

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 06, 2016, 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 (7:02 p.m.); Randy Chase, Town Administrative Representative; Frank Bartkiewicz, Jim MacEachern, Lori Davison, Mirjam Ijtsma; Members; Elizabeth Carver, Mark Connors, Alternates

Absent: Marc Flattes

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 noted the emergency exits, the location of meeting materials, and introduced the Board members and staff.

## **Escrow**

### **#16-21**

**Project Name: Highland Place Condos**

**Developer: Extended Realty, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

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

The request is to renew Letter of Credit #27279 drawn on Enterprise Bank in the amount of \$263,150.21, for the above noted project. The expiration date is August 6, 2017.

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

### **#16-22**

**Project Name: 17-27 Ashleigh Drive, Self Storage**

**Developer: Yvon Cormier Construction Corp.**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 08280-004, 23 Ashleigh Drive**

The request is to approve a release in the amount of \$139,553.28 and request a replacement Letter of Credit in the amount of \$180,966.96 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release Letter of Credit #091501 drawn on Salem Five Bank in the amount of \$320,520.24.

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

*Mr. Foote was seated.*

### **Minutes**

The Board reviewed the minutes of the June 15, 2016 meeting.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes of the June 15, 2016 as written. The motion passed with Chase and Fairbanks abstained.

### **Correspondence**

Mr. Fairbanks read into the record an email from Public Works Director, Michael Fowler, that was sent to Mr. Sioras. A copy of the email has been placed in the H & B Homes/Nathan Road subdivision file, Parcel ID 03039. The subject of the email is the discussion the Planning Board had at its last meeting with regard to the release of public servitude for the paper street portion of Linda Road. In summary, Mr. Fowler referenced Good Discontinuation Policies from *A Hard Road To Travel*. The landowners on either side of the paper street would need to petition the town to release the road. There should be a compelling reason to discontinue a road. The cost of petitioning to discontinue would be borne by the abutters. This is not something that would be initiated by the town.

Mr. Fairbanks also advised Southern New Hampshire Planning Commission has informed the Town the terms for the Representatives from Derry are due to expire.

Mr. MacEachern had comments in relation to Mr. Fowler's email. The intent of the Board when they looked at the street near the Windham town line is that is an extraordinary circumstance. That will never be a road; the topography won't allow it. He asked if Mr. Sioras could contact the abutters and see if they want to petition the town. He has the utmost respect and agrees with Mr. Fowler's correspondence but felt Planning should reach out to the abutters and see if they were interested. Mr. O'Connor said if the abutters petition the town, the land would be split between them and they would have to pay all costs associated with it, as well as any additional taxes. Mr. Granese did not believe this was the time for discussion on this item as the agenda was very full this evening. He said if the Board wishes to discuss the matter further, he is open to scheduling a workshop. He asked Mr. L'Heureux if the abutters should be contacted. Mr. L'Heureux said if the abutters are anxious about the property being developed or have an interest in the road, it would be courteous to inform them of their options. Mr. Connors asked if there is an additional tax that would be collected that would be a benefit to the town. Mr. MacEachern said the landowners are paying the tax on the land now. Mr. Granese asked Mr. Sioras to reach out to the abutters.

**Other Business**Summer Schedule

Mr. Granese reminded the Board the next meeting will be on August 17, 2016.

Appointment of Representatives to the Southern New Hampshire Planning Commission

Mr. Sioras advised the Representatives/Commissioners are appointed for a four year term. Jeff Moulton, Frank Bartkiewicz and John O'Connor have expressed an interest in being reappointed. The town has a fourth position open and an alternate position. A notice has been posted informing the public there are open positions. The recommendation comes from the Planning Board to the Town Council.

Motion by MacEachern, seconded by Fairbanks to reappoint Jeff Moulton, Frank Bartkiewicz and John O'Connor to the Southern New Hampshire Planning Commission for another four year term.

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

Mr. Granese asked Mr. Sioras to reach out to Joseph Donahue to make sure he did not want to be reappointed as an alternate. Mr. Sioras advised the Commission meets on the 4<sup>th</sup> Tuesday of the month at noon in Manchester. Mr. O'Connor advised there are additional committee meetings.

**Salvatore N. Lupoli****PID 32032, 2 Lenox Road****Acceptance/Review****Site Plan – redevelopment of site****Construct new 2230 SF restaurant**

Mr. Sioras provided the following staff report. The purpose of the plan is for Sal's Pizza restaurant located on the corner of Crystal and Lenox in the General Commercial district. The project proposes to demolish the existing two-story 3,720 SF building and construct a new single-story 2,230 SF building (restaurant) and the supporting parking area, granite curbing, new utility connections, landscaping and lighting. The applicant obtained a variance to allow a lesser side setback. All town departments have reviewed and signed the plan. There are several waiver requests outlined in a letter from TEC Engineering dated June 21, 2016. No state permits are required. Staff would recommend approval of both the waiver requests and the site plan application.

Peter Ellison of TEC Engineering presented for the applicant. Phil McCabe of Lupoli Companies was also present. Mr. Ellison stated the project is located at 2 Lenox Road. They believe this is a great project for the town. They are investing in an older, degrading site and this

project will be a nice facelift for a site which is paramount on the Crystal Ave corridor. They will raze the existing building, construct a new one on just about the same footprint, and create a new parking field. The layout will be similar to what is there now. They will add new vertical granite curbing, and a concrete sidewalk along the front. They have gained one additional parking space by realigning the spaces. The green space has been increased, the impervious surface has been decreased. They will add new landscaping along the edges of the lot. There will also be new utilities to the building: telephone, sewer, water, electric and gas. They will add a grease trap as well. They have designed a new storm water system; there will be a roof drain and a new catch basin that will catch the runoff. The catch basin will tie into the municipal system on Crystal Avenue. The variance granted by the ZBA was for the building setback. They have been working with staff throughout the planning process and have received the staff comments. They believe they did a good job of answering the comments.

Mr. Granese asked with regard to the façade. Mr. Ellison said it will be brick with large windows on the store front. They will utilize fiber cement siding.

Motion by MacEachern, 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 comment.

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

Mr. Connors asked with regard to the residential uses adjacent to this property that were just rezoned commercial. Mr. Sioras said this project will not have effect on them with regard to zoning. Mr. Connors noted the current parking is on the Lenox Road side; will that need a waiver because of the distance to the road. Mr. Granese said that waiver was included in the submittal. Mr. Connors felt that they would need a waiver to allow them to come right off the street.

Mr. Granese read correspondence received from Attorney Gary Burt, representing the Manchester Diocese and St. Thomas Aquinas Church. A copy the correspondence is in the file. In summary, the Diocese and St. Thomas have no objection to the proposed application, but would request the applicant be required to erect a natural (arborvitae) or artificial fence between the property owned by the Diocese/St. Thomas parking area and the back of Sal's Pizza. The purpose of the barrier would be to deter patrons from Sal's from using the St. Thomas parking area when it is needed by St. Thomas parishioners. The Church uses the parking lot for masses, funerals and other events at the Church or Parish Center. The Church did not feel this request would put an undue burden on the applicant.

Mr. L'Heureux said there were a number of design comments which have been addressed by the engineer. There is one hurdle. They need to do a test pit where the underground conduit comes in. The conduit is encased in concrete under the sidewalk. They need to determine the elevation

of the bottom of the conduit box so that they can connect to the catch basin. Currently, all the water sheet flows off the site and crosses Lenox. DPW would like the opportunity to funnel the water to a catch basin. They have to make sure they can meet the elevation. If they cannot, they will need to revise the drainage plan and come back to the Board. In light of the email from Attorney Burt, if the Board elects to require arborvitae or a fence there, the applicant would need to put the size, height and type of trees (or fence) on the plan.

Mr. O'Connor said he would like a condition of approval to be the installation of a fence. There is a built in walkway that goes into the church parking lot. Sal is a great person and does a lot for the parish and the community, but Mr. O'Connor felt that given potential future projects, it would make it more difficult given the parking. Mr. McCabe said they would do whatever the Board wanted. They have tried to tie into the development to the left and arborvitae would work. They can make sure the arborvitae are put into a position where it would make it difficult for people to walk through the property line. Mr. Connors noted Attorney Burt specifically mentioned the arborvitae; Mr. Connors felt a fence would be subject to damage from snow piles. Any barrier should be significant so that the vegetation in the landscape does not get damaged.

Mr. MacEachern asked who owned the parking lot next to Sal's. Mr. Sioras advised it was owned by the Church and the one behind it by Mr. Derderian. Mr. MacEachern asked how many spaces are in the church lot. There are about 13. The church owns the property from Sal's up to where the aluminum cans are stationed. Mr. Derderian owns the land behind that and then over to Moo's on the other side of the aluminum cans. Sheet C3 shows the abutting property lines. Mr. MacEachern said he would not support the request as they are not altering the zone and he does not feel the applicant needs to install a buffer for a parking lot. He does not feel many people park there for any length of time. It would be different if there was continuous activity at the church. He cannot justify the expense to the applicant. The St. Thomas Aquinas Center installed a buffer when they came before the Board because they were abutting a residential use. This is all one zone. There may be a handful of occasions where it would be an issue. The arborvitae would get trampled because that area is a cut through.

Mr. O'Connor respectfully rebutted stating this is the largest Catholic church in the state. There are many activities that occur on site such as functions three to four times per day and into the evening. It operates beyond the masses. He would support the request.

Mr. Connors asked if there had been any discussion between the parties. Mr. Ellison said if the installation of the arborvitae would make the abutters happy, they were amenable to the suggestion. Ms. Ijtsma asked if the Board could require the abutters negotiate this item. Mr. Granese said it needs to be shown on the plan as a condition. Mr. MacEachern said the Church may need to make arrangements to expand the parking lot.

Mr. Granese asked Mr. McCabe if he had been in conversation with Mr. Derderian. Mr. McCabe said he has been in talks with them and they tried to tie into their design. Sal's is moving forward with their project. They like the openness between the lots and would like it to stay open, but will do what the Board wants. He has not spoken to the Church about this.

Mr. L'Heureux directed the Board to sheet C4 of the plan set. This sheet shows the proposed landscaping, dumpster pad, and telephone box. There is landscaping here. In addition to any extra arborvitae, additional detail will need to be added to the plan such as the size, height and spacing of all the vegetation. There are also overhead wires above the dumpster pad where a truck would come in to empty the box.

Mr. MacEachern said he did not want to open Pandora's Box and create something that may/may not have an effect later or that this applicant may need to take out. The town changed the zoning behind Sal's; the Board has seen concepts for the development of the Derderian property. When that development happens there will be an intense discussion regarding buffers and parking. He does not want to have the applicant redo something that the Board imposed on them. He would like to add a condition to the plan that at such time as the Derderian lot is developed, the Board reserves the right to speak to Sal's management about buffering. It may make more sense to create the buffer later rather than earlier.

Mr. Connors noted it is all green space between the parking lots. There is also 5-6 feet on the Church's side of the property line where trees can be planted. Will the dumpster be screened? Mr. Ellison said it would. There is a proposed enclosure. Mr. Fairbanks asked about the residential buffer; he thought this area was General Commercial. Mr. Sioras said the actual zoning change takes effect tomorrow so technically the applicant is requesting a waiver this evening.

Mr. Granese asked if the colors on the building will be determined at a future date. Mr. Ellison said they are using Sal's brand of colors and the look and architecture of the building is in keeping with other buildings in the area. Mr. Granese said the colors on the rendering are nice but he wants to make sure that the building does not end up being a color that would not match the area. Mr. McCabe said the only colors they use are gray and tan.

Mr. Granese discussed the change in the entrance location. Mr. Ellison said they are constructing an ADA compliant ramp along the face, that is the reason they are changing the entrance location to the Lenox Road side. Mr. Granese asked if there would be more seating. Mr. McCabe said the seating will be the same but the kitchen will be a bit larger. It will be easier to maneuver in the seating area, but the number of seats will remain the same. They have been in Derry for 20 years. The company is very excited about this. Derry has been very good to them. They are also working on other locations such as Manchester, Billerica, and Salem.

Ms. Carver asked if there was a reason why they were taking the building down rather than refacing it. Mr. McCabe said it would have been difficult to keep the building as they are replacing plumbing and fixtures. They felt it was better to start at the ground up and do the site the correct way, by adding drainage. They feel this will create a better result.

Motion by MacEachern, seconded by Bartkiewicz to accept jurisdiction of the site plan application before the Board for Salvatore N. Lupoli (Sal's Pizza), 2 Lenox Road, PID 32032.
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Chase, Ijtsma, Foote, O'Connor, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to grant a waiver from the following Sections of the LDCR as after review of the waiver requests the Board finds that specific circumstances related to the plan, or conditions of land in such plan, indicate the waivers will properly carry out the spirit and intent of the regulations: Section 170-67.B.1, dumpster location; Section 170-63.A.2, parking setback; Section 170-63B.4(1), required number of parking spaces; Section 170-64.A.3, green space; and, Section 170-64.C, residential buffer.

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

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: subject to owner's signature, subject to on-site inspection by the Town's Engineer, establish appropriate escrow as required to complete the project, obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-61, note approved waivers on the plan, subject to receipt of state or federal permits relating to the project, test pit shall be dug, or verification provided that the drainage plan will work prior to final approval of the plan. If the drainage plan does not work, submission of the drainage modification plan shall be presented to the Planning Board for approval; conditions precedent shall be met within 6 months; and, 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. Discussion followed.

Mr. O'Connor wanted to add a condition that arborvitae be installed as a barrier between Sal's and the church. Mr. MacEachern declined to accept the friendly amendment. Mr. O'Connor suggested a poll of the Board members to see if anyone else would like that as a condition. He could not support approval without that condition.

Mr. L'Heureux asked for a condition of approval that more details be placed on the plan for the size and spacing of the proposed landscaping.

MacEachern added that as a condition, seconded by Bartkiewicz.

Mr. MacEachern motioned to poll the board to see if additional arborvitae should be added as an amendment seconded by Mr. Bartkiewicz. Mr. Granese summarized the motion is to see if the Board wants to add a condition of approval that arborvitae be added to the landscape behind the transformer.

MacEachern: no; there are enough there now; Chase, no; Ijtsma, no; Bartkiewicz, no; Foote, no; O'Connor, yes; Fairbanks, no; Davison, yes and Granese voted no. The amendment failed.

Mr. MacEachern wished to add one other condition to the plan such that when the plans come to the Planning Board for the development of 23 Crystal Avenue, that the Planning Board reserves the right to request Mr. Derderian, Sal's Pizza, other interested parties, and the Church get together to discuss buffering. Mr. Bartkiewicz seconded the amendment. Mr. Fairbanks did not feel it was fair to tie the applicant to something that may or may not happen. The Board was polled to see if they wanted to add this as a condition of approval.

Chase, O'Connor, Fairbanks said no; Ijtsma, Foote, MacEachern, Bartkiewicz, Davison and Granese said yes. The amendment to the motion passed.

It was noted there is already a buffer in place between Sal's and the Church. Mr. Connors asked if having the parties come back to the table to discuss buffering opens the Board up to any issues. Mr. Sioras said if 23 Crystal Avenue is developed, Sal's and the Church will be noticed as abutters and there will be discussion about buffers. The Board proceeded to vote on the motion to grant approval.

Chase, Ijtsma, Foote, MacEachern, Davison, Bartkiewicz, Fairbanks and Granese voted in favor; O'Connor voted against. The motion passed.

Mr. Granese welcomed the business to Derry for the second time in 25 years.

**Tupelo Music Hall/Scott Hayward**  
**PID 08001-002004, 10 A Street**  
**Acceptance/Review Site Plan**  
**Redevelopment of Site – Music hall and tenants**

Mr. Sioras provided the following staff report. The purpose of the plan is for the redevelopment of a former health club into a music hall located on A Street in the Industrial IV district. All town departments have reviewed and signed the plan. There is a waiver request letter dated June 20, 2016 in the member packets. Staff would recommend approval of the waivers and the site plan application. This is a tremendous move if this plan is approved this evening and staff is happy to see Tupelo Music Hall come to Derry.

Karl Dubay presented for the applicant. Scott Hayward was also present. Mr. Dubay passed photos of the site to the Board members while Mr. Hayward gave background on his venue. He has operated Tupelo Hall in Londonderry for twelve years. They opened in 2004. The patron age ranges between 45 and 65 years old. The current venue holds 240 seats and they sell out 80% of the shows. There is not enough parking or bathrooms at the existing facility. He has been looking for a new location for a few years. This property suits the needs for many reasons. The Stockbridge Theatre is nearby with 188 seats; this venue will be able to hold about 500 seats. The Opera House is also located nearby. Mr. Hayward feels this project could turn Derry into a destination for entertainment. People attending the three venues will also be looking for food. Portland, Maine invested in entertainment and now has 8 music venues and over 200



restaurants. This is not a venue that will cater to the young crowd who tend to like hard rock and rap. Examples of artists that perform at Tupelo Hall would be Dave Mason or Vanilla Fudge.

Mr. Dubay advised the property is located at 10 A Street. He reviewed the photos provided to the Board. The first shows the building from the front as well as the parking. The lot is 3.6 acres in size. They will clear the left side of the building which has become overgrown. That area will be used for egress and the sidewalk. To the right, they will keep the landscaping and remove the invasive species. The existing shrubs will need to be identified and they have added a detail to the plan for that. The parking lot to the right will be rebuilt and expanded slightly to the right towards the existing detention basin. They will add a catch basin and drainage, and replace the lights with LED. The main entrance will remain and they will save the majority of the mature trees. To the rear of the building is the swimming pool. The pool will be removed and it will be replaced with an area for the tour busses to pull up and load/unload. They are adding 2,000 square feet of impervious surface. They meet the green space requirement. The plan shows an as built survey. As noted, they will replace the lights and reconfigure the parking which will add value. They have worked with the TRC and addressed their review comments. They did update the plans and emailed them to Mrs. Robidoux today. Mr. L'Heureux had pointed out they needed to add more detail with regard to the site phasing as the previous note had been a little vague. They are proposing to phase the project as follows. There are 50 additional parking spaces in the area to the right. They will add a phasing line on the plan to show Phase I which will be all of the site with the exception of the 50 parking spaces to the right. That will be Phase II.

With regard to parking, Mr. Dubay explained there are 87 spaces currently. When the site is built out, they will have 207 spaces. They need to add 120. He suggests for Phase I, out of the 120 net new spaces, they will add 70 spaces; then add 50 spaces in Phase II. The intent is to grow the site from the rear and then go to the right. Mr. Hayward does not want to have to cancel any shows and would like to get this up and running. He also wants to be cognizant of his tenants. Mr. Hayward would like to be able to have Phase II in case he gets caught by winter conditions. They have been working with Mr. L'Heureux on a more detailed phasing plan.

Mr. Fairbanks asked if the maximum occupancy would be phased. Mr. Dubay said likely not. The 500 seat events are a small percentage of the events held each year. Usually they have smaller numbers, at intimate tables. There are not a number of large shows expected this winter. Mr. Hayward would like to work with DPW, Fire and Building to make sure all of the life safety items are in place. Mr. Fairbanks said they need to show the proper number of spaces for the events. Mr. Hayward said the shows scheduled for January and February generally have a lower number of seats. The shows with the larger number of seats (between 240-500) start in May. There is binder on the pavement now and they could stripe it and be done but it is not optimal. They have parking for more cars than they really need. He has been tracking the number of cars per the number of people and came up with 180 parking spaces. The school tenant lets out at 3:00 p.m. The other tenant leaves at 5:00 p.m. He is aware of the Sportszone across the street and he does not want his patrons parking on the street; he wants them all on site. He can fit them. He also has volunteers who currently park the cars.

Mr. MacEachern said he was familiar with the site and felt Mr. Hayward could park all the cars there now and it would not be an issue to phase it. He feels this is a good fit. Mr. Hayward said at his current facility, he has 40 spaces and has been able to park 90 cars. Mr. Connors asked with regard to the entrance; with that volume of cars, is there any option for a second egress? Does the town have any requirement once the parking lot reaches a certain size? Mr. Chase advised this application came before the Highway Safety Committee which felt the entrance and egress would be appropriate for the amount of traffic. Hopefully, people trickle in as they have been; there is no major rush to get in or out of the site. Mr. Hayward said he has been tracking traffic over the last year in fifteen minute increments. It is a trickle of traffic over any hour. Many artists do a “meet and greet”; 60% of the patrons wait after the show for that. The exit from the site is around 11 p.m. when there are not many cars on Manchester Road. Mr. MacEachern asked if there will be staff helping people in and out of the site. Mr. Hayward hoped to not require that.

Mr. Dubay said they created an intersection in the parking lot surrounded by islands so the cars will not all be rushing to one spot. Inside the building will be a café; that will spread out the peak traffic. This is not a venue like the Opera House with events such as the Kids Coop where everyone arrives and departs all at one time. This will support many secondary businesses.

Mr. Granese asked with regard to the use and the three tenants. Mr. Hayward said he currently has Ombudsman. He hopes to create 2000 sf of office use. His space is 13,000 square feet. There is additional space that he may or may not rent. He does not need to maximize the build out. He will have a kitchen and can do many other events in the space. This is not just a music hall. They will have the ability to cater the events on site and will be open for shows. He does not have any goals to open a restaurant. Mr. Granese asked if Mr. Hayward was aware of the sign regulations. The Board would not want the sign to look like the one on South Willow Street. Mr. Hayward said the idea of the sign is to show the upcoming events. It takes 13 seconds to go from Walmart to Applebee’s. The sign would change every 7-8 seconds. It is also a space to notice community events. Mr. Granese noted the Board spent time revising the sign ordinance a few years ago, and just wanted Mr. Hayward to be aware of the regulations. Mr. Hayward said he is a concert promoter; people need to know what they do at the venue. Mr. O’Connor commented the sign is not located on Mr. Hayward’s property. Mr. Hayward advised the sign is on leased land and the current owner holds the lease until 2032. He will take over the land lease. He has spoken with Mr. Mackey and is aware of the regulations.

Motion by MacEachern to open the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the floor was open to the public.
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There was no public comment.

Motion by MacEachern to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and review of the plan came back to the Board.
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Mr. L’Heureux said his primary concern was the phasing of the project. He does not want to hold them up but the phasing needs to be identified on the final plan. Escrow will be required for

the entire project and will tie up collateral until all the improvements are complete. This includes final pavement, landscaping and lighting. They can open the business and continue to make improvements. Mr. Hayward said the goal is to not phase it but they want flexibility. He wants to begin right away and is ready to go. He wants Derry to have the best New Year's Eve celebration it has had in 40 plus years.

Motion by MacEachern to accept jurisdiction of the site plan application before the Board for Tupelo Music Hall (Scott Hayward), 10 A Street, PID 08001-002004, seconded by Bartkiewicz.

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

Motion by MacEachern, seconded by Bartkiewicz, to approve the following waivers from the LDCR as after review of the waiver request, the Board finds that specific circumstances relating to the plan, or conditions of the land in such plan, indicate the waiver will properly carry out the spirit and intent of the regulations: Section 170-63.A.7/8 and B.4, curbed islands, interior islands and plantings in parking areas, Section 170-63.C.1, parking stall length.

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

Motion by MacEachern, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed application, with the following conditions: subject to owner's signature, subject to on-site inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS Disk is received, is operable, and complies with LDCR Section 170-61; note approved waivers on the plan; note the total SF of the building (can be in the general notes) separating out the SF for each use; add spot elevations around proposed islands; clarify phasing notes (detail the number and extents of the phasing using separate sheets), Phase I shall be as discussed to include the addition of 70 parking spaces, Phase II is the addition of 50 parking spaces; all drainage must be completed for all phases; add notes that existing pavement and subbase material are to be removed to allow for minimum gravel placement; add depth of bury for the light pole bases, note the type of shrubs/trees that currently exist on site; conditions precedent shall be met within 6 months; snow and ice removal are to be performed by a "Green Sno Pro" certified contractor following Best Management Practices for the application of de-icing materials.

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

Mr. Granese welcomed Mr. Hayward to Derry.

*The Board recessed and then reconvened.*

*Ms. Davison recused herself from the next application. Ms. Carver was seated in her place.*

**Varsity Wireless, LLC**

**Owner: Sara Baggar**

**PID 08102-001, 69 By-Pass 28**

**Acceptance/Review, Site Plan**

**130 Foot monopole telecommunications tower**

Mr. Sioras provided the following staff report. The purpose of this plan is for the construction of a 130 foot monopole telecommunications tower located on By-Pass 28 in the General Commercial II zoning district. On April 21, 2016, the Zoning Board of Adjustment granted a variance to permit the construction of the facility in the General Commercial II zone. All town departments have reviewed and signed the plan. There is a letter dated June 14, 2016 from Varsity Wireless in the file, requesting waivers. There is a NH DOT driveway permit pending; a copy of the application is in the file. Mr. Sioras reported that during the TRC discussions the Fire and Police Departments supported the project based on poor emergency communication in that part of town. There is a benefit to having a tower located on the By-Pass. With regard to the technical aspects of the application, staff would recommend approval of both the waiver requests and the site plan application.

Attorney Francis Parisi represented the applicant. He related a personal story highlighting the importance of having cell phone signals in a medical emergency. The applicant had applied to the Zoning Board of Adjustment for a use variance to allow construction of a cellular tower in a General Commercial II zone; the ZBA felt the use was appropriate for the zone and approved the variance. They are before the Board this evening seeking several waivers and site plan approval. His company is a developer of wireless infrastructure. The major vendors are focusing on expanding their networks and are no longer building the towers. Varsity Wireless builds the vertical real estate and then the major vendors rent space on them. Gerry Squires, Site Acquisition Specialist from T-Mobile and Marlon DePaz, the Radio Frequency Engineer, are in the audience this evening, to answer any questions. Varsity Wireless is undertaking several projects statewide. The benefit of using a developer such as Varsity Wireless is the telecommunications companies cooperate and this is a win/win for towns that are trying to minimize the number of towers.

Attorney Parisi explained why they want to locate in Derry. Seventy percent of E-911 calls now come from cell phones. 40% of the residents in the State of New Hampshire have cell phones as their only source of communication. People are using cell phones for residential and commercial use. Cellular technology has evolved and is now in the 4<sup>th</sup> generation (4G). The technology requires a better quality signal and coverage is not as good in the area in which they would like to locate. As people are moving cell phones into structures, the structures become an impediment to the signal. Public Safety needs to know the location of the calls. The carriers now comply with E-911 and calls can be triangulated to locate where you are calling from. That technology requires better signals and service. In order for this to work, there is a need for more antennas. They are building this tower for T-Mobile. AT & T tried to build a tower on town

owned land next to the water tank but the town was not interested in becoming a land lord. Varsity is working with AT & T as well. It is anticipated that Verizon and Sprint will also locate on this tower. They can design the tower to accommodate public safety. There is a cell tower at the fire station near the traffic circle (Station 1). As one goes up By-Pass 28 near Pinkerton, the hill becomes a topographic impediment for the signal coming from that tower. The tower does not reach Tsienneto Road. The topography is the driving factor for the need. They have found a site that meets the requirements, other than the zone itself. There are powerlines nearby so he felt this would be less intrusive.

Attorney Parisi advised he submitted a lot of material and did a lot of due diligence in working within the regulations and land use. This is the only viable location for all. Since he filed the original application, he submitted a revised waiver request letter. He advised he would be going through a PowerPoint presentation that is submitted for the record (note: no hardcopy provided).

In the materials provided is a gap coverage map. There are not many structures as one heads toward Chester. For the alternatives analysis, they analyzed 30 different properties where it would have been easier to locate a tower, for example near Walmart, but the land did not meet the topographical requirements. Radio analysis determined they need to be on the hill. The subject vacant lot is adjacent to the Town water tank with powerlines to the north. The facing setback is over 200 feet and the facility won't be seen from By-Pass 28. The gap map shows that the location of this tower will fill the gap. The trend today is to build smaller, strategically placed towers. They know they are getting closer to the residential neighborhoods in less than optimal zones.

With regard to the site plan, the tower compound will be a 60 x 60 foot fenced in area. It will be located 280 feet off the By-Pass. There is an existing gravel driveway that is supposed to have been discontinued per a subdivision approved by this Board ten years ago. They will discontinue the driveway as part of this project and relocate it across from London Road. The driveway will be angled in so that the compound cannot be seen from London Road. The facility will be surrounded by brush vegetation. The powerline easement was overgrown and has since been cut back; that surprised the applicant as well as the neighbors when that occurred. They will plant a vegetated buffer to the north. The compound is standard at 60 x 60, surrounded by chain-link fence. The Town regulations also call for barbed wire and they will accommodate that. The facility will be un-manned. They anticipate 6 weeks of construction activity. Inside the compound, T-Mobile will install its equipment on a concrete pad. The majority of the site will be gravel; they had to add an additional parking space and turn around area for emergency vehicles per the TRC. All of the cables will go up the inside of the tower. They can accommodate the Town by placing a public safety antenna on the top. They did put a balloon in the air at 130 feet and advertised they were doing so in the local papers. They also notified the abutters so that they were aware this was occurring. They prepared a visual analysis. The balloon was in the air for over 12 hours. The map provided shows the roads they traveled to see if they could see the balloon. They have pictures to show where the tower will and will not be visible and worked with Planning staff on the locations. The tower will be visible from a few spots on Route 28; the trees typically hide the tower so at major intersections it might have more of an impact as the intersections are cleared areas. Attorney Parisi said he felt there would be

minimal visibility throughout town. In a car, the tower can be seen from J&F Farms, Beaver Lake Road, the soccer fields, First Parish Church, Frost Farm (on the road in front of the farm); the baseball fields, and the Fairways. The tower is most visible from London Road because of the open vista. The tower will not be seen from the homes as the homes face east and west. The tower will also be visible from the corner of Olde Coach Road.

Attorney Parisi reported he visited the TRC and received good comments. They need waivers because they are not building the typical building. They are building a 60 x 60 compound in a vacant lot, an access driveway, for an unmanned facility that will be checked every once in a while. The parking spaces will be gravel and no lighting is proposed as the FAA does not require this tower to have lights. He believes the facility is the only viable alternative for the area and it meets the site plan requirements. The waivers are nominal and he would request site plan approval.

Motion by O'Connor, seconded by MacEachern 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 plan came back to the Board.

Mr. Connors acknowledged the gap in coverage and had a question about the new location of the driveway. Attorney Parisi explained they were going to use the existing driveway but were informed during TRC they needed to comply with the former subdivision plan. They will take out the old driveway and build a new one where the Planning Board approved it ten years ago. Mr. Connors noted there are some fairly robust trees along the frontage to the property line. With the new driveway and detention pond, those will be removed. He is concerned that will create views of the tower. Attorney Parisi advised they had to go with the sight line analysis. There was a two lot subdivision ten years ago. One condition was to remove the existing driveway and create a new one. They are leasing the newer lot. The engineer has certified the dimension of the antennae for the facility. The platform should be about 12 feet wide. Mr. Connors asked with regard to removal of the tower when it is no longer in use. Who is responsible for that? There is a land lease/landlord agreement in place. In one part of the material it says the landlord is responsible, in another location it says the town will hold a removal bond. Attorney Parisi said he anticipated the Board would decide on an amount this evening for the removal bond and add it as a condition of approval. The bond would be posed in conjunction with the building permit. Mr. Connors noted the Captain of the Fire Department had asked about space on the monopole. Would the town be provided space, or would the town be a client? Attorney Parisi said they would agree to a condition that they provide space free of charge for the town; the town would have to enter into a lease agreement. They would work with the town on that. Mr. Connors asked if the cabinets would all be in the fenced area. The plan shows some power/telephone cabinets outside the fence. Attorney Parisi said those are small transformers (power cabinets) that are 2'x 2' x 2' in size. Mr. Granese said they were similar to the ones seen in residential neighborhoods. With regard to the driveway, Mr. Connors

noted the Board just amended the LDCR and anything over a certain length had to be 14 feet wide. Does this conform to the new or old regulations? Mr. L'Heureux said this driveway is over 150 feet (275 feet long) and has a turnaround. It does meet the gravel requirements. The Board discussed the width of the driveway. Attorney Parisi said the width was not discussed with TRC. Can they request a waiver? They don't see a need to build something that big. Mr. Chase said the problem with a 12 foot wide driveway is that it is okay during the summer but during the winter months it is harder to navigate because of the snow. The fourteen foot width gives extra room. Mr. Granese felt it would be a hard sell to the Board to request a waiver of that requirement. The driveway should be constructed at the 14 foot width.

Mr. Granese asked if there would be a generator. Attorney Parisi explained they allow space for one in case it is needed later. Each of the companies has its own back up battery; if that fails, they bring in a temporary battery. Mr. Connors noted the ZBA decision recommends the Planning Board establish a true need for four carriers on the tower; does the Board need to do that? Mr. Granese said it was a recommendation. Mr. Sioras advised when the telecommunication ordinance was written, it encouraged co-location. That is why there are three to four carriers on each tower. Attorney Parisi stated in their application they did extensive analysis and broke down coverage maps for each of the carriers, as well as a height analysis.

Mr. Granese commented the Board has approved two towers that have yet to be built. Will that happen with this application? Attorney Parisi said no. The industry has changed and Varsity Wireless is a real estate developer. They don't build unless there is a true need. T Mobile makes its money selling service and Varsity makes its money leasing the real estate. The telecommunication companies are budget driven and that may be the reason those towers have not been constructed.

Mr. Fairbanks noted the town has zones where towers are allowed. Are there no areas other than the By-Pass to locate the tower? Mr. Sioras noted the overlay zone ends just before this lot. Mr. O'Connor asked what is the usual bond amount for removal of a tower. Mr. Sioras said the town has \$25,000.00 in escrow for the past two towers.

Mr. MacEachern said this property abuts the telecommunications overlay; did they look at that land? It is one lot away. Attorney Parisi stated the lot on which cell towers are allowed is owned by the Town of Derry. The Town of Derry negotiated with a carrier to put a cell tower on the property and then said the Town did not want to lease the land. The land is not available for lease. Varsity Wireless did not speak to the Town Administrator. He had been doing work with AT & T at the time that company was in discussion with the Town. Mr. MacEachern commented there is a different Town Council and Town Administrator. The Board spent a lot of time working on the telecommunication ordinance. He respectfully requests the applicant bring this to the Town Council for discussion. There is a secure road, and construction costs would be minimized. He felt the tower could be relocated there. He would then want to see the appropriate maps updated. Attorney Parisi said with all due respect, they went to the ZBA for a use variance which was approved. It would have been in the ZBA's jurisdiction to request they speak with the Town. Mr. MacEachern felt Attorney Parisi did not approach the town with this specific request and did not look at the land in the telecommunications overlay district. Attorney

Parisi said the town had that opportunity previously. Varsity Wireless did not speak to the Town. Mr. MacEachern feels the ZBA erred in its decision and that it did not have all the proper information in front of it. Mr. Granese reminded the Board this is a public hearing and the Board needs to take action on the application. Mr. MacEachern said he was aware of the previous entity but Varsity is a new player. Mr. Fairbanks wanted to know what was the hardship cited to the ZBA? Attorney Parisi said there are two ways to look at it. Technology defines the need. They looked in Industrial zones but because of the topography and technology, they can't use the industrial zone; it has a lower elevation and is closer to other structures and therefore can't meet the coverage objective. Mr. MacEachern said they could adjust the height of the tower to make up for it. Attorney Parisi said there is case law that supports how a ZBA should look at applications of this type. The applicant needs to establish the gap in coverage, have data to support that, and needs to show there are no viable alternatives. Mr. Fairbanks asked would the parcel in the telecommunications overlay work. Attorney Parisi said yes it would, but the land is not available per the previous discussions A T & T had with the Town.

Mr. O'Connor said there had been discussion with the TRC about this project. All of the departments were represented. The signal struggles to get up the hill; the TRC notes document the discussion. If staff felt this should have been brought to the Town Administrator, they would have done so. Mr. Connors asked if the property in question is the one noted on the spreadsheet in the presentation as 36 Tsienneto Road. If that is the case it may not have been made clear to the ZBA that there had been no recent discussion with town administration. Ms. Ijtsma said it was too bad the town was not interested because the Tsienneto Road parcel would generate revenue. Varsity Wireless did not negotiate with the town, AT & T negotiated with the town. She felt if Attorney Parisi has been working with the town for over a year on this project, then he should have been aware the players changed. Attorney Parisi said he came here a year ago and spoke with Planning. He spent that year doing due diligence. The packet resulting from that due diligence costs tens of thousands of dollars to prepare. He sat with the TRC. At any time, the town could have said something. He does not feel he should be required to backtrack and go back to Town Council. The town had the opportunity and said no after listening to its residents. He does not believe the situation has changed. He is here this evening requesting a site plan approval on a plan that meets the requirements with some waivers. They have invested time and money based on the town's previous decision. It is disingenuous to say they might be interested now.

Mr. Granese said the use is not in the Planning Board's purview. Attorney Parisi made a good point. Someone could have said something during the process. Mr. MacEachern noted TRC meets after the ZBA. Mr. Sioras agreed the town was approached by another company a year ago for the water tower property. Town Council said no. Attorney Parisi has worked with the town; staff told him he needed a use variance, which he obtained. During TRC staff made Attorney Parisi aware that they had known about the previous negotiations. Staff did not recommend he approach the town one way or the other.

Mr. MacEachern said it is not about the town owned land; there are other lands available in the telecommunications overlay district. There is nothing this Board can do about it. The ZBA made a decision and this Board needs to make a decision based on the facts presented to it.



There are many alternatives and he struggles with what to do. Mr. Granese reminded the Board they needed to take some form of action on this application.

Ms. Carver asked if any studies had been done with regard to apiaries and how this cell tower will affect bees. Attorney Parisi said cell towers have a lot of federal mandates. The National Environmental Policy Act (NEPA) analyzes the impact on birds, plant and animal endangered species, historic resources and Indian resources. They have the analysis and have made sure they are not affecting migratory birds. Ms. Carver asked specifically with regard to bees. There is a farm nearby and she has heard cell towers can negatively affect the bees' navigation system. Is there anything in the analysis provided by Attorney Parisi that will show the cell tower will not negatively affect the bees' ability to pollinate nearby crops? Attorney Parisi admitted this was a first for him. Bees are not endangered and he has not heard that honey bees have proximity issues with cell towers. Birds are an issue.

Mr. Fairbanks asked to see the map of the alternative properties. Attorney Parisi explained they took the gap analysis and had the real estate people look at different properties. They look at the zoning laws, and at more than just 'is it in the overlay'? They look at any land that might work. Mr. Fairbanks asked if the only land in the overlay that was not industrial was 36 Tsienneto Road; it is. Mr. Fairbanks would like an opportunity to hear from the town formally that it is not interested in making 36 Tsienneto available. Mr. Connors asked if the town had been concerned about locating a tower on the water tower. Attorney Parisi said the town was approached to put one on the lot, not the water tank. Mr. Connors asked if anyone knew why the town said no. Mr. Granese asked that the Board do something with this plan.

Motion by O'Connor to accept jurisdiction of the site plan application before the Board for Varsity Wireless, LLC (on behalf of Sara Baggar), 69 By-Pass 28, PID 08102-001. There was no second. The motion died on the table.

Motion by MacEachern to continue this plan. There was no second. The motion died on the table.

Mr. Sioras said the next hearing date is August 17<sup>th</sup>, the Board should have two plans on the agenda. Mr. Granese said this matter could be placed first on the agenda if continued. Mr. Fairbanks wanted to get this matter before the Town Administrator or Town Council to see if there was interest. Mr. MacEachern said any contract would fall under the purview of the Town Administrator who would bring it to the Town Council. Mr. Foote suggested the matter could be brought to Mr. Daly who would bring it to Council. Mr. MacEachern wanted it to be clear. It is not just 36 Tsienneto Road. He felt all the parcels in the overlay district should be looked at. Attorney Parisi said they can't be going all over town and they looked at all the available parcels.

Mr. Granese advised there was no second on the motion to table and that motion died on the table as well. He inquired as to the shot clock. Mrs. Robidoux advised it begins when an application is received. In this case, the ZBA received the application so the shot clock ends on September 04th. Attorney Parisi noted this is a site plan application for a specific plan. What happened if Town Council says yes? Mr. Granese noted no one seconded that motion and they

can't move forward. Attorney Parisi stated this Board has jurisdiction over site plan review. There is no benefit in waiting. If the Board says yes, there is a site plan to approve or reject. This Board's purview is on the application, not on whether they should look at alternative locations.

Mr. Granese said there was no second to accept jurisdiction, so the Board can't vote on the motion. There was further discussion about tabling the application to the 17<sup>th</sup> of August so that the applicant could have time to speak with the Town Administrator; this matter could be placed on the next agenda. Attorney Parisi did not believe there would be an answer from the town before August 17<sup>th</sup>, because Town Council would need to hold its own meetings. Mr. Connors thought the Board should vote on the application up or down because the Board has been discussing an opportunity for the town rather than the existing site which he feels is inappropriate.

Mr. Granese said the issue is that the motion did not get a second. Mr. MacEachern asked for a recess. Mr. Granese said the Board needs to make a determination and the meeting would conclude this evening at 10:00 p.m. He granted a five minute recess.

*The Board recessed and then reconvened.*

Mr. L'Heureux said he had additional housekeeping items and an issue with the detention pond/swale, with which the applicant complied. They did do a drainage study analysis. Mr. Granese asked what did the Board want to do. Mr. O'Connor noted he still had a motion that failed. There has been additional information and he would like to repeat the motion.

Motion by O'Connor, seconded by Bartkiewicz to accept jurisdiction of the site plan application before the Board for Varsity Wireless, LLC (on behalf of Sara Baggar), 69 By-Pass 28, PID 08102-001.

Chase, Ijtsma, O'Connor, MacEachern, Bartkiewicz, Fairbanks and Granese voted in favor; Foote and Carver abstained. The motion passed.

Motion by O'Connor, seconded by Bartkiewicz to grant the following waivers from LDCR as after review of the waiver requests, the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waivers would not be contrary to the spirit and intent of the regulations: Section 170-61.A.12, HISS Mapping; Section 170-61.A.13, Wetland mapping; Section 170-63.A.5, to allow parking on a gravel surface, Section 170-63.C & D, to allow parking on a gravel surface and to not provide striping, dimensions, etc., for the parking stalls, Section 170-64, to not provide a landscape plan, Section 170-61.A.20 and 170-63.A.9 to exclude a lighting plan from the submission. Discussion followed.

Mr. Chase asked if LDCR Section 170-63 C & D also covered the new construction requirements. Mr. O'Connor said he was going to add a stipulation as a condition of approval that the driveway had to be fourteen feet wide. Mr. Fairbanks would like that condition to

specifically state the appropriate section of the LDCR. Mr. Connors reminded of the need to post a removal bond.

Chase, O'Connor, MacEachern, Bartkiewicz, Fairbanks, and Granese voted in favor; Ijtsma and Carver voted no; Foote abstained. The motion passed.

Motion by O'Connor to approve, pursuant to RSA 676:4,I, Completed Application, with the following conditions: subject to owner's signature; subject to on-site inspection by the Town's Engineer; establish appropriate escrow as required to complete the project; provide signal analysis/test data to show the signal from the cell tower will not interfere with the signal from the existing Town of Derry water tower communications; provide a tower fall zone plan; obtain written approval from the IT Director that the GIS disk is received, is operable and complies with LDCR Section 170-61; note approved waivers on the plan; subject to receipt of state or federal permits relating to the plan; conditions precedent shall be met within 6 months; submittal of a bond in the amount of \$25,000.00 for the removal of the cell tower; provide space free of charge with a written lease agreement to the town for public safety use; the driveway width shall be increased to 14 feet to meet the requirements of the LDCR Section 170-26.A. Bartkiewicz seconded the motion.

Chase, Ijtsma, O'Connor, Bartkiewicz, and Granese voted yes; Foote abstained; Carver voted no, Fairbanks voted no and MacEachern voted no stating he felt the ZBA did not have all of the information at the time of its decision. The motion passed by a vote of 5-3-1.

There was no further business before the Board.

Motion by MacEachern to adjourn, seconded by Bartkiewicz. The motion passed with all in favor and the meeting stood adjourned at 9:54 p.m.

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

\_\_\_\_\_  
Secretary

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