

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 06, 2013, 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; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; Darrell Park, Ann Marie Alongi, Members; and Lori Davison, Alternate

Absent: Jim MacEachern, Al Dimmock; Randy Chase, Jan Choiniere, Frank Mazzuchelli

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; 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 introduced the staff and Board members present, and noted the location of the exits, and meeting materials.

*Ms. Davison was seated for Mr. MacEachern*

## **Escrow**

### **#13-27**

**Project Name: Covey Run**

**Developer: Covey Run, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 31021, 81 North High Street**

The request is to approve Release #4 in the amount of \$57,283.20 for the above noted project. This is the final release. The amount to retain is zero.

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

### **#13-28**

**Project Name: 2<sup>nd</sup> Building – General Office Building**

**Developer: Tsienneto Fourteen Development, LLC**

**Escrow Account: Same**

**Escrow Type: Letter of Credit**

**Parcel ID/Location: 08079-005, 14 Tsienneto Road**

The request is to approve Release #1 in the amount of \$164,925.07 and request a replacement Letter of Credit in the amount of \$68,169.60 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit in the amount of \$233,094.67.

Motion by O'Connor, seconded by Bartkiewicz. The motion passed with all in favor.

**#13-29****Project Name: Granite State Credit Union****Developer: Same****Escrow Account: Same****Escrow Type: Cash****Parcel ID/Location: 27002, 38 Birch Street**

The request is to approve Release #1 in the amount of \$33,357.74 plus any accumulated interest for the above noted project. This is the final release of cash escrow. The amount to retain is zero.

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

**#13-30****Project Name: Mixed Use Development Site Plan****Developer: Route 28 Custom, LLC****Escrow Account: Same****Escrow Type: Letter of Credit****Parcel ID/Location: 03035-001, 230 Rockingham Road**

The request is to approve Release #1 in the amount of \$94,793.33 and request a replacement Letter of Credit in the amount of \$45,100.80 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit in the amount of \$139,894.13.

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

**#13-31****Project Name: Pinkerton Academy CTE Buildings****Developer: Pinkerton Academy****Escrow Account: Pinkerton Academy****Escrow Type: Cash Escrow****Parcel ID/Location: 43001 and 43005, North Main and Pinkerton Street**

The request is to approve Release #1 in the amount of \$40,435.20 plus any accumulated interest for the above noted project. This is the final release of cash escrow. The amount to retain is zero.

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

## Minutes

The Board reviewed the minutes of the October 02, 2013, meeting and the notes from the October 26, 2013 site walk of the BR-10 project.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the October 02, 2013, meeting as amended and to accept the site walk notes of October 26, 2013 as written. The motion passed with all in favor.

## Correspondence

Mr. Bartkiewicz advised the Board has received from the Town of Windham, a copy of the Intermunicipal Agreement between the Town of Windham and Town of Derry. This is for the maintenance of Nathan Road, which is part of the H&B Homes subdivision plan. The Derry Town Council has this item on their agenda for November 19, 2013. The Board has also received copies of escrow reminder letters that were sent for the following projects: Yvon Cormier, Driveway Crossing Plan; Martin Gate Site Plan; Hampstead Road and Harvest Drive subdivision plan; Bunker Estates site plan, and the 5 & 15 Madden Road site plan. The Board has also received the most recent edition of *The Source*.

## Other Business

Mr. Sioras reminded the Board members that at the next meeting, scheduled for November 20<sup>th</sup>, the Board will hold the public hearing on the sign ordinance revisions. Additionally, the Board has a joint workshop scheduled with the Town Council on December 3, 2013 at 7:30 p.m.

### Request to Extend Approval – Extended Realty, LLC

Mr. Sioras advised this is the first request to extend the conditional approval of the two lot subdivision and lot line adjustment plan that is located on Ashleigh Drive, just north of the new Walmart on the right. This has nothing to do with the recent site plan approval.

Motion by O'Connor, seconded by Bartkiewicz to grant a six month extension of the approval.

Park, Alongi, O'Connor, Davison, Bartkiewicz, and Granese voted in favor and the motion passed.

### Request for Recommendation – 13 Manchester Road

Mr. Sioras explained the town is in the process to potentially sell 13 Manchester Road which was the site of the former Pinkerton Tavern. After the road widening project, there is a small parcel of land left over. Per the Charter, the town is required to hold two public hearings on the matter.

The first one was held last evening; the next one is scheduled for November 19<sup>th</sup>. They will vote on the matter in December. As part of the process, Town Council has made a request to the Planning Board, Conservation Commission and Heritage Commission to provide a recommendation on whether this property should be returned to the tax roll. The question is, does the Planning Board endorse Town Council to proceed with the sale of the property?

Mr. Granese said he had already send an email to the Administrator's office stating that as Chair, he has no issue with bringing this property back onto the tax rolls. Does the Board need to vote on it? Mr. Sioras said the Board should vote on it. Whenever the town seeks to sell property, there should be some action taken by the Planning Board.

Motion by O'Connor that the Planning Board is in favor of the Town of Derry Town Council moving forward with the proposed sale of 13 Manchester Road, Parcel ID 08274, and placing that property back on the tax roll. Bartkiewicz seconded the motion.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. Granese noted it would be a good thing to bring this property back on the tax rolls.

#### Planning Board discussions with the public

Mr. Granese reminded the Board members that if someone reaches out to any member regarding a plan that is in litigation, the Board member should not make a comment and should refer the person to the Planning Office.

#### **Public Hearing**

##### **BR-10, LLC**

##### **PID 04084, 1 Bartlett Road**

##### **Review of 11 lot subdivision**

##### **Continued from October 02, 2013**

Mr. Sioras provided the following staff report. The purpose of this plan is for an 11-lot subdivision located in the Low-Density Residential District. The Planning Board originally approved this plan on September 14, 2011. That approval has expired and the applicant is re-submitting a new application. All town departments have reviewed and signed the plan. There are three waiver requests that Mr. Lavelle will address. The NHDES state subdivision, Alteration of Terrain, and NH Wetlands Dredge/Fill permits have been received and are in the file. The Board held a site walk a few weeks ago and Mr. Bartkiewicz forwarded pictures. He would recommend approval of both the waiver requests and the subdivision plan.

James Lavelle of James A. Lavelle Associates presented for the applicant. Mr. Lavelle advised they have received the latest review letter from Keach Nordstrom Associates (KNA) dated November 6, 2013. Mr. Keach made general comments related to the bonds and recording. The other items are housekeeping items and they will be taken care of. Other comments had to do

with the three waiver requests. One waiver is for two short sections of roadway that are at an 8% grade rather than the required 6%. The reason for the increased grade is to cut down on site disturbance. The second waiver is to allow a side slope at 2:1 outside of the right of way, which is also to limit site disturbance. The third waiver is to allow less than 3 feet of cover over a culvert pipe located near the entrance to the new road. This has been discussed previously. This evening, they would request approval of the plan subject to satisfactorily complying with the KNA comments and any other items that go along with an approval.

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

There was no public comment.

Motion by O'Connor 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.

Mr. Granese asked if there were any concerns from DPW? Mr. L'Heureux stated that the department concerns had been addressed. He would caution the developer to follow the process with regard to bonds, preconstruction meetings, and to follow protocol so that they don't run into any issues that fall outside of the town's jurisdiction. Mr. O'Connor noted there had been some questions with regard to drainage raised during the site walk. Could Mr. L'Heureux explain the effect the road improvements will have on the current road conditions?

Mr. L'Heureux said he has heard there is existing flow in the road. If there is any seasonal surface water that is located upstream, there will be no improvement. The new road will take its run off and slow it down, discharging it to an area just outside the wetland at the bottom of the hill. The new culvert will be upgraded to ensure there is no flooding in the road at that location. He would like to think the improvements will alleviate all the flooding in the road, but he can't say it will eliminate it. The improvements include tree cutting along the side of the road which will allow more sun to shine on the road which will minimize the existing conditions.

Mr. Sioras recalled there had been questions at the last meeting regarding the neighbors well. Has that issue been resolved? Mr. Lavelle said the well is upstream of the project and the flow goes west to east. The water flows toward the subdivision and not away from it. Mr. Granese recalled they tried to find the well while on the site walk but were only aware of the general location. Mr. Lavelle recalled the abutter speaking of water coming from above his lot, causing freezing on the road. Their improvements will not take care of that but will take care of anything that comes from their subdivision. Uphill from the subdivision is where most of the icing occurs. Board members noted one of the abutters, Mr. Fraser, spoke of the icing during the site walk and Tim Lavelle had explained what the new culvert would do for the area.

Mr. Granese asked if Mr. L'Heureux had any issues with the waiver requests? He did not.

Motion by O'Connor to grant pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, a Conditional Use Permit to allow disruption for the purpose of the proposed 11 lot subdivision of 1 Bartlett Road, of an area of poorly drained or very poorly drained soils, other

than prime wetlands with conditions. After review of the proposal the Board finds that 1) the proposed construction is essential to the productive use of the land not within the Wetlands Conservation District, 2) design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition, 3) no alternative which does not cross a wetland, or has less detrimental impact in the wetland, is feasible, and 4) economic advantage alone is not reason for the proposed construction. A note regarding approval of the Conditional Use Permit shall be added to the plan. Bartkiewicz seconded the motion.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to grant waivers from the following sections of the LDCR: Section 170-26.C (4), Table of Geometric Roadway Design Standards to allow a 365' section of the proposed roadway, Steele Road, to be constructed at a grade of 8% rather than the 6% maximum grade required by the regulation; Section 170-26.A (17), Streets, to allow a 2:1 slope along sections of a roadway embankment as shown on the plan presented this evening where the regulation requires a 4:1 slope for the full length of the embankment, and Section 170-29.J to allow less than 3 feet of cover over the culver pipe. After review of the waiver requests, the Board finds that specific circumstances relative to the plan or conditions of the land in such plan indicate the waivers will properly carry out the spirit and intent of the regulations.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to approve the 11 lot subdivision plan pursuant to RSA 676:4, I, Completed Application, subject to the following conditions: comply with the KNA review dated November 06, 2013; subject to owner's 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; obtain written approval from the IT Director that the GIS disk is received and is operable; Certified Wetland Scientist stamp should be added to the plan; testing, pre and post construction, of the dug well located at 3 Bartlett Road; the above conditions shall be met within 6 months; improvements shall be completed by October 31, 2015; a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar, along with the applicable recording fees.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

**Andrew and Donnalee Panos  
PID 35042 and 35042-001, 13 & 15 Manchester Avenue  
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The lots are located off Crystal Avenue behind Wendy's. The purpose of this plan is for a lot line adjustment between the above referenced parcels. The applicant was granted a variance from the ZBA on October 17, 2013, Article VI,

Section 165-45.B (1) a-d to allow a lot line adjustment to occur between the two non-conforming lots. There is a waiver request letter dated October 18, 2013. He would recommend approval of both the waiver request and the lot line adjustment plan. There are existing homes on the two lots which are in an older neighborhood. The lots were created in the early 1900s and the area predates zoning.

Dan Mullen of Richard D. Bartlett & Associates, LLC presented for the applicant Mr. Panos who was also present. Mr. Mullen said the lots are located at 13 and 15 Manchester Avenue. The Panos family purchased the lots several years ago as part of a package deal. The issue is with the property line between the two properties. The existing lot line goes through one of the houses. The lots were created in 1908 and the homes built in the 1940s. Everything predates zoning and nothing conforms. The lot line adjustment will put each building on its own lot. They did apply for and receive variances for the applicable setbacks. The shed located on lot 15 will be moved to a location where it will meet the setbacks. There is a waiver request from the wetland mapping requirement as wetland mapping will serve no practical purpose with this plan. The lot line adjustment is equidistant between the two homes as that seemed the most fair.

Motion by O'Connor, 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 input.

Motion by O'Connor, 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. L'Heureux confirmed DPW had no issues with this plan. Ms. Alongi confirmed both parcels are owned by the Panos family. Mr. Granese thought the lot line adjustment made sense given the circumstances.

Motion by O'Connor, seconded by Bartkiewicz to accept jurisdiction of the Lot Line Adjustment application before the Board for Andrew and Donnalee Panos, 13 and 15 Manchester Avenue, PIDs 35042 and 35042-001.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to approve a waiver from LDCR Section 170-24.A.13, Wetland Mapping, as after review of the waiver request the Board finds that specific circumstances relative 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.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by O'Connor, seconded by Bartkiewicz to approve, subject to RSA 676:4, III, Expedited Review, with the following conditions: subject to owner's signature; establish escrow for the setting of bounds, or certify the bounds have been set; obtain written approval from the IT Director that the GIS disk is received and is operable; record parking easement benefiting Parcel 35042 with the plat; correct date in Reference Note 3; note approved waiver on the plan; the above conditions shall be met within 6 months; improvements shall be completed by April 30, 2016; a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees.

Park, Alongi, O'Connor, Davison, Bartkiewicz and Granese voted in favor and the motion passed.

### **WORKSHOP – Mixed Use Developments**

*This portion of the meeting was not televised.*

Mr. Sioras commented the Board has discussed mixed use before. Mr. Granese asked how staff came up with the document before the Board this evening? Mr. Sioras said this document is new to the Board. Staff put ideas together and this is a starting point. They essentially brainstormed things to think about. The maps show the various General Commercial zones in Derry. They were broken down into four areas of town: Route 111 (near Atkinson/Hampstead town line), Ryan's Hill (Route 28 South), Webster's Corner (near Clam Haven), and Ross's Corner (near Tsienneto, Crystal and Folsom). The document portion contains ideas for discussion and some potential definitions. On the maps, the GC areas are noted in light brown and blue with the blue lots designating GC lots that are larger with more development potential. Staff wanted the Board to see what the parcels looked like. The downtown CBD zone has mixed use which is made up of retail, office and multi family. This was common for the area, especially when there used to be shoe factories in the area.

Ms. Alongi asked if the Board wanted to have mixed use? Mr. Sioras said that is what the Board needs to decide. When the General Commercial zone was changed recently, the Board took out housing and it needs to determine if it wants to allow any type of housing in the GC zone. Several business people have called the Planning Office and they were advised there would not be any decisions made this evening and that this process would take a while. Ms. Alongi recalled there had been some kickback from residents when the Board discussed taking residential use out of the General Commercial zone. Mr. O'Connor said he recalled the Board stating it would look at a mixed use overlay. He has a concern with adding it to other areas outside of the Webster's Corner area as that is the only area that will have water and sewer. He could not see allowing mixed use in areas that did not have water and sewer. Mr. O'Connor cited citizen survey results from the 2010 Master Plan.

Mr. Granese felt when the Board talked about overlays, he did not think the overlay could be kept to one area and that the Board needed to consider the whole town. The Board needs to look at all areas of town to determine the right areas. The last time the Board did something like this



was when it created the Traditional Business Overlay District. That should be done here. What might work in one area of town might not work in another.

Mr. Sioras also felt it was similar to when the Board discussed the Architectural Design Regulations. The Board ranked areas of town in order of importance. The first choice for high compliance with the regulations was the downtown area. It was ranked higher than a zone that has a mish mash of architectural types. Crystal Avenue area is not the same thing as the Clam Haven intersection. The Board may not want that area of town to look like Crystal Avenue, and the Board might not want multi family on Crystal Avenue.

Mr. O'Connor asked where exactly will the water and sewer improvements stop? Mr. Sioras said they will extend down from Clam Haven to Berry Road, just below the mobile home park. That is why staff used the color scheme on the maps. The Smith property is shown with 45.2 acres and that is prime commercial land. The Grandview site has 21+ acres. Hillside Plaza has had major issues with its septic and is waiting for water and sewer. He also identified the Siragusa and Butterfield properties. Ms. Alongi asked if this is near the school? Mr. Sioras said the school is farther north on Route 28. A few people have called the office. The owner of Metro Plaza has indicated he would like to see buffers between the gas stations. Mr. Smith had suggested the Board consider allowing 3-5 residential units on a lot the size of their lot. There would still be commercial development, which could go to the front of the lot, but there could be limited residential to the rear, closer to the existing residential lots. He had suggested allowing a maximum number of units based on acreage.

Mr. Granese recalled the Board has already addressed the issue of the distance between gas stations and there is no buffer. Mr. Sioras commented the gas pumps at Hillside Plaza are being removed.

Ms. Alongi asked what is the implication of allowing housing on a permitting system? Mrs. Robidoux explained the intent noted in the document provided to was to allow residential use as a permitted use by right, but then decide if it would be through a conditional use permit, or just as a permitted use. The issue would be that if it is a permitted use and a developer needs a variance from the Ordinance, that would be granted through the ZBA. If it was allowed by Conditional Use permit, it would fall completely under the purview of the Planning Board, even though it was in the Zoning Ordinance.

Mr. Sioras spoke with regard to overlays. An overlay is placed over a general zone and only applies to specific properties in the zone, not the whole zone. For example, the TBOD is an overlay over the Central Business District. The TBOD consists of the frontage lots ranging from Halligan's Tavern to the Baptist Church. The intent was to keep the downtown area to scale and not allow someone to purchase a block and tear down the buildings and put in something like a Walgreen's. Two lots back off Broadway falls into the CBD zone. The Board had not wanted the downtown area to look like Crystal Avenue. Ms. Alongi felt the Town needed an ordinance that kept properties in good repair even if the owners were not living in or working in the buildings. She asked if the examples of permitted uses were the only ones that would be allowed? Mrs. Robidoux said they were only examples to start the discussion. Mr. Sioras said he has heard some people say they would not want to see something like the Fairways in the

General Commercial zone but maybe there could be housing for those 55 and older, the elderly or an Assisted Living Facility. Ms. Alongi recalled seeing a much more detailed document at one of the previous workshops and asked for a copy. Mrs. Robidoux said she would send it but the document was more of a model ordinance and was likely more involved than the Board wanted to get. Mr. O'Connor recalled seeing a document published by the Southern New Hampshire Planning Commission on mixed use and it actually referenced Derry in it. Mrs. Robidoux said she would send the link to the Board members.

Ms. Alongi asked if it was difficult to manage mixed use? Mr. Sioras said not from a staff standpoint. The TBOD is not a large area and is only a handful of properties. It would not be like Mashpee Commons on the Cape, which is a good example of mixed use. Mr. O'Connor noted Woodmont Commons is also another good example.

Mr. Granese suggested the Board take what staff has given them for suggestions, staff can incorporate the Board comments and this can be discussed at the next workshop which he scheduled for February 19, 2014.

Mr. Sioras advised the water and sewer project along Route 28 should be completed by fall of 2014. Mr. O'Connor asked if gas was included in those improvements? It is not. Gas is in a very limited area of the downtown. He reiterated the materials provided tonight are really discussion points. The Board can come back at the next workshop for more discussion.

There was no further business before the Board and it adjourned at 8:06 p.m.

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

\_\_\_\_\_  
Secretary

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