

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 04, 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: John O'Connor, Chairman; Lori Davison, Vice Chair; Mark Grabowski (Secretary Pro-Temp); Brian Chirichiello, Town Council Liaison; David McPherson, Mark Connors, Frank Bartkiewicz, Members

Absent: Randy Chase, Maya Levin, Jim MacEachern, Dave Granese

Also present: Elizabeth Robidoux, Planning and Economic Development Assistant; Mark L'Heureux, Engineering Coordinator.

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

Mr. Grabowski was appointed Secretary Pro-Temp for the evening.

Mr. O'Connor expressed condolences from the Planning Board to George Sioras on the passing of his family member. He reported the Town Council approved the expansion of the Office Business District last evening by a vote of 5-1.

Correspondence

Mr. Grabowski advised the Board has received a copy of the public hearing schedule for the 2021-2030 Ten Year Highway Plan. Derry's District Councilor is Russell Prescott (District #3). There is a public hearing scheduled for October 1, 2019 at 6 p.m. at the Salem High School.

Escrow

#19-26

Project Name: North Point Outdoors

Developer: Same

Escrow Account: Same

Escrow Type: Performance Bond

Parcel ID/Location: 08280-007, 22 Ashleigh Drive

The request is to establish a performance bond in the amount of \$294,578.21 for the above noted project. Bond #SUR10000420 – Frankenmuth Mutual Insurance Company.

Motion by McPherson, seconded by Bartkiewicz to approve as presented. The motion passed with all in favor.
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#19-27**Project Name: BR-10 Subdivision – Steele Road****Developer: BR-10, LLC****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 04084, 1 Bartlett Road**

The request is to authorize the Treasurer for the Town of Derry and/or his designee to draft Letter of Credit #1278F, drawn on Bank of New England, in the amount of \$171,460.80 on September 16, 2019, if a replacement Letter of Credit is not received by September 13, 2019. The existing Letter of Credit has an automatic call provision, but as a precautionary measure, it is recommended the Board approve the draft.

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

Minutes

The Board reviewed the minutes of the August 07, 2019, meeting.

Motion by Davison, seconded by Grabowski to approve the minutes of the August 07, 2019, meeting as written. The motion passed with O'Connor, Bartkiewicz and Chirichiello abstained.

Other BusinessCertificates of Eligibility

Mrs. Robidoux advised that in 1999 a subdivision and lot line adjustment plan was approved for Parcels 12047 and 12050. The plan was recorded in 2000. Conditions of approval were placed on the plan that only one lot was eligible for a building permit; the rest of the lots would have to wait until the Board approved the Growth Management Ordinance, at which time Certificates of Eligibility for building permits were to be issued for the remaining lots. Unfortunately something was missed and the Certificates were never issued. Buildings permits were granted for the remaining lots, and homes were constructed in the early 2000s. In order to clear up the title for these lots, the Board is being asked to approve the Certificates of Eligibility.

Mr. O'Connor asked when the Board voted to remove the GMO from the Zoning Ordinance as the staff memo notes the GMO is no longer in effect. Mrs. Robidoux stated it is still in the Zoning Ordinance and is another housekeeping item to be addressed by the Board. Mr. Chirichiello said the GMO is not practical now as part of the ordinance was based on the number of students enrolled. Enrollment has declined and the GMO is redundant; it has not been used for years and should be removed from the Ordinance. Mr. O'Connor confirmed that the maximum number of permits allowed per year under the GMO was never surpassed. Mrs.

Robidoux clarified that at the time the subdivision was approved with conditions, the Planning Board was in the process of implementing the GMO. It had not yet passed. The Board wanted to make sure the lots were compliant with the new ordinance, if in fact the ordinance went into effect. The next step should have been to issue the Certificates for these lots once the GMO was in effect, but for whatever reason, that did not happen.

Mr. Chirichiello confirmed the request to grant the Certificates is to clear the title for the lots. This was brought to Mrs. Robidoux's attention by a local attorney who is performing the title search on one of the properties. When they looked at the records, it was found the Certificates of Eligibility were never issued for the lots; this is to clear the title for the lots when and if the lots are sold. This makes the building permit legal.

Motion by Davison to approve the Certificates of Eligibility for the five lots and to record the Certificates at the Registry of Deeds. Chirichiello seconded the motion.

McPherson, Chirichiello, Davison, Connors, Grabowski, Bartkiewicz and O'Connor voted in favor and the motion passed.

Public Hearing

Lake Realty Trust PID 04037, 152 Goodhue Road Acceptance/Review Two lot subdivision

Tim Lavelle of James Lavelle Associates presented for the applicant. There are 10.92 acres on Goodhue and Gulf Road. The proposal is to create an additional lot. One lot will be 5.08 acres; the other 5.84 acres. In 2008, the Planning Board approved this exact subdivision with the condition that road shoulder improvements be completed. The conditions of approval were not met and the approval lapsed. The property has since changed hands. With this application, they are proposing the same off site improvements. The lots have a decent building envelope; given the size of the lots they do not need State subdivision approval. DPW had requested a note be added to the plan stating that before a building permit can be issued, the existing mobile home in the southeast corner will need to be razed. That note has been added to the plan.

Motion by Chirichiello, seconded by Bartkiewicz to accept jurisdiction of the two lot subdivision before the Board for Lake Realty Trust PID 04037, 152 Goodhue Road.

McPherson, Chirichiello, Davison, Connors, Grabowski, Bartkiewicz and O'Connor voted in favor and the motion passed.

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

Mr. Connors asked if there is an existing lot in the middle of this proposed subdivision. Mr. Lavelle explained one lot will wrap around 130 Gulf Road which is an existing lot of record. Mr. Connors noted there is a significant wet area to the rear of the lot; is there enough room to construct a home? Mr. Lavelle advised the existing mobile home will be razed and a new home constructed on 124 Gulf Road. There are no immediate plans to build on the mobile home lot (#128 Gulf Road); they have shown the proposed building envelope. Mr. Lavelle felt the proposal maximizes what can be done on the land and there should not be any further subdivision.

Mr. L'Heureux stated the notes with regard to the razing of the mobile home have to be on the plan. For housekeeping items, the height and dimension on the sight distance profile should be shown on the plan. More driveway details remain to be added. There is a utility maintenance easement that should be noted and recorded. These items are all listed as conditions of approval for the plan. Mr. O'Connor noted that escrow should be held for the off site improvements.

Mr. Chirichiello had questions regarding the proposed septic system. Mr. Lavelle identified the area which is 75 feet from the proposed well. The 4k receiving area is shown on the plan. The proposed driveways are 75 feet from intersections.

Motion by Davison, seconded by Bartkiewicz to approve pursuant to RSA 676:4, III, Expedited Review with the following conditions. Subject to owners signature; subject to onsite inspection by the Town's Engineer, establish escrow for the setting of bounds or certify the bounds have been set; establish appropriate escrow as required to complete the project; a final utility/maintenance easement agreement shall be submitted to the Town's attorney for review; the applicant shall bear the full cost of the review and the recording of the easement; the recorded easement shall be noted on the plan; additional driveway requirements from Section 170-26.A.16 shall be listed on the final plans regarding gravel requirements, pavement aprons, etc.; note height of object at the driveway and heights at 200 feet on the profile; add a note to the plan such that no building permit shall be eligible for the new lot 037 (126 Gulf Road) until the existing mobile home has been razed and the area stabilized; obtain written approval from the IT Director that the GIS disc is received, is operable, and complies with LDCR Section 170-24.C.; subject to receipt of state or local permits relating to the project; that the above conditions are met within 6 months; a \$25.00 check payable to the Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement; submission of the applicable recording fees, payable to the Rockingham County Registry of Deeds.

Discussion followed.

Mr. Connors asked with regard to the road improvements. Mr. L'Heureux advised the proposed improvements are noted on the plan.

McPherson, Chirichiello, Davison, Connors, Grabowski, Bartkiewicz and O'Connor voted in favor and the motion passed.
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Workshop

Workshop #2 – 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. O'Connor advised he read the minutes from the last meeting and thanked the Board for holding off on further discussion of these amendments until more of the Board members could provide input. He would like to discuss a 3 acre minimum; he also had concerns with the description found under "Building Area Design and Scale". Some of the existing buildings in this district are clapboard and there are strip malls. The intent of the Board was not to create strip malls and new construction should not match the some of the existing auto dealers. He also felt the Board needed to further discuss the requirements for corner lots, specifically with regard to the height of the buildings. Most towns use a maximum height of 60 feet. Definitions for the term "story" can vary. A story can be 8, 10 or 12 feet, which would make a three story building anywhere from 32-48 feet tall. He feels the height restriction should be left out of that section. He recalled when the Board was refining the zoning in the CBD, the Board stipulated that no building could be taller than the Adams Memorial Building. Something similar could be done here. The original intent of General Commercial III was to protect the Robert Frost Farm. He would like to protect that area and felt the Frost Farm should be the tallest building in that area. Perhaps the Board could place a restriction that anything within 1000 yards of the Farm would need to be of similar height to protect it. The land tends to slope down as one heads north on the ByPass away from the Farm.

Mrs. Robidoux explained that acreage requirements for the zones are found in the Zoning Ordinance and it would not be appropriate to place one in the LDCR. The Board will look at acreage when it reviews plans. Mr. Connors agreed it was important to look at the lots near the Robert Frost Farm; the State owns the property there, but he felt it was appropriate to restrict height near the Farm. Mr. O'Connor thought if a circle of 1000 yards was utilized it would protect the historic asset. Mr. Chirichiello felt the term "story" needed to be defined or removed from the LDCR; he questioned how height would be regulated if the story requirement was removed. Mr. O'Connor thought it should be removed and it would be reviewed on a case by case basis. Each project will be reviewed individually. He noted if a hotel came to the area, a five story hotel would look different, depending on the base topography where it was located. Mr. Chirichiello said he did not mind not having a lot of set parameters, so long as the Board does its due diligence in reviewing the project and the project is done in a tasteful manner.

Mrs. Robidoux suggested removing the wording with regard to the number of stories for a corner lot; it was too confusing. The maximum height of buildings in the West Running Brook District is regulated under Section C of that district's requirements in the Zoning Ordinance.

Mr. Grabowski also questioned how the Board would regulate a proposed development if an applicant came in and proposed a five-story hotel; how could that be prohibited? Mr. Chirichiello said the regulations give the control to the Board members; developers can bring ideas to the Board but then need to conform to the regulations. Ms. Davison asked if the wording ‘Buildings shall generally relate in scale and design features to the surrounding buildings, showing respect for the local context’ gives seated members of the Board the authority to say a five story building on that lot is out of context and not allowed? She questioned if it was a powerful enough sentence to keep something monstrous out of the district.

Mr. O’Connor stressed the need for consistency and noted the Board needs to make decisions with regard to the height of structures during the conceptual discussion. Mrs. Robidoux said consistency is achieved when the Board reviews an application the same way, for each application. For example, the Board should go through the regulations for the district ensuring they are being applied for each project. The Board makes findings when it reviews the applications; for example, the application meets the architectural design regulations for the district. If the Board is consistent in its application of the regulations for each development, it creates a better case for the Board when the Board states something does not meet the regulations.

Mr. Connors felt the Board needed to be able to control height but was not sure setting a specific value, such as elevations above sea level were the best way to do that. He asked if the document had been vetted by legal counsel. He hoped the document was defensible. Mrs. Robidoux advised it had not been reviewed by the attorney but if that was the Board’s preference, that can be done.

After discussion, the Board opted to remove the last sentence under Corner Lots, “Buildings on corner lots may be three and a half stories high.” Mr. O’Connor asked if the Board wanted to put a height restriction around the Robert Frost Farm or was the Board comfortable that any sitting Board would make sure that took place, based on the current wording. The Board questioned where the highest point is in the district. The Robert Frost Farm is not in the West Running Brook district – although it is within a few feet of the district boundary. Mr. Chirichiello noted if a circumference was going to be used, the middle point should be in this district. Mrs. Robidoux cautioned against taking the highest point and using a percentage above that. With the varying topography in the area, the Board could end up with something that towers over the Farm. The Farm Trustees will take a very hard look at any development that occurs near the Robert Frost Farm.

The Board also discussed wording options for Buildings: Scale and Style. The Board members were concerned that the wording did not reflect the intent, which was to preserve the historic character while improving some of the building façade styles in the area. The Board also continued its discussion on how to best regulate height.

Mrs. Robidoux suggesting continuing discussion to the next meeting of the Board. In the meantime, staff could work on the wording for Buildings: Scale and Style to see if the proposed text could be edited to better state the Board’s intent. A map will be created showing the

topography in the district. It would be important to know where the highest point in the district is located.

The Board agreed to continue the workshop to the next meeting which will be on September 18, 2019.

There was no further business before the Board.

Motion by Grabowski, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 7:56 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____