

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 06, 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; Michael Fairbanks, Secretary; Mark Osborne, Town Council Liaison; Randy Chase, Administrative Representative, Lori Davison, Members; Marc Flattes, Frank Bartkiewicz, Alternates

Absent: Jim MacEachern, Jan Choiniere, Darrell Park

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Assistant

Mr. Granese called the meeting to order at 7:01 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 Mr. MacEachern
Mr. Bartkiewicz was seated for Mrs. Choiniere*

Escrow

None.

Minutes

The Board reviewed the minutes of the April 15, 2015 meeting.

Motion by O'Connor, seconded by Bartkiewicz to approve the minutes of the April 15, 2015 meeting as written. The motion passed with all in favor.

Correspondence

Mr. Fairbanks advised the Board is in receipt of a memo from Joia Hughes of Red Oak Apartment Homes. The correspondence is related to the proposed changes to the Central Business District and Traditional Business Overlay District which will be discussed later this evening. The memo will be read into the record during that public hearing.

Mr. Fairbanks reviewed the list of Change of Uses received to date in 2015.

152 Rockingham Road	Change from personal storage to TNT Busted Knuckles (Site plan required)
127 Rockingham Road, Unit 2	Expanding spa to next unit (Venus Avani Eco Salon)

181 Rockingham Road	Lovski Auto Services to Autoshop Services
49 East Broadway	Birch Street Kitchen to Lineage Vapor (electronic cigarette store)
11 Manchester Road, Unit 11	Retail space to Benson's Driving School
105 Franklin Street	Residential use to Nusbaum Electric (Site Plan Determination required)
80.5 West Broadway	Moncarr Auto Sales to PJ Scenna Auto Sales
7 Ash Street	Driving school to Barber Shop
55 Crystal Avenue, Unit 24	Derry Kang to Sumo Sushi
55 Crystal Avenue, Unit 2	Go Wireless to Marilisa's Fashion
172 Rockingham Road	Auto Advantage to Milford Auto Annex

Mr. Granese noted another change of use located on Pinkerton Street. The former used auto lot is now a landscape business. Mr. Sioras advised the new tenant is going through the Change in Use process now and working with Code Enforcement on the location of materials. Mr. Granese thought this was a better use for the lot. Mr. Sioras recalled the site was formerly a nursery for many years.

Other Business

Amendment of Voluntary Merger for Parcels 30012, 30013 and 27137

Mrs. Robidoux explained that in October of 2014, the Board approved the voluntary merger of 15, 17 and 19 South Avenue at the same time it approved a 20 unit townhouse development on the lot. When the applicant filled out the Notice of Voluntary Merger, he used his proper name and not the name of the LLCs which owned the three lots. His attorney is working on the new deed, discovered the error and asked if the Board could amend the Voluntary Merger to create a clean record. Mr. Granese noted this would just amend the document that was approved; it corrects the name. Mr. Fairbanks said he did not have an issue with the request but wanted to ensure there was something in the file that clarified why this was changed. He also clarified who would be signing the Notice of Merger. Mr. Granese asked the Board if any member had an issue with the request. The Board members responded in favor of the request.

Extension Request – PID 01023-001, 125 Windham Road, Crom, LLC

Mr. Sioras advised this is the first request for extension of the conditional approval. The project is the storage warehouses located at 125 Windham Road. The applicant is still working with the state on the state permits and towards establishing escrow. Traditionally, the Board approves the first request. Staff would recommend approval for an additional six months.

Motion by O'Connor, seconded by Bartkiewicz to grant a six month extension to the conditional site plan approval granted on November 05, 2014 to Crom, LLC, PIDs 01023-001, 003 and 004, with an address of 125, 119 and 117 Windham Road. This is the first request. The new expiration date will be November 05, 2015.

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

Extension Request – PID 24037, 19 Kendall Pond Road, James Taylor and Aaron Hill

Mr. Sioras advised this is a similar request. This is the first request to extend the conditional approval. The project is the apartment building proposed on the corner of Magnolia and Kendall Pond Road. The applicant is requesting an additional six months. Staff would recommend approval.

Motion by O'Connor, seconded by Bartkiewicz to grant a six month extension to the conditional multifamily site plan approval granted by the Board on December 03, 2014 to James Taylor and Aaron Hill, PID 24037, 19 Kendall Pond Road. This is the first request. The new expiration date will be December 03, 2015.

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

Other

Mr. Sioras reported the town has been selected by Southern New Hampshire Planning Commission to be one of four towns for the Solar Energy Pilot Program. The program allows the town to put a solar energy ordinance in place that would allow businesses and residents to work with solar energy. The Solar Energy Committee is made up of staff (himself, Mr. Mackey, Mr. Wentworth), Mr. Flattes, Mr. O'Connor, Maureen Reno and Jeff Moulton. The work will start in the fall. Mr. O'Connor advised a large solar energy company is in the process of moving to New Hampshire to set up operations.

Public Hearing

SECOND Public Hearing relating to requirements in the Central Business District and Traditional Business Overlay District, to amend Article II, Section 165-5, Definitions, to add definitions for Contractor, Travel Agent, Light Manufacturing, and Electrical Vehicle Supply Equipment, and to amend definitions for the following terms: Commercial Service Establishment, Bus Depot, Professional Office and Filling Station; to Amend Article III, Section 165-13, Off-Street Parking For Non-Residential Uses; Article VI, Section 165-33, Central Business District and Section 165-49, Traditional Business Overlay District, and to amend the permitted uses allowed in the districts, density requirements, building height, parking and buffer zones.

The purpose of the amendments is to revise the requirements in the CBD and TBOD to encourage future development and redevelopment opportunities within the downtown business district, promoting economic growth.

Mr. Sioras reported a Planning Board subcommittee worked on these changes and the Board has discussed them for several months. The changes are proposed to promote downtown development. The Board has clarified the height, and some definitions. Mr. Dupont is present and would like to discuss the density and regulation of housing above the first floor. As written, the proposed changes prohibit residential below the third floor.

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

Ron Dupont of Red Oak Apartments in Manchester advised he has been in business for 31 years. He now owns 1500 apartments and believes he has a good understanding of the market and business and has a strong opinion with regard to the changes. He feels municipalities should allow the market to drive what happens in downtowns. He owns the Opera Block and Mirror Daily building in Manchester. This building contains approximately 43 apartments, 12 to 14 offices, the Palace Theatre, the Manchester Chamber of Commerce, the Manchester Monarchs corporate office, and several law firms. He also owns various apartment communities around the state. He is currently contemplating a project in Derry's downtown. He has spoken with Mr. Sioras and Mrs. Robidoux on the concept. He has been advised he would need to place office on the second floor. He has invested between \$10,000.00 and \$15,000.00 in survey work and preliminary conceptual plans. If he has to place office on the second floor, he will not move forward; there is no demand for office space. Even in Manchester there is a 20% vacancy rate. He is getting \$10.00 per square foot on rents next to the Palace Theatre. In order to build new, he would need at least \$20, triple net. There is a surplus of office space in New Hampshire for many reasons, among them too many units were built, and people are now telecommuting. Requiring office on the second floor in a downtown is not attractive to developers and the space will remain empty or not be profitable. The space is less valuable. This is a significant impediment to anyone who would like to build in downtown Derry. In ten years if someone wanted to put office on the second floor, third floor or above, that would be great, but if they want residential on the second floor, they should be allowed to do that. The markets have changed dramatically in one year. The cost of construction is going up. What was thought to be \$100.00 per square foot, is one year later estimated to cost \$148.00 per square foot; that is a 48% increase in one year. The labor market plays a role in the rates. He believes the town needs to allow those markets to play a role. Steve Chapman is a well known developer and he is building half one bedroom, half 2 bedroom in his projects because the market is dictating that. With regard to parking, in an urban area with a parking calculation of 2 to 2.5 spaces per bedroom, it will inhibit development and make it difficult to build and create too much parking. Studios and one bedroom apartments would expect a calculation of 1.1 or 1.2 spaces per bedroom. If the town requires 2 spaces per bedroom there will be many empty spaces.

Mr. Dupont felt density was great in a downtown. That is where towns want density, so long as there is parking. More people walking around the downtown make the downtown a safer place to be. Retail, office and residential is a great idea, but the market needs to play a role. If residential is allowed on the second floor it puts more people in the downtown and those people will be spending money. The developer should not be burdened with too many parking spaces.

Mr. Granese spoke with regard to Derry's current downtown condition. There is an empty lot and buildings that are not maintained well. He can't see an additional 100 apartments in the downtown. People own businesses that are in bad shape and the town is required to spend money in court to rectify that; there are also owners who don't want to sell their buildings. There are a few buildings with office on the second floor and there are also empty apartments on the second floor. He is all for restaurant or retail on the first floor and office on the second floor because there are many empty spaces in the downtown. Mr. Dupont said if there is an empty apartment in downtown Derry, it is empty for a reason. He has 73 units in Derry, all of them are occupied and all of his tenants pay their rent. There is a huge demand for multifamily in the southern tier of New Hampshire. When the Board is talking about downtown Derry the Board needs to be careful to not make decisions based on what is in the downtown now. The Board needs to be planning for the future. In Manchester and Nashua, there are dense housing proposals. In Manchester, he can put in a 100 unit apartment building and is not required to provide parking, although he would provide it. Density is a good thing when discussing a downtown.

Mr. O'Connor asked if Mr. Dupont would take any HUD funding or Section VIII housing in his potential project. Mr. Dupont said he probably would. Section VIII is the best housing program in the world. It allows a resident to live anywhere. The last thing the town should want is to force people in the same income level to live in one area; there needs to be mixed incomes. Spreading people out is a good thing for this country.

Mr. Osborne asked if having apartments on the second floor was not commercially popular. Mr. Dupont said it was popular. What is being built is retail or commercial on the first floor and residential above that. There are towns that have something other than residential on the second floor, but in Manchester and other areas, developers are contemplating converting office space to residential on the second floor because that is the market. The Generation Y population is now leaving their parents' homes and looking for housing. Mr. Osborne asked is the reason to not have office on the second floor because the market cannot support it. Mr. Dupont said it was. Office space rents have come down in value. Office space cannot be built at \$10.00 per square foot and that is what he is getting for prime real estate in Manchester. There is little demand for that type of use. Mr. Osborne asked Mr. Dupont if he found each town has different variables that would affect the attractiveness of office on the second floor. Manchester is not lacking office and small business space. In Derry, the discussion has been to attract both large and small business. There is no shortage of apartments in Derry. If the goal is to attract professionals to the downtown to build with space on the second floor and it is marketed that way, would that make these buildings more marketable where there is already a type of Main Street community? Mr. Dupont said economics is the driving force behind it. Hypothetically, to build say a 1000 square foot space with a three room suite, it may cost \$100,000.00. The unit would need to be rented at about \$2000.00 per month to gain any return on investment. Tenants can go to Londonderry for \$900.00 per month. So where are they going to go? That means impediments are put in front of any potential developers. If there is a special use or someone owns a specialty business, that would put what he just said out of whack, but for regular office or professional office space, it would not get built. It won't get built in Manchester either or Nashua. The only

community with significant office space being built is Portsmouth but that is because that community has held its value. He can understand the Board's thought process but the office space won't be built because it would be constructed at a loss.

Mr. Fairbanks asked if the vacancies rates in the downtown were known. Mr. Dupont said Derry has about a 15-20% vacancy rate. Mr. Sioras agreed with that assessment. Mr. Dupont said he recently conducted a residential survey of properties he does not own and found Manchester Place had a 97% occupancy rate, Wall Street Tower was at 100% occupancy, Parmazono Family had a 96% occupancy rate and his rentals were operating at a 96% occupancy rate. In Derry, he is at 100% occupancy. Mr. Granese noted other communities such as Manchester also provided public transportation which made a difference; Derry does not have that. Mr. Dupont felt the residents of Manchester Place and Wall Street Towers, with rents between \$1500.00 and 1800.00 per month would not be utilizing public transportation. Mr. Granese said he would agree to disagree. He felt people would pay to be in the heart of a downtown rather than on a back road. He clarified that 'downtown' meant along Broadway. He felt some of the building owners did not want to work with the tenants which caused tenants to leave. Mr. Dupont said he has been in Derry for 30 years and has been in touch with what has happened in the town. One of his buildings caught fire and it took two years to rectify the insurance issues. His building was left standing at the advice of his attorney until the insurance issue was rectified. He immediately razed the building. There is now an empty lot. He did not believe it made economic sense to build there because of the cost of construction and what he can get for rents. Profit is not a bad word for business owners.

Mr. O'Connor reported that the I-93 improvement project has been given the go ahead; with that comes the Community Technical Assistance Program (CTAP). It has been announced there will be a third phase of CTAP. Part of the CTAP program is build out studies for communities affected by the widening of I-93. The last build out done for Derry was in 2009 just before the recession. A lot has changed since then. He would think with the widening going forward, that would give the town a better venue for smaller business areas. Mr. Sioras explained CTAP further for the newer Board members. CTAP looks at the impacts to affected communities caused by the widening of I-93. The program provides technical assistance to those communities in the form of assistance in developing Growth Management and Open Space Ordinances. This past week, NH DOT announced a Phase III of the program. The program is provided at no cost to Derry. If the town participates, one of the impacts reviewed is housing to determine if there is enough or not enough housing. Derry provides its fair share of workforce housing for the region; Derry and Manchester actually exceed their fair share for the region. Recently, the Board reduced the multifamily density requirements which was a positive step for the town. The question is the downtown; what does the town want to do? The thought process was there should be mixed use buildings in the downtown made up of retail, office and residential. The question is the amount and type of multifamily housing Derry has. Should the town absorb more of that type of housing in the downtown? Subsidized housing is different than the young professional market. Is Derry a market for young professionals or does Derry want subsidized and elderly housing in the downtown. The town needs to have residents that have some disposable income to spend in the downtown. He is familiar with urban renewal programs and

his experience is the downtown becomes saturated with the elderly and low income housing and those residents don't utilize the downtown because they don't have disposable income.

Mr. O'Connor spoke to the concept of more density in the urban areas. He believes the key thing that drives that is some form of bus transportation. Until Derry has that, he does not see this type of density in the downtown. He sees a small business concept or business incubator. Mr. Dupont said the busses in Manchester are 9/10ths empty. Lebanon has a thriving, active system. Mr. Fairbanks agreed and commented that Lebanon has a thriving business center and the residences are centered miles away.

Mr. Osborne asked if Mr. Dupont found that having professional office on the second floor and not residential could enhance the value of the third floor residential. His reasoning would be that some people may prefer not to have residences under them and would welcome not having the space below their apartment occupied at night. Would this type of scenario be more marketable. Mr. Dupont said he has not found this to be the case. People care about the condition of the apartment and the amenities, such as the location of the washer and dryer. He would not get additional rent because there was a business below. As far as the marketability, he could see what Mr. Osborne was saying but does not feel it happens much. He can't think of any buildings with apartments on the third floor that have office or retail below; although there must be some, somewhere. Manchester has issues where there are offices that are empty and there is no parking; so the City is trying to change that over to residential. 99% of the time, residents don't care what is below them.

Mr. Fairbanks said the key goal is to raise the valuation up. Does it change the valuation to have retail with residential above or is there a difference if there is retail, office and then residential on the third floor. Mr. Dupont said he is not shy about asking for abatements. He runs the numbers and if an office is empty for many months, that assessment is less valuable. If it is not empty then the rate is at \$10.00 per square foot, but not \$18.00 per square foot. He stressed no one will build new office space because there is no return on investment.

There was no further public comment.

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

Mr. Fairbanks read the following from Joia Hughes, Development Manager, of Red Oak Apartment Homes into the record.

"We are writing this memo because we have concerns with the proposed changes to the Zoning Ordinance, specifically Section 3. Multi-unit residential uses and the proposed changes to section iii that would prohibit residential space below the third floor (currently states that residential is prohibited below the second floor). Additionally, our concern extends to the proposed change to the Traditional Business Overlay District proposed change to B. Permitted Uses under which section b. indicates that residential will not be permitted below floor three (currently two).

We feel that the proposed change to residential use below floor three may prohibit financially feasible new development projects in the Central Business District/Traditional Business Overlay District. There are many vacant downtown storefronts currently and multiple listings for office space in the Derry area. The Town of Derry's Master Plan states in its Chapter 3 Housing Recommendations, that Derry should, "continue to adapt to the demand for affordable housing in Derry" and "continue to support a variety of housing in town by allowing for two-family, multi-family, manufactured homes, townhouses/condos and other forms of high-density housing in those zones that they are currently allowed in." Currently the Zoning Ordinance allows for housing on the second floor of downtown buildings.

New Hampshire Housing and Finance Authority released a report, "Big Homes, Smaller Households – An Assessment of housing Needs in New Hampshire" in which author, Ben Frost, Esq. AICP states that, "an aging population, shifts in housing preferences among younger generations, a misalignment between housing supply and future demand, and change in traditional financing paths for homeownership" could hinder further economic growth. Frost indicates in his report that young people (under the age of 45) are more unlikely in this economic climate to want the financial burden and responsibility of homeownership. It is because of this that rental housing is in higher demand especially in areas that are walking distance to dining, shopping and recreational activities, all of which are available in downtown Derry. Ronald Dupont, owner of Red Oak Apartment Homes will be present at the May 6, 2015 meeting."

Mr. Flattes said he would like to see office on the second floor and for the town to market the community. He felt it was appropriate to have the first floor of a building be retail, the second floor office and the third floor residential. Mr. Sioras noted the current proposal has no housing below the third floor.

Mr. Fairbanks also would like to limit residential development but took a moment to play devil's advocate. There is a lot of vacant space and buildings in the downtown. The town can't force people to invest in the downtown nor can it influence the market place. If the developers don't feel they will make a return on investment, they won't invest and build in Derry's downtown. That is why he asked the question about valuation. He was interested in the balance between retail, commercial, and residential with people with disposable income.

Mr. Sioras said he has seen more people walking in the downtown in the last few years. He credits several of the new businesses which have opened during the day. Even two to three professional offices will make a difference. People from the Court House walk down Manning Street for a coffee or for lunch. He agrees with Mr. Granese that the downtown is small and compact. The downtown is made up of about 4-5 blocks. If the town had two invested property owners there would be a different downtown. Mr. Fairbanks asked what would provide incentive to developers to help improve the downtown. The Property Maintenance Ordinance will help but developers will need to want to invest. Mr. Granese felt there were people who wanted to rent or purchase property in the downtown but there are some property owners who will not work with them. Mr. Fairbanks said there needed to be momentum. Mr. Granese asked what was happening with the former pet store. Mr. Sioras explained the owners will be tearing the building down this year and they are working with Code Enforcement. That will make a difference in the downtown. Mr. Granese noted there have been new businesses in town, but there are pockets that need work.

Mr. Chase said the national trend is to avoid suburban sprawl and people are gravitating to downtowns. Derry's downtown will not be revitalized with elderly housing in the middle of it; it needs to be done with commercial business. It is a slow process. This document is where the town starts.

Mr. O'Connor felt the Board should stay on course, unless there was mass transit in Derry. He feels professional office is a viable use and does not feel the Board needs to deal with these changes any further.

Motion by Fairbanks to accept the proposed changes to the Town of Derry Zoning Ordinance to Article II, Section 165-5, Definitions, Article III, Section 165-13, Off Street Parking for Non Residential Uses, Article VI, Section 165-33, Central Business District and Section 165-49, Traditional Business Overlay District and forward the changes to Town Council. Bartkiewicz seconded the motion.

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

SECOND Public Hearing relating to parking requirements to amend Article XI, Section 170-63, Parking Requirements; Section 170-64, Landscape and Buffering Requirements.

The purpose of the amendments is to ensure the parking requirements in the Land Development Control Regulations are in line with the proposed amendments to the Central Business District and Traditional Business Overlay Districts.

Mr. Sioras advised these changes are proposed in the Land Development Control Regulations and as such, do not need to go to Town Council for approval. Any changes approved would become effective immediately.

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 discussion returned to the Board.

Mr. O'Connor felt the changes were long overdue and will correct some issues the town has been having in the downtown.

Motion by O'Connor, seconded by Bartkiewicz to accept the proposed changes to the Land Development Control Regulations, Article XI, Section 170-63, Parking Requirements and Section 170-64, Landscape and Buffering Requirements.

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

Mr. Sioras thanked the Board and those who worked on the subcommittee.

Workshop – To Discuss proposed changes to the Town of Derry Zoning Ordinance, Sections 165-44 and 165-45 to amend “circumference” to “radius”

Mr. Granese confirmed the change is to one word. Mr. Sioras explained when the Board approved the changes to multifamily the question had been asked about the wording and should it be radius rather than circumference. The term should be ‘radius’. The procedure is that if the Board agrees with the change this evening, the changes can be placed on the next agenda to schedule a public hearing. This is more of a housekeeping issue. Mr. Chase noted the more correct term is ‘radius’. For example, you can measure the circumference of a tree, but radius is the area around an object. Mr. Fairbanks noted that if left alone applicants would have been building level with the ground.

The Board agreed with the change and Mr. Sioras said a date for a public hearing would be available at the next meeting.

There was no further business before the Board.

A motion was made and seconded to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:18 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____