

The Planning Board for the Town of Derry held a public meeting on Wednesday, August 07, 2019 at 7:00 p.m., at the Derry Municipal Center (Third Floor Meeting Room) located at 14 Manning Street in Derry, New Hampshire.

Members present: Lori Davison (Chair Pro-Temp); Mark Grabowski (Secretary Pro-Temp); Mark Connors, David McPherson, Members; Jim MacEachern, David Granese, Alternates

Absent: John O'Connor, Maya Levin, Brian Chirichiello, Randy Chase, Frank Bartkiewicz

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning and Economic Development Assistant; Beverly Donovan, Economic Development Director.

Ms. Davison called the meeting to order at 7:01 p.m. The meeting began with a salute the flag. Ms. Davison then noted the location of emergency exits, and introduced the Board members and staff present.

Mr. MacEachern was seated for Ms. Levin; Mr. Granese was seated for Mr. Bartkiewicz, and Mr. Grabowski was appointed Secretary Pro-Temp for the evening.

Escrow

#19-23

Project Name: Subdivision of Map 05, Lot 58

Developer: Linda Rutter

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 06058, 52 Lane Road

The request is to approve a final release of cash escrow in the amount of \$25,958.88 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

#19-24

Project Name: East Derry Store Restaurant

Developer: 50 E. Derry Road Con., Inc.

Escrow Account: Same

Escrow Type: Cash Escrow

Parcel ID/Location: 39033, 50 East Derry Road

The request is to approve a final release of cash escrow in the amount of \$7,302.96 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

#19-25**Project Name: Lot Line Adjustment, 22 Ashleigh Drive****Developer: SUSO 4 Derry, LP****Escrow Account: Same****Escrow Type: Cash Escrow****Parcel ID/Location: 08280-002 and 08280-007, 22 Ashleigh Drive**

The request is to approve a final release of cash escrow in the amount of \$1,555.20 for the above noted project. The amount to retain is zero. This escrow is non-interest bearing.

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

Minutes

The Board reviewed the minutes of the July 17, 2019, meeting.

Motion by MacEachern, seconded by Connors to approve the minutes of the July 17, 2019, meeting as written. The motion passed with Granese abstained.

The Board reviewed the minutes of the July 24, 2019, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the July 24, 2019, meeting as written. The motion passed with McPherson and Grabowski abstained.

Correspondence

Mr. Grabowski advised the Board is in receipt of Letter of Credit renewal reminders for David and Catherine Frahm and BR-10, LLC, as well as a notice of public hearing from the Town of Fremont. Mr. MacEachern verified the Town of Derry is notified by other towns when the application is for a telecommunications tower and the town is within a 20 mile radius of Derry.

Other BusinessSummer Schedule

Mr. Sioras reminded the Board the next meeting will be September 04, 2019.

Voluntary Merger – 17 and 15 Tyler Road

Mr. Sioras stated staff recommends approval of the Voluntary Merger application. The merger is for two lots on the paper street portion Tyler Road. There is a map attached to the application. These lots were approved in the 1960s as part of Sunset Acres. There are a handful of lots in this area that have frontage on paper streets. There are no roads being constructed as part of this merger. The combined square footage will make the lot about 1 acre in size which is more conforming to the current zoning regulations. Most of the lots in the area are half an acre in size.

Motion by MacEachern, seconded by Granese to approve pursuant to RSA 674:39-a, the voluntary merger of 17 and 15 Tyler Road, Parcel ID 02046-064 and 02046-069. 17 Tyler Road shall be retained and 15 Tyler Road shall be deleted. Discussion followed.

Mr. ~~Conner~~Connors noted Tyler Road, which begins on Windham Road, ends in a cul de sac. This portion of Tyler Road is off of Silver Street and this portion of Tyler technically does not exist. Mr. Sioras explained there is no plan to build this portion of Tyler Road. The road statutes changed in the 1989 to state that any paper street dedicated between 1893 and 1969 automatically goes away unless accepted by the town within 20 years. This portion of Tyler was not accepted by the town. If the landowners want the road accepted, they would have to see the Town Council to open the road. These roads have been terminated per that state statute. Mr. Connors commented there are many paper streets in Derry. Is there a process so that the road area can be given to the abutters? Mr. Sioras said there are several things that can happen in those situations. The abutters on either side of the paper street can request the Town Council do a release of public servitude and split the land area; there are other roads the Council did not accept that just exist on paper, which under the 20 year rule no longer exist, or some are subject to gates and bars. There were many stub roads left when subdivisions were created in the 1960s. It looks like these lots have frontage, but the road does not exist. In theory, the abutters would need to petition the Town Council to open the paper portions of Drury and Silver; he is not aware of any plans to do that.

Connors, MacEachern, McPherson, Grabowski, Granese and Davison voted in favor and the motion passed.

Public Hearing

First Public Hearing – To discuss proposed amendments to the Town of Derry Zoning Ordinance, Section 165-34, Office Business District, to amend the permitted uses, limitations, parking requirements and maximum lot coverage.

Mr. Sioras provided the following staff report. The Office Business District is an existing zone that runs from the Londonderry town line along the frontage lots on West Broadway and ends near Veteran's Hall. The Board has been discussing the addition of uses in the zone. There are no proposed additions of lots to the zone as part of this amendment. The uses are primarily commercial office uses that exist in the zone today.

Motion by Granese, 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 Granese to close the public hearing. The motion passed with all in favor and review of the amendments came back to the Board.

Mr. Sioras advised the Planning staff has spoken to many of the affected landowners and most were not opposed to the change. Mr. Granese noted the Board has held multiple workshops on this amendment and he likes the changes the Board has agreed upon; he sees no reason to not move forward with the proposed amendment. Mr. Connors felt the uses aligned with what has been mentioned. Single family residential is still listed as a use; does the Board want to continue that? Mr. Sioras believed so. There are several homes in the district that remain single family with no intention of changing the use. That was the most common concern raised by the residents who spoke with Planning staff. They want to be able to retain the single family use. That use should be retained. This zone is very different from West Running Brook. Mr. Connors asked if new single family residential would be allowed. Mr. Sioras said it would be, but the lots don't meet today's zoning with respect to the ability to subdivide a lot in the OBD. These lots were created in the 1920s and 1930s and are reflective of the time.

Mr. MacEachern asked with regard to multifamily dwellings. They are allowed and need to follow the regulations for multifamily set out under the Traditional Business Overlay District (Section 165-49) and would include mix use; residential use can be on the second floor or above.

Motion by Granese, seconded by Connors to recommend proposed changes to the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-34, Office Business District, to amend the permitted uses, limitations, parking requirements, and maximum lot coverage and to forward the proposed amendments to Town Council for review and approval.

McPherson, Grabowski, Granese, Connors and Davison voted in favor; MacEachern voted no, citing he disagrees with the decision to not have a list of prohibited uses. The motion passed with the majority in favor.

Workshop

Workshop #1 – to discuss proposed changes to the Land Development Control Regulations, Section 170-84, Various Sections of Town and to add Section 170-86.1, West Running Brook District

Mr. Sioras noted the Board recently approved the creation of the West Running Brook District. All districts have Architectural Design Regulations which are not included in the Zoning Ordinance. The changes to the Land Development Control Regulations were not discussed while working on the West Running Brook District. Specific design elements are outlined for the West Running Brook District as part of this amendment. If the Board moves forward with the proposed amendments, it will hold its own public hearing. These proposed amendments do not require Town Council approval. It was felt the West Running Brook District should be held to a higher design standard than some of the other districts. If the Board agrees to the proposed changes, the Board can vote at its next meeting to set a date for a public hearing. Ms. Davison confirmed these regulations would be used as a guideline for any development in the West Running Brook District.

Mr. MacEachern felt Mr. O'Connor, who was not available for this meeting, should have input on this document. Would he and the other members not present this evening be able to do that if the Board moved forward with the document as written? Mr. O'Connor had been the one to raise the issue that this step was missed and he wanted to respect Mr. O'Connor's ability to comment on it. Mr. Sioras said Mr. O'Connor would be able to provide comment and suggested changes during the public hearing. Ms. Davison noted as this is a workshop, this would be the time for the Board members to comment on the draft.

Mr. Connors questioned Section 170-86.1.C, Design Elements for Corner Lots, where it states a building on a corner lot may be three and a half stories in height. Mr. Sioras said where a corner lot is more visible and highlights the corner, that may be a reason for the height restriction. Mr. Connors asked what a half story would do for a building. Ms. Davison thought it is an opportunity to add architectural elements such as balustrades, etc. Mr. Grabowski commented the apartment building on the corner of Fordway and Kendall Pond Road is three and one half stories tall. Mr. Connors wondered if a building was three and a half stories tall and then had A/C units on top of it, does that make it a four story building? Mrs. Donovan provided an example of a three and a half story building on a corner lot in Salem. To the rear where it is built into a hill, the building looks four stories tall. She noted the reason the Board opted to utilize Conditional Use Permits in this zone is to create flexibility in development. The lots have very different and varying topography. The buildings should be designed to work with each individual lot.

Mr. Connors felt it was odd to have a half story; he was struggling with the 'half story' concept. Mr. Sioras said there is potential for development with creative touches; he did not believe there would be a push to construct the four to five story townhomes that are being constructed in neighboring communities. Mr. ~~Connor~~Connors commented it would be possible, based on the topography, to have a five story building on some of the lots. Mr. MacEachern asked why a height restriction was suggested for corner lots; there are no other restrictions outlined for this district in the Zoning Ordinance. Other districts restrict height to be no taller than a certain elevation about sea level. Mrs. Robidoux said there is no restriction in the Zoning Ordinance for the West Running Brook district. The Planning Board determines the height based on the scale of the development and the topography of the land to maintain the character of the district. The language for the corner lots is a talking point and the Board can remove the language. Mr. MacEachern said he did not want a five story building in the back of a lot where the land is lower to be five stories just so it can match the elevation of the three story building on the front of the lot. He felt if there was going to be a height restriction, it should be for the entire district. Mr. Sioras said the point was to make sure the corner lot had an attractive building as it would be more noticeable; he agreed the restriction could be removed. The architectural design regulations are the Board's regulations and have the ability to be waived. Board decisions on waivers to the LDCR are not appealable to the Zoning Board.

Mrs. Donovan suggested leaving the height restriction out of the document based on the conversations she has been having with developers. She has been speaking with hotel users. It is well known Derry needs a hotel. A hotel structure would typically be three to four stories. It might be better to look at each development based on its own merits, rather than having restrictions in place; that is the spirit of this zone. There are guidelines in place. Developers will come to the Board with the first pass and the Board can provide input before the developer spends a lot of money on engineering. Then the plan will go to the Technical Review Committee. Mr. MacEachern disagreed and felt there should be regulations in place or the Board is going to end up in court or with something the town did not want in this area because there are no restrictions. Each district should be looked at holistically, to see what fits and what does not fit. He felt the Board may be developing these regulations in a blind fashion. The lack of information does not help the Board put good plans in place for the zone. Mrs. Donovan said she would suggest adding a maximum if the Board needs one for height, but not a minimum. Mr. MacEachern said he was not disagreeing, but he thought the Board should know what is being discussed between Mrs. Donovan and potential developers so that the Board does not make a mistake; that could be done in non-public. Mr. Sioras advised the Board cannot just move to go into nonpublic session; it has to be posted and there are very limited reasons to enter a nonpublic discussion under RSA 91-A:3, II.

Mr. Sioras asked the Board members if they wanted to make any changes to the proposed text in Section 170-86.1.C. Mr. Connors asked if the Board should be looking at placing restrictions on certain lots; Mr. MacEachern said that could be construed as spot zoning unless it applied to multiple lots. Mr. Sioras added there are smaller lots in the zone that could potentially be combined; there are not many large lots in this zone. The tallest building in the zone currently is about three stories.

Ms. Davison suggested polling the Board to see if they felt the Board should consider holding a nonpublic session. Mr. Sioras said the Board can't do that per the RSA; the Board can only enter nonpublic to discuss litigation. With regard to what Mr. MacEachern wants to do, this is why Conceptual and Design Review is allowed by statute; the discussions are non-binding. Mr. McPherson felt discussing potential projects ahead of time created a confidentiality issue for the town's economic development team. Ms. Davison said she felt everyone understood that, but it created a challenge for the Board when it is crafting ordinances; she did not want the Board to put something in place that barred the development the Board wanted to see in this area. Mr. Grabowski agreed with Mr. McPherson in that entering nonpublic as a group to discuss specific development or plans and then tailoring the language to suit those plans seemed wrong. Ms. Davison agreed that it would then appear the Board was acting in the best interest of the developer rather than the town. Mrs. Donovan stated she will not discuss specific projects or properties with the Board as that could harm negotiations between the landowners and developers. The developers are looking at all the properties in this area because they need to make sure the land is suitable for what they want to develop. Mr. MacEachern felt the Board needed more information than it was being given, for example the heights that the developers might be looking for. Mrs. Donovan said she felt it was better to keep the language generic so that the Board can be flexible. Hotels would be taller than retail uses. In any discussion she has had with regard to this district, she has made it clear to the developers that there is a distinct vision for this district and she did not feel there would be a five or six story building along the road frontage. She would not want to see language that was overly restrictive so that the town misses out. She would suggest removing the language having to do with the height, rather than having an arbitrary number. Ms. Davison said the challenge is to get a consistent feel in the district; will the neighborhood look be lost if the parcels are only looked at on a case by case basis? Mrs. Donovan thought that was a good point. If the Board was to put a height restriction it should be a maximum that is realistic and in line with some of the uses that might come to the area, such as a 4 story hotel. That is a use the town needs and she could see coming to this zone. Mr. Connors noted the Board has control over the design of the buildings, such as façade, gables, etc. Even if the Board knew in advance what a project would look like, the regulations need to be applied for the entire zone, not individual lots, to avoid spot zoning. Mr. Sioras agreed with Ms. Davison; when projects come in, the Board needs to look at the overall character, feel and intent of the vision. The zone can be altered if the Board allows too many things. He agrees with Ms. Davison, the Board needs to look at the big picture. Mr. Connors asked if the Board had the ability, on a project by project basis, to say yes or no to specific heights of buildings. If the answer is yes, then the restriction should be removed. Mr. Sioras noted the Land Development Control Regulations are the Board's regulations and can be waived on the spot, for example the HISS mapping requirement or an applicant requesting four maple trees in place of five pine trees. If the applicant makes a good case, the Board can waive the regulation. He discussed the vision the Board had when it created the General Commercial II zone along Tsienneto Road, which has been developed per the vision.

Mr. Granese noted these regulations are specific to the West Running Brook area. He suggested looking at the allowable uses in the zone and thinking about how tall the Board would want those buildings to be. They should not be too tall; the buildings will have sprinkler systems, but there may still be a need to meet the ladder truck height restriction.

Mr. MacEachern and Mr. Sioras suggested holding off on further discussion until the missing members could attend and comment.

The Board determined the next workshop would be on September 04, 2019.

There was no further business before the Board.

Motion by Connors, seconded by Granese to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:01 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____