

The Planning Board for the Town of Derry held a public hearing on Wednesday, April 1, 2009 at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: Virginia Roach, David Granese, Jan Choiniere, Ann Evans, Gary Stenhouse, Town Administrator; Randy Chase, Administrative Representative; Brian Chirichiello, Council Representative; John O'Connor and Maureen Heard, Alternates

Absent: Mark Cooper, Phil Picillo

Also present: George Sioras, Director of Community Development; Mark L'Heureux, Engineering Coordinator; Virginia Rioux, Planning Clerk Pro-Temp.

Mrs. Roach called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. She introduced the staff and Board members present, and noted the location of emergency exits, agendas and additional materials.

Election of Officers

Motion by Roach to elect Granese as Chairman, seconded by Evans.

Stenhouse, Chirichiello, Granese, Chase, Evans, Choiniere and Roach all voted in favor and the motion passed.

Mr. Chirichiello wished to thank Mrs. Roach for her service as Chair for the past four years. Mrs. Roach thanked Ms. Evans for her years of service and hard work, as she did not submit her name again for a seat on the Board. Ms. Evans thanked the Board for the sentiment, adding that she feels it has been a privilege to give back to the town. She believes the town still needs town business people to serve on the Board.

Motion by Granese to elect Roach as Vice Chair, seconded by Choiniere.

Stenhouse, Chirichiello, Roach, Chase, Evans, Choiniere, and Granese all voted in favor and the motion passed.

Motion by Roach to elect Choiniere as Secretary, seconded by Chirichiello.

Stenhouse, Chirichiello, Roach, Chase, Evans, Choiniere, and Granese all voted in favor and the motion passed.

Review of Policies and Procedures

Chairman Granese elevated Ms. Heard to sit for Mr. Picillo and Mr. O'Connor to sit for Mr. Cooper.

The Board reviewed the Town of Derry Planning Board Policy and Procedures manual.

Motion by Roach to change Section 1A to read, "The Town Administrator or his/her designee if approved by Town Council", and Section 1B to read, "An administrative official of the town shall be appointed by the Town Administrator to be an ex-officio member." That is per the applicable NH RSA. The motion was seconded by Chirichiello. All voted in favor and the motion passed.

Escrow

There were no escrow requests.

Minutes

The Board reviewed the minutes of the March 4, 2009 public meeting.

Motion by Roach, seconded by Choiniere to approve the minutes as written. The motion passed in the affirmative with Stenhouse abstained.

Correspondence

Mrs. Choiniere noted the Board has received a new edition of *Town and City*.

Other Business

Mr. Sioras wished to thank Ginny Roach for her time as Chair of the Board. He also wished to thank Ann Evans for her more than 10 years of service to the Board as a member.

Our Town – Our Future

Mr. Sioras reported 135 residents have signed up for the Our Town – Our Future event to be held this Saturday at West Running Brook School. There are still spaces available if any other members of the community would like to attend. Phone 432-6110 to sign up.

Public Hearing**WP Realty, Inc. (Tractor Supply Co.)
Parcel ID 36017, 55 Crystal Avenue
Acceptance/Review, Site Plan Determination**

Mr. Sioras provided the following staff report. The purpose of this plan is for a change of use for a new retail store in the vacant space formerly occupied by the Ames Department store. Additionally, there will be outside display areas for merchandise. All town departments have reviewed and signed the plan. There is a waiver request, dated March 17, 2009 from MHF Design Consultants for a waiver from the parking regulations found under § 170-63.B.4, Parking Density. That request is attached to the staff report. Mr. Sioras would recommend approval of both the waiver and the site plan determination application. He said the town was excited to have a new business take over the Ames location which has stood vacant for many years.

Mr. Sioras introduced Dan Fuchs, Vice President of WP Realty, who in turn introduced Frank Monteiro, PE, Principal of MHF Design Consultants, and Marty Strelau, of ADA Architects, Inc., representing Tractor Supply Company.

Mr. Fuchs advised he is part of the real estate investment company that manages approximately 45 shopping centers in the United States. In 2006 they purchased Hood Commons and a year later repaired the façade. WP Realty purchases shopping centers that need a bit of care and repair and bring in quality tenants such as Planet Fitness, The Coffee Factory, Kim's Spa and Nails and Half Off Cards. He advised they are excited about Tractor Supply coming to Hood Commons. The application before the Board tonight includes a parking waiver request. Currently, there are 910 parking spaces. As part of the build out they will relocate some spaces and add one parking space for a total of 911 spaces. They had a parking demand study performed during the past two weeks at the request of the Technical Review Committee that shows various peak demands for parking in the parking lot, as well as the parking demand for the Chichester location and others across the country. Peak hours are 12:00 to 2:00 p.m. on Saturday and Sunday, and between 4:00 to 6:00 p.m., weekdays. The study also factors in full occupancy at Hood Commons. The study shows the peak demand at Hood Commons with full occupancy at high peak (holidays) would be 693 parking spaces. They are supplying more than that so the study shows they are supplying sufficient parking at Hood Commons. Nothing at Hood Commons is changing. They are adding one space and reconfiguring parking. In these tough economic times, they are excited that they are bringing a quality retail tenant that operates over 800 stores nationwide to Derry. It is important to Hood Commons to introduce new businesses to Derry and to continue the renovation and regeneration of Hood Commons.

Mr. Monteiro of MHF reviewed the site plan for the Board. Tractor Supply will be 24,679 square feet, occupying a portion of the old Ames store. As part of their operation they have two main outdoor display areas. One is 16,900 square feet, with a 140 x 120 foot fenced area. Access to that area is through a 5 foot swing gate for customer access and 2 cantilever gates on the side for vehicular access. The second display area is for trailer sales and will not be fenced. The area is for trailer storage. They are removing 69 spaces in the larger area and 30 spaces in the smaller one, with a net displacement of 99 parking spaces. There will also be some display area on the sidewalk in front of the store. A small overhead door will be added to the façade of the building to allow for forklift access from the building to the larger display area. Main delivery will be to the rear of the facility. Tractor trailer access will be off Pinkerton Street and there will be very small changes to the loading area.

There are no utility changes planned and drainage to the parking lot will remain the same. One light pole in the fenced area will remain. With regard to signage, they will install a panel on the existing street sign and a wall sign for the face of the building.

There is a written waiver request for parking density to provide 911 parking spaces where 1152 spaces are required. The TRC comments have been addressed and they did sign off on the plan. There are no state permits required for this application. New spaces will be located where the bank used to be and on the side there will be 2 new rows of parking as well as parking along the rear.

Mr. Strelau provided a slideshow depicting what Tractor Supply has to offer. They develop all types of retail stores and have refurbished some old Wal-Mart or supermarket stores that have relocated to larger facilities. Three main components of a Tractor Supply location, in addition to the building, include a permanent sidewalk and motorized vehicle display area, a permanent trailer and equipment display area and permanent fenced display area. They incorporate a cable type of security system for the sidewalk and trailer displays. He explained to the Board pictures displaying various Tractor Supply stores located elsewhere in the country and their various display areas. A steel dock ramp, once brought to the site, becomes a permanent fixture for loading and unloading trucks.

The inside of the store will contain a clothing area (20-25% of the store). 35% of the store is animal related with retail products such as bird feed, dog food, equine supplies and vaccines, etc., and seasonal supplies. 40% of the store is parts related as they are a tractor parts store. They do sell mowers but not tractors such as John Deere.

Mr. Fuchs of WP Realty asked if the Board had questions?

Ms. Evans asked for clarification of the parking calculations. 1152 parking spaces are required by current regulations, and there was a previous waiver that allowed 911 spaces when Hood Commons was built. Mr. Fuchs advised when they purchased the property they had this number of spaces. At the time of purchase they confirmed there were no outstanding violations. Ms. Evans noted the applicant is 241 spaces short before they remove the 99 spaces for the outside display areas. It seems they feel it is an equal trade off to put 99 spaces behind the building. She likes to be business friendly but does not feel this is an equal trade off to put parking to the rear when they are already 241 spaces short. She has a problem with parking. Mr. Fuchs said they are not asking to reduce parking, but asking to add one space. Ms. Evans said they are taking away parking to the front which is good parking and adding spaces to the back. Mr. Fuchs said it is typical of other shopping centers to have parking in the rear of the building for employees or for people familiar with the center. The parking demand study they have provided shows there is ample parking available. Ms. Evans said she has an issue with the parking.

Mr. Granese inquired if any other waivers are required? Mr. Sioras advised the plaza was constructed in the 1960's and then the bookends were constructed in the 1990's. Mr. Granese confirmed when WP Realty took over, the current number of parking spaces were in existence. Ms. Evans remembers some businesses in town that had issues with storage utilized outdoor storage trailers. The town asked those businesses to remove them. There will now be new, unused storage trailers in the middle of the lot. This is a plaza that has just been remodeled. She does not feel this is an appropriate choice of display. Mr. Fuchs stated they are part of Tractor Supply's standard inventory.

Mrs. Choiniere inquired if Tractor Supply owns the space or WP Realty? WP Realty owns the space. The display area near the bank will not be fenced and will be for trailer storage. Mrs. Choiniere inquired if there is a possibility of accidents as that area is currently used as a cut through area? Mr. Fuchs hoped the new area would eliminate those issues. Mr. Chirichiello commented on the back parking. The additional parking areas located off to the right rear of the building floods out. What will be done with the pooling water? No one will park there if there are large puddles. Mr. Monteiro advised he would look into it. There are some areas in the rear that are in tough shape and they are planning on repairing them.

Mr. Chirichiello also had concerns regarding the door in the front that will be used for fork lift access. How frequent will that traffic be? Mr. Strelau said it depends on the sales and what is being sold out of the display areas. Perhaps 1 – 2 times per hour. Tractor Supply employs certified tow motor operators. The purpose is to assist with the loading/unloading for customers in the display area. Mr. Chirichiello suggested leaving the forklift in the fenced area which would eliminate the back and forth. Mr. Strelau advised the forklift is also utilized in the store depending upon customer needs and there is typically one per store. Mr.

Chirichiello advised the traffic flow is a concern. He was advised that there would be employees available to assist in directing traffic.

Mr. O'Connor confirmed there were no covenants or restrictions on the property that would prohibit outside displays. He also had questions regarding the display on the southern portion of the lot where the trailers will be located. Mr. Strelau stated what was shown in the pictures is typical of what will be stored in that area. Mr. O'Connor asked if the south sliding gate is open during business hours? It is typically closed. They are meant for customers to enter and pick up product. Mr. O'Connor felt the gate was in the wrong location as he frequents the site. He suggested relocating the gates within the fenced area. He felt there was a danger to pedestrians who travel the main throughway. Mr. Fuchs commented as Mr. Strelau has stated, there is a man door which allows customers to view what is in the display area. They will have a sales associate, and traffic in that area will only occur when someone purchased something from that area.

Mrs. Heard asked if there have been vandalism problems? Mr. Strelau stated he is not aware of any issues. The areas are illuminated and that deters vandalism. It may happen from time to time, but it is not experienced often.

The floor was opened to the public.

Suzanne Berry, 192 ByPass 28 had a concern with the outdoor display. She has no issue with the store. There are a lot of children in the plaza. The town parades end in the Plaza and there are many children present during those events. She has a concern for the forklifts and children in the area that may be unseen. That is a large display area that may prohibit site visibility when seeking a parking space or looking for a store in the plaza. She has a concern with the forklift potentially injuring a child. She also feels the large display area will create an attractive nuisance. Planet Fitness has a lot of followers and those guests take up prime parking spaces. Mr. Fuchs commented that Planet Fitness has parking spaces available on the other side of this area, that even during peak hours are not utilized. If equipment was an attractive nuisance they would have addressed it. Tractor Supply is an experienced retailer. The forklift is a motorized vehicle. There will be one less drive aisle for people to travel and the ability to cut through near the ATM kiosk will go away and that should help with traffic flow. Ms. Berry said there is no light to allow exit from the entrance on Crystal Avenue. Why not utilize the area where tractors are being stored now? Mr. Fuchs stated that was specifically discussed with Tractor Supply but that area is not suitable for Tractor Supply as it is too far away. He added that the parking study shows the peak number of cars for locations around the country. The parking number for Derry is 5 per thousand. The peak hour during peak season is about 40 cars. The display takes approximately 135 spaces. Using the formula, the number of customers at the store at peak is a wash. Any other retailer during peak demand would be the same as Tractor Supply with its

customers and display area. In essence it is a wash, so it does not detract from the overall parking in the plaza. Ms. Berry said mathematically it is a wash, but not for the person walking to the store. Mr. Fuchs said when another tenant takes the space occupied by Tractor Supply, those spaces would be supplied. This use will not take away from what another tenant would use. Ms. Berry said the cars to move through the aisles, equipment does not.

There was no other public comment and the plan came back to the Board.

Mrs. Roach inquired as to the hours of operation? Mr. Strelau stated the hours are 8:00 a.m. to 8:00 p.m., Monday through Saturday and 9:00 a.m. to 6:00 p.m. on Sunday. That may change according to customer needs during the spring and fall. It may be 7:00 to 9:00 p.m. during the season.

Mrs. Heard inquired as to the branding which is red and white. Hood Commons has a cream color. Mr. Fuchs stated the façade is not changing, but they will have signage which will require separate approval. The façade color will not change. Mrs. Heard asked if there will be signage on the fence? There will not; only on the street pylon and the façade. Mrs. Heard asked if there is a concern for trespassing. There are no concerns. Mrs. Heard asked if while the store is closed, is there anything indicating there will be no entrance? Mr. Strelau said the fence would be locked.

Mr. Stenhouse inquired as to the number of employees and can they be required to park in the rear? That might solve some of the dilemma. Mr. Fuchs said they do not know the total number of employees but would be open to suggesting to tenants that employees park to the rear.

It was noted jurisdiction did not need to be accepted for this plan.

Motion by Roach to grant the waiver from Section 170-63.B.4, *Parking Density*, seconded by Heard.

Stenhouse, Chirichiello, Heard, Roach, Chase, O'Connor, Choiniere, and Granese voted yes; Evans voted no. The motion passed by a vote of 8-1-0.

Motion by Roach to approve the site plan determination application pursuant to Section 170-51 of the Derry LDCR as presented, seconded by Choiniere.

Stenhouse, Chirichiello, Heard, Roach, Chase, O'Connor, Choiniere, and Granese voted yes; Evans voted no, citing the storage of trailers on display and she disagrees with the parking. The motion passed by a vote of 8-1-0. Mrs. Roach asked the applicant to please review the trailer parking area if there becomes an issue in that area; Mrs. Choiniere seconded that comment.

Board Discussion – Potential Zoning Changes

Mr. Granese announced that this portion of the meeting will not be televised.

Robert Mackey, Code Enforcement Officer, advised issues have come up at the ZBA regarding home occupations (specifically day cares), where the deeds to the property reference private covenants restricting the use of the property to residential only. He obtained legal advice from Steve Clark to determine if the Zoning Board should be considering private covenants. For multiple reasons, the Zoning Board should not be dealing with private covenants. That wording appears in the Zoning Ordinance in several sections. MHDR and MDR lists 10 criteria for home occupations. They are seeking to remove condition #10 which speaks to the consideration of private covenants. In addition, the calculation allowed for living space, he believes, has a scrivener's error. He believes it was inaccurately retyped and the word "kitchen" was left out. He would like to see that section state, no more than 25% of finished living space, rather than listing the specific rooms to be calculated; it makes more sense. If the Planning Board feels this should be pursued, it can go through the process to change the Ordinance. Mr. O'Connor noted that the percentage of 25% of the total does not change, this is essentially housekeeping. Mrs. Roach stated it may assist some residents to meet the criteria, when currently, as it is worded now, they fell short. It is more fair.

Mr. Mackey went on to say the Board may want to also review Section 165.46.C.1.B (page 102) of the Zoning Ordinance. This is with regard to the MDR zone, which currently has a 1 acre minimum. This section speaks to grandfathered lots, and what would be considered a buildable lot. He is looking for clarification. Should that provision be just in the MDR zone, or should it apply to other districts? Taken verbatim right now, it only applies in the MDR district. Do we want it to apply to the other residential districts? Mrs. Roach noted the ZBA has granted appeals for areas that are zoned for 3 acres per lot and allowing them to be split. Mrs. Choiniere would rather see this just applied to the MDR zone. Mr. O'Connor said some of that relief has been to re-allocate land. Mrs. Roach felt that whatever is decided, it needs to be consistent across the board and should be fair to everyone. Mr. Sioras advised that previously, Derry used to be one acre lots, but many of those grandfathered lots are in the 3 acre zones. There are many smaller sized lots still in Derry. Mr. Mackey had a concern because when applying this to a 3 acre lot, it can make a difference.

Mr. O'Connor wanted to know why this was coming forward now? This has been in effect since 1999. Mr. Mackey said there is nothing that has brought this issue up, specifically. Mr. O'Connor agreed to the first suggested changes with regard to private covenants. Mr. Mackey noted that typically, private covenants state they are good for 30 years and then 10 years if the owners vote to change them.

Mr. Mackey advised he would like to the Board to also look at Section 165.18 (page 25). Nothing has come forward but since he is here tonight, he thought he would bring it up. Currently it states "No disposal system shall be located closer than 75 feet to any wetland." This is more stringent than the state requirement which will allow a system within 50 feet of a wetland in Hydric B soil. There have been times where an applicant has been approved by the state, but does not meet town requirements. If this section is kept intact, the town may need to require local review of the plans prior to them going to the state for approval. Other towns do this and it is more proactive. Mr. Chirichiello asked how frequently does this happen? Mr. Mackey indicated there have been a few. There is no requirement to go before the Conservation Commission if the septic is closer than 75 feet. The applicant would need to go to the Zoning Board, which may require a joint meeting with the Conservation Commission. Mr. Chirichiello asked if the applicant could go to the ZBA for a hardship variance? Mr. Mackey said yes, that can happen. Mr. Mackey stated if the Planning Board decides to keep the distance the same, he will speak with the state and require prior town approval before the septic plan goes to the state for review. Mr. Chirichiello felt that would be a smart move. Mr. O'Connor confirmed there are newer style septic systems that have a lesser footprint. Mr. Mackey advised that these systems are relatively new and only time will tell if they will last as long as the traditional pipe and stone systems. Mrs. Roach asked if the changes require a public hearing? Mr. Sioras said yes. Mr. Mackey can provide the changes to Mrs. Robidoux and at the next public meeting; the Board can schedule a public hearing. That cannot be done tonight.

Mrs. Roach asked that the Board review the packet that contains the information on the rezoning requests. She and Mr. Sioras have looked at the areas with the intent of cleaning up some of the zoning in different districts. She asked the Chair if the Board can schedule a workshop in May to discuss some of these suggested changes. Maps are included in the packets so that Board members can view the areas and there can then be a qualified discussion. Mr. Granese asked Mr. Sioras to schedule a workshop. Mr. Sioras indicated that can take place in May.

Mr. Chirichiello thanked Ms. Evans again for her time of service with the town and Mrs. Roach for her time as Chair.

Motion by Choiniere, seconded by Roach to adjourn. The motion passed unanimously and the meeting adjourned at 8:30 p.m.

Minutes compiled by Virginia Rioux, Clerk Pro-Temp and prepared by Elizabeth Robidoux, Planning Clerk.