

The Planning Board for the Town of Derry held a public meeting on Wednesday, April 03, 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; John O'Connor, Vice Chairman; Frank Bartkiewicz, Secretary; John P. Anderson, Town Administrator (7:06 p.m.); Randy Chase, Administrative Representative; Albert Dimmock, Sr., Town Council Liaison; Darrell Park, Member, and Lori Davison, Alternate.

Absent: Jan Choiniere, Jim MacEachern, Ann Marie Alongi

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. He introduced the staff and Board members present, and noted the location of the exits, and meeting materials. He welcomed Mr. Dimmock to the Board.

*Ms. Davison was seated for Mr. MacEachern for the evening.*

**Election of Officers**

O'Connor nominated Granese as Chairman, seconded by Bartkiewicz. There were no further nominations placed on the table.

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

Granese nominated O'Connor as Vice Chairman, seconded by Park. There were no further nominations placed on the table.

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

O'Connor nominated Bartkiewicz as Secretary, seconded by Park. There were no further nominations placed on the table.

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

## Review of Planning Board Policy and Procedures

Mr. O'Connor noted there are a few changes to be made to the Policy and Procedure document. As a result of the most recent changes to the Charter, the Membership will need to be amended to reflect a seven member Board rather than 6, as well as the other associated changes. In addition, the document is currently silent on how the Board handles reconsideration of an approval. In the past, the Board has followed Robert's Rules, which covers this possibility, but recent changes in the RSAs indicate the Board should have the procedure noted in this document. Staff will review the applicable RSA and bring a revised draft of the Policy and Procedures back to the Board for review and comment at the next meeting. Mr. Sioras reminded the Board of the requirement to read the changes at two meetings, and then it can approve any changes.

## Escrow

### #13-09

**Project Name: Pete's Scoop Driving Range**

**Developer: Samuel Kershaw**

**Escrow Account: Same**

**Escrow Type: Cash escrow**

**Parcel ID/Location: PID 03087, 185 Rockingham Road**

The request is establish cash escrow in the amount of \$130,641.98 for the above noted project.

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

## Minutes

The Board reviewed the minutes of the March 20, 2013, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the March 20, 2013, meeting as written. The motion passed with Dimmock abstained.

*Mr. Anderson was now seated.*

The Board reviewed the notes taken during the March 23, 2013 site walk at 37 Highland Avenue.

Motion by O'Connor to accept the notes as amended, seconded by Bartkiewicz. The motion passed with Dimmock abstained.

## Correspondence

Mr. Bartkiewicz advised the Board is in receipt of an invitation to the New Hampshire Department of Environmental Services annual Drinking Water Source Protection conference to be held on May 1, 2013, between the hours of 8:30 a.m. and 4:00 p.m. in Concord. If anyone is interested in attending, they should speak with the Planning Office.

Mr. Bartkiewicz advised the Board is also in receipt of the Change in Use list, which requires no action on the part of the Board. Mr. Granese asked if Mr. Sioras knew when California Grille would be open? Mr. Sioras said he understood the owner was working with Code and Fire on inspections and walk throughs. Carolina Bedding is a mattress company.

Mr. Anderson asked if the list could be read for the public. Mr. Bartkiewicz read the changes into the record.

<u>LOCATION</u>	<u>CURRENT USE</u>	<u>PROPOSED USE</u>
133 Rockingham Rd	Dollar Bill's	Cabinet Warehouse NH, LLC
67 Birch Street	Wholesalers Unlimited	Hot Deals on Wheels
127 Rockingham Rd, U 13	Nail Salon	Pet grooming
8 Tinkham Ave	Vacant warehouse	Furniture storage
29 East Broadway	Vacant office	Home/office cleaning company
16 Manning St, Unit 105	For Kids Who Cook	The Culinary Playground
21 East Broadway, Unit A	Ashley's Consignment	VIP Top Fashion
1 Hood Road	Headstart	CATS – renting office space in the basement
127 Rockingham Road Unit 11	Natalie's Coffee	One Stop Graphics
41 Crystal Avenue	Great American Subs	California Grille
38 Birch Street	People's Bank	Granite State Credit Union
		<b>INTERIOR ONLY</b>
127 Rockingham Road, Unit 12	Solar E Clipz	Venus Avani Hair Salon
172 Rockingham Road	Superior Auto Sales	adding A & M Towing
127 Rockingham Rd Unit 14	Vacant unit	Carolina Bedding of NH

Mr. Anderson said he felt it was important for the public to know the Town has received these applications. There is no need for the Planning Board to review them, but they are new businesses in town. These are the applications received from December 28 through March 28<sup>th</sup> of this year. He felt this was a good thing for Derry.

## Other Business

Mr. Sioras advised Town Council will hold a public hearing on the proposed sign amendments on April 16, 2013.

Mr. Granese confirmed the Planning Board will hold its public hearing on the proposed General Commercial amendments on April 17, 2013.

Mr. Sioras reported there will be a visioning session for the Robert Frost/Old Stagecoach Scenic Byway on Saturday, April 06, 2013. The session will be held at Chester Town Hall (84 Chester

Road) between the hours of 9:00 a.m. and 11:00 a.m. The meeting is open to the public and the intent is to get ideas from the public on how to promote the scenic byway through the towns of Atkinson, Hampstead, Chester, Auburn and Derry.

Mr. Granese thanked the Town Council for appointing him for another three year term, and the Board for electing him Chair. He is looking forward to working with the Board over the next three years.

## **Public Hearing**

### **22 Lenox Road, LLC**

### **PID 32040 and 32029, 22 Lenox Road and 20 Lenox Road**

### **Acceptance/Review, Lot Line Adjustment and**

### **Site Plan – Multi Family Residential**

### **Addition of a two family dwelling on the existing parcel at 22 Lenox Road**

### **Continued from March 06, 2013**

#### Lot Line Adjustment

Mr. Sioras advised this application was continued from March 6<sup>th</sup>. The purpose of the plans are for a lot line adjustment and the construction of a multi-family townhouse at 22 Lenox Road. The applicant has made changes to the plan since the last meeting.

Motion by O'Connor to accept the revised plans for both the lot line adjustment and site plan applications for 22 Lenox Road, LLC, seconded by Bartkiewicz.

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

Tim Winings, TJW Survey, presented for the applicant.

Mr. Winings explained there are two separate projects that are presented together. The lot line adjustment plan shows a lot line adjustment between 20 and 22 Lenox Road. This will accomplish two things: it will increase the building setback for the house on 20 Lenox and add frontage to 22 Lenox Road. The original application contained two waiver requests, one for topography and one for the wetlands mapping. At the last hearing, the Board had approved the waivers, approved the Lot Line Adjustment and then reconsidered the vote. Those waivers are no longer required as there are no wetlands on the property and the plan indicates such and he has provided a topography sheet.

The site plan application became a major reason for the reconsideration of the lot line adjustment. There had been many concerns about the application. He had originally requested four waivers; one for the drive aisle width, one for the walk way requirement, one to allow overhead utilities and one from the landscape requirement. They have made revisions to the plan and have redesigned the driveway access way to create the 24 foot width near the entrance. The

drive aisle splits 40 feet back and makes a loop to facilitate the traffic circulation. They have left room for vehicles to pass. This removes the drive width waiver. They have added an interior walkway leading to the sidewalk on Lenox Road and that negates the need for the walkway waiver. They had requested the landscape waiver as they had intended to only remove sufficient vegetation for the structure and did not propose new plantings. They have revised the plan and added items to address the landscape requirement. The Town's consulting engineer, Keach-Nordstrom (KNA) feels there should be more landscaping added. The waiver from the underground utility requirement is the only remaining waiver request. All of the other structures in the area are serviced by overhead utilities. They feel it would be inconsistent to require this project to take the utilities underground.

Mr. Winings advised the revised plans were submitted to the town last week and late yesterday, he received the comments from Keach-Nordstrom. With regard to the comments, KNA had four minor comments regarding the lot line adjustment which should be easy to address. There were approximately 10 items for the site plan which were more in depth and they may need time to address those comments.

Regarding the lot line adjustment he asks the Board to look at the submission in light of completeness and compliance with the regulations and ask for conditional approval. With regard to the site plan, they would like more time to address the KNA comments. One of the comments may require more work. He believes the Board has a copy of the letter from Attorney Panciocco that addresses items the Board may find helpful. He also has three letters from abutters: the two abutters on either side of 22 Lenox and one from the school which is located behind the property. They have also addressed the issue raised by DPW with regard to the water service to the existing home on the lot. The water line is shared with the house on 24 Lenox. Tom Carrier had asked that either a new line be tapped off the line that would be installed to service the proposed duplex or to obtain a utility and maintenance easement from the abutter. They obtained an easement from the abutter and that easement has been executed and recorded. The three letters from the abutters were entered into the record.

Motion by Anderson to open the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the floor was open to the public.
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James Isbelle, 20 Lenox Road, stated he agreed to the boundary line change because his property line is in severe violation of the town's 15 foot setback. In some places he only has five feet to the property line. When he was approached with the proposal to redraw the boundary, he readily agreed as he wants his property to conform to the standards. He had been told the applicant needed the adjustment to construct the two family structure. At first he was concerned it would spoil his view, but he has been told it will be constructed as far back as possible on the lot and they will only cut the trees needed for the building and access way. It will be far enough back that people walking on the road will need to look hard to see it. The existing house was renovated he believes for members of the applicant's family. The renovations are a credit to the neighborhood and he supports the application.

D. Seth Abbott of 24 Lenox Road, stated he watched the renovation of the existing home and the applicant has done a magnificent job. He has no objections to this proposal.

There was no further public comment.

Motion by Anderson to close the public hearing, seconded by Bartkiewicz. Discussion followed.

Mr. Granese asked Mr. Sioras to read the letters from the abutters into the record. Mr. Sioras read the letters from Seth Abbott and James Isbelle, which were reiterations of their public statements with Mr. Abbott stating there are two multifamily homes on the other side of his property. The Derry Cooperative School District advises they have no concerns this project would impact Grinnell School or the School District. All three letters were retained for the file.

The Board voted unanimously on the motion to close the public hearing.

Mr. Anderson said he had moved to reconsider the approval of the lot line adjustment because he feels it allows for an increase in density in the neighborhood. He is still hesitant as the current house is non conforming. The new structure would be conforming, and there is now better access for the Fire Department. If the lot line adjustment is not granted, then the site plan application does not come into play.

Mr. L'Heureux advised Public Works has no comment regarding the lot line adjustment.

Mr. O'Connor noted that procedurally, the Board would need to look at the waiver requests before voting with regard to approval. He began to make motions with regarding to the two waiver requests. Mr. Winings reminded the Board that the waivers had been requested originally, but are now no longer required. In any event, the Board had granted the waivers at the last hearing, so could either continue with those approvals in place, or not act on them as they have been effectively withdrawn. Mr. Sioras noted procedurally, because the Board voted to reconsider the approval, it should vote on the waivers. The waiver for the topography does not need to be addressed now as the applicant has supplied a plan sheet showing topography. Mr. Granese confirmed the waiver request for relief from LDCR 170-24.A.11, Topography, has been withdrawn.

Mr. Chase noted the waiver request for wetlands mapping (LDCR 170-24.A.13) can also be withdrawn as the plan is stamped by a wetland scientist and indicates there are no wetlands on the lot.

Mr. O'Connor withdrew his motion.

Motion by O'Connor, seconded by Davison, to approve the lot line adjustment plan for 22 and 20 Lenox Road, pursuant to RSA 676:4, I, Completed Application, subject to the following conditions: Comply with the Keach Nordstrom report dated April 02, 2013. Subject to owners' signatures. Subject to on site 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. Deeds for the lots shall be drafted and the language in the deed is to be reviewed by the Town of Derry Assessor or designee. The deeds for the lots shall be recorded with the

plat. The above conditions shall be met within 6 months. Improvements shall be completed by October 03, 2014. 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.

Chase, Park, O'Connor, Davison, and Bartkiewicz voted yes; Dimmock abstained; Anderson voted no, citing the density bothers him, and Granese voted no citing as the land exists he does not see a need for the change or a hardship. The motion passed by a vote of 5-2-1.

### Site Plan

Mr. Sioras provided the following staff report. This application was continued from March 06, 2013. The purpose of the plan is for a residential site plan for the construction of two additional residential living units (townhouse duplex) to total three units on this lot. There is an existing home on the lot. The parcel is located in the Medium High Density Residential District. All town departments have reviewed and signed the plan. There is a waiver request for overhead utilities, and he would refer the Board to the letter from Mr. Winings dated March 6, 2013. There should be an additional waiver request to allow greater than 3% slope on the driveway entrance per the KNA review.

Mr. Winings stated he is not sure if they would ask for the waiver of the driveway slope or not. That was one of the items from the Keach Nordstrom report. As designed, the driveway entrance does not meet the slope requirement. There are concerns with the grade as the maximum allowed is 5% and as it sits, they are at a 15% grade. They would need to regrade the entrance to meet the requirement, or ask for a waiver. At this time, they would ask for a continuation so that they can have time to address that comment and look at it in more detail.

Mr. O'Connor asked how the Board should proceed as the applicant does not know if he would ask for the waiver or re-engineer the plan? Mr. Sioras noted that in the past, the Board has allowed applicants to continue an application so that they can continue to work on the engineering aspects. They need time to see if they can meet the requirement or to see if they will need to ask for a waiver.

Motion by Anderson 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 input.

Motion by Anderson to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the plan came back to the Board for review and comment.

Mr. Chase noted the Board is in receipt of a letter from Attorney Panciocco. In that, she defines "Multi-Family" per the Derry Zoning Ordinance. He does not believe this application meets that definition. The Zoning Ordinance defines "multi-family" as three units in one building. Mr. Winings stated Mr. Mackey has already made that determination and interpreted that to mean three units on the lot. Mr. Chase disagreed. This lot has a single family detached dwelling with

a two family dwelling/duplex. That is a subdivision. A multi-family building has three plus units in one building. Mr. Winings respectfully disagreed. Mr. Chase stated he disagrees, per the Zoning Ordinance Section 165-45.1 and 2, and 165-8, which states there shall be no more than one building on a lot. He does not feel this proposal meets the definition of multi-family. It has a single family residence and a duplex on a single lot, which by definition is a subdivision. He would not like to question Mr. Mackey's decision, but he will on this as per the LDCR and the Zoning Ordinance he does not feel this applies.

Mr. Chase read from Attorney Panciocco's letter, a multi-family dwelling is defined as "...a residential building [emphasis added] designed for occupancy by three or more families with the number of families in residence not exceeding the number of dwelling units." The Zoning Ordinance defines the following: "Dwelling, Single Family Detached – a freestanding residence designed and occupied by one family only. Dwellings, Two Family (Duplex) – a residential building designed for occupancy by two families, living independently of each other in individual attached dwelling units." Based on those definitions that is subdivision. He believes this application is a moot point.

Attorney Panciocco said she initially did bring up questions regarding the definitions. She understands the circumstances to be that there has been a common practice, or "administrative gloss", imposed on the regulations where the regulations can be read one way, but are interpreted in another way. Mr. Chase said he needs to go by what he is reading in the regulations. Attorney Panciocco said there are other areas in town where there are more than one building on a single lot (condominiums) and they also conflict with the Ordinance. Mr. Chase said he does not see there is any intent to convey these units to condominiums. Attorney Panciocco advised the intent is to condominiumize all three of the units. Mr. Chase said without conveyance documents, he cannot assume that is going to happen in the future. Attorney Panciocco said the matter is in the record of the last meeting and is noted in the minutes of that meeting. The condos are not conveyed until the site plan is approved. Mr. Chase said intent is one thing, but follow through is another. Attorney Panciocco noted the condo conversion can be a condition of approval. Is there any procedure that states they are required to provide the Declaration of Condominium up front? Mr. Sioras said that the Board has approved some plans with condominium documents being a condition of approval, and the documents are reviewed by the town attorney, or, some provide the documents up front. He has seen it both ways. Attorney Panciocco thought this was an issue that could be easily managed. Creating the condominium documents is not a real challenge. Mr. Chase said there are other issues that go along with that including access. As a condo, the plan would need to comply with NFPA regulations for sprinklers, Fire Department fire lanes, access and other items to make sure it complies. If it is a multi-family, it needs to comply with the regulations found under Section 170-62.B.3 of the LDCR.

Mr. Winings said they can present the plan to the Fire Department. The Fire Department knew during TRC that this was to be a condominium project and signed the plan. Mr. Chase said the applicant says it is a multi-family residential plan; he does not see that. Then they say it is a condominium; he does not see that either. It can't be both ways. Attorney Panciocco asked to clarify some items. Multi-family is a use of land. A condominium is a multi-family use that can be in one building or scattered throughout the lot. "Condominium" is a form of ownership, not a

land use term. They are the same thing when you look at it, but one is looking at it from the title perspective, the other is from the land use view. Mr. Chase understood that, but felt that condominiums are normally set up in one multi-family building. Normally, the Board sees them created from raw land and makes sure they conform. Each unit is purchased from an association that the Board knows about in advance.

Attorney Panciocco said condo conversions occur in older multi-family buildings all the time. The units can be conveyed. Condos are not just formed in new buildings and it is a form of ownership only. Older buildings may not always comply with the regulations.

Mr. Chase thought the applicant is asking for a duplex and a nonconforming single family residence to be approved on the same piece of land. He maintained that is not "multi-family". Attorney Panciocco explained that multi-family for this application has been defined by the town, or they would never have gotten this far in the process. Mr. Chase said he still believes multi-family is three families or more in one building. Attorney Panciocco said the single building piece has had a different interpretation over time that has changed and glossed Derry's regulations.

Mr. Anderson suggested tabling this application without taking action on it so that there can be further conversations with town officials regarding the interpretations of the Zoning Ordinance and the LDCRs. The issues raised by Mr. Chase have been his concerns as well and he feels this proposal needs further review by staff. Mr. O'Connor thought if and when the Board decided to table the plan the applicant prepare condo conveyances that the Board can review.

Motion by O'Connor to conduct a site walk, seconded by Bartkiewicz. Discussion followed.

Mr. Granese said he was also going to suggest a site walk. Mr. Sioras advised that procedurally, the Board does not need to accept jurisdiction of the plan before the site walk. Jurisdiction is accepted when the Board feels there is enough information present that the application is complete. In this case, the Board is asking for more information. He would suggest not accepting jurisdiction, hold a site walk, and come back to a meeting with more information.

Chase, Park, Anderson, O'Connor, Davison, Dimmock, Bartkiewicz and Granese all voted in favor of holding a site walk and the motion passed.

After a brief discussion, the date was set for Saturday, April 20, 2013, beginning at 10:00 a.m. Mr. Granese suggested those attending park on Mt Pleasant or Mt Washington Streets. He confirmed with Mr. Winings and Attorney Panciocco that members of the public are also welcome to attend the site walk.

Mr. Sioras recommended May 15 as a date for a continued hearing.

Motion by Anderson, seconded by Park, to table this hearing to May 15, 2013.

Chase, Park, Anderson, O'Connor, Davison, Dimmock, Bartkiewicz and Granese all voted in favor and the motion passed.

Mr. Granese advised there would be no other notice of the continuation.

**Extended Realty, LLC  
PID 26232, 37 Highland Avenue  
Acceptance/Review, Apartment Development  
Renovation of the former Floyd School to create a total of 20 apartment units  
Continued from March 06, 2013**

Mr. Granese advised he would recuse himself from this application. Mr. O'Connor took the seat as Chair Pro-temp.

*Mr. Granese departed the meeting.*

Mr. Sioras provided the following staff report. This plan is continued from March 06, 2013. The Board held a site walk at the property on March 23<sup>rd</sup>. The applicant has made technical changes to the plan as a result of the last meeting and discussions during the site walk. There are waiver requests. There is also a letter from Attorney Gerardi regarding an abutting property at 12 Florence. That letter will be read into the record later. Mr. O'Connor advised he could address the contents of the letter later as he had some comments based on the results of the site walk. Mr. Sioras also advised he has had discussions with Mr. L'Heureux and Mrs. Robidoux and it is felt an additional waiver for the driveway slope should be submitted and discussed.

Motion by Anderson, seconded by Bartkiewicz to accept the revised plans.

Chase, Anderson, Park, Davison, Dimmock, Bartkiewicz and O'Connor voted in favor and the motion passed.

Mr. O'Connor provided a report of the site walk. He stated it was determined that the private way is greater than 24 feet wide and currently the abutters are infringing upon that. The developer knowing that, has opted to allow that to continue and will reduce the aisle way to keep the private way at 24 feet. The Board looked at the location of the water hydrant and potential areas where the utilities could be buried. He had asked Ms. Duquette to look at other potential locations. With regard to the no parking signs on Highland Avenue, currently there are two across the street from the applicant's building. They have no parking during limited times during the day: 7:30 am to 9:00 am and 2:00 pm to 3:00 pm. He is not sure that is enforceable since the school is no longer at this location. Regarding the handicap location on the plan on the other side of the building, they had discussed handicap parking and stormwater flow on that side of the building. They also discussed the "recreation area" which is a left over designation from an old plan for this site. He suggests that is removed from the plan. Several abutters had a concern there might not be a place for over flow parking other than in the street. Below the recreation area, near the fence, there is an area that might be available for expanded parking at the bottom of the hill. It was also noted Highland Avenue has no posted speed limit.

Nicole Duquette, of TF Moran, presented for the applicant. Eric Spofford was present as was David Gleason of Gleason Architects. Ms. Duquette stated they looked at the driveway grading. They have determined they can get to an 8.7% slope at the entrance. Currently the slope on the south side is at 18%. This will be a significant improvement. Regarding the driveway slope waiver, the regulations say there should be a 3% grade on the approach on the entrance. She does not feel a waiver is required because she believes they are performing maintenance to an existing access for three lots. If the waiver is not approved, the changes get rid of the grandfathering of something that has been in place for over 100 years. If the Board wants the waiver submitted, she can do that.

Ms. Duquette stated they spoke with the abutters at Parcel 26234, and Mr. Spofford has also emailed with them. The applicant has agreed to add a privacy fence along the Busted's property line that abuts the private way. The length of the fence will be determined at a later date; the fence will be 6 feet high. Previously, the entrance of the building facing the two direct abutters was shown with a sidewalk to the private way. They are eliminating that sidewalk. What they are trying to do is make sure the abutters have as much privacy as possible. They will plant rhododendrons and junipers in that location. Regarding the underground electric utility, she has been trying to speak with PSNH for several weeks and has no response from them. Therefore, she cannot answer whether the utilities can easily go underground or not. Mr. Gleason is continuing to work on finalizing the floor plan. They are changing the numbers a bit. Previously they proposed 11 two bedroom units, 5 efficiency units and 4 one bedroom units. They have changed that to 10 two bedroom units, 6 efficiency units and 4 one bedroom units. This change was necessitated because of the width of existing walls.

Mr. O'Connor asked for the dimensions of the efficiency and one bedroom units. Ms. Duquette advised the two bedroom apartments are 730 square feet; one bedroom units are 450 square feet and the efficiency units are 320 square feet.

Mr. Anderson asked where are the changes occurring in the floor plan? Mr. Gleason provided the Board with updated interior floor plans. A copy was retained for the record. Unit 6 goes from a two bedroom to an efficiency unit; Unit 5 and Unit 7 get a little bigger.

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

Craig Busted, 33 Highland Avenue, stated he is against 6 efficiency units. He did not want five of them. It seems to be too much. Dropping a two bedroom and adding an efficiency would appear to make the neighborhood more transient. He feels it will change the value of his home. He does not feel efficiency units will attract the best neighbors.

Ken Bartke, 14 Pleasant Street, stated he was against the density. He is not so much against the use. There is precedence with the conversion of the Oak Street School into condominiums. He feels in this case that packing in the number of bedrooms in this neighborhood will have an impact. This is a family neighborhood. He would like to see the recreation area developed and not become parking. His office is 400 square feet and he can't imagine living in that space. He would like to see no parking on Highland Avenue or Severance. He believes the parking lot will

fill up and overflow will go to Highland and then Severance. No one, including emergency responders, will be able to get through. Decreasing the amount of units by five or six units would not be so severe and parking would not be an issue. He also has a concern that there is only one dumpster for all of these units. There will be no room for snow storage on this site.

Mr. O'Connor spoke with regard to the no parking signs. He advised this is not something the Planning Board can control but suggested speaking with the Highway Department. Mr. Anderson said he would have that matter addressed. Mr. O'Connor said that with regard to the overflow area, it was only mentioned during the site walk to address one of the citizen's concerns. The applicant has more than ample parking on the site. Mr. Bartke feels that 47 spaces is not enough for twenty units. Mr. Chase noted the street fills up now once the parking ban has been lifted. He has lived in this area for over 50 years and is aware that as soon as the parking ban is lifted, people use the street for parking.

Danielle Steen, 30 Highland Avenue, agreed there were too many apartments. There is enough traffic already on this street and the traffic travels fast. There are many children and pets on the road. She did not believe there needed to be more traffic, adding to the potential for an accident.

There was no further public comment.

Motion by Anderson to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor.
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Mr. Sioras noted the Gerardi letter should be read into the record. Mr. Anderson withdrew his motion and that passed with all in favor. The public hearing was re-opened.

Mr. Sioras advised Attorney Gerardi owns 12 Florence Street. He is representing the interests of Jill Richards who lives there. She is also in the audience this evening.

Mr. O'Connor read the letter from Attorney Joseph Gerardi into the record. A copy is retained in the file. Concerns are the snow storage areas will result in additional drainage to his property; there is an inaccurate depiction of existing trees along the property line, and issues with the recreation area. The plan does not show access to the recreation area, he feels storm water concerns will result from the creation of an access path to that area, he is not sure how the area will be secured, or if it will meet the building setbacks. Does the use meet the zoning in this area, how will the area be monitored, is the use appropriate in this location, what are the impacts to the privacy of the abutters, and will there be appropriate screening. He requested copies of any submittals be forwarded to him for review.

Mr. Anderson stated that during the site walk, it was apparent that the neighbors on Florence are using the area noted on the plan as "recreation area" for their own use. He also believed there were structures that were encroaching on the 37 Highland Avenue property. Ms. Duquette confirmed there are fences and retaining walls that encroach on Extended Realty's property. She also stated the recreation area is something that was required for the previous approval at this location and it was not removed from the plan. She is happy to remove that as they don't intend to use that area of the property. It will be empty space.

Mr. O'Connor confirmed that snow melt, drainage and all flows will be directed to the subsurface system and will not run off the property. The recreation area issue has been addressed. During the site walk, it was noted which trees would be removed and that the slope will be stabilized.

Ms. Duquette stated they will stabilize the slope with the retaining wall. Any disturbed areas will be stabilized as well. The problem usually occurs while the seed is sprouting and the grass is being established. They will make sure they have erosion control in place and utilize erosion control blankets. The area needs to be stable before they can remove that. Regarding security, Mr. O'Connor noted there is a double gate near Florence Street. He suggested padlocking that. Mr. Chase agreed to a point with regard to snow storage, but there will be some snow melt that will go over the curb. He is concerned with the east side of the dumpster area near the boundary. Will it slope away and melt into the infiltration trench? It is very steep there. He wants to make sure the land is graded so that it goes into the trench. Ms. Duquette said they can regrade that section.

Mr. O'Connor recalled another concern raised at the last meeting was if a fire engine could make it onto the site. Mr. Chase noted that at 18% grade the only truck that could not make it would be the ladder truck. At the new grade level (9%) the ladder truck will be able to easily travel up the grade. There will be no issues.

Motion by Anderson to accept jurisdiction of the Apartment Development Site Plan application before the Board for Extended Realty, LLC, PID 26232, 37 Highland Avenue, seconded by Chase.

Chase, Park, Anderson, Davison, Bartkiewicz and O'Connor voted in favor. Dimmock abstained. The motion carried in the affirmative.

Mr. Chase stated on the site walk, he recalled hearing the former multi-purpose building would be dressed up. Does it need to stay? He feels it would be a better project if it was removed and let the main building stand alone. He feels it would be more appealing. He did not like to mention that as he knows that is the proposed location of the handicap accessible apartments.

Mr. Gleason advised the intent is to have the facade be brick with vinyl siding. There are not enough accessible apartments available for those who need them. He believes this is a good opportunity to provide for people with disabilities. Mr. Chase said that is why he was reluctant to make that suggestion. Mr. Gleason said he is involved in accessibility issues at the state level. There are not enough places for people requiring accessible apartments on the ground floor. They redesigned the site to specifically meet this need. He can't create accessible apartments in the main building. The building will no longer be an eyesore once it is completed.

Mr. Chase said his second question had to do with the neighbors' concerns. Were they taken into account when the applicant made the changes to the interior of the building? Do they really need the efficiency apartments? Mr. Gleason said there are two chimneys in the space that he cannot remove, so that is the space they have to work with. He could make two of the one

bedroom units a two bedroom unit. Mr. Chase asked if that would bring the number down to 18? Mr. Gleason said it would be two bedrooms as opposed to single apartments. Mr. Chase asked if they could look at lessening the number of units? Mr. Gleason said he is constrained by the structure of the walls. Mr. Anderson asked if units 6 and 7 could be combined through the smaller structure wall at the right rear corner? Can they put a door there and make it a two bedroom unit? Mr. Gleason said he would need to reframe the wall because that is a load bearing wall. Mr. Anderson noted it appeared the walls are thicker on the second and third floors. He feels if they could not rent the efficiency units perhaps later they could add on to the one bedroom units. Mr. Gleason said his directive was to create 20 units and to make them as big as possible.

Mr. Anderson asked with regard to the fence along the property line to the north. Will it be on the property line? Ms. Duquette said it would be approximately 4 to 5 feet away from the private way. Mr. Anderson said he had a concern that it would be too close to the garage. What about the Lorenz family? Is anything being done for them? The right of way is close to the McGowan/Busteed garage. Is there any plan to develop the right of way back near the Lorenz property? Ms. Duquette said the land slopes down at that point. Mr. Anderson confirmed the recreation area will be taken off the plan.

Mr. Park said his concern has to do with density. That is what he keeps hearing. This is a lot of traffic in a small area. He would like to see four of the units go away, but he could accept two less. That would be a good compromise. Mr. Anderson said he did not see a lot of storage area. Many such units have gated storage areas available in the basement of the building for the residents. There is no overflow storage. These are small units. Is there a possibility to add some? Mr. Gleason said a lot of the mechanical space will go away. They are going to utilize a more efficient design. That is a large space and they may be able to do something there. It is easily large enough to add another apartment in that space. Each floor will have its own mechanical area. They plan to heat the building but not add air conditioning as the ceilings are so high. They don't feel they will need air conditioning with the high ceilings and the fans. Also, adding an HVAC unit will significantly add to their electrical load.

Ms. Davison asked if the accessible apartments will be able to accommodate wheelchairs? They seem to be very small. Mr. Gleason said they are actually larger two bedroom units.

Mr. Chase noted the back stairs going to the multipurpose building which act as a second means of egress. The front door will now be blocked. What is the second means of egress? Mr. Gleason said there will be four units in that area and there are two means of egress, on each side of the building. Mr. Sioras recalled James Kersten had raised that issue as well during TRC.

Mr. Anderson said the second floor has steps to access the building. Will there be a hallway to the front door? Mr. Gleason said the door will not exist anymore as far as egress. It will be one big storage room.

Mr. Anderson asked if DPW had any concerns? Mr. L'Heureux reiterated the need for the waiver for the 3% grade at the access drive, which is required for multi-family. Mr. Anderson noted the proposed grade is 9%, decreased from 18%. Ms. Duquette presented the waiver

request to the Board. Mr. Sioras noted the staff report has a copy of the discussion between staff and Bryant Anderson at VHB who also recommended the applicant request this waiver.

Mr. Anderson asked Ms. Duquette to talk about what they will do with the private way so that the public who did not attend the last meeting can be aware of it. There had been a lot of discussion at the last meeting. What will they do with the right of way?

Ms. Duquette advised they will install a new water line to the site. There are currently stairs leading from the front of the building to the sidewalk. The existing stairs at the front of the building will be removed and the water line will enter the building at that location. The width of the driveway will be 24 feet wide at the entrance. The cross slope is 6.5% which cannot be changed because that is the slope of Highland Avenue. They are lowering the grades against the building and are able to decrease the slope on the south side by 9%. The other side (north) is at an 8±% pitch and that will be maintained. The south side of the entrance will mimic the north side. They will work with PSNH and try to work out the utility issue. The waiver request to allow a 23.5 wide drive aisle can be withdrawn as they will reduce the sidewalk and now do not need the waiver. They will keep the parking spaces at the new entrance to the building.

Motion by Anderson to grant a waiver from the following sections of the LDCR: Section 170-64.C.2.iii, to allow a decrease in the residential buffer; Section 170-63.A.2, to allow a reduction in the parking space setback from the side property line, and Section 170-62.A.4 to allow a slope of approximately 9% within the existing private way entrance off Highland Avenue. 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 that the three waivers will properly carry out the spirit and intent of the regulations. Bartkiewicz seconded the motion. Discussion followed

The Board discussed the best way to handle the waiver request to allow overhead utilities. If the waiver is granted, then the applicant would not have to hold discussions with PSNH and work to put them underground. If the Board did not grant the waiver, they would have to come back for another public hearing if it was found it was impossible to place the utilities underground. The Board determined it would be best to withdraw the waiver and make this a condition of approval.

Chase, Park, Anderson, Davison, Dimmock, Bartkiewicz and O'Connor all voted in favor and the motion passed.

Motion by Anderson, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, I, Completed Application, with the following conditions: Comply with the Vanasse Hangen Brustlin report dated February 27, 2013. Subject to Engineering Coordinator's correspondence to TF Moran dated March 04, 2013. Subject to owners signature. Subject to on site inspection by the Town's Engineer. 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. Appropriate documentation of the private access agreements between the property owner and abutters should be provided to the town. Note approved waivers on the plan. Subject to receipt of state or federal permits relating to the project. A privacy fence shall be installed in an agreed upon area along the right of way adjacent to 34 Highland Avenue. The plans are revised to show the snow storage area in question will slope to the on site drainage system. A condition compliance

hearing is held with regard to the resolution of the underground utility issue. The above conditions are met within 6 months. Improvements shall be completed by October 03, 2014. Discussion followed.

Ms. Davison said she still has concerns regarding the number of apartments and feels there are too many for the size of the building. She does not feel the efficiency apartments enhance the project. Mr. Gleason said that the applicant appreciates the concern and is willing to take two of the efficiency units and make them into a bigger unit on the first floor. This would reduce the number of apartments to 19. They will combine units 8 and 9 into one unit.

Motion by Anderson to amend the previous motion to combine units 8 and 9 into one unit for a total of 19 units for the project. Bartkiewicz seconded the amendment. Further discussion followed.

Mr. Anderson noted the Board held a site walk, and the applicant has worked with the abutters. He would recommend the town continue discussions with the residents after construction begins. He wondered if a condition of tenancy could be that none of the tenants or their guests park on Highland Avenue. He is not sure the Board can do that. He will bring the parking sign concern to the attention of the Highway Safety Committee. He agrees the signs are outdated. Mr. Spofford advised he was not opposed to putting the parking restriction in the lease agreement.

Motion by Anderson to further amend the conditions such that the tenants or guests of the complex are not allowed to park on Highland Avenue, which will be established through the lease agreements. Bartkiewicz seconded the amendment.

Chase voted no, citing it is a fair plan but he still has concerns with the number of units. He would like to see less efficiency units. The density has not been reduced. Park voted no stating he concurred, adding he likes 90 plus percent of the plan and understands structurally they are stuck with the density, but would like to see if the density can be reduced. Anderson also had a concern with density but voted yes, after confirming with Mr. Sioras that the density is allowed in the zone based on the regulations for MHDR and that the 20 units meets the density requirement, and there is no basis for denying the density. Davison voted yes as the plan meets the density requirements and they combined a unit. Dimmock abstained. Bartkiewicz voted yes as the plan meets the legal density requirement. O'Connor voted yes for the reasons stated and that the applicant has made some major compromises. He feels this development will be a benefit to the town when the building is upgraded. The motion passed by a vote of 4-2-1.

Mr. Anderson asked the applicant to continue the dialogue with the neighborhood as the project moves forward and that they try to resolve any issues as they arise as amicably as possible. It would not hurt to hold a neighborhood meeting to keep the abutters abreast of the timelines for construction and plans as they move forward. He asked the applicant to accommodate as best he can with the construction schedule, keeping in mind that no one likes to hear construction at 6:00 a.m. on a Saturday. He asked the applicant to be cognizant this is a very residential neighborhood and the applicant and neighbors have worked hard together and he would encourage them to continue to work together to make this project work.

Mr. Gleason said they would re-examine the density as they deal with the structure, and will try to decrease the density. Mr. Anderson thanked everyone for participating in the process.

There was no further business before the Board.

Motion by Anderson, seconded by Bartkiewicz to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 9:07 p.m.

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

\_\_\_\_\_  
Secretary

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