

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 01, 2021, at 7:00 p.m. The meeting was broadcast from the Derry Municipal Center, 14 Manning Street, Third Floor meeting room with all of the Board members physically present.

Members present: John O'Connor, Chairman; Jim MacEachern, Vice Chair; David Nelson, Secretary; Randy Chase, Town Administrative Representative; James Hultgren, David Granese, Mark Connors, David Clapp, Members; Andy Myers, Alternate

Absent: Brian Chirichiello

*Denotes virtual attendance.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning & Economic Development Assistant; Mark L'Heureux, Engineering Coordinator

Mr. O'Connor opened the meeting at 7:00 p.m. The meeting began with a salute to the flag. Mr. O'Connor advised that although Emergency Order #12, as issued by Governor Sununu has expired, Board members are allowed to attend the meeting remotely, provided there is a quorum of members physically present in the meeting room. He provided the appropriate links for members of the public to join the meeting virtually via a MAC, PC, or by phone. He then introduced the staff and Board members.

Escrow

#21-20

Project Name: 30 Brook Street Site Plan

Developer: Stage Crossing, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 23016, 30 Brook Street

The request is to approve Release #1 in the amount of \$170,158.32 for the above noted project and request a replacement Letter of Credit in the amount of \$5,184.00. Upon receipt of the replacement escrow, the Board will release Letter of Credit #Stage-515-P, in the amount of \$175,342.32, drawn on Merrimack County Savings Bank.

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

#21-21**Project Name: LaBelle Winery – Wine Barn****Developer: Fulcrum Associates, Inc.****Escrow Account: Same****Escrow Type: Performance Bond****Parcel ID/Location: 15002, 48 Conley's Grove Road**

The request is to establish Performance Bond SUR0064656 issued by Argonaut Insurance Company in the amount of \$90,609.84 for the above noted project. The expiration date will be November 18, 2022.

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 November 17, 2021, meeting.

Motion by MacEachern, seconded by Granese to approve the minutes of the November 17, 2021, meeting as amended.

The motion passed with all in favor; Clapp abstained.

Correspondence

Mr. Nelson advised the Board will be holding a workshop on January 05, 2022, to discuss an amendment to the provisions of the West Running Brook District, specifically with regard to technical language involving buffer zones.

Mr. Connors later asked why a workshop was being scheduled. Mr. O'Connor explained the incorrect wording cannot just be changed; any changes to the Zoning Ordinance must ultimately be approved by Town Council and the process for a zoning amendment includes a workshop. He also noted in the event of an appeal on this issue, the Courts would need to review the written record (the approved minutes), not a copy of the meeting broadcast.

Other Business

Recommend restoration of merged lots – 15 Escumbuit Road

Mrs. Robidoux advised the RSAs allow the town to restore lots that were involuntarily merged upon request of the owner. In this case, there are three lots that were merged at some time in the past by the Assessing Department. The owner has requested the lots be restored to their pre-merger status. The request will go to Town Council for approval. Following that, the applicant will be requesting a voluntary merger of two of the lots as a structure straddles the lot line. Unfortunately the town could not restore just the two lots; the process had to be lot restoration, then a voluntary merger.

Motion by MacEachern, seconded by Granese recommend the restoration of Parcels 16018 (15 Escumbuit), Parcel 16018-001 (17 Escumbuit) and Parcel 16018-002 (13 Escumbuit) to the Derry Town Council, as requested by the landowner to its pre-merger status.

Chase, Hultgren, MacEachern, Nelson, Connors, Granese, Clapp, and O'Connor voted in favor and the motion passed.

Discussion – Addition of 2,592 SF pavilion, 49 South Main Street, LLC; PID 05048, 49 South Main Street

Mr. Sioras provided the following staff report. The site plan for 49 South Main Street was before the Board previously and was approved for the conversion of the school into an inn with associated site improvements. The developer would like to take the existing basketball court and convert it to a pavilion. The structure would be located on the south side of the property. Staff met with the developers and the engineer. It was felt that there should be a discussion at the Planning Board level, but that it could be discussed Administratively. Staff recommends approval of the addition of the pavilion.

Paul Chisholm, Keach Nordstrom Associates, presented for the developer. Jerry Siragusa was also present. Mr. Chisholm explained the project is located at 49 South Main Street, in the West Running Brook District. The project has been before the Board several times. Once for a conceptual discussion of the master plan for the property. Earlier this year, the Board reviewed and approved Phase I. They would like approval to change that plan to replace the basketball court (which has been removed), with a pavilion. This will be an open air structure, containing a patio, restrooms, and a utility room. It will be connected to town water and sewer and other utilities. Other changes included paving the walkway between the pavilion and the parking lot, and then paving the walkway to the tent previously approved by the Board. They have added lights along the walkway for the life safety of the guests. The lights are equipped with battery backup.

During the Technical Review Committee discussion, the Fire Department noted there is a need to apply for a variance to the Fire Marshall's office to allow this structure to be in a part of the site

without a 20 foot paved road to it. That application is still in process, and they are hoping for a favorable decision. If the variance application is denied, they will need to amend the details of the site plan. This is part of the first phase in the overall development of the site, which will take years to accomplish. It was felt the pavilion would be a value add to the site for customers. It is not intended to say that more people can now come to the site and add to the occupancy level; this is just an additional amenity on the property.

Mr. O'Connor recalled the Board approved the site plan in April with the basketball court in place. There are a few changes proposed here; is that why this amendment is being called a field change? Mr. Chisholm did not recall using the word "field change", but that is essentially what it is. He explained the impervious area for the basketball court was larger than that of the proposed pavilion. The intent is to change the use from a basketball court to a pavilion.

Mr. MacEachern felt the idea of the pavilion was good, but it does beg a few questions not discussed previously. If the tent is staying in place, the Board needs to ask the same questions it asked during the discussion for the tent. Are the hours of operation changing? Now a paved path and light have been added and there will be a structure close to the apartments at The Fairways. How can light be prevented from infringing on The Fairways residents? He is assuming the hours of operation are not changing, but how close is this proposed structure to where people are living? It is closer than the tent. He understands they need lighting for the safety of their guests, but they also need to make sure the apartments on the property line are not affected. He wants them to be able to get what they want, but the Board needs to be cognizant of the adjacent apartments.

Mr. Chisholm provided the Board members with a photo of the area proposed for the pavilion; a copy was kept for the record. The photo shows the location of the pavilion marked out. The vegetative buffer is also shown to be low shrubs and taller vegetation. There is interior existing space, and for the most part, the pavilion won't be used "off season"; unless someone had a specific outdoor winter event in mind. In addition to the existing vegetation, the land mounds up into a several foot tall berm which helps with the buffer. The operating hours will remain the same as noted. People will want to use the pavilion while on the property. The developer's vision is to create a customizable experience for their guests while they are on the property. He sees this more as an area that could be used for cocktails or desserts. Receptions will take place mostly in the tent. The pathway lights have been added for safety purposes. The lighting plan and lumen sketch shows that the light does not extend over the property line. The lumen sketch also does not consider the buffer provided by the vegetation.

Mr. MacEachern asked if the lights on the exterior of the pavilion will be under its canopy. They will. Where is the water and sewer coming from? Mr. Chisholm noted there is an existing sewer easement on the property and the water and sewer will come from the southwest corner. The main runs through that corner of the site and they will tie into an existing stub. The hours of operation will be as noted on Sheet 2, Note 20 which states outdoor music ends at 12 midnight.

Mr. Nelson felt what the Board had before it this evening is an amended site plan with many of the details changed; there are revisions on each sheet of the plan. He feels the Board should treat this as formal site plan amendment with a public hearing, accepting jurisdiction, and approve it

to make sure the document is legally binding. He stated the developer knows what he wants to do and has planned accordingly, that is not really a field change. This goes beyond the scope of a field change. Mr. Sioras stated staff felt this was more of an administrative change but that the Board should see and discuss it. He did not feel this required a public hearing. The departments all reviewed the changes. He understands what Mr. Nelson is saying. The developer is here for an administrative review. The Planning Director, in consultation with the Town Engineer at their discretion, can make decisions regarding field changes and as to whether the change requires administrative review or not. Mr. Connors asked if that authority was specific to this zone, or town wide. Mr. Sioras advised it applies in any zone, for any plan.

Mr. Connors stated he was glad to hear the master plan for this site is still active. Would the addition of the pavilion affect the master plan for the site? The tent is a temporary feature, but in looking at the stormwater plan he can see the detention area. Mr. Chisholm felt this project needed to be looked at as Phase I of the total master plan, and deal with each piece as it comes. For the developer, it makes sense to engineer the first phase. The area to the lower end of the site is meant to be for hospitality, residential uses, and to be more dense. Parking is provided in the west corner. This would change with the last phase of development of the site, which would be the last thing they would do. The parking is set up so that in future phases, it will hopefully not be impacted. Mr. Connors stated this is a wedding venue. The tent is available for three seasons. Would walls be added to the open air pavilion to extend the time during the year it could be used? Mr. Chisholm advised the fire classification rating of the structure would change if they did that and it would change how it had to be constructed.

Mr. Connors commented since the Board first saw the master plan for this site, there have been other plans before the Board for conceptual discussion in this zone. The Board has discussed connectivity between the properties and hopes that will be included so that there is a true village concept in this area so that people can move between properties.

Mr. Granese agreed with Mr. Nelson but understood this could be discussed with the Board as a field change. He felt the pavilion was a good addition to the overall plan and looks nice.

Mr. L'Heureux stated options had been discussed about bringing this before the Board as an accessory use to the wedding venue. This is an open air structure that is accessory to the tent use. This is not a building that is changing the overall occupancy of the site and parking which is why staff concluded this could be handled administratively rather than as a public hearing. Staff did not want to hold up the active and ongoing construction on the site. He is uncomfortable with adding a structure to a site once it is approved without discussion. It is one thing to change a sewer line location, but to alter the visuals or use on the site makes it important to come back to the Board for discussion and approval.

Mr. O'Connor said he compared this plan to the approved one. There are now lights and paved paths on the site. Has this impacted the detention pond? Mr. L'Heureux explained the detention pond is provided handle the stormwater from the parking lot. The pavilion will be in a green area of the site. The intent of the stormwater management is to ensure that abutting properties are not affected by additional stormwater impacts post construction. The pavilion will be in an extensive green area and the stormwater should dissipate in the grass area appropriately.

Motion by MacEachern, seconded by Granese to approve the addition of 2,592 square foot pavilion in the location where the paved basketball court is situated with the following conditions: Plan will conform to State/local requirements for Fire Department and Emergency access to the pavilion; final plan details shall be approved by the Department of Public Works/Town Engineer. Minor plan or construction detail changes shall not require further review by the Planning Board and will be considered “field changes” as approved by the Department of Public Works/Town Engineer.

Chase, Hultgren, MacEachern, Connors, Granese, Clapp, and O’Connor voted in favor. Nelson voted no indicating he understands the scope of field changes is somewhat of a judgement call, but feels in his judgement, this rises above the level of a field change. He does like the idea and the concept. The motion passed.

Chairman/Planning Director Updates

Mr. O’Connor advised there will be no meeting on December 15, 2021.

Board Member Comments

Mr. Chase commented during the Master Plan discussions, it was noted the school population has decreased and there were some tentative discussions about closing a school. He believes the three acre zoning has outlived its usefulness. The town cannot be bigger and better without people, and he feels now is the time to reconsider that zoning requirement because housing is in short supply. Perhaps the three acre minimum can be decreased to one or one and one half acres. There is a large property, containing about 400 acres that is on the market in this zone. Mr. Chase felt smaller lots would be more beneficial to the town. Any approved lots would stay at their current acreage. Mr. MacEachern noted the Growth Management Ordinances is currently inactive. The Low Density Residential zone (3 acre minimum) is mostly in East Derry. Acreage requirements in Derry, in the residential zones, are one, two or three acres. Mr. Chase advised he is not requesting a new residential zone; he would like to change the minimum lot size in the LDR. Mr. O’Connor added part of the requirement includes soils based lot requirements. Mr. Chase said the three acres was implemented as an attempt to reduce the overcrowding in the schools and unregulated growth in the 1980s. That time has passed.

Mr. Nelson felt the school capacity was one issue. There were other reasons why the three acre minimum was implemented. If the density of the LDR is changed to one acre, all the three acre lots with adequate frontage could then be subdivided. Mr. O’Connor noted residents have the ability to construct an Accessory Dwelling Unit. Mr. Connors said if the 3 acre lots were subdivided, there would be three acre, and 1.5 acre lots all in the same neighborhood. He felt this would be opening a can of worms. Not everyone would be able to subdivide their lots. There are large housing projects proposed in town. He has heard of the need for affordable

housing for people with a working wage. He feels the Board should look long term to what they are trying to do. There won't be another baby boom. The Board should be building Derry for the future need. Would this type of change pose a problem later where there would be empty housing? He does not feel high rise towers create a "village feel" and is worried the Board might be making a mistake for the future. Mr. O'Connor commented the Master Plan was based on the town vision. Mr. Connors said he had no problem with the West Running Brook District; it was the big buildings that bothered him.

Mr. Chase stated it would be beneficial to schedule a workshop to see what the benefit to the town could be as a whole and to see if this is feasible. He felt the Board needed to look at future repercussions. Mr. O'Connor cautioned the Board also needs to be aware of changes in the legislature that will affect the Board, for example the Tiny House legislation. Mr. Chase did not want Derry to be left behind and the Board should have an open discussion. Mr. O'Connor stated he will look at the future agendas and see if they can schedule something.

Mr. Sioras added he did discuss this request with Mr. Chase. There are a lot of projects in the pipeline that include high density housing, and subdivisions. It might behoove the Board to take another look at open space (cluster) subdivisions in the rural areas. According to a former developer, most people don't need three acres of land. With open space subdivisions, people typically use a half to one acre of land for their house and leave the rest open. This results in less road, clustered housing, and a lesser burden on town services. The 400 acres Mr. Chase mentioned will also connect to 100 acres of land in another town and feed onto Damren Road.

Mr. MacEachern understood the other members' comments. There are multiple reasons why the Growth Management Ordinance was created. On the surface, he would not want to change the density of the three acres because of the negative impact on the town. The schools might be right sized right now, but the GMO was to support the number of kids in the school without a negative tax impact on the town. The purpose was to minimize the impacts of development on the residents. The open space subdivision concept has been discussed from time to time. He might not be averse to creating a zone with open space where the three acre minimum is maintained and the homes are clustered. If 350 acres of land is preserved out of 500 acres, that is not bad, but this needs to be balanced with the tax burden. The Board would need to look at the tax benefit for clustered homes versus homes constructed in a typical subdivision. How does it affect the schools? The Board should look at the school master plan.

Mr. Connors agreed a workshop would be beneficial to begin the discussion. It might take a year or more, but the Board should not be focusing on doing this for one parcel that is for sale. Can water and sewer be brought to this area of town? Can the Board tell a developer to extend the infrastructure? Mr. Sioras said that is a good question. There are many water systems in that area. It could be possible to have the Water/Wastewater Superintendent attend a workshop to discuss expansion plans. Mr. Connors noted that is one of the last larger lots. Mr. Sioras agreed. There are very few large, vacant parcels in Derry. Mr. Connors felt when there is a need to expand infrastructure, the developer should do that.

Mr. O'Connor mentioned the Zoning Board would be hearing a variance application for the redevelopment of Abbott Court. The Board members may want to watch that meeting tomorrow

evening. Mr. MacEachern had concerns that the ZBA was hearing a variance application on what is essentially a concept plan. It was noted the Town has a Memorandum of Understanding with the developer. Mr. MacEachern felt the variance application was to discuss the approval for smaller apartments, and more studios but there is not really a project yet. He understood they were asking for variances so that they could solicit for projects. Mrs. Robidoux said that was not entirely correct. Mr. O'Connor and Mr. Sioras cautioned the Board members that the project will eventually come before this Board, and he does not want anyone to appear influenced beforehand. He just wanted to make the Board aware of the meeting.

There was no further business before the Board.

Motion by Nelson, seconded by Granese to adjourn.

All members voted in favor and the meeting stood adjourned at 7:59 p.m.

Approved by: _____
Chairman/Vice Chairman

Approval date: _____