

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 05, 2017, at 7:00 p.m., at the Derry Municipal Center (3rd Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; John O'Connor, Vice Chairman; Michael Fairbanks, Secretary; Brian Chirichiello, Town Council Liaison; Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Jim MacEachern, Lori Davison, Members; Mark Connors, Elizabeth Carver, Alternates

Absent: Mirjam Ijtsma

Also present: George Sioras, Planning Director. Elizabeth Robidoux, Planning Assistant, Mark L'Heureux, Engineering Coordinator; Robert Mackey, Code Enforcement Officer

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.

Ms. Carver was seated for Ms. Ijtsma

Election of Officers

Mr. MacEachern stated over the last year the current slate of officers has served the Board well. There is a lot on the Board's plate this year and he would like to recommend re-election of the current officers.

Nomination by MacEachern to re-elect Granese as Chairman, O'Connor as Vice Chairman, and Fairbanks as Secretary. Bartkiewicz seconded the nomination.

There were no other nominations.

Mr. Fairbanks asked if anyone had an interest in being Secretary. No member expressed an interest.

Chase, Carver, Chirichiello, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the nomination passed.
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Escrow**#17-08****Project Name: Groundhog Landscaping****Developer: 6-8 Bowers Road****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 02065, 8 Bowers Road**

The request is to approve a release in the amount of \$23,425.20 and request a replacement Letter of Credit in the amount of \$20,023.20 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release Letter of Credit #27363 in the amount of \$43,448.40 drawn on Enterprise Bank.

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

#17-09**Project Name: Annual Review of Cash Escrow Accounts**

#11-12	T-Mobile Northeast	\$17,385.92
#13-08	Bella Vista Homes, LLC	\$8,544.06
#13-32	H&B Homes	\$4,252.30
#14-11	Donahue Family LLC	\$9,652.71
#14-16	Samuel Kershaw	\$44,896.00
#15-05	Erin Smith	\$712.80
#15-11	OSP Realty, Inc.	\$20,703.60
#16-02	Craig Bonneau	\$12,221.28
#16-23	James N. Taylor	\$5,000.00
#16-25	Grace Homes Excavation	\$5,767.20
#16-26	Indian Hill	\$153,587.80
#16-30	Doolittle	\$5,814.00
#16-41	Varsity Wireless	\$26,166.24
#17-04	Derry Sr. Development	\$1,296.00
#17-05	David Barka	\$1,069.20
#17-07	Timothy Swinerton	\$17,573.76

Motion by MacEachern, seconded by Bartkiewicz to find the list of open cash escrows are held in amounts which provide adequate security for the proposed length of the project. The motion passed with Chirichiello abstaining.

Minutes

The Board reviewed the minutes of the March 15, 2017, meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the March 15, 2017, meeting as written. The motion passed with Chirichiello abstaining.

Correspondence

Mr. Fairbanks reported the Board has received an updated contact list for the Planning Board members, and a letter from FEMA advising there will be field surveys conducted between March and April and residents may see project survey crews on bridges, dams, and rivers during those months. The Board has also received a copy of the most recent Town & City magazine.

Other Business

Mr. Granese welcomed Mr. Chirichiello to the Board, acknowledged the reappointment of Mr. Bartkiewicz, Mr. Chase, and Ms. Ijtsma. He also expressed thanks for the work Mr. Flattes performed as an alternate of the Board for the last three years. Mr. Granese commented there is an alternate position open for a three year term.

Planning Board Work Schedule

Mr. Granese noted the Board will have a busy next few months and based on the amount of work to be done, the Board will likely work through the summer schedule. He would like to invite the Economic Development Advisory Committee to a joint workshop with the Planning Board.

Mr. Sioras advised the Board will hold the public hearing with regard to the sign changes tonight, and will likely be able to move forward with scheduling public hearings on the definitions and accessory dwelling units in May. Once those have been completed, the Board can begin workshops on the other amendment items.

Schedule Public Hearing Zoning Amendments, Article II, Section 165-5, Definitions

Motion by MacEachern, seconded by Fairbanks to schedule a public hearing for May 3, 2017, regarding proposed changes to the following section of the Town of Derry Zoning Ordinance: Article II, Section 165-5, Definitions to ADD definitions for Abandoned, Abattoir, Agritourism, Animal Hospital, Aquifer, Artist, Attached, Bottling Facility, Brewer, Brewery, Brewpub, Buffer, Accessory Building, Building Area, Building Material Storage Yard, Bulk Fuel Storage & Distribution, Change in Use, Commercial, Community Center, Community Oriented Recreational Facility, Community Water System, Contractors Yard, Cultural Facilities, Density, Development, District, Dye Stuff Manufacturing, Equestrian Facilities, Equipment Upfit Repair, Expansion of Use, Excavation and Soil Removal, Commercial Excavation, Farm, Farm Roadside Stand, Farmer's Market, Floodway, Forestry, Foundry, Freight Terminal, Fuel & Storage Tanks, Groundwater, Groundwater Recharge Areas, Impact Fee, Industrial, Industrial Repair Garage, Industrial Supply, Kennel, Laboratory, Landscaping Services, Research Laboratory, Lot Coverage, Rear Lot Line, Side Lot Line, Mail Order Storage Yard, Microbrewery, Mixed Use, Modular Housing, Multi-Unit Commercial Establishment, Non-Conforming Lot, Non-Profit, Nursery, Nursing Home, Pharmacy, Primary Building or Use, Product Assembly, Public

Education Facility, Public Utility, Recycling Facility, Repair, Repairman, Riding School, Rooming House, Sand/Gravel Pit, Self-Storage Unit, Semi Public Agency, Setback, Sewage, Site, Small Wind Energy System, Social Facility, Stockyard, Television Broadcasting, Public or Private Utility, Utility Substation, Wetlands, Wood/Metal Craft, Workforce Housing; and to AMEND definitions for the following terms: Commercial Service Establishment, Library.

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

Review of Policy and Procedures

Mr. Sioras advised each April, the Board reviews this document. Any changes would require the document to be read twice before voting on the changes. Mr. Granese asked that any proposed changes be forwarded to Mr. Sioras or Ms. Robidoux.

Acceptance of Willow Street and Lilac Court

Mr. L'Heureux explained this was a housekeeping item. During the closing process for the land on Willow Street being purchased by the Town for conservation purposes, it was found the Town never formally accepted these roads as town roads. The oversight occurred in 2006 when the escrow for the project was closed out. The normal process is to close out the escrow and then move the recommendation of acceptance of the road to Town Council. That step was missed in this case. The Town has been maintaining the two roads since 2006. This action is to primarily clean up the housekeeping and to create a record of formal acceptance.

Motion by MacEachern, seconded by Bartkiewicz to recommend the Derry Town Council accept Willow Street and Lilac Court as public town roads. Discussion followed.

Mr. O'Connor confirmed the town has been plowing these roads. Mr. L'Heureux added there is no additional cost to the town; the formalization of the acceptance was not completed.

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

Public Hearing

To amend Article II, Section 165-5, Definitions, to add a definition for “display sign” and to amend Article XII, Section 165-100 through Section 165-103, Signs, to change the requirement for church signs, signs in residential districts, signs in commercial and business districts, campground signs, political signs and electronic message center signs. The purpose of the amendments is to ensure compliance with recent Federal Supreme Court case law.

Robert Mackey, Code Enforcement Officer, advised there had been a Federal Supreme Court case, *Reed v Gilbert*, which ruled that towns can't regulate signs based on content. Municipalities have been advised to look at their ordinances to make sure the ordinances are not subject to challenge. The Board revised the sign portion of the ordinance and sent it to legal for review. The attorney made comments and the Board incorporated the majority of them. There had been some issues with the types and size of signs allowed in the residential districts, and with church signs. That has been revised to create more uniformity in the ordinance. The Board also addressed the issue of electronic message center signs. Those signs are currently allowed in the General Commercial and Industrial districts. When the Board created the General Commercial IV zone in portions of the GC zone, it did not at the time, amend the sign ordinance to include that new zone. That has been corrected with this amendment and electronic message center signs will be allowed in the General Commercial, General Commercial IV, and Industrial zones.

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

There was no public comment.

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

There was no Board discussion.

Motion by MacEachern, seconded by Bartkiewicz to accept the proposed changes to Town of Derry Zoning Ordinance, specifically Article II, Section 165-5, Definitions, to add a definition for Display Sign and to amend Article XII, Section 165-100 through Section 165-103, Signs, to change the requirement for church signs, signs in residential districts, signs in commercial and business districts, campground signs, political signs, and electronic message center signs. The Board also moves to forward the proposed changes to the Derry Town Council for review and approval of the proposed amendments.

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

WORKSHOP

Workshop #5 – Review of proposed amendments to the Zoning Ordinance, Article III, Section 165-25, Accessory Dwelling Units

Mr. Mackey advised Ms. Robidoux provided the Board with a memo and put together the proposed changes the Board made and the comments received from legal counsel. The amendments proposed by the Board have been annotated with notes indicating what the attorney suggested.

The attorney amended the proposed definition of “Accessory dwelling unit” and added a definition for “short term rental”.

The Board reviewed the proposed changes item by item.

The attorney placed the lot size requirement back into the document. This item requires the lot on which the single family dwelling unit is situated must have the minimum area for the zoning district. Mr. Mackey agreed with the Board amendment which removed this restriction. Many of the lots in the current three acre zone were created when the minimum lot size was one acre. If this is put back into the amendments, many in the LDR zone would have to seek a variance. He does not believe that was the intent. Applicants would of course have to meet all the other requirements, such as setbacks and lot loading. He would prefer to see it stays out so that all of the people adding ADUs in these areas don’t need to go to the Zoning Board.

The Board was polled and the consensus was to put this language back into the ordinance.

Mr. Mackey advised the attorney separated out the requirement for adequate water and sewer, where the Board had those two items combined. He suggested keeping it as written by the Board. When a bedroom is added onto a home, the homeowner needs to make sure the lot can support the total number of bedrooms. Separating out the two requirements does not change anything. Mr. Chirichiello asked, is the Board basing this on the number of bedrooms or the number of people. If someone has a three bedroom home and wants to add one more bedrooms, are they required to update the septic system? Mr. Mackey explained that per DES requirements, the loading is 150 gallons a day per bedroom. If an additional bedroom is added, either in the house or as an accessory dwelling unit, the homeowner needs to provide a septic design that shows the lot can support the total number of bedrooms in the event the existing system fails. Mr. Chirichiello provided the following example. If someone has a home with two empty bedrooms and finishes the basement off as an accessory dwelling unit, adding a bedroom in the basement, even though with the addition there may only be three people in the home (even though there would now be four bedrooms), that homeowner is now required to pay for a replacement septic plan? Mr. Mackey said that is correct. When the house is eventually sold, it will be sold as a four bedroom home and the septic system plan needs to match the number of bedrooms in the home.

Mr. O’Connor asked if DES also looks at the well. Mr. Mackey said DES does not. They will only look at the well in relation to its distance to the septic system. Mr. Connors asked if the town requires a separate water meter for an accessory dwelling unit (ADU). The town does not, unless the homeowner specifically requests it. When the home is attached to the municipal system, rather than a private well, when a bedroom is added there may be additional costs, but the town does not require a separate meter. Mr. Connors noted a two family would have a separate meter. Mr. Mackey said technically, an accessory dwelling unit is attached to a single family home. Mr. Connors felt the requirement for an adequate water supply should be kept in the ordinance. Mr. O’Connor noted this section is specific to accessory dwelling units. Mr. Connors said he is assuming the town wants to know there is water to the unit. Mr. Granese asked Mr. Mackey if the town requires a water test when an ADU is added to a home. Mr.

Mackey said the town does not, but they will make sure there is a septic plan on file. The town follows the state regulations.

The Board was polled and the consensus was to remove the wording “water supply and”.

The Board discussed the proposed change by the attorney that removed the parking for four vehicles and amended it to ‘adequate parking’. Ms. Robidoux noted this was not a proposed amendment and that wording currently exists in the ordinance. The Board decided to leave the wording as is, as parking has not appeared to have been an issue.

Mr. Mackey advised the attorney suggested adding the qualifier “gross floor area” rather than “floor area” to the maximum square foot requirement; he is not sure the Board needs to get that technical. Mr. MacEachern thought the Board had specified a minimum square foot requirement. Mr. Chirichiello confirmed the town cannot require less than 750 square feet, and if it chose, it could require a minimum size. The Board had said it would be better to have a maximum square foot size. Mr. MacEachern thought the Board wanted a mechanism to keep the size reasonable. The Board reviewed its previous discussion with regard to minimums and maximums.

Mr. Mackey said the limit used to be 400 square feet and was then increased to 600 square feet. The issue for homeowners has always been getting everything to fit within the 600 square feet. Accessory dwelling units have kitchens, bathrooms and at least one bedroom. He agreed with Mr. Chirichiello that most of the future applicants will utilize the 800 square foot maximum.

The Board debated adding the qualifier “gross” to “floor area”. Mr. Fairbanks felt the number should reflect living space rather than gross floor area. The majority of the Board was in agreement and it was decided to not add “gross floor area”, but instead amend this item to read “800 square feet of living space.”

Mr. Mackey noted the attorney had suggested removing the requirement that ADUs must be attached to the existing dwelling unit or a structure attached to the existing dwelling unit. He stressed the ADUs should be attached, otherwise they would be in conflict with Section 165-8. Mr. Granese commented the law permits towns to choose whether they will allow detached accessory dwelling units or not.

The Board was polled and the consensus was to keep the wording in the ordinance requiring ADUs to be attached.

It was noted the attorney also suggested removing the requirement that an ADU be composed of a kitchen, living room, bathroom and one or two bedrooms. The reason the attorney suggested removing it was to facilitate the town allowing studios that were also ADUs. Mr. Mackey reported he and Ms. Robidoux had discussed this section. The suggestion is that the ADUs contain no more than two bedrooms, but this does not limit the applicant from having an open concept floor design. An “addition” to a home would be adding a bedroom or adding additional living area. It becomes an ADU when self-sufficiency items such as kitchens are added. Mr. Connors felt the ordinance should be as specific as possible and did not see why this particular

section should be changed. Mr. Fairbanks thought if the wording was changed such that an ADU consisted of one to two bedrooms, that would allow studios. Ms. Davison asked why would the town require a kitchen for an ADU. There are bound to be some cases where a family would not want someone living in an ADU to have access to a kitchen for safety reasons. Mr. Mackey said residents are allowed to put an addition onto their homes, but when provisions are added for cooking and sanitation, that makes the addition into an ADU. Ms. Carver confirmed the minimum square foot area, per code, for a bedroom is 70 square feet. She felt that the provision listing the component parts of an ADU should be left out of the ordinance. Mr. Connors said ADUs are limited to two bedrooms. The town has mechanisms in place to add additions. He felt these components needed to be specifically mentioned as a limiting factor. Mr. Sioras read the state definition of an ADU which includes provisions for sleeping, eating, cooking and sanitation.

The Board was polled and the consensus was to leave this section in the proposed amendments.

The Board then discussed the suggestion from the attorney to remove the existing restriction that states room sizes in the primary dwelling unit and in the ADU must conform to the minimum requirements of the International Residential Code. Mr. O'Connor noted there are the four components that fit within the 800 square foot space. He wondered if the kitchen and bathroom had to conform to the limits in the building codes. Mr. Mackey said there are certain sizes and clearances in the building code relating to plumbing. Mr. O'Connor felt that sentence should be left in the ordinance as it allowed Code Enforcement tools to make sure construction was up to standards. Mr. Chase felt the attorney may have deleted this provision because it requires all rooms in the existing structure and the ADU to be brought up to current code. Mr. Connors suggested striking the words "primary dwelling unit" but leaving the rest of the provision intact. Mr. Chase agreed.

The Board was polled and the consensus was that "in the primary dwelling unit and" would be removed and the provision would remain with that amendment.

The Board reviewed the suggestion from the attorney that deleted the existing provision requiring no further conversion of the primary structure would be allowed for the purpose of creating an additional dwelling unit. The Board decided to keep that provision in.

The attorney had suggested amending the existing provision that restricted conversion to a condominium or any other form of ownership of the single family dwelling unit, to include no further subdivision of the lot unless it met certain conditions. Mr. Mackey noted that upon application for a subdivision of any lot, there would be certain criteria to be met under the LDCR.

The Board was polled and the consensus was to leave this provision as currently written.

Mr. Mackey advised the attorney also suggested requiring an ADU to not only maintain continuity with the look of the dwelling to which it was attached, but to also be consistent with the neighborhood. It was felt that was a very subjective restriction.

The Board was polled and consensus was to leave that provision as written.

With regard to owner occupancy, the Board kept the current wording as it was not that different from what the attorney suggested. The RSA does require owner occupancy of either the primary dwelling unit or the ADU.

The Board noted that there are already provisions in this section of the Zoning Ordinance limiting only one ADU per lot and did not opt to add the wording suggested by the attorney.

The Board discussed the suggestion to add a provision requiring an interior door between the ADU and the primary dwelling unit. That requirement is in the language contained in the RSA. Mr. Chirichiello confirmed this door would need to be fire rated. The Board felt it would be more clear if wording was added to the requirement that an ADU be attached to the primary dwelling unit. That provision was amended to read, "The accessory dwelling unit must be contained within or be attached to the existing dwelling or be within a structure which is attached to the existing dwelling and include an interior door which shall be provided between the principal dwelling unit and the accessory dwelling unit."

A clean copy of the amendments will be provided to the Board at the next meeting for review and so that the Board can schedule a public hearing on the changes.

Mr. O'Connor noted that the requirement to provide water/sewer to an ADU is contained in the RSA which specifically states the owner of the home must supply water and sewer to the ADU. Mr. Chirichiello asked if the ADU is a separate living space, would the town require separate metering. Mr. Mackey said no. Owners may want to meter them separately, but it would not be required.

The Board confirmed that the proposed definition of Accessory Dwelling Unit would not be amended per the attorney's suggestion as the proposed definition reflects the state definition. The Board also opted not to add a definition for "short term rental". It was noted a "condex" is not allowed to add an ADU at this time.

There was no further business before the Board.

Motion by MacEachern, seconded by Fairbanks to adjourn. The motion passed and the meeting stood adjourned at 8:19 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____