

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 07, 2021, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with some members of the Board present.

Members present: John O'Connor, Chairman; Lori Davison\*, Vice Chair; Brian Chiricheillo, Town Council Liaison; Randy Chase, Administrative Representative; Jim MacEachern, Secretary, Mark Connors\*, Doug Danzey, Mark Grabowski\*, David Nelson, Members

Absent: Dave Granese, David Clapp

\*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Mark L'Heureux, Engineering Coordinator; Beverly Donovan\*, Economic Development Director; Mary Till\*, Craig Lazinsky\*, Solar Energy Subcommittee

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor advised that although the Stay at Home order has expired, Emergency Order #12 as issued by Governor Sununu waives the requirement that all members be physically present. Members can attend the meeting electronically. He provided the appropriate links for members of the public to join the meeting virtually via a MAC, PC, or by phone. He then introduced the staff and Board members. Mr. O'Connor welcomed Mr. Nelson back to the Board.

### **Election of Officers**

Motion by MacEachern, seconded by Davison, to nominate John O'Connor as Chairman.

Chase, Chirichiello, MacEachern, Danzey, Connors, Nelson, Davison, and Grabowski voted in favor; O'Connor abstained; motion passed.

Motion by MacEachern, seconded by Connors to nominate Lori Davison as Vice Chairman.

Chase, Chirichiello, MacEachern, Danzey, Connors, Nelson, O'Connor, and Grabowski voted in favor; Davison abstained; motion passed.

Motion by O'Connor, seconded by Davison to nominate James MacEachern as Secretary.

Chase, Chirichiello, Davison, Danzey, Connors, Nelson, Davison, and Grabowski voted in favor; MacEachern abstained; motion passed.

Mr. Connors asked if Mr. Grabowski had been asked about returning as Secretary. Mr. O'Connor indicated he had spoken with Mr. Grabowski and was under the impression he was not seeking another term.

Mr. O'Connor thanked Mr. Grabowski for his service as Secretary for the past year.

**Escrow****#21-03****Project Name: Brookview Estates****Developer: MPV Development****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 29149, 18 Maple Street**

The request is to approve Release #1 in the amount of \$93,466.22 for the above noted project. The amount to retain is \$59,518.80. This escrow is non-interest bearing.

Motion by MacEachern, seconded by Chirichiello to approve as presented.

Danzey, Chase, Chirichiello, MacEachern, Nelson, Davison, Connors, Grabowski, and O'Connor voted in favor and the motion passed.

**#21-04****Project Name: Annual Review of Cash Escrow**

|   |                    |
|---|--------------------|
| <b>#11-12 T-Mobile Northeast</b>          | <b>\$17,392.76</b> |
| <b>#14-16 Samuel Kershaw</b>              | <b>\$44,913.60</b> |
| <b>#17-17 Bella Vista Homes, LLC</b>      | <b>\$10,000.00</b> |
| <b>#18-15 Kevin Coyle - 40 Chester Rd</b> | <b>\$16,167.60</b> |
| <b>#19-20 DJ Development</b>              | <b>\$6,804.00</b>  |
| <b>#19-39 11 Tsienneto Rd.</b>            | <b>\$22,777.20</b> |
| <b>#20-15 MPV Development</b>             | <b>\$59,518.80</b> |
| <b>#20-14 Lake Realty Trust</b>           | <b>\$2,203.20</b>  |
| <b>#20-16 High Meadows, LLC</b>           | <b>\$71,597.52</b> |
| <b>#20-20 Prime Storage Derry, LLC</b>    | <b>\$79,554.96</b> |

The request is to find the list of open cash escrow is held in amounts which provide adequate security for the proposed length of the project. The amounts listed above are ending principal and interest amounts as of January, 2021.

Motion by MacEachern, seconded by Chirichiello to approve as presented.

Danzey, Chase, Chirichiello, MacEachern, Nelson, Davison, Connors, Grabowski, and O'Connor voted in favor and the motion passed.

## Minutes

The Board reviewed the minutes of the March 17, 2021, meeting.

Motion by MacEachern, seconded by Davison to approve the minutes of the March 17, 2021, meeting as written.

Chase, MacEachern, Connors, Davison, and O'Connor voted in favor; Chirichiello, Danzey, Nelson, and Grabowski abstained, and the motion passed.

The Board reviewed the notes from the site walk of March 20, 2021.

Motion by MacEachern, seconded by Connors to approve the notes of the March 20, 2021, site walk as written.

MacEachern, Davison, Grabowski, Connors, and O'Connor voted in favor; Danzey, Chase, Chirichiello, and Nelson abstained, and the motion passed. [Connors and Davison did not attend the site walk, but professed familiarity with the site and were comfortable with the notes as written.]

## Correspondence

Mr. MacEachern noted the Board has received a Zoning Use Matrix prepared by the Planning Department. It outlines all of the zones and permitted uses in each zone. The Board has received a copy of proposed amendments to the Land Development Control Regulations. Copies of material provided to Planning for a Change of Use at Shaw's to add a grocery pickup have been included in the correspondence packet. Eversource has advised the town of plans to make improvements at the Scobie Pond Substation. An updated list of Planning Board member contact information has been provided to the Board, as well as a copy of Riggins Rules, which outlines suggested conduct at Public Hearings and deportment for members of Boards and Commissions.

Mr. L'Heureux explained the proposed changes to the LDCR are to bring the town in compliance with the MS4 permit requirements from the EPA. This includes how stormwater is treated and miscellaneous tweaks to the appropriate sections to bring the town into compliance. Mr. Sioras advised the Board will hold a workshop on April 21, 2021.

## **Other Business**

### Annual Review of Policy and Procedures – First Reading

Mr. O'Connor advised at each annual meeting, the Board reviews the Policy and Procedures. This year there are suggested changes to the document which include the requirement that Board members attend at least one land use planning training a year and provide a copy of the certificate or registration to Mrs. Robidoux. The Office of Strategic Initiatives holds a summer training; the New Hampshire Municipal Association holds annual training in the fall, and OSI also conducts monthly webinars. Most of the training is free. For registrations that require a fee, the Town of Derry will pick up the cost.

The second change involves electioneering. Town Council enacted an ordinance (Chapter 28 of the Town Code) prohibiting electioneering by Board or Commission members while performing their duties. A copy of Chapter 28 was provided to the Board members. Since this is town code, it is being added to the Policy and Procedures. Once adopted, each member will acknowledge by signature they have received a copy of the adopted Procedures. If the Board is satisfied with the proposed changes, they can be adopted at the next meeting.

Mr. Connors questioned the "shall" versus "may" with regard to the training component. He was unable to locate the RSA referenced in the document but believed the RSA states "may" with regard to training. Mr. O'Connor advised other Boards and Committees mandate training and this proposed change falls in line with that.

## **Public Hearing**

### **49 South Main Street, LLC**

**PID 05048, 49 South Main Street**

**PID 05047, 45 South Main Street**

**Review, Site Plan**

**Redevelopment of Property**

**Conversion to 6 room inn, event center, and new parking lot**

**(Continued from March 17, 2021)**

Mr. Sioras provided the following staff report. The Board held a site walk on the property on March 20, 2021, attended by staff, a few Board members, the developer and their engineer. The site walk went well. The purpose of this plan is the redevelopment and repurpose of the former Circle of Friends School located at 49 South Main Street into Westbrook, a historic inn that offers lodging and events. The parcel is located in the newly created West Running Brook

District and includes conversion of the former school into an inn, indoor event center, outdoor event area and new parking lot. All town departments have reviewed and signed the plan. There are six waiver requests. The NH DOT driveway permit application has been approved and a copy is in the file. Staff recommends approval of the waiver requests and the site plan application.

Paul Chisholm, Keach Nordstrom Associates, presented for the applicants, Jerry Siragusa and Marc Siragusa, who were also present. They were before the Board last month and Mr. Chisholm agreed the site walk was productive. During the site walk it was suggested he speak with Mr. L'Heureux in Public Works to see if there were opportunities to compromise, as there had been a lot of discussion about paving or not paving the parking lot. The applicants have decided to withdraw the waiver request from LDCR Section 170-63.A.5, with regard to the paving of the parking lot, have shifted the parking lot location, and will pave it in accordance with Town of Derry specifications. The plan has been revised per the VHB comments. The parking lot was pushed to the back property line in a location that is more in line with the master plan for the entire property. They are proposing the same number of spaces as previous. VHB will continue its review of the plan and they will address the comments as necessary.

Motion by MacEachern to accept the revised plan set with a revision date of March 31, 2021, seconded by Chirichiello.

Danzey, Chase, Chirichiello, MacEachern, Nelson, Connors, Grabowski, Davison, and O'Connor voted in favor, and the motion passed.

Motion by MacEachern, seconded by Chiricheillo to open the public hearing.

Danzey, Chase, Chirichiello, MacEachern, Nelson, Connors, Grabowski, Davison, and O'Connor voted in favor, the motion passed, and the floor was open to the public.

There was no public comment for this hearing.

Motion by MacEachern, seconded by Chiricheillo to close the public hearing.

Danzey, Chase, Chirichiello, MacEachern, Nelson, Connors, Grabowski, Davison, and O'Connor voted in favor; the motion passed, and review of the plan returned to the Board.

Mr. Connors inquired about the 10 foot buffer waiver; does this just apply to the corner space that is closer to the lot line? Mr. Chisholm confirmed this waiver relates to the area between the two properties owned by the applicant and it is for the one parking space. This does not apply to the property line between the applicant and property owned by others.

Mr. MacEachern agreed it was a good site walk and felt there has been good cooperation between the town, the Board and the applicant.

Mr. L'Heureux advised his remaining comments relate to engineering details on the plan with regard to the detention pond bays, construction details and the need to add headwalls. These comments have been shared with Mr. Chisholm.

Motion by MacEachern, seconded by Connors, to grant a waiver from LDCR Section 170-63.A.2, to allow 45 additional parking spaces to be located closer than 10 feet from the abutting lot line for Parcel 05047, as strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Connors to grant a waiver from LDCR Section 170-63.A.4 to allow off street parking facilities on a lot different from the lot on which the principal use will occur as strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Chirichiello to grant a waiver from LDCR Section 170-64.B.2, which requires a minimum of one deciduous or ornamental tree per 30 feet of building perimeter since the existing trees and vegetation on site will be utilized to blend with the project and specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Chiricheillo to grant a waiver from LDCR Section 170-64.B.3, which requires a minimum of one deciduous or evergreen shrub per each two required parking spaces, as existing vegetation will be used on site and any newly planted vegetation would likely have to be removed for any future expansion of the site; therefore specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Chirichiello, to grant a waiver from LDCR Section 170-64.C to waive the 100 foot landscape buffer along the southeast corner of the 49 South Main Street property as specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Chirichiello to grant a waiver from Town of Derry Zoning Ordinance Section 165-32.4.I.2 (a) to not require sidewalks for this project along the road frontage as this project contemplates the repurposing of an existing building and will not add any additional permanent structures at this time, therefore strict conformity to the regulations would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Discussion followed.

Mr. Connors confirmed the sidewalk waiver is only for this project and would not apply to any future projects on this lot. The correct citation from the Zoning Ordinance was updated in the motion and is reflected above.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Motion by MacEachern, seconded by Danzey pursuant to the Town of Derry Zoning Ordinance, Section 165-32.4.E, after review of the proposal, the Board finds the proposed project is appropriate for the West Running Brook District as: There will be no major changes at this time to the external existing site, other than the addition of parking areas, access ways, an outdoor tent area and walkways; the project will not have a detrimental impact on the environment; the project is consistent with the Town of Derry Master Plan (2020) in that it promotes Derry as a destination, preserves historic character, and increases opportunities for economic development; the plan is consistent with the Architectural Design Regulations as the exterior of the existing buildings are not changing at this time; and the outdoor event area allows the public to meet in a safe, socially distanced manner.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.

Mr. O'Connor inquired if the Board was interested in placing a time limit on outdoor music. Mr. MacEachern suggested 11 PM based on prior Board discussion. Marc Siragusa advised they would prefer to end music at midnight as they had originally requested. It was their hope the Board would consider allowing that, as they did not want to be limited. There is no noise ordinance in town, and they understand the Police Department has a right to respond to complaints. Mr. Chirichiello asked how frequently would events occur on site? Marc Siragusa advised every weekend once they begin booking steadily. The intent is to allow couples to have exclusive use of the property for an entire weekend. Mr. Chirichiello suggested using 11:30 PM as a time to conclude outdoor music. Mr. MacEachern noted weddings normally end around 11 PM. People would be allowed to use the grounds, but there are neighbors to be considered. Mr. Connors questioned the Board's authority to regulate business hours. Mr. O'Connor commented the ZBA just imposed a condition on a recent approval for a wedding venue that the outdoor music had to cease by 10 PM. Mr. Sioras explained the Board does have the authority under the site plan regulations to establish hours of operation.

Mr. MacEachern commented the ZBA only has the authority to approve or disapprove of a use in a particular zone; it does not have the authority to impose site plan conditions, which is the authority of this Board. The ZBA did not have the authority to dictate hours of operation for that variance. Mr. Connors noted in this case, the Board is not setting the business hours, it is considering imposing a time when the music has to end. Mrs. Davison felt this was like any application before the Board. The Board needs to consider the impact on the abutting properties and surrounding area. The Board is not restricting the business hours but is minimizing potential negative impacts on the surrounding area.

The Board was polled to determine the preferred time to end outdoor music. Mr. Danzey preferred 11 PM; Mr. Chase said midnight. He believes if music becomes a problem for the neighbors, it will take care of itself; Mr. Chirichiello suggested 11:30 PM; Mr. Connors felt the town needed a Noise Ordinance and agreed with Mr. Chase that midnight would be acceptable; Mr. Grabowski indicated midnight; Mrs. Davison preferred 11:30 PM; Mr. MacEachern preferred 11 PM; Mr. O'Connor preferred midnight.

Motion by MacEachern, seconded by Chirichiello, to approve, pursuant to RSA 676:4, I, Completed Application with the following conditions: Comply with the Vanasse Hangen Brustlin report dated March 12, 2021, or later; subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; note approved waivers on the plan; State Plane Coordinates shall be noted on the plan, tied to two boundary corners; obtain written approval from the Planning Director/designee that the GIS disk is received, approved, is operable, and complies with LDCR Section 170-61.C; outdoor music shall end at 12:00 a.m.; subject to receipt of applicable state or local permits relating to the project (i.e., AoT, Wetland, Building Department; Fire Department, Water/Wastewater; Driveway, etc.); snow and ice removal shall be performed by a Green Sno-Pro certified contractor following Best Management Practices for the application of de-icing materials; conditions precedent shall be met within 6 months; the parking agreement between 45 and 49 South Main Street shall be recorded and the Book and Page number noted on the plan. Discussion followed.

Mr. Connors inquired if the number of spaces provided on site were adequate. He noted the agreement between the two adjacent properties; does there need to be an agreement for any additional offsite parking? Mr. Chisholm stated the parking as indicated on the site plan is adequate for the proposed use at this time and meets the parking requirements.

Danzey, Chase, Chirichiello, MacEachern, Connors, Grabowski, Davison, and O'Connor voted in favor; Nelson abstained as this is a continuation of a previous hearing, and the motion passed.



**Public Hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article III, General Provisions, to add a new section, Section 165-28.2, Solar Energy Systems**

It was noted Mary Till and Craig Lazinsky, members of the Solar Energy Subcommittee, had joined the meeting.

Motion by MacEachern, seconded by Chirichiello to open the public hearing.

Chase, Chiricheillo, MacEachern, Nelson, Connors, Grabowski, Davison, Danzey and O'Connor voted in favor and the floor was open to the public.

Aaron Stam\*, 21 Mill Road, requested permission to share his screen with the Board to better aid his discussion. He advised he had comments with regard to the structure of the proposed ordinance, and how it is written. The Board was reluctant to allow Mr. Stam to share the screen and broadcast his PowerPoint as the Board had not had an opportunity to review it ahead of time.

Mr. Stam expressed concern with the wording found at Section 165-28.2.C.1.a and b, Ground Mounted Arrays. The 'front yard' is not defined in this ordinance. Additionally, the ordinance does not do anything to address physical impact. It bans certain size panels. He does not see the point of the regulation. A 500 square foot solar array of panels consisting of less than 18 square feet, will not have much visual difference from a 500 square foot array of panels larger than 18 square feet. The policy appears to not address visual impact.

Craig Lazinsky advised he is on the Net Zero Committee and co-authored this regulation. The intent of the 18 square foot solar panels is to indicate that one standard 3 x 6 solar panel would be the maximum that could be visible in a front yard. The rest of the panels are supposed to be installed in the side or rear yard.

Mr. Stam explained his home sits back from the road more than 200 feet with a garage between the house and the road. The defined front yard between the home and road blocks him from putting a ground mount solar array in his front yard because there is a garage there. Mr. O'Connor suggested if Mr. Stam had a 200 foot front yard, he could apply for a variance to place the array in the front, based on the distance his house is from the road.

Mr. Grabowski commented Mr. Stam should be able to share his document with the Board; it was not appropriate to prevent it because he was not present in person. Mr. Stam advised his presentation had bullet points, not diagrams.

With regard to Section 165-28.2.C.1.c and d, the regulations speak to roof arrays, Mr. Stam indicated "Flush Mount" is not defined in this ordinance and probably should be added to Section 165-28.B. Mr. Connors felt flush mount was self-explanatory. Mr. Lazinsky indicated he would not have an issue with adding a definition for clarification purposes.

Mr. Nelson commented there is normally a space between an array and roof surface; he does not feel the intent is to prohibit that. Mr. MacEachern felt the wording of the definition should be left up to Ms. Till, Mr. Lazinsky, and the other members of the Subcommittee; these installations fall under Code Enforcement. Mr. Connor noted “flush mounted” is a standard term in the solar industry.

There was no further public comment.

Motion by MacEachern, seconded by Chirichiello to close the public hearing.

Chase, Chirichiello, MacEachern, Nelson, Grabowski, Danzey, Davison, Connors and O’Connor voted in favor; motion passed, and review of the proposed ordinance came back to the Board.

Mr. MacEachern suggested sending this back to the Subcommittee to alter the definitions; it can then come back to the Board. Mr. Connors reiterated he felt “flush mount” was understood in the industry and did not feel a definition was necessary. The Subcommittee did a lot of work on this ordinance and he would be comfortable voting on it and approving it this evening as written. Mr. Sioras explained procedurally, as the proposed changes would be substantive, there would have to be a second public hearing. Once the changes are received, a second hearing will be scheduled.

Motion by MacEachern, seconded by Chirichiello, to remand the proposed ordinance back to the Subcommittee for revision to add definitions for clarification.

Chase, Chirichiello, MacEachern, Nelson, Grabowski, Danzey, Davison, and O’Connor voted in favor, Connors voted no, and the motion passed.

Mr. Grabowski wanted it made clear that under Subsection C.c the cost of hiring of a structural engineer would be born by the applicant.

Mr. MacEachern said he would agree to amend his prior motion to include that phrasing. Mr. Chirichiello seconded that amendment.

Mr. Connors asked if the ordinances always said that or was it implicit. Mrs. Davison said she could see where it might be interpreted that the town engineer would verify the structural integrity and that would not be the case. She agreed that should be added.

Mr. Chase stated solar installers are aware of the square foot weight requirements, and the company will determine if the roof structure is capable of holding the weight of the equipment or not. The homeowner would have to make any necessary modifications. Mr. Connors asked who gets the report. Mr. L’Heureux explained this is a Code Enforcement issue as it is part of the structure and the Building Department issues the permit; this is not handled by the Engineering Division. Mr. Nelson wondered why, if this was a Building Code issue, is it in the regulations at all. Structural integrity or weight bearing capacity is a life safety issue. Mr. Lazinsky said the

intent is that a licensed engineer should be reviewing the structure. Mr. Connors confirmed a building permit is required for solar panels.

Ms. Till indicated Section 165-28.2.D.3 which states a building permit is required and further Planning or Zoning review may be required, depending on the type of installation. Mrs. Davison added this ordinance straddles both Planning and Code Enforcement as some installations might impact the neighborhood; those require Planning Board review.

Mr. Grabowski stated he agreed with Mr. Nelson.

Mr. MacEachern withdrew his friendly amendment and Mr. Chiricheillo seconded. Mr. Grabowski asked if the Solar Subcommittee would meet again and perhaps review this issue as well. Mr. Sioras said for the record, the Subcommittee will meet and revise the document. Once that is complete, a second public hearing will be scheduled. Mr. Nelson suggested the Subcommittee include Code Enforcement in the discussion and make sure there is nothing in the ordinance that will conflict with their duties. Mrs. Davison said she planned to schedule the Subcommittee meeting on a date/time when Mr. Mackey could participate.

**Public Hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-49, Traditional Business Overlay District, Subsection B, Permitted Uses, Subsection C, Area and Dimensional Requirements, and Subsection G, Parking Requirements. The Planning Board will also discuss proposed amendments to the Town of Derry Land Development Control Regulations, Article XI, Design and Construction Standards, Section 170-63, Parking Requirements.**

Mr. Sioras explained the Planning Board and Town Council over the last twelve months have worked on amendments to the downtown regulations. The original Traditional Business Overlay District was comprised of the frontage lots on Broadway. From Crystal Avenue, the District was from the First Baptist Church to the Opera House and on the opposite side of the street from Storer Court to the restaurant on the corner of Crystal and Birch. This district overlays the Central Business District. The Planning Board recently expanded the Traditional Business Overlay District to encompass 66 more properties. The Board is currently taking a second look at the permitted uses, housing density and parking in the TBOD to further economic development. In the Land Development Control Regulations, the Board is requiring developers to come before the Board with a parking plan for any multifamily developments during the conceptual discussion; this is similar to what the Board requires for the West Running Brook District. The Board agreed on the proposed changes to the density.

In summary, in the TBOD for any multiunit residential, the minimum square foot per residential unit is 750 square feet, a change from 800 square feet; studio units are allowed to be 400 square feet but cannot exceed 5% of the total allowable number of units for a single project. The minimum lot size shall be 20,000 square feet with the density not exceeding 40 dwelling units per acre. Existing structures can be converted to multifamily with Planning Board review. The requirement to meet with the Planning Board for a non-binding conceptual discussion prior to meeting with the TRC has been included. There has been no change to the list of permitted uses. The dimensional requirements related to lots without public sewer have been removed.

In the Land Development Control Regulations, a parking plan is required for any multifamily development; the parking calculation is being amended to 1 space per bedroom with a minimum of 1.5 per dwelling unit for multifamily development.

These changes are being made to encourage economic and redevelopment in the downtown and furthers the goals of the Master Plan. Several property owners have contacted the Planning Office with questions about this amendment.

Mr. Connors had questions about the requirements for studio apartments. If the number cannot exceed 5% of the total allowable units, a development would need to have at least 20 units to get even one studio apartment. Anything less than that results in a fraction and he does not see that the number gets rounded up or down. Is that the intent of the proposed amendment? Would a fraction result in one studio, or do they need at least 20 units to get a studio? Mrs. Robidoux said the intent is to allow studio apartments, but to not have a development consisting of nothing but studio apartments. Mr. Connors wondered what happened when someone wanted to do ten apartments – would any of them be able to studio apartments, or do they not meet the requirement? Mrs. Robidoux suggested amending the wording to “not to exceed 5%”.

Motion by MacEachern, seconded by Chiricheillo to open the public hearing.

Chase, Chiricheillo, MacEachern, Nelson, Davison, Connors, Grabowski, Danzey and O'Connor voted in favor; motion passed, and the floor was open to the public.

David Barka, 64 East Derry Road, owns property in this district. He owns three buildings behind the Opera House and townhouses on South Avenue. He asked what would happen if one of his units burned and he wanted to rebuild. Would the emphasis be on these regulations, or would he be allowed to build to complement the existing development? Mr. Sioras explained if Mr. Barka has legal, non-conforming uses, if there was a fire, he would have twelve months to replace the structure on the same footprint with the same number of units. For example, if there are 7 units there, he can replace 7 units. After 12 months, he would lose the grandfathering and need to conform to current standards.

Mr. Barka said his issue is with the extent of damage per the current ordinance. Would he need to conform only if the structure completely burned, as long as it was within twelve months? Mr. Sioras said he could, so long as he built within that time frame. The use is protected for 12 months of non-use.

Mr. Barka indicated he owns 11 townhomes on South Avenue. On that development is also a single family home. If that home burned, would he be able to build something compatible with the townhomes in place of the single family to maintain the character of the development? Mr. Sioras said he could build a townhome so long as it conformed to the new regulations; the structure could be rebuilt as a single family home. Mr. Bara asked if there were any restrictions on the style of the home or was it just the footprint. Mr. Sioras said it would be the footprint. He believed the property owner has legal rights to rebuild after a catastrophic event. Mr. Barka inquired if the ZBA had flexibility to allow construction of something a bit outside the footprint

of the existing single family home so that the character of the lot could be consistent. Mr. Sioras advised Mr. Barka could maintain the character of the setback for 300 feet in both directions so long as he maintained the average setback.

Mrs. Donovan commented on the studio apartment question. As written, she agrees it is ambiguous. It is supposed to be 5% of the total number of units; that wording may need to be clarified. Mr. Chase suggested using a percentage of the total number of square feet of the building, rather than the number of units. Mr. Connors wondered if there might be more studios than intended if the Board went in that direction. Mr. O'Connor suggested this be remanded back to staff to clarify the wording.

Mr. Nelson suggested another option might be to use language such that studios are allowed up to 5% of the total resulting square footage with at least 1 studio allowed per development. Mr. Sioras thought that was a good idea. Given housing trends, there should be some provisions to allow studios as those are affordable to recent graduates and younger people.

Mrs. Donovan recalled discussing the trends and the need to allow for studio apartments, but it is important to not have all studios. Other communities are doing something similar. The units would be above a commercial use in the downtown, and it is not anticipated there would be a lot of them.

Mr. Connors asked if based on the current wording, if someone was adding 4 dwelling units, would one of those units be able to be a studio. Mrs. Donovan said it will be market driven, and based on what the developer wants to build. Additionally, the lot sizes are shallow in the TBOD, and she did not anticipate apartments much larger than 750 to 800 square feet. They did look at the existing buildings to test the theory. Mr. Sioras agreed and suggested staff get together and look at the wording again.

Steven Trefethen\*, 44 West Broadway, advised he had questions and concerns. He questioned the time frame that someone would have to rebuild after a disaster. Would they need to begin construction or complete construction within 12 months? Mr. Sioras explained construction needs to begin within 12 months. Mr. Trefethen noted many of the lots in the downtown are small, 5,000 square feet or smaller. Does this ordinance create something where people won't do anything because the lots are too small? Mr. Chase explained the minimum lot size requirement is for new proposals so that someone can't make smaller lots. Mr. Trefethen asked if a 5,000 square foot building burned to the ground, and he could not begin construction in one year, what happened. Mr. Chase said it would still be a lot of record. If substantial construction does not begin within one year to preserve the grandfathered status, the lot would be subject to the current ordinance with regard to use and structure.

Mr. Connors noted this overlay supersedes the underlying Central Business District. This section is saying someone can purchase multiple lots, combine them, and build.

Mr. Chase explained with non-conforming uses and structures, the use needs to conform to the current ordinance (after one year of non use) but the lot size would not have to conform because

it is an existing lot of record. Any building would need to conform to the current setbacks. He agreed if someone wanted to build a large building, they would need to combine lots.

Mr. Trefethen recalled in the original TBOD, once apartment use was removed from the first floor; there was a certain amount of time before you were not able to re-establish the residential use on the first floor. Mr. Sioras explained if there is a current building with a residential use on the first floor, and that use goes away for more than twelve months, the grandfathering also goes away. Any brand new development would have to have residential on the second floor or above. Mr. Trefethen asked the Planning Board to reconsider the first floor residential requirements so that people have the ability to create apartments on the first floor and maintain income, especially during these times. With COVID, businesses closed, and people did not pay rent. He does not see why the town has this restriction in place. Mr. Connors stated it is because the town wants this to be a business district rather than residential district.

Mr. Nelson recalled when the TBOD was created, the intent was to increase the concentration of business and foot traffic in the downtown and to allow residential uses above the businesses. Now, the TBOD has expanded, and it is important to maintain the character of the district. Beyond the frontage lots, the character of the buildings may primarily be residential. There may be some buildings in the expanded portion of the district that have residential on the first floor, which creates a permitted use issue. He suggests keeping residential on the second floor and above.

Mr. Trefethen questioned the studio portion of the ordinance. If the intent is to provide housing for young people, his experience is that people will rent spaces and put as many people in it as possible.

There was no further comment.

Motion by MacEachern, seconded by Chirichiello to close the public hearing.

Chase, Chirichiello, MacEachern, Nelson, Connors, Davison, Grabowski, Danzey, and O'Connor voted in favor and review of the proposed amendment returned to the Board.

Mr. Connors felt that as newer developments came into the downtown, an inventory of existing parking will need to be completed and then constantly updated to make sure there is no double dipping on the available parking. Over time, the available parking spaces might get used up. Who is going to do the inventory and keep track of that? Mr. Sioras commented there have been many parking studies completed over the last ten or so years and the town does keep track. This is a good point.

Mr. Sioras requested the Board review and perhaps vote on the proposed changes to the LDCR while staff works on the wording for the Zoning Ordinance. The changes to the Zoning Ordinance can be brought back to the Board on May 05, 2021 for a second public hearing.

Motion by Chirichiello, seconded by Nelson to continue discussion of the proposed changes to the Town of Derry Zoning Ordinance, Section 165-49, Traditional Business Overlay District, to May 05, 2021.

Chase, Chirichiello, MacEachern, Nelson, Connors, Davison, Grabowski, Danzey and O'Connor voted in favor and the motion passed.

Motion by MacEachern, seconded by Danzey to approve proposed changes to the Town of Derry Land Development Control Regulations, Article XI, Design and Construction Standards, Section 170-63, Parking Requirements. The changes will become effective immediately.

Chase, Chirichiello, MacEachern, Nelson, Connors, Davison, Grabowski, Danzey and O'Connor voted in favor and the motion passed.

There was no further business before the Board.

Motion by Chirichiello, seconded by MacEachern to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:55 p.m.

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

\_\_\_\_\_  
Secretary

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