

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 04, 2015, at 7:00 p.m., at the Derry Municipal Center (3rd 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; Michael Fairbanks, Town Council Representative; Randy Chase, Administrative Representative; Jim MacEachern, Lori Davison, Jan Choiniere (7:26 p.m.), Members; Marc Flattes, Bob Jean, Alternates

Absent: Darrell Park

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Assistant; Robert Mackey, Code Enforcement Officer; 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 noted the emergency exits, the location of meeting materials and introduced the Board members and staff.

*Mr. Flattes was seated for Mrs. Choiniere
Mr. Jean was seated for Mr. Park*

Escrow

None

Minutes

The Board reviewed the minutes of the February 18, 2015 meeting.

Motion by MacEachern, seconded by O'Connor to approve the minutes of the February 18, 2015 meeting as written. The motion passed with all in favor.

Correspondence

Mr. Bartkiewicz reported the Board has received a copy of *The Supply Lines with The Source* newsletter from NH DES. A copy is available on line at des.nh.gov.

Other Business

Mr. Sioras and Mr. Granese thanked Mr. Fairbanks for his time on the Planning Board as the Town Council liaison. Staff and Board members have enjoyed working with him in his capacity on the Board and in subcommittee. Mr. Granese added he hoped Mr. Fairbanks would be able to rejoin the Board.

Voluntary Merger, 2 and 4 Old Chester Road

Mr. Sioras advised this is a merger request of two lots on Old Chester Road. One lot contains an existing home, the other lot is vacant. Staff would recommend approval of the merger.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to RSA 674:39-a, the voluntary merger of parcels 39041 and 39040, 2 and 4 Old Chester Road. Parcel 39041 will be retained.

Chase, Fairbanks, Davison, O'Connor, MacEachern, Flattes, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

Voluntary Merger, 100 and 90 Goodhue Road

Mr. Sioras advised both lots are vacant lots. There is no building anticipated at this time. Mr. MacEachern asked with regard to the parcel located behind these two lots (parcel 04011). It appeared to be landlocked. Is staff aware of any plans, paper streets or future development that will provide access to that lot? Mr. Sioras was unaware of any and noted these lots have been in existence for a very long time; he is unsure how they were originally approved.

Motion by MacEachern, seconded by Flattes to approve a voluntary merger, pursuant to RSA 674:39-a, of parcels 04011-001 and 04054-002, 90 and 100 Goodhue Road. Parcel 04054-002 will be retained.

Chase, Fairbanks, Davison, O'Connor, MacEachern, Flattes, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

Voluntary Merger, 167 and 169 Warner Hill Road

Mr. Sioras said the lots are located on Warner Hill Road. The map shows the location of the lots. There is a house on one of the lots and the applicant would like to combine the two.

Motion by MacEachern, seconded by Bartkiewicz to approve pursuant to RSA 674:39-a, the voluntary merger of Parcels 07021 and 07020, 167 and 169 Warner Hill Road. Parcel 07020 will be retained.

Public Hearing**John Sederquest****PID 04098, 1 Whitney's Grove Road****Acceptance/Review, 2 lot subdivision**

Mr. Sioras provided the following staff report. The purpose of the plan is for a two lot subdivision located in the Low Density Residential District. One new building lot is being created. Whitney's Grove Road is a busy private road. The ZBA granted a variance on June 17, 2014 to allow a new lot to be created without frontage on a town road. All town departments have reviewed and signed the plan. There are no waiver requests. This application requires state subdivision approval. He would recommend approval of the subdivision plan. The Board will need to accept revised plans prior to proceeding with review.

Mr. Granese asked what changed to require this. Mr. Lavelle advised his office added upland soils to Sheet 3 of the plan set and sent those a few days ago. Mrs. Robidoux explained the sheets were revised after the application was received and noticed by the Planning Office. Per its policies and procedures, the Board can't review the plans until they accept the revisions. It was noted this type of acceptance is different than accepting jurisdiction of the plan.

Motion by O'Connor, seconded by Bartkiewicz to accept revised plans.

Chase, Fairbanks, Davison, O'Connor, MacEachern, Flattes, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

James Lavelle, James M. Lavelle, LLS, presented for the applicant. This is a 7.23 acre parcel located on Whitney's Grove Road that will be subdivided into two lots. One of the lots will contain an existing home; that lot will have 3 acres. The second lot, containing 4.23 acres will be established for a new home. Whitney's Grove Road is a private through road that continues to Island Pond providing access for more single family year round homes. Notes 4 and 5 speak to the conditions of approval set forth by the ZBA. This parcel is located in the low density residential zone which requires a minimum of three acres. Setbacks are 35 feet from the front and 15 feet from the side and rear; 75 feet from any wetland larger than one acre and 30 feet from any wetland less than 1 acre. The front setback for this lot has been set from the newly created right of way line. Previously there was 10 foot right of way over Mr. Sederquest's property. A new 50 foot right of way line has been created in the event the road is eventually improved to town standards. State subdivision approval has been received for this application. The intent is to sell the existing home and construct a new home on the new lot for the applicant.

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 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. L'Heureux advised all of the Department of Public Works comments and requests were addressed. Twenty feet was added in the event there was ever a need to create a town road. Note 5 outlines the process for that. The town does not maintain nor plow Whitney's Grove Road at this time. The landowners are responsible for bringing private roads up to town standards if they want the town to take over the road.

Mr. Fairbanks asked if this was one of the roads on the wish list to become a public road. Whitney's Grove Road was not believed to be on that list.

Mr. Granese asked if there were any issues from the ZBA. Mr. O'Connor outlined the five conditions imposed by the ZBA which were that the ZBA approval was subject to Planning Board approval, the applicant was to obtain all the necessary state and town permits and inspections, a notice of municipal waiver of responsibility and liability must be received and recorded with the registry of deeds, the proposed structure is to be situated a minimum of 85 feet from the northern property line to allow for a 50 foot right of way and a 35 foot building setback, and the 50 foot right of way must be established along the northerly property line for possible future expansion of the road.

Mr. Lavelle noted the Conservation Commission requested the addition of Notes 7 and 8. There is a wood road that goes around Mr. Sederquest's pond on the second lot. The Conservation Commission requested that wood road not be paved, and a note has been added to the plan. Notes requested by the Fire Department regarding fire suppression have been added as well.

Motion by O'Connor, seconded by Bartkiewicz to accept jurisdiction of the subdivision plan before the Board for John Sederquest, 1 Whitney's Grove Road, PID 04098.

Chase, Fairbanks, Davison, O'Connor, MacEachern, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

Mr. MacEachern said he did not see a discussion of hardship in the ZBA minutes. It looks like the ZBA just approved the application. The minutes do not reflect the discussion regarding hardship to the property which is one of the items required to approve a variance; there needs to be hardship. It was noted the Planning Board cannot overturn a ZBA decision. Mrs. Robidoux advised the Planning Board was only provided the minutes of the ZBA meeting and a copy of the notice of decision; it was not provided a copy of the ZBA file. It is possible there was information before the ZBA that is not recorded in its minutes that the Planning Board is not seeing; for example, a written explanation of how the application met the five criteria provided by Attorney Campbell. Mr. MacEachern did not disagree with that, but he would like to see that

before making a decision. Mr. Lavelle noted the ZBA application for this case was not a complicated submission; it had been handled by the applicant's attorney.

Motion by O'Connor, seconded by Bartkiewicz to approve, pursuant to RSA 676:4, III, Expedited Review, with the following conditions: 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 the GIS disc is received, is operable and it complies with LDCR Section 170-24.C; ensure recordable sheets meet the requirements of the RCRD; subject to receipt of state or local permits related to the project; that the above conditions be met within 6 months; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement; submission of the appropriate recording fees, payable to the Town of Derry.

Chase, Davison, O'Connor, Flattes, Jean, Bartkiewicz and Granese voted in favor. Fairbanks voted in favor adding he took exception to the statement by Mr. Lavelle that the town's ZBA granted blanket approvals to applications of this type. MacEachern voted to deny citing the reason stated by Ms. Prudhomme-O'Brien in the July 17, 2014 ZBA minutes. ["No. Do not feel that it is in the spirit and intent of the ordinance as there was already a variance granted in 1981 to build a residence on the property."] The motion passed with the majority in favor.

Mr. Lavelle apologized if his remarks were taken out of the context of what he meant.

Mrs. Choiniere was seated at 7:26 p.m. and Mr. Flattes stepped down.

SECOND public hearing to discuss proposed amendments to the Town of Derry Zoning Ordinance, specifically to amend to amend Article II, Section 165-5, Definitions, to add definitions for Green Area/Space, Greenway/Greenbelt, Active Recreation, Passive Recreation, and Net Buildable Area, to amend Section 165-8 relating to the number of dwelling units on a lot, and to amend Article VI, Section 165-44, Multi-Family Residential (MFR), and Section 165-45, Medium High Density Residential District (MHDR) to revise the density calculations, parking calculations, green space and recreational space requirements for multifamily dwellings within the Town of Derry.

The purpose of the amendments is to address the need for better quality multifamily housing; provide for better lot usage, and to reduce the density requirement by allowing less multifamily units in the Medium High Density Residential District which is comprised of some of the town's oldest, most compact neighborhoods.

The Board will also discuss proposed amendments to the Town of Derry Land Development Control Regulations to amend Article IV, Section 170-63, Parking Requirements, to revise the parking calculations to be more in line with current demands and to enhance access for emergency response vehicles.

Mr. Sioras said they have been waiting for this change for a long time. There are three major changes: the density requirements for multifamily dwellings and townhouses which will affect the development of this type, especially in West Derry. There are also changes to the open space requirement and increases in the parking density. This keeps the town in line with the state requirement to provide workforce housing, of which Derry provides more than enough. Changes were made to the document at the last meeting and have been incorporated. Staff would recommend approval and that the Board forward this to Town Council for their consideration.

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

There was no public comment.

Motion by MacEachern, seconded by Bartkiewicz to close the public hearing. The motion passed in favor and review returned to the Board.

Mr. Granese noted last evening at the Town Council meeting, Councilor Cardon had asked him if there was a mechanism to create a moratorium on multifamily growth. These amendments will further the aim to decrease multifamily development. Mr. Sioras said if the Board is in favor of the changes this evening, the changes can move forward to Town Council to be placed on their agenda in April. He confirmed all new applications for this type of development will need to comply with the proposed changes. The only application that will come before the Board that will follow the old rules will be the redevelopment of the Floyd School.

Motion by MacEachern to accept the proposed changes to the Town of Derry Zoning Ordinance, Sections 165-5, 165-8, 165-44 and 165-45 regarding multifamily developments and forward the changes to Town Council for their consideration; the motion was seconded by Bartkiewicz. Discussion followed.

Mrs. Choiniere asked how will the Board measure 110% of the building height. Mr. Fairbanks noted the surveyors would measure the height of buildings within 500 feet and then take the average to determine the 110%. Mr. MacEachern inquired if Mr. Chase was satisfied with all of the grammatical changes that had been made. Mr. Chase indicated he read through the document and it looked good.

Chase, Fairbanks, Davison, O'Connor, Choiniere, MacEachern, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

Motion by MacEachern, seconded by Bartkiewicz to approve the proposed changes to the Land Development Control Regulations, Section 170-63; such changes will be effective March 04, 2015.

Chase, Fairbanks, Davison, O'Connor, Choiniere, MacEachern, Jean, Bartkiewicz and Granese voted in favor and the motion passed.

Workshop #1 – discussion regarding proposed amendments to the Special Exception Requirements relative to residential zones.

Mr. Sioras introduced Robert Mackey, Code Enforcement/Zoning Officer and Lynn Perkins, Chair of the Zoning Board of Adjustment.

Mr. Perkins stated the ZBA has received questions regarding the covenant restriction found on factor 10 of the special exception requirements relating to home occupations. The question is, does the application for a special exception conflict with any existing covenants? This factor may be in conflict with RSA 356-B:5 relating to the Condominium Act. Legal Counsel has instructed the ZBA to not get involved in statutory issues and advised the Board to remove this factor from their application.

Mr. Mackey said the proposed change was initiated in 2009. At that time, the ZBA had received a legal opinion that recommended the ZBA remove this factor from the application. The issue is that in order to obtain a special exception for a home occupation, the last factor says the use can't be in conflict with private covenants or deed restrictions. The 2009 legal opinion said those are private contracts and the ZBA should not be involved. The Planning Board approved the proposed changes in 2009 and forwarded them to Town Council. Town Council discussed it and then ended up tabling the changes indefinitely. The issue came up again in a recent case that was heard by the ZBA. The current Town Council has indicated it might look more favorably on the changes at this time.

Mr. Granese confirmed that if the Board approved the proposed changes shown in this document, it will remove conflicts. Mr. Mackey said if removed, the ZBA application would be modified. Mr. Fairbanks noted this would remove the town from involvement in civil issues. This was tabled in 2009 because the Town Council at the time thought removing the wording would invite legal action against the town. This Town Council feels it will prevent it. Mr. Mackey said in many cases, the covenants are years old and reference Associations that are no longer in existence. In those cases it raises the issue of what party, the town or the applicant, is responsible for the legal work required to track it back to see if it applies.

Mr. Sioras advised if the Board is comfortable with the proposed changes, the document can be brought to the next meeting and scheduled for a public hearing in April.

The Board had no further comments or amendments.

Workshop #5 – discussion regarding proposed amendments to the Central Business District and the Traditional Business District Overlay

Mr. Sioras said he missed the last workshop and deferred the discussion to Mr. Mackey and Mrs. Robidoux who also worked with the subcommittee on these changes. He is aware the changes discussed at the last workshop have been incorporated. This is the final version of the CBD changes.

Mrs. Robidoux said at the last workshop the Board discussed wireless communications and how that might look in the downtown. The Board's consensus was if those structures were disguised, that would be okay, but there needed to be a better definition of what that would look like. Definitions were taken from RSA 12-K, and the document was amended utilizing those terms and definitions. Currently, telecommunication towers are not allowed in the downtown. If the Board wants to allow disguised towers, it should then review the proposed wording and see if it meets their needs.

Mr. Granese noted he has seen cell towers that look like chimneys, flagpoles, and are on top of telephone poles. Mr. Sioras said the old Aubuchon building had fake chimneys added to it to incorporate wireless equipment. That actually added to the look of the building. Mr. MacEachern said the telecommunications overlay was created years ago. He is not sure the Board needs to go ahead with the suggested changes in this section of the Ordinance. If the Board wants to change the overlay areas, the Board could make the changes there. He is not sure if the Board wants to investigate that or not as technology has changed. Places where telecommunication towers would be allowed should be listed in that section of the Ordinance and he would be very careful with future changes. Mr. Mackey and Mr. Sioras recalled the hidden towers in the downtown were allowed there by variance as telecommunication towers are not allowed in this zone. Mr. MacEachern said the Board had spent a lot of time mapping out the overlay zones along Route 93 and Route 28. Mr. O'Connor said he would not want to see monopole structures in the downtown, noting the town can't restrict some items that are allowed by the Federal government. Mr. MacEachern felt for a change of this sort, it would be better if Board had subject matter experts who could speak to the issue. Mr. Fairbanks agreed that the Board should not go ahead with the suggested changes relating to wireless communications and to instead look at the overlay zone at a later date.

Mr. MacEachern reviewed the mapping conducted by a previous Board. The mapping does leave out some areas of East Derry but the majority of the town is covered.

Mr. Granese confirmed wireless communication towers are not allowed by right in the CBD or TBOD and would require a variance. Have there been many applications? Mr. Mackey said there have not been a great many. Sometimes these types of applications get approved and then they never get constructed. Mr. Granese concurred with Mr. MacEachern and Mr. Fairbanks. Mr. MacEachern believed there was sufficient cell phone coverage in the CBD and TBOD; there are towers along Route 93, at the dump and at Central Fire Station.

Mr. Chase said there is a remaining question having to do with the building height. He has been working with Alan Côté, but the weather has not cooperated this year. He would suggest, since they know the elevation calculated by himself and Mr. O'Connor, that the Board use an elevation of 350 feet above sea level. This is a reasonable number. Mr. Granese said that would solve the issue of grade change behind Broadway. Mr. Chase said the sidewalk in front of the old fire station is at 280 feet above sea level. The Adams Memorial Building is the tallest in the downtown, although they were not able to measure it. The Board was in agreement with using 350 feet above sea level for the maximum building height.

Mr. Granese felt the proposed amendment adding in the electric vehicle charging stations should remain in the document. Town Council had inquired about that last evening.

There were no further amendments suggested. Mr. Sioras thanked the subcommittee members and the Board, and mentioned the support of the Downtown Committee. Town Council had wanted the Board to look at this so that they can move forward with their discussions involving Abbott Court. If the Board has no further suggestions, this can also be brought back to the Board at the next meeting and scheduled for a public hearing in April.

There was no further business before the Board.

Motion by O'Connor, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:00 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____