

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 18, 2017, 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; Randy Chase, Administrative Representative; Brian Chirichiello, Town Council Liaison; Jim MacEachern, Lori Davison, Members; Mark Connors, Elizabeth Carver, Alternates

Absent: Frank Bartkiewicz, Maya Levin

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

Mr. Connors was seated for Mr. Bartkiewicz and Ms. Carver was seated for Ms. Levin.

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the October 04, 2017, meeting.

Motion by MacEachern, seconded by Fairbanks to approve the minutes of the October 04, 2017, meeting as amended. The motion passed with Chase, O'Connor and Carver abstaining.
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### **Correspondence**

Mr. Fairbanks advised the Board is in receipt of a memo from George Sioras, the Planning Director, with regard to multi-unit residential uses in the Central Business District and Traditional Business District Overlay. The Board members have a copy of the memorandum. Staff would like to schedule a workshop to discuss this further.

The Board elected to hold a workshop to discuss housing in the CBD and TBOD at its next meeting which will be November 1, 2017.

**Other Business**

None.

**Public Hearing****DAR Builders, LLC****PID 03162, 7 Gulf Road****Waiver Request, LDCR Section 170-31.A****To allow overhead utilities on 3 new lots****Continued from October 04, 2017**

Eric Mitchell, of Eric C. Mitchell & Associates presented for the applicant. At the last meeting, the Board approved the waiver request to allow overhead wires but the Board continued the hearing to see if the pole in front of Lot 03162-001 would be moved. The Department of Public Works went out and looked at the pole in the field. Mr. MacEachern stated he drove by that area two days after the first public hearing and observed Eversource had placed new poles in front of the other two lots. Mr. L'Heureux advised he spoke with Eversource about the third pole. The third pole, in front of 5 Gulf Road (03162-001) is four feet off the new edge of pavement and is beyond the gravel shoulder. After discussion with Eversource, that pole will be left in place and will not be moved. It is in line with other poles along the roadway. The removal of the two poles in front of Lots 03162-002 and 03162-003 will be expedited once the wires have been transferred to the new poles. Mr. Mitchell reiterated a new pole was set in front of Lot 02 and one in front of Lot 03. They are waiting for the wires to be transferred from the old poles to the new poles in front of Lots 02 and 03. Once the wires have been transferred, Eversource will remove the old poles in front of those two lots. Mr. O'Connor advised he has also traveled this roadway and noted the poles are now close to the edge of pavement since the state repaved Island Pond Road. Eversource placed reflectors on many of the utility poles because they are so close to the road. He has no issue with the pole in front of lot 01 remaining, but does want to see the other two poles removed once the wires have been transferred.

Mr. Connors asked how far off the pavement is the pole that is to remain. Mr. L'Heureux stated is it as far as possible off the pavement as it can be and still remain in the town right-of-way. The distances off the pavement varies for utility poles along the roadway because of obstructions such as fences, trees, and stone walls. The town is limited by the right of way space. Typically, roadways are 50 feet wide, but the centerlines vary and are not always right in the middle of the 50 foot width. Mr. Connors asked if the Town has a right to ask Eversource to move poles if we find they are now too close to the roadway and create a hazard. He does not see any reason to keep the pole in front of Lot 01 and believes it should be moved as noted on the original plan. The Board has granted a waiver to allow overhead utilities, which saved the applicant money. Mr. L'Heureux explained it would be an intricate process to move the third pole. It is more difficult to change and move the wires given its location and anchoring of the wires needs consideration. Eversource would have to cut trees to move the pole. Mr. L'Heureux felt the

result was a good negotiation because now Eversource will expedite the removal of the other two poles. The third pole was already set back from the roadway. Moving it a few feet does not serve an extra benefit. The pole that is located on the edge of pavement was in that position for several years. It was noted as a nuisance once the developer moved the stone wall back from the edge of pavement, creating more road shoulder. That stone wall had been the property line; the town now has a roadway easement in front of that lot. Mr. Connors did not feel the Board should be giving up on things that had already been agreed to.

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

There was no public comment.

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

Motion by MacEachern, seconded by O'Connor to accept the revised plan denoting the location of the utility pole in front of Lot 1 (PID 03162-001, 5 Gulf Road).

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

Motion by MacEachern that the Board agrees to not require relocation of the utility pole in front of Lot 1 (5 Gulf Road, PID 03162-001). Subsequently, the plan approved for DAR Builders by the Board on December 7, 2016, is considered amended with the following conditions: Per the regulations (LDCR Section 170-39.D), all of the off-site improvements shall be completed including the removal of the old utility poles located in front of 03162-002 and 03162-003, prior to the issuance of final certificates of occupancy.

Chase, Chirichiello, O'Connor, MacEachern, Davison, Fairbanks and Granese voted in favor. Carver abstained as she was not present at the last hearing. Connors voted no for the reasons stated previously. He believes the Board should do what is good for the town as a whole when it has the opportunity. The motion passed by a vote of 7-1-1.

**Cow Bell Corner Realty, LLC  
PID 04126, 418 Island Pond Road  
Condition Compliance Hearing  
Tenants, Building 2**

Mr. Sioras provided the following staff report. The Planning Board approved the original site plan on March 18, 2015. One of the conditions of approval was to have the applicant come back before the Board for each tenant. B & H Oil, the convenience store, and a Dunkin's drive-through are in Building 1. This plan is for three of the tenants in Building 2 which includes a restaurant, nail salon, and autistic therapy facility for children. No town department signatures

are required. The applicant has met the requirements for compliance with parking and tenant use. Staff would recommend approval.

Joshua Manning, of Lewis Builders and Matthew Frahm, applicant, were present. Mr. Manning advised there will be three new tenants in Building 2. The uses are an 80 seat restaurant which will be on the side of the building closest to Route 111; a 1012 square foot nail salon, and a 1708 square foot professional office space intended for a therapeutic and educational facility for children with autism. The parking and septic calculations still work with the addition of these uses. The restaurant will be Tara's Place. The owners of the restaurant have an existing facility in Salem, New Hampshire and will be moving to this location. The menu will be a little different than the existing location.

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

John Lahey, 411 Island Pond Road, had concerns about the restaurant/bar. He asked if it would be open past 10:00 p.m. The concern is that it would be an on-premise liquor establishment once the restaurant portion closes. There are two homes on Island Pond Road in Derry on this section of the road. He feels there is little police protection in this area and there could be an issue with bar patrons after hours. If the restaurant was closing at 10:00 p.m. and liquor was not served after that time, that would be different. He is also concerned about the extra traffic. It is already difficult to get out of his driveway. He noted they have no problem with the gas station; that is working out nicely. Mr. Lahey said he would appreciate it if the Board could consider the hours of operation for the new tenant.

Mr. Frahm advised the projected hours of operation for the restaurant are as follows. This could change. Monday through Thursday it would close at 10:00 p.m. Friday and Saturday they would be open 11:00 a.m. to 11:00 p.m. Sundays, the current location closes no later than 9:00 p.m. and occasionally closes earlier, depending on the business. The kitchen will close at 10:00 p.m. on the weekends, allowing an hour for patrons to finish eating and vacate by the time they close at 11:00 p.m. They will not be open late like other restaurants. This is not intended to be a rowdy spot for people to gather. Mr. Lahey stated that is the best he can hope for.

June Lahey, 411 Island Pond Road, said she did not realize how large the parking lot was going to be at B & H Oil. The majority of traffic comes out of the facility facing their home. It would be nice to have some sort of buffer there. The cars that park in the spaces facing their home shine lights into the house. She did not realize when the site plan was first being discussed the spaces faced their home. This adds an 80 seat restaurant to the gas station use; traffic will face their home as the vehicles get ready to leave the site.

There was no further public comment.

Motion by O'Connor, seconded by Fairbanks to close the public hearing. The motion passed with all in favor and review returned to the Board.

Mr. Granese believed that hours of operation were normally listed on the site plan. Mr. Frahm indicated he has been advised the nail salon will tentatively operate 9:00 a.m. to 7:00 p.m., but will likely be closed on Sunday. All About Kids will be open weekdays, 9:00 a.m. to 6:00 p.m. He was not certain if they would be open on the weekend.

Mr. MacEachern said normally this type of addition of tenant would be handled through the Planning Office by the Planning Director. He does not want to be restrictive. For this building, normal business hours could be dealt with through the Planning Director, for example he might state hours of operation would have to occur between 7:00 a.m. and midnight. Mr. Granese said any business that has come before the Board normally has the business hours listed on the site plan. Mr. Sioras explained when the plan was originally before the Board, there were no planned tenants. The Board asked the applicant to come back to the Board with the tenants to verify the parking calculations.

Mr. Connors was originally surprised the Board would look at each tenant, but now understands why this is before the Board this evening. There is one more building on this site. Mr. Frahm said that building is still to be constructed; there is only a foundation in place at this time. The business hours were provided by the tenants and have not yet been set in stone. All of the businesses seem to close at a reasonable hour. Mr. MacEachern said the Board will want to cap the hours of operation. Mr. Granese said he wanted the hours of operation on the plan at some point. He would also ask the applicant to work with the abutters to address their concerns about a buffer. Mr. Connors asked if it was within the jurisdiction of the Board to set business hours. Mr. Sioras explained that is done on a case by case basis. When a business is adjacent to a residential neighborhood, the Board does weigh in on the hours of operation. This is a unique situation. Route 111 is a state road and the NH DOT dictated the driveway location on Island Pond Road.

It was confirmed B & H Oil operates 5:00 a.m. to 10:00 p.m. Mr. Lahey stated the lights are out on the site by 10:30 p.m. Mr. Connors asked if a new restaurant goes in after this one, would the new restaurant come to the Board or would it be handled by staff. Mr. Sioras explained staff would review the new restaurant as a Change in Use application. Mr. MacEachern added that on occasion, Mr. Sioras will bring a Change in Use to the Board for review.

Motion by MacEachern, seconded by Fairbanks to find the amended site plan for PID 04126, 418 Island Pond Road (Property owner: Cowbell Corner Realty, LLC), meets the conditions set forth in the March 18, 2015, Planning Board decision such that: Parking calculations have not increased; general site conditions have not changed and the proposed sign for the three tenants (hair salon, 80 seat restaurant and autistic therapy) meet the Town of Derry Regulations. In addition, hours of operation for the three tenants shall be added to the plan pending approval of the Planning Director and are not to exceed closure times of midnight.

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

**Public hearing to review the following proposed zoning amendment to the Town of Derry Zoning Ordinance:**

**To amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to remove 444 parcels from the Medium High Density Residential zone and add the 444 parcels to the Medium High Density Residential II zone. The affected lots are bounded by Madden and Folsom Roads to the north, Crystal Avenue to the east, East and West Broadway to the south and the Londonderry town line to the west.**

A map of the proposed area of change was available to view during the hearing. Mr. MacEachern pointed out the area denoted in blue is the area under discussion. Multi-family would be removed from that area; everything else would remain exactly the same.

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

Donald Burgess, High Street, said he thinks the rezoning is a great idea. There is enough workforce housing in this part of town and Derry does not need further development in that respect.

There was no further public input.

Motion by MacEachern, seconded by O'Connor to close the public hearing. The motion passed with all in favor and discussion returned to the Board.

Mr. Connors asked if the description of the bounds of the proposed area of change needed to be adjusted. Mr. Fairbanks felt it was clearly defined. Mrs. Robidoux advised the list of affected properties, which the Board received previously, would be forwarded to Town Council.

Motion by MacEachern, seconded by Fairbanks to recommend an amendment to Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, to **remove** 444 parcels from the Medium High Density Residential zone and **add** the 444 parcels to the Medium High Density Residential II zone. The affected lots are bounded by Madden and Folsom Roads to the north, Crystal Avenue to the east, East and West Broadway to the south and the Londonderry town line to the west. For the lots affected, this change is comprehensive in nature. The Board also moves to forward the recommendation to Town Council for their consideration and approval.

The purpose of the amendment is to preserve the existing character of a majority of the lots located in the area of change. This is phase I of a review of the area in the vicinity of the proposed Exit 4A. Discussion followed.

Mr. Connors noted the rail trail corridor goes through this area and has an easement across the condominium property. Does this affect that corridor? Mr. Sioras said it does not, nor does the

zoning change affect the rail trail corridor. Ms. Davison asked if this change affects accessory dwelling units. Accessory dwelling units are a permitted use in the zone.

Chase, Carver, O'Connor, MacEachern, Davison, Connors, Fairbanks and Granese voted in favor. Chirichiello abstained as his is one of the affected lots. The motion passed.

Mr. Granese thanked the subcommittee for their work on this.

Mr. Fairbanks asked when the Board would begin working on the next phase of the zoning changes. Mr. Granese stated he will meet with Mr. MacEachern, Mr. Sioras and Mrs. Robidoux, and provide something at the next meeting. The Board still needs to take a field trip to view the area on each side of Folsom Road. Mr. MacEachern offered to reach out to the Recreation Department to see if the Board can borrow the Rec bus. Mr. Granese stated he will have a plan of direction available at the next meeting for the field trip.

There was no further business before the Board.

Motion by MacEachern, seconded by Fairbanks to adjourn. The motion passed and the meeting stood adjourned at 7:43 p.m.

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

\_\_\_\_\_  
Secretary

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