know why the tanks were moved to their current location and why there are now Air Conditioning (AC) units.

Edward Smith and Rico Borrazzo presented. Mr. Smith explained when it was time for building construction, they went to the vendor. The AC units could not go on the roof or hang from the roof; they could only be placed on concrete pads to the front of the building. The noise of the units is at 88 decibels (dB), which is the equivalent of a loud toilet flushing. They will provide a buffer of arbor vitae trees around the concrete pads so they are not visible. The propane tanks are on site. They could not place them in the approved location because of the codes. Representatives from Suburban Propane are here this evening to speak to that. They have reduced the amount of impervious pavement on site from what was originally there. He has seen the letter from Ms. Rose and will speak to her concerns, utilizing the appropriate team members as necessary.

Mr. Granese asked why the AC units could not be placed on the roof. Henry Tracz, representing BETCO, of Statesville, North Carolina, explained his company builds self-storage facilities. This building design is not built to handle the load of AC units on the roof or as hanging units. The building is constructed of light gauge steel, with a 10' grid pattern. There is no heavy steel in the building to support the weight of an AC unit. 99% of the units they construct are constructed without AC units on the roof. It is not a standard practice to put the units on the roof; it would void the warranty. Once the AC units are placed on the roof, the weight, over time, causes leaks. It is not conducive to the way they build their facilities. At this point, they cannot beef up the roof; they would need to completely re-engineer the building.

Mr. O'Connor noted the original site plan had no mention of HVAC or AC units. Did the addition of the HV portion change the weight load? Mr. Smith replied the new building was always listed as a climate controlled building. This is reflected throughout the minutes of the various meetings. The 88 dB for the units is at a range of one foot. Anything beyond that would decline in dBs. The proposed trees will provide a noise buffer. There is an adequate distance to

any neighbor and they will be adding additional trees. He pointed out that no additional trees were cut in association with the changes and they have added several plantings.

Mr. O'Connor said he was aware of outdoor acoustical materials that can be purchased and will add an additional noise buffer, especially in the winter time. He is not sure there would not be an echo effect as these pads are in a corner of the building. Mr. MacEachern asked for confirmation that the HVAC/climate control units were always part of the plan. Mr. Smith stressed it has always been stated that the building would be climate controlled. At one point he went through all of the notes on the meetings looking for the references. He did say there would not be an air conditioning. He made a mistake. He meant his other facilities did not have AC. This building was always listed as climate controlled. He apologizes for the mistake he made while in front of the Board.

Mr. MacEachern asked if climate controlled means heat and AC. It does. On the original plan, where does it show the units? Are they not there? Were they always planned? He assumes they were not there since they are now before the Board. He confirmed the AC units were not on the drawing but 'climate controlled' was part of the discussion. Mr. Smith said in the minutes, during all the site visits and between meetings it was referred to as a climate controlled building. He did miss it while speaking before the Board and it is not shown on the plan. They were omitted from the drawing by mistake. Mr. MacEachern asked Mr. L'Heureux for his recollection of when it was brought to his attention.

Mr. L'Heureux said it was within the last couple of months; he could not pin point an exact time. Mr. MacEachern indicated he just wanted a timeframe so he can make a determination. He feels this is a significant change to the plan and something the Board was unaware of.

Mr. Granese asked if 'climate control' would be on the building sign. Mr. Smith said it would not, but it will be on the website. Mr. Granese noted the sign facsimile on the approved plans did not mention it.

Mr. Connors admitted he was not on the Board for the original decision but was aware of the project. The existing facilities are not climate controlled. His recollection was this was to be an extension of that project. He confirmed the property has been sold. Mr. Connors asked if Mr. Smith had proof of the discussions that the building was to be climate controlled. Mr. Smith responded with the following dates and page numbers of minutes spanning TRC meetings, ZBA hearings, and Planning Board meetings: April 11, 2014, page 2; September 13, 2014, pages 1 and 2; August 21, 2014, pages 3 and 5; October 2, 2014, pages 1 and 11; and November 5, 2014, pages 12 and 14.

Mr. Connors was shocked that the inclusion of AC units was missed during plan review. Who is responsible for that and is that something the Planning Board should have caught during its review? What is the distance from the units to Ms. Rose's property? Mr. L'Heureux stated it is over 100 feet. Mr. Connors noted the arbor vitae seem to be placed against the building, not outside the pad; is that accurate and will that be noise cancelling on that side? Mr. Smith added there will be a fence along the property line. Mr. Connors asked if there is an option to add an enclosure around the AC units so that noise is directed up rather than out. Mr. Smith felt

visually, arbor vitae would be better than a wall around the units. The noise of the units is not much louder than a flushing toilet. Mr. Connors said it was concerning this item was missed. The abutter has concerns. The Board did what it could during site plan review to make sure her concerns were addressed. He wants to see where this goes and to see if the Board can make everyone happy. He is just asking questions.

Mr. Borrazzo said he understood noise leaving the site is a concern. It is a concern for them as well; they want to be good neighbors. The plantings will mitigate the noise travel. There will also be a vinyl fence on the other side of the drive area. The existing home on the site will also provide a noise barrier, along with the additional plantings. The dB level, per town code, at the property line should be no more than 80 dB. They are at 88 dB one foot from the units. By the time the noise gets through all of the barriers, they are confident the level will be below 80 dB. Mr. Connors asked if the approved design of the building on the original site plan had the cut out area where the AC units are now planned to be located. It was. Mr. Connors asked if there is any other place where these units can be located. Mr. Borrazzo said they exhausted all possibilities for another location. There is not one. They held many site meetings in an attempt to locate one. Mr. Connors asked how close ~~to~~ the units have to be to the building. Bernie Temple, Eric Mitchell & Associates, explained the units have to be against the building because of the duct work; the units also need to be located off the pavement. The entire building is paved along the perimeter. That is why there are concrete pads. This is why they are located there.

Mr. Granese read from minutes of several meetings. The ZBA minutes of October 2, 2014 state, "Mr. Perkins asked if it would also have air conditioner located on the roof. Mr. Smith said that there would be no air compressors on the roof as they would have a sloped pitch roof line." In many places, the minutes say climate controlled or heat so the building does not freeze. Planning Board minutes, November 05, 2014, reflect, "Edward Smith, applicant, stated there would not be any air conditioning units. The building will be heated in the winter months to 50°F. All of the heating units will be inside the building and will be hanging units."

Mr. L'Heureux explained procedure and process. AC units are considered accessory to a building and are not shown on a site plan because the building construction plan is reviewed by Code Enforcement. He wanted to point out this has happened to other sites in the past. Building appendages, such as AC units, are not shown on site plans pending completion of the building design which is ongoing and is normally finalized after site plan approval. Mr. Granese reiterated it had been stated there would not be any AC units.

Mr. Flattes asked if there was a copy available of the documents that referenced all of the times "climate controlled" was in the minutes. Mr. Borrazzo provided a copy for review during the meeting.

Mr. O'Connor spoke with regard to the propane tank location not being to code. In 2014, the propane tanks were proposed to be in the location which is now proposed for the AC units. That location was approved by the Fire Department. Was it because of the addition of air conditioning that the propane tanks were moved?

Mike Welch and Mark Bausha of Suburban Propane provided information with regard to the propane tanks. Mr. Welch advised he has been in the industry for 35 years and is a senior technician and teacher. The propane tanks could not be installed per plan because that location did not meet NFPA 58, §6.3 which refers to the distance to the traveled way. They had to maintain a ten foot distance. This is not the first time they have found they could not place tanks in an approved location because of the code that may have been missed by an engineer or inspector. Their duty is to ensure the tanks are installed safely, per the code. The tanks had to be at least 10 feet off the side of the building and 10 feet from a parking area. The plans as drawn left no room to put the tanks there. They can meet the building distance but they could not meet the distance to the parking area.

Mr. Fairbanks asked if it was possible to put the tanks anywhere else on site. Mr. Welch explained the area behind the existing house has a down slope and water could enter the tanks through the dome. Mr. Smith added that Ms. Rose and the Board were very particular during the public hearing discussions that the back side of the property, the brush, and the wildlife not be disrupted. That area was not an option.

Mr. Fairbanks noted the new plan shows the tanks 10 feet off the building and the driveway; he believed they could have stayed where approved if the parking spaces had been removed. It looks like there is more than 10 feet there. Why not move the parking spaces instead of moving the tanks? Mr. Smith said they were looking for minimum disruption of the approved site plan. He has worked with the town closely on this project; the town has been incredible to work with. Everything they have done was looked at as a minor site plan revision and he did not want to change what they had done or affect the parking calculations. Mr. Fairbanks noted the units are full air handlers; he is familiar with them as he works in the industry. Where is the documentation that shows the noise level is at 88 dB? Mr. Borrazzo provided a copy of the documentation sent from the manufacturer which he just received. Mr. Fairbanks admitted he was less concerned about the propane tanks than the AC units. Mr. Borrazzo stated the noise level of the units while running is at a comparable decibel level (86 dB) as a toilet flush. He researched various dB levels to find comparisons for the Board. A cricket chirp is over 100 dB at the one foot range.

Mr. Connors asked about the propane tanks. Since the original climate control was to be heat and self-cooling, were the propane tanks proposed during site plan review smaller? Mr. Welch said the AC unit is heat and air conditioning. The units are manufactured as one unit. The AC portion does not utilize propane. They calculate how fast the gas can vaporize. Based on the calculation and industry practice, one 1000 gallon propane tank would not be enough to supply the two heating units. He believes the original approval was for the two tanks. Mr. Borrazzo confirmed the size and number of propane tanks did not change from the original site plan approval. Mr. Connors asked if the four parking spaces were on the original plan. They were and the plan was approved by the Fire Department. The configuration on the original plan does not comply with the safety code even if they had decided not to add AC. Mr. Connors commented in his experience, small pool heating units are loud.

Mr. O'Connor confirmed the propane tanks are underground. Mr. Flattes asked where it was recorded the Fire Department stated the propane tanks could not be against the building and

recommended they be moved and surrounded by bollards. Mr. Granese advised that is recorded in the TRC notes of August 1, 2014, on page 5. “Eric advised they will use LP gas for the climate controlled building. He asked if James [Kersten] could recommend an area for the gas so that the tank is out of the way of the Fire Department. James said it might be too close if placed in the jog of the building. He would need to review NFPA 58. He noted he would like to see bollards over the tank so that a car/snow plow can’t hit it.” Mr. Borrazzo stated the comment had been that it “might be” too close. There had been no follow up from the Fire Department, so they believed it to not be an issue as the plan was then approved. They did not realize it was an issue until the professionals came on site and said it was not to code. The propane tanks are installed. The bollards are 4 feet tall. Mr. Connors asked if they will remove any of the bollards. Mr. Borrazzo advised they spoke with Mr. L’Heureux and they will remove several of the bollards for aesthetic purposes, leaving an appropriate amount so as not to compromise safety.

Mr. Granese said in November of 2014, the applicant had stated there would be no AC and the ~~heating~~ heating units would be hung. Why has there been a change and why are the HVAC units outside? Mr. Smith explained that when constructing a building, the process is to take bids on the project. They were behind in their projected timeline. BETCO was awarded the contract and builds a good project. During the process, he was alerted the building is constructed a bit differently than he has seen at his other facilities. In his other facilities (Pembroke, Amherst, and previous ones he has owned), the heating units are hanging inside. This building is manufactured and constructed differently. The engineer on the original site plan is Eric Mitchell and Associates. Mr. Granese suggested that after approval if there was a change from something specifically stated during the public hearing, it would have been better to let the Planning Board know about it.

Mr. Smith said he had lengthy conversations with the Town of Derry staff over the changes. This was considered an appendage to the building which would be a slight revision to the plan. Had he known he should have approached the Planning Board, he would have. He has invested a lot of time and effort into this process. In hindsight, he would have done a lot of things differently.

Mr. Fairbanks asked with regard to various options available. Could they have moved the parking spaces so that they could keep the propane tanks in the approved location?

Mr. L’Heureux explained that they never discussed moving the four parking spaces. He made the decision to approve the new location of the propane tanks. The decision making process was that they could not meet code in that spot and this was viewed as a minor construction change. This has happened on other projects and it has not been an issue. Mr. Fairbanks felt given the sensitivity of this being right on the street and the buffers, that they could have moved the parking spaces and then the installation would have been to code. Mr. L’Heureux stated moving parking spaces on a site plan is considered a major change. Elimination of parking could be an issue with the use of the property. Mr. Fairbanks rebutted the plan was also approved with the location of the tanks in a less obtrusive location.

Mr. L’Heureux explained there is no regulation that stipulates the tanks could not be located there.

Mr. Connors confirmed the parking spaces are 18 feet long. If the four parking spaces were eliminated and the bollards were placed along the drive, would the tanks then fit to code? Mr. Temple said he would need to measure the distances. The reason the corner of the building is shown as a jog is because they had to accommodate for the traffic flow around the building for the Fire Department. In order to retain the house and driveway, they had to cut that corner. They provided the required number of parking spaces and green space on the plan. This is a perfect place for four parking spaces. If the parking spaces were gone they may be able to put the tanks there, but that takes up green space elsewhere to create parking.

Mr. Fairbanks felt the new location of the propane tanks was precipitated by the decision to add AC units for the building. Mr. Temple said the parking spaces were always noted in that location on the plan. Mr. Connors felt something was missed on both sides. The developer now wants to have AC units and he would like to hear from the abutter.

Mr. Borrazzo said they have stated this would be a climate controlled building since the inception of the project. The dictionary defines climate controlled as having temperature and humidity changed by means of a cooling and heating system. The building was to have air conditioning from day one but that was not shown on the Planning Board plan. Mr. Granese advised the record does not reflect that as Mr. Smith specifically said there would be no air conditioning, just heating units and those would be on the inside.

Mr. O'Connor commented the Board had granted a waiver from the parking requirement (LDCR Section 170-63.D.1) to allow no specific parking spaces. He therefore felt the parking spaces had been removed from the plan. It was understood people would park in front of the overhead doors.

Maureen Rose, 115 Windham Road, said she was very upset by this whole situation. On December 2, 2016, in the back yard, trees came down in the 50 foot buffer. She did not know what was going on and walked to the front and could see all this stuff in the front yard. She took pictures, which she has shared with the Board (copies are in the file). She took the pictures to town hall and showed them to Mr. Mackey in Code Enforcement. He thought it was propane in the front yard. She has been to town hall every week since construction started in August to keep in touch with the town and to make sure officials were paying attention and watching what was going on at this site. For three days, they crushed rock on site; she is sleeping with pillows on her windows because she does not know when this is going to be done. They have 2000 gallons of propane, fifty feet from her lot line. Her house is not far away and sits on a bend in the road. There is a telephone pole on the corner of Windham Road that has been hit two times. She does not want there to be an accident where she has to be evacuated from her home because of a propane leak. She did not want to die by explosion. Ms. Rose said the best solution is to put the propane tanks down back. They can raise up the dirt and put it somewhere else on the three acres. The town engineer looked at it. She talked to the Fire Chief this week and the Inspector. If the tanks are underground the propane can be 10 feet from the building. They can be put in the back so long as they leave room for access to the septic tank. They should put the propane tanks to the back. If they blow up it will take a while to get to her. The AC/heating units are in an alcove. Sound travels. She can hear the guys talking outside. The land is a big echo



chamber. She does not want to hear the noise at night. The other buildings do not make noise. This is a complete change. The abutters never had a chance to discuss sound. The size of the tanks was never brought up. 2000 gallons is a lot of propane. For the heating and cooling units, where is the gas? Is there any possibility of a spill? Will the neighboring wells be protected from contamination? Mr. Granese explained the gas being referred to is propane. Ms. Rose asked if there are any chemicals of which she needs to be concerned that will affect the wells. Who checks the amount of salt that gets put down in the winter? She had to have a second well dug because her first well was not installed correctly. She already has salt in her well and it is being monitored because of the I-93 expansion. This should be monitored. This is a residential neighborhood; not an industrial park. She does not want to move. She wants this to be done. There is a new neighbor who has no buffer from this use. The prior owner of that home did not attend the public hearings or provide input. The board needs to think about the long term effects. What about generators? Where will they be? Outside her window? They lose power in this area of town quite a bit. No one has mentioned generators. She does not want that to be an oversight too. She would like any generators to be put down back too. Mr. Smith is a millionaire. Why is he groveling over these little details? They should make her happy and be gone.

Mr. Granese stated the discussion needs to stick to the main issues which are the propane tanks and AC units. What would Ms. Rose like to see done? Ms. Rose replied she would like them to put the propane tanks out back. Put the AC units out back; it can't cost that much to do that. Mr. Granese asked Ms. Rose how she felt about the Board discussing putting a sound barrier around the AC units. Ms. Rose said she would like an opportunity to discuss her options. She would need to be educated on how the sound would carry. She wants to be able to sleep at night and would like some quiet. She hears beeping now in the morning when the trucks come on site. She has some trees, but they don't do much to block the sound. She provided the Board with pictures so they could see what she sees. The wide open area is huge. They can put stuff over there. She wants less sound and more safety. She wants protection so if the tanks blow up, they blow up his house and the storage unit. This is a residential neighborhood. What would the Board want if this was beside them? She does not want to be unreasonable. She wants to protect her investment. The bollards should not be removed. They should add more so that if the telephone pole falls it will land on them. She wants something that is blast proof and needs reassurance. The ideal solution would be to put everything out back so that she does not see it so she will not worry about it. It will only affect the railroad bed and trees. It would be far enough away to give them a reprise. Regarding the 50 foot buffer, maybe the Board needs to look at that. There is a septic system, a septic line, a house, and a shed within her 50 foot buffer already. This was not brought up at the Planning Board hearing. It was represented it would be inside and there would not be any noise. She thanked the Board for discussing this.

Mr. Granese confirmed all development is taking place in the Industrial V zone.

Ms. Davison asked Ms. Rose to explain the views from the property line shown in the pictures. Ms. Rose approached Ms. Davison individually and explained the pictures. She noted ~~cares~~ cars are being parked next to the bollards. She had a concern that a cigarette butt thrown near the tanks could create a problem. She pointed out the home on the industrial lot and her home in relationship to it.

Mr. Connors said he understood the concerns. This project will not go away. He asked if Ms. Rose has a propane tank at her house. She does not. Mr. Connors offered he has a 1000 gallon underground tank located 50 feet from his home. She may not need to be that concerned about the underground tanks. To put the propane tanks to the back of the property would change the approved plan substantially. They have only moved them about fifty feet. He thought the main question would be the AC units and the noise. Mr. Connors noted the experts have said the AC units need to be against the building. He wants to know if there is an alternative location. Knowing the project is not going away, what would be the things that would make Ms. Rose say she is okay and comfortable with the developer moving ahead?

Ms. Rose recalled during the ZBA hearing, the thought process was that the existing single family home would be a nice transition between uses as there would be a house next to a house. It looks awful. Property values would decrease with that there. She is not sure anyone would buy a house with 2000 gallon tanks there.

Mr. Granese pointed out the propane tanks were discussed previously. Ms. Rose did not recall them discussing the size of the tanks. They were planned to be next to the building so it was probably not as much of an issue for her since if the tanks exploded it would affect their building. The propane tanks should not have been put in the ground without anyone knowing about it. Mr. Granese explained the plan stated the tanks were underground tanks. They are safer underground than above ground. Ms. Rose said that is fine; but they were ten feet from the building and the town's engineer never said anything about them having to be moved. If they were above ground, they would have to be 25 feet away. She proffered the new location, adjacent to the driveway, might be a more convenient location for the propane company to fill the tanks and that might have been part of the consideration on the location.

Ms. Rose said the driveway next to the house on the storage unit lot will now have propane tank filling, oil filling, and UHauls for tenants moving in and out. That is all traffic that can affect those underground tanks. She is not sure a soundproof fence along the property line will make a difference. It is wide open and sound travels. She did not want another six months of Planning Board meetings. Someone needs to make a decision. Mr. Granese said the intent of the discussion tonight is to decide if there should be a compliance hearing on these changes or not. Ms. Rose said she was willing negotiate with the town on a solution. This has gone on for many years. The plan was approved in 2014. They did nothing in 2015. They did not begin construction until the property was sold in 2016.

Mr. Fairbanks asked if there would be any generators. Mr. Granese said that was never discussed. Mr. Smith said there will be no generators. He asked for a moment to speak to the Board.

Mr. Smith said he has worked with the Town of Derry and its officials. He believes if the Board members spoke with the officials, they would tell the Board that he has been above board and his process is to dot all the "Is" and cross all the "Ts". He purchased this property because it is zoned Industrial. Is it true he has sold the property? Yes. Is he here to stand behind his project and what he has done? Yes. This is one of his projects. He will do it to an A+ value and is proud of his site. He is proud of his site personnel, the metal erectors, the concrete personnel, the

engineering personnel, and his team that has worked on this project. Many times over the last three years he has extended an olive branch (to the abutter) to obtain input on the project and has met with extreme resistance.

Mr. L'Heureux approached him and explained they would have to make an adjustment, and advised there was a financial impact. Mr. Smith stated he asked Mr. L'Heureux if it concerned complying with code. It did and Mr. Smith said yes, he would do it. He has worked with the Planning Board, the town, and has tried to work with the abutter. He is exhausted. He has done all he could do in his power to try and work. If the Board would like a fence around the AC units with sound-deadening, he will put a fence. He can keep the bollards and the trees. The Board just needs to say so. It is hard to move forward with the project, but he was taught to do the right thing and to not give up.

Mr. L'Heureux said there were several changes to the project. He looked at the relocation of the propane tanks the same way he did the alteration of a barrier, drainage, and adding extra drainage. He looks at the whole site in the same regimented fashion. He makes sure any change meets the spirit and intent of the approved plan. He reviews the regulations to make sure any changes are not eliminating something critical to the plan or altering something into a location where it is not permitted. In all those instances, he has abided by those specifications and regulations. He is not a propane expert but noted the tanks could not be in one place or another. He did not approve the manner in which the bollards were installed. He assumed that was a requirement of the propane installer. The inspection of the tanks falls under the jurisdiction of the Fire Department. The climate control units are not a major change. Almost every commercial building is retrofitted with an exterior central air system in almost every instance where he has done inspections during construction. With central air, sometimes the units get moved along the outside of the building during the permitting process. Propane tanks get moved. He pays attention to items such as trash receptacles because there are established guidelines and setbacks for those items. He looks at it and incorporates the standards and will push back on the developer as much as he can. The developers are aware of this from the start. The very first agenda item during the pre-construction meeting is that there will be no substantial changes to the project that require re-engineering of the plan. Any substantial changes get sent back to the Planning Board and the developers are put on notice of that fact. In this instance, he tried to steer them into retrofitting the building and was told they had difficulty doing that.

Mr. Granese commended Mr. L'Heureux for the work he does for the town. His biggest concern is that there was no AC proposed and now it is on the plan. Mr. Flattes asked Mr. L'Heureux if this project had more field changes than most. Mr. L'Heureux stated all projects have field changes for items like elevations and drainage. These are things that are not seen. Many changes are for underground items such as the amendment of catch basin locations, or water and sewer lines. This site is no different than any other. In fact, this project has had fewer field changes than many of the larger sites he has inspected.

Mr. Fairbanks appreciated this is an Industrial V site. Ninety-nine percent of the time these types of changes are the norm. However, this Industrial V site is in a former residential area. The Planning Board discussed ways to protect the abutters. In most cases, this would be a minor change. The spirit of the conversations at the public hearings was about working with the

abutters. They did a good job with the trees. But now there is a change that plopped something close to the buffer, he felt it was a major change. The spirit of the Planning Board decision was to try to work with the buffers in an Industrial V site, adjacent to a residential neighborhood.

Mr. Connors confirmed the house on the Industrial site is part of the development lot and Ms. Rose lives in the abutting home which is on a residential lot. He earlier thought her house was the one with the propane tanks in front. The propane tank is quite a distance from her home and will be sufficiently screened once the arbor vitae are in place. The distance from her home to the AC units is even further. Can the Board hold escrow until they run a decibel test on the AC units to ensure they are within acceptable limits and then the issue can be mitigated. Mr. Granese said the Board cannot; the plan is already approved. There have been changes and the developer is here because of the changes on the original plan. The Board cannot change the escrow. Members tonight need to decide a direction. The Board can leave the situation as is, or can schedule a compliance hearing. Any changes to escrow would have to be discussed during the public hearing.

Ms. Carver noted the developer had stated all possible locations had been reviewed before deciding to place the underground tanks in the front yard of the house on the lot. What was the iterative process, and how exhaustive was it? Mr. Borrazzo explained the site has retention ponds, swales, elevation changes, and the buffer. Mr. Borrazzo, Eric Mitchell's office, Mike Sauvola and a representative from Leighton White looked at the site plan, and walked the entire property to see if there was an alternative to placing the tanks in the 50 foot buffer. The buffer took up a large portion of the discussion during the public hearing and they did not want to touch it. Mr. Borrazzo reviewed the site plan with Ms. Carver.

Mr. Granese advised the Board needs to decide on a direction. Mr. MacEachern felt the Board should determine the question with regard to the AC units. Is the answer yes or no based on the documentation provided at the previous hearing. If the answer is yes, there are some follow up questions. Should the Board hold a public hearing and put regulations around the units such as buffering? With regard to the propane tanks, Mr. L'Heureux made a professional decision and has provided his opinion. Mr. MacEachern said the tanks were too close to the parking lot and they can't be too close to a paved surface. Mr. L'Heureux had to decide if they should eliminate parking spaces or move the underground tanks to an area where they are not visible and can be screened. Those are the alternatives. The Board can debate whether or not they should have come back to the Board, or if the Board is content to trust staff. The Board can ask, is there enough protection? The driveway is shown on the plan provided to the Board this evening. One leg of the driveway leads to the house, the other leads to the storage units. The driveway in the pictures provided by Ms. Rose is the driveway to the house. He trusts Mr. L'Heureux's professional decision on the propane tanks. The question he has is with regard to the AC units, based on the facts provided in the documents.

Mr. Granese said the Board approved the plan in November of 2014. The new plan shows AC units and a new location for the propane tanks. His concern is the addition of the AC units. There were to be heating units. That is a big change for him. He understands why the propane tanks had to be moved. He feels the Board should hold a compliance hearing but limit discussion to only a few issues. If the Board holds a public hearing, the Board should accept a

revised plan because there has been a change with the addition of the AC units and the propane tanks have moved; the Board should discuss protection of the propane tanks and buffers to the AC units, and the location.

Mr. Sioras advised the Board has held compliance hearings before and narrowly defined the parameters for discussion. The abutters would be notified of the public hearing. He stressed this would not be a new review of a site plan – just for the three items discussed. Mr. Granese agreed that the plan could then be reviewed for the three items and approved.

Mr. Granese said if the Board held a compliance hearing it would be to 1) accept the revised plan as presented to the Board this evening. 2) Discuss two changes: the AC units and the propane tank location. Regarding the propane tanks, the discussion should be limited to the protection around them. 3) If the AC units stay, the Board will need to discuss a buffer for those units. This would get all the changes on record.

Mr. MacEachern suggested limiting discussion about the propane tanks to the protection around them. They are already in place. Mr. Granese said the location of the tanks should be discussed because the location has changed. Mr. MacEachern supports Mr. L'Heureux's findings. Mr. Fairbanks felt there should be a decision made with regard to the location of the tanks. He commented if there were no AC units, the tanks could have stayed in the proposed location. The parking spaces could have been eliminated and the tanks could have been placed as approved.

Ms. Davison asked Mr. Smith if he had the authority to represent the property as the lot has been sold. Mr. Smith advised that half of the property is still his.

*Mr. Granese polled the Board to see if the Board members would like to hold a compliance hearing on March 15.*

*Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese all stated yes, with Fairbanks adding he would agree if the Board discussed the location of the underground propane tanks.*

A compliance hearing will be held on March 15 to discuss the three items outlined by Mr. Granese; abutters will be notified.

#### Sign Ordinance – Attorney Review Comments

Mr. Sioras reported the sign ordinance had been forwarded to Attorney Boutin for review to ensure compliance with the Federal *Reed v Gilbert* case. Attorney Boutin had a few suggestions.

Motion by Fairbanks, seconded by Bartkiewicz to make the letter dated January 18, 2017, from Boutin & Altieri, PLLC, public.
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Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.
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Mr. Sioras explained normal procedure is to take the review to workshop, but he wanted the Board to have the benefit of the comments. Mr. Mackey could be available for a workshop. A workshop will be scheduled for a future date and the Board members apprised accordingly.

### **Public Hearing**

**New Wave Diversified, LLC  
154 Hampstead Road, PID 09081  
Review, 2 Lot Subdivision  
Continued from January 18, 2017**

*Mr. O'Connor recused himself. Ms. Carver sat for Mr. O'Connor.*

Mr. Sioras advised as discussed at the last public hearing, the applicant has provided additional information. There have been no changes to the plan, other than the details that have been added to the hydrant exhibit. Staff recommends the Board reconsider the motion denying the waiver. The Board has before it additional information with regard to the hydrant and from Assistant Chief Jackson.

Tim Peloquin, Promised Land Survey was present with Attorney John Cronin, representing the applicant who was in the audience. Mr. Peloquin advised the measured distance from the center of the driveway to the hydrant is 568 feet. The hydrant exhibit shows that distance. The plan also shows the distance to the water line on Hampstead Road. That is a lesser distance. They are asking the Board to reconsider the waiver based on the new information.

Attorney Cronin noted there had been a lengthy discussion at the last meeting. He assumes the Board members who were not present at the last meeting have had an opportunity to review the minutes and the record. They are asking for a reconsideration of the waiver which was denied on December 07, 2016, as they feel they meet the spirit and intent of the regulations. It is clear in looking at the legislative history that the life safety goals as outlined in the LDCR are threefold: through a direct water connection which in an ideal world is the preferred option, through a cistern, or through residential sprinklers. He looked at the history and minutes from Assistant Chief Jackson, who did not take a position but said he would support residential sprinklers. They have looked at the particular distances, the setback from the road and right-of-way on the opposite side of the street, the distance of moving it 65 feet to get to the 500 foot limit, and the associated costs, which would be over \$50,000.00. It has not been discussed that there is a private property located at the corner which would be the most accessible place to move the line. There is a culvert in the area, and they would need to obtain construction easements for the private property and the shoulder. No private landowner has the right to do that. This is a state regulated roadway and he can't see the state or the town commencing eminent domain proceedings. The practicality involved in the work and the financing make this proposition difficult. In looking at safety goals, they are not challenging this property would have individual sprinklers which would provide the essential life safety security. When they consider adding 568

feet of water main, when AC Jackson said sprinklers provide adequate life safety measures, they feel the sprinklers meet the spirit and intent of the regulation. It is not fair to have the developer spend \$50,000 on improvements for the addition of one lot. They are asking that the Board looks favorably on their request for reconsideration based on the new information the Board requested and has received.

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

Herbert Goodrich, 6 Penny Lane, had comments aside from the water issue. The ZBA had recommended the Board increase the buffer requirement and he is requesting that the Board please address that as well.

James Kelly, 7 Penny Lane, said the plan keeps changing. It has been said the Chief gave permission, is there a letter that says the Chief is okay with the changes?

There was no further public comment.

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

Mr. Flattes thanked the applicant for providing the extra documents.

Mr. L'Heureux pointed out conflicting notes on the plan. Note 10 on Sheet 3 conflicts with the buffer label on sheet 2. Sheet 2 references 4'5" tall and sheet 3 references 3 feet tall trees. This has been discussed at previous meetings. They should both reference a minimum of 4 foot tall trees with five foot spacing. Mr. Fairbanks and Mr. L'Heureux pointed out if the Board reconsiders the waiver, and decides not to grant it, there are no construction details on the plan for what would have to be proposed to extend the water service.

Mr. Connors acknowledged the additional information, adding it would have been helpful to have this information earlier. This all started with a claim that the hydrant system had inadequate pressure and that was the main crux of the hardship. That information was supplied by the applicant. The information from the Water Department and Fire Department shows the hydrant has adequate pressure. The decision now before the Board is to determine if the Board will allow 68 feet from the 500 foot regulation. That is a different argument than the discussion that started this.

Mr. Peloquin spoke to the previous waiver request. Per Fire Prevention, it was not believed there was sufficient pressure. It took time to get the information on the pressure on the hydrant.

There was a short discussion relative to which Board member could make a motion to reconsider. Attorney Cronin pointed out that since the decision to deny was unanimous, and the motion had been made in the affirmative to approve; any member could make the motion. Mr. Granese read the record of the vote from the December 07, 2016 meeting.

Motion by MacEachern, seconded by Bartkiewicz to reconsider the decision to deny a waiver request (LDCR Section 170-30.1 and 170-28.D) made on December 07, 2016. Discussion followed.

Mr. Granese advised a motion to deny reconsideration would mean the waiver decision stands as it is, denied. A yes vote would mean the Board would move on to a new vote on the waiver request.

MacEachern voted no, for similar reasons stated at the previous meeting; Davison voted yes, Bartkiewicz voted yes, Fairbanks voted yes, Ijtsma voted no for the reasons stated previously, Foote voted no for the reasons stated previously, Carver abstained, and Granese voted no for the reasons stated previously. The motion failed by a vote of four no, three yes, and one abstention.

Mr. Fairbanks asked if Ms. Carver had to give a reason for her abstention. Mr. Granese did not recall that being the procedure followed in the past.

Mr. Sioras advised the Board will need to make some determination on the plan.

Mr. MacEachern said at this point, there are no construction plans for the Board to review. Mr. Peloquin stated they will need some time to amend the plan and add those details. They will need to extend the water line 40 feet and extend the hydrant to less than 100 feet of another hydrant, or seek other action. They will need more time. It was agreed to extend the clock an additional 30 days; which would then end around April 10th. Mr. Peloquin did not feel they would need that much time to revise the plans. His client will be out of town and could not attend the March 1 meeting; therefore, they would request to be placed on the March 15<sup>th</sup> agenda.

Attorney Cronin asked that the Board provide specific findings as to how this case is different from the Doolittle case for which the Board granted this exact waiver. He would also like the Board's feedback on if the hydrant is moved to the 500 foot level, that the Board would agree there is no need for sprinklers. Mr. Granese said that could be discussed during the next hearing; speaking for himself, he prefers not to discuss other plans that were either approved or denied by the Board. Attorney Cronin said his requests speak to his fact finding.

Motion by Bartkiewicz, seconded by Fairbanks to continue the public hearing to March 15. Discussion followed.

Mr. Fairbanks confirmed the Board would discuss Attorney Cronin's request on how the Board dealt with specific findings on the previous case. Attorney Cronin said he would place his request in writing. Mr. Connors asked if the Board needs to decide if the applicant should move the hydrant or add a hydrant. Mr. Granese said that would be discussed at the next hearing.



Ijtsma, Foote, Carver, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

*Ms. Carver stepped down and Mr. O'Connor resumed his seat.*

**Public hearing relating to Planning Board submission deadlines: Discussion of proposed amendments to LDCR Article VI, Section 170-19, General Provisions, to change the submission deadline to 21 days prior to any regularly scheduled meeting and Article IX, Section 170-58, General Provisions, to change the submission deadline to 21 days prior to any regularly scheduled meeting. The purpose of the amendment is to revise the Planning Board submission deadlines to be in accord with RSA 676:4.**

Mr. Granese noted the Board has discussed this change.

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

There was no public input.

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

Ms. Davison confirmed the change is as a result of a change in statutory requirements.

Motion by O'Connor, seconded by Bartkiewicz to approve an amendment to the Land Development Control Regulations, Sections 170-19.B and 170-58.B, to revise the submission deadline from 15 days to 21 days before any regularly scheduled meeting.

Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks, and Granese voted in favor and the motion passed.

## **Workshop**

Workshop #3 – Review of proposed amendments to the Zoning Ordinance, Article II, Word Usage and Definitions, Section 165-5, Definitions

Mrs. Robidoux noted the proposed definitions still need work. Mr. Sioras advised there is a light agenda on February 15<sup>th</sup>. A workshop could be taken up that evening. There are no public hearings scheduled; the Board will discuss the Capital Improvements Plan.

Mr. Granese advised this workshop will be moved to February 15<sup>th</sup>. He asked that the Board members provide input on the proposed definitions to staff prior to that.

Motion by O'Connor, seconded by Bartkiewicz to adjourn. The motion passed unanimously and the meeting stood adjourned at 9:09 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_