

The Planning Board for the Town of Derry held a public hearing on Wednesday, August 5, 2009 at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chair; Brian Chirichiello, Council Representative; Randy Chase, Administrative Representative; Jan Choiniere, Secretary, John O'Connor, Paul Hopfgarten, Members, Darrell Park, Alternate

Absent: Virginia Roach, Gary Stenhouse, Phil Picillo, Maureen Heard, and Jessica Hodgeman

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk;

Mr. Granese called the meeting to order at 7:01 p.m. The meeting began with a salute to the flag. He introduced the staff and Board members present, and noted the location of emergency exits and agendas and other materials.

Mr. Park was seated for Mr. Picillo for the evening.

**Escrow**

**09-023  
Middleridge Subdivision  
H&B Homes  
03011, 22 Windham Depot Road**

The request is to approve Release #1 in the amount of \$233,221.68. The amount to be retained is \$223,166.02.

Motion by Hopfgarten, seconded by Choiniere to approve as presented. The motion passed with all in favor.

**09-024  
The Goddard School  
Derry Realty Trust (Foxcroft)  
08079-006, 12 Tsienneto Road**

The request is to approve Release #2 in the amount of \$50,146.13. The amount to retain is \$7,711.20.

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

**09-025**  
**McDonald's**  
**McDonald's Corp.**  
**36020-001, 45 Crystal Avenue**

The request is to approve the final release of cash escrow for the above noted project. The amount to release is \$20,859.12, plus any accumulated interest. The amount to be retained is zero.

Motion by Hopfgarten, seconded by Choiniere to approve as presented. The motion passed with all in favor.

**Minutes**

The Board reviewed both the public and non-public minutes of July 1, 2009. It was noted the non-public minutes had already been sealed.

Motion by O'Connor, seconded by Chirichiello to approve both the public and non-public minutes. The motion passed in the affirmative with Choiniere and Park abstained.

**Correspondence**

Mrs. Choiniere acknowledged the following correspondence: The Board has received a report from the Tax Collector and the Assessor regarding town owned property and suggested disposition of same. This has been reviewed and no action on the part of the Board is required.

The Board has received notice from Greenwood Realty Trust that the applicant does not intend to move forward with his plan and is requesting the return of escrow for the project. The revocation hearing has been set for September 2, 2009.

The DOT has forwarded a memo asking for information on environmental issues regarding the planned improvements to Route 28 at the intersection of 28 and Kilrea Road. Mr. Sioras has drafted the response to the DOT and the Board can be provided a copy of that response.

The Board has also received a notice that it is time again for the Municipal Volunteer awards, and there is a new edition of *The Source* and *Town and City*.

**Other Business**Request for Extension – Schibbelhute

Mr. Sioras advised the property is located on the corner of Oleson and Hampstead Road. This is the second request for an extension on the 3 lot subdivision approval. Barbara Schibbelhute and her son Paul, were present to answer questions.

Mrs. Schibbelhute advised they had received approvals originally in 2006; family issues interfered with the completion of the plan and she reapplied. Given the current market conditions, she is asking for a 12 month extension. If the plan is recorded now, she will have to pay for three lots and that will truly create a hardship. Mr. Chirichiello noted that typically, the Board grants 6 month extensions. He is okay with granting a second extension, but only for 6 months to be fair to other applicants. Mr. Granese agreed this has been the past practice of the Board – to grant six month extensions. Mr. Schibbelhute asked what happens in 6 months? Mr. Sioras explained the applicant would be notified ahead of time that the approval is expiring, and the process would be the same.

Motion by Chirichiello, seconded by Hopfgarten to approve a 6 month extension for the Schibbelhute subdivision plan.

Chirichiello, Park, Chase, Hopfgarten, O'Connor, Choiniere, and Granese all voted in favor.

**Public Hearing – Zoning District Changes**

Motion by Choiniere to open the public hearing, seconded by Chirichiello. The motion passed with all in favor and the public hearing opened at 7:12 p.m.

Mr. Granese advised the Board is discussing an amendment to Article V, Zoning Map and District Boundaries, Section 165-31, District Boundaries, to delete references to Sheet Numbers (“Tax Map No.”) and to amend parcel identification numbers as follows below. The Board would present each section and then ask for public comment. Once all public comment had been heard, the Board would close the public hearing and enter deliberation and then possibly move to a vote.

*Section A, General Commercial: Add parcels 02090-001, 02090-002, 03109, 03110, 05001, 05002, 05090, 05090-001, 37111, 37112, 37084-001, 37118, 37118-001, 37119, and 37119A.*

Mr. Sioras advised these requests came from the property owners. The first one is to rezone land around the traffic circle. He supplied a colored map of the area which was

projected on the overhead for the audience and Board members to view. In this area, the only parcel that is actually zoned commercial is located in the northeast corner, parcel 37079. This is the existing office building. Everything else has been in existence prior to zoning or predates the ordinance and is grandfathered. They don't have site plans. The lots that are proposed to be changed are the Lobster Claw, the Mobil station, the Getty station, the ATM, and the Fire Station. The brook would be the natural boundary to the south. This cleans up the zoning in the area around the rotary.

Mr. Granese opened the floor to the public. Margaret Ives, Field Road advised she is representing her sister who is an abutter as her house is located on the corner of Kingsbury and Thornton (parcel 37113). Given that the businesses have been there for some time, with this zoning change, would there be any additional protective buffers required, especially along the stream bank? The stream comes from Beaver Lake Meadows, and enters the prime wetland across the street. Mr. Sioras indicated there are no proposed changes. The uses are already there. If something changed on the lot, such as a redevelopment or a new building, then the Board would discuss the buffer during site plan review. Ms. Ives confirmed that because the businesses are existing, they stand as they are. If they change hands or become something else, then the buffers normally required would need to conform. Mr. Sioras said if a 7-11 or a Friendly's was put in then there would definitely be an appropriate buffer. If the use stays the same, the buffer would not change.

Lee Kratz, Brown Road, Candia, identified himself as the owner of The Lobster Claw. He wrote the letter requesting the change in the zone. He has operated the business for 24 years and it was a business for 40 years prior to that. There is business all around them. He feels the current zoning is outdated.

Mr. Chirichiello had a question with regard to buffers. If The Lobster Claw expanded, would it require an additional buffer? Mr. Sioras said if the business expanded, it would need to come before the Board for site plan review and the Board would determine the appropriate buffer; so the answer would be yes.

*Section B, Central Business District: Remove parcels 30008, 30009, 30010, 30012, 30013, 27091, 27093, and 27137.*

The public continued to comment on Section A.

James McGrade, and Scott Davidson of Rockingham Road identified themselves as residents of an affected parcel. They abut the George Reynolds property (parcel 05090). They are opposed to the change in the zone. They do not want a business on their property. Mr. McGrade said they moved here to live with their children and he does not think commercial zoning will help them. Mr. Davidson added that he did not think making this area commercial would help the town in general. Their house is surrounded by 400 acres of wilderness. Has the Conservation Commission been made aware of this? Is the Robert Frost Farm part of this change? He feels this area should

be residential. He understands the properties are located along Route 28, but cautions against being too commercial. They like the rural nature and do not want it ruined. He feels many Derry residents feel the same.

Mr. Granese noted that most of the changes were requested by the landowners. Mr. Davidson asked if the Board members would want a Home Depot next to the Robert Frost Farm? Mr. Hopfgarten asked if Mr. McGrade and Mr. Davidson were aware that their land is actually zoned Office Research and Development, not Residential? Mr. Davidson replied that General Commercial is a step above the current zoning and he understands that would open the land up to more a more intensive type of development.

Mr. O'Connor noted the land abutting the Robert Frost Farm is owned by the state. The Conservation Commission may not have anything to say regarding state owned property. Mr. Davidson stated Mr. Reynolds' property may fit some of the criteria the Conservation Commission looks for in order for a property to be considered for acquisition.

Mr. Sioras advised that parcel 05002, which is the Robert Frost Farm, and parcel 05001, are both owned by the state. Parcel 05001 contains 42 acres and is protected. The state also purchased two parcels across the street at Berry Road. The 42 acres is located between the Farm and the Reynolds' property. The state had insight with regard to protecting the land when they purchased the farm.

Mr. Davidson commented criteria for the Conservation Commission to purchase land includes things like abutting existing conservation land, wetlands, and wildlife, so the Reynolds' property meets some of the criteria.

Margie Ives advised the Conservation Commission has not discussed this property (05090). The Commission does have criteria to protect land. She stressed she is not speaking tonight as a member of the Conservation Commission, but as an admirer of the Frost Farm. She is aware that parcel 05008 is zoned General Commercial, and understands what the state did to protect 05002 (the Farm) by purchasing 05001. It is a beautiful setting. The state runs a summer program at the Farm and Senator Gregg procured a grant for the Farm. This is a tourist attraction and a very special place for the citizens of Derry. She asks the Board to consider that although there is a buffer from 05008, imagine how a tourist would feel visiting the farm, and looking at flashing lights, a used auto yard or a large parking lot next door. She asks the Board to consider a balance rather than embracing the change as is, and that the Board go back and study this. The buffer to the north could be strengthened. Any development in the GC zone can have a dramatic impact on the Farm. Consider buffers on the south side. It is up to the town to match its effort with what the state did. An additional buffer restriction makes sense. Having a large sign, such as the one at CVS near the Frost Farm would detract from it. She asks the Board to consider this property as the gem it is and to do what it can to preserve it. The town touts its Alan Shepard heritage and its Robert Frost heritage. The Board should consider that once the area is zoned General Commercial,

the owner can always change hands. The Board may want to embrace something that protects the town's history. She does not however, recommend spot zoning. This is an opportunity for Derry that she asks the Board to consider.

George Reynolds, Rockingham Road, is the owner of parcel 05090. He stated he requested a change in zoning on his property several years ago. He has been living here since 1984. He built a home here and runs a small welding/fabrication business specializing in tubular fabrication with a focus on energy efficient transportation; he builds bicycles and wheelchairs, etc. Ten years ago, he was surprised by the change to Office Research and Development. That zoning does not connect with what he does and he would like to expand his business. He has been through the Farm and remembers the 'relics' from the junkyard that was there 20 plus years ago. It is now a beautiful property. There is a path that goes through his property that leads to the brook and the pond. The public accesses the path and people ride horses, bicycles, and cross country ski through there.

He has been using alternative fuel in his vehicles and has had some success with it, and is trying to take his company in a different direction. He can't do that in an ORD zone.

Mr. O'Connor asked Mr. Reynolds if his property was zoned General Commercial, would Mr. Reynolds be in favor of additional buffer zones to protect the historic property? Mr. Reynolds noted the state owns parcel 05001, which is between his property and the Farm. His property is the ridge of the hill; it is about 2 tenths of a mile to the Farm.

Mr. O'Connor explained the purpose of vegetative buffers. Mr. Reynolds said there are 100 foot trees there now and it is hard to walk through the woods in some spots because the vegetation is so thick. There is a good density now and there is a lot of wildlife.

Laura Burnham, North Main Street, advised she is a Trustee of the Robert Frost Farm, and a former Chairman. This is a National Historic Landmark as well as a State Historic Landmark. Frost himself requested the property be made into a living memorial to him. The intent of the original restoration was to recreate the 1900-1911 pastoral atmosphere that inspired the main body of Frost's work. When the state purchased the land in 1964, it was an auto graveyard. It took the state and the Trustees eleven years to bring the Farm to what it is today. Since 1975, visitors across the globe have visited the Farm. Last year, there were visitors from 48 of the 50 states, and 15 foreign countries. Her concern is that the rezoning will diminish the visitors' experience. The Board of Trustees had the foresight to purchase a property which will only buffer that side. The land to the other side will not have the same protection.

General Commercial zoning will increase the flow of traffic and it is difficult to enter and exit the property now. It will also displace natural species that are a part of the Frost

experience, and will replace the pastoral atmosphere with unwanted noise generated by commercial use and increased traffic noise. When the State of New Hampshire learned of the neglect of Historic properties in 2006, the Legislature provided funding for the Bureau of Historic Sites. The Frost Farm was the major reason for this legislative action. Should this Board do less to protect this landmark? This is a national landmark and rezoning will jeopardize it. Once commercial buildings are in place, it will be too late to revert back to what we have in place. Does the town want worldwide visitors to see a box store as an abutter or do we want them to see the 'mending wall' as it was in a natural setting? We have a responsibility to protect this site from encroachment of commercial establishments. For these reasons she is opposed to the rezoning.

Mr. O'Connor asked about the property to the south of the Farm. Mrs. Burnham said the Trustees raised funds and purchased a buffer area and it was signed over to the state. This buffer is between the Smith property (05008) and the Farm. Mr. Sioras noted parcel 05008 is located across the street from Dollar Bills and the mobile home park. Mr. Hopfgarten commented the Smith parcel is zoned commercial and something could go in there now. Mrs. Burnham said the Trustees did try to obtain a right of first refusal but the owners were not amenable to that. Her concern is the intensity of uses allowed in General Commercial. If the zoning is intensified to what is proposed, the town can't go back. Once there is a big box next door, the experience of visitors to the Frost Farm is decreased across the globe. People across the nation voiced concern over the status of the property. People care about this property across the globe; people in Derry should care more.

Eleanor Strang, Pine Isle Drive, understands the request from 05090, but how did the Frost Farm become part of this change? Mr. Granese explained it had been discussed during workshop. If the Board only changed one parcel it would be spot zoning, so the Board decided to change the whole zone. Ms. Strang asked if the Board can change something owned by the state? Mr. Sioras advised it is just a change to the zone it does not control the property; the state will not develop the property. He suggested the Board may want to look at this suggested change again. Ms. Strang asked why spot zoning was so bad? The Board explained it is illegal.

Scott Davidson, Rockingham Road, said he did not begrudge the Reynolds' a living but noted that property has been for sale for a year now. Mr. Reynolds said the property was for sale under ORD and he could not expand his business. Under General Commercial the property is not for sale.

William and Jean Smith, Rockingham Road, stated they have owned their property (the garden center) for 25 years. They had to move off the property to raise their children because of the traffic on the road, but now that their children are older they have moved back. There are 11,000 cars per day that travel this road. It is difficult to talk to the Nursery customers at the roadside because the traffic is so loud. The Farm is a wonderful property and they spend time there as well. There are great buffers. But for tax reasons it is time for the town to look at Route 28, which has changed, and look to

the future. This is not a residential area, especially given the traffic count. Mrs. Smith said she has spent years walking the property and parcel 05001 is wooded and large, making a deep buffer. She feels the change to General Commercial would enhance the area and Derry's future.

There was no further public comment on Sections A or B.

*Section E Office/Research and Development: Remove parcels 03110, 05001, 05002, 05090, and 05090-001.*

There was no public comment.

*Section N, Medium High Density Residential District: Add parcels 30008, 30009, 30010, 30012, 30013, 27091, 27093, and 27137.*

*Section N, Medium High Density Residential District: Remove parcels 37118, 37118-001, 37119, and 37119A.*

Mr. Sioras explained these properties are located on South Avenue, Highland and Railroad Avenues, and are currently multi-family properties. The Board received a request to change them to make it more reflective of the actual use and the neighborhood. It would move the properties out of the Central Business District.

Edita Kucmas and George Kucmas asked about the change in the zone. Their family owns the multi-family that has been their business for the past 25 years. Will this change the taxes on the property? They haven't changed their rents to reflect the increase in taxes. Their taxes have increased from \$10,000.00 to \$35,000.00 over the years. Are there any other considerations that would affect their property? Mr. Sioras advised they own parcel 27091 which contains the four buildings next to the baseball field. The Board would like to put the property into the multi-family zone. It would reflect what they are actually doing with the property now. Mr. Hopfgarten did not feel the taxes would change because there are more than four rental properties. If there are four or more, they are not taxed as residential even if it is in the residential zone.

There was no further public comment.

*Section O, Medium Density Residential District: Remove parcels 02090-001, 02090-002, 03109, 37084-001, 37111 and 37112.*

There was no public comment.

Motion by Hopfgarten to close the public hearing, seconded by Chirichiello. The motion passed in the affirmative and the public hearing closed at 8:02 p.m.



Mr. Hopfgarten noted if one looks at the sections listed, they are a mix and match of the requested areas. The Board will need to be specific to the parcels. He feels the South Ave area changes are clear cut. Mr. Chase did not agree. If the Board is talking about parcels 30008, 30009, 30010, 27091 and 27093, then yes, it makes sense because they abut the MHDR. 30012, 30013 and 27137 do not. Those three would create a bulge of spot zoning in the Central Business District. Mr. Chirichiello noted those three parcels still touch the MHDR. Mr. Chase said it had been discussed in workshop, and the others were added to keep the boundaries neat, the same as how the Board suggested rezoning Route 28. The parcels on the south side of South Ave abut MHDR. They are trying to keep the lines stable and taking those parcels out of the CBD does not do that. Mr. Chirichiello said there would be the same issue on the other side of the street. Mr. Chase thought it made sense to do the other side of the street. Parcels 30012, 27137 and 30013 make an island of MHDR in the CBD. Mr. Chirichiello did not think they would be able to get a clean line. Mr. Hopfgarten said there are other examples where the zones cross the road and the parcels are contiguous. It does not look neat on a map, but the parcels are contiguous. Mr. O'Connor noted the rail trail abuts the parcels on South Ave. Mr. Hopfgarten also noted the parcels along Featherbed Lane (discontinued) also have different districts.

Motion by Hopfgarten to amend Article V, Section B, Central Business District to remove parcels 30008, 30009, 30010, 30012, 30013, 27091, 27093 and 27137. The motion was seconded by Chirichiello.

Chirichiello, Park, Hopfgarten, O'Connor, Choiniere and Granese voted in favor. Chase voted against citing changing the three parcels from CBD to MHDR is not in the spirit of the workshop discussions. The motion passed 6-1 in favor.

Motion by Hopfgarten to amend Article V, Section N, Medium High Density Residential District to add parcels 30008, 30009, 30010, 30012, 30013, 27091, 27093, and 27137. The motion was seconded by Choiniere.

Chirichiello, Park, Hopfgarten, O'Connor, Choiniere and Granese voted in favor. Chase voted against citing the reason previously stated. The motion passed 6-1 in favor.

Mr. Sioras suggested given the discussions, that the General Commercial proposed changes be split between the suggested changes at the rotary and those on Rockingham Road. He understands both sides of the issue. He has been looking into the issues of commercial growth near historic properties. Gettysburg, Pennsylvania has had some of the same issues. The Board should perhaps look at some zoning overlays near historic sites for that area that allow for commercial growth. He would suggest postponing discussions regarding Rockingham Road. Mr. O'Connor concurred.

Motion by Hopfgarten to amend Article V, Section A, General Commercial to add parcels 37111, 37112, 37084-001, 37118, 37118-001, 37119 and 37119A. The motion was seconded by O'Connor.

Chirichiello, Park, Hopfgarten, Chase, O'Connor, Choiniere and Granese all voted in favor.

Motion by Hopfgarten to amend Article V, Section N, Medium High Density Residential district to remove parcels 37118, 37118-001, 37119 and 37119A. The motion was seconded by O'Connor.

Chirichiello, Park, Hopfgarten, Chase, O'Connor, Choiniere and Granese all voted in favor.

Motion by Hopfgarten to amend Article V, Section O, Medium Density Residential district to remove parcels 37084-001, 37111 and 37112. The motion was seconded by O'Connor.

Chirichiello, Park, Hopfgarten, Chase, O'Connor, Choiniere and Granese all voted in favor.

Mr. Sioras suggested further discussions and workshops on the Robert Frost Farm area. This rezoning will take some thought; it could be a unique area with specific buffer requirements. He will look at other areas of the country to see how they handle issues of this type. The landowners will be notified again and invited to the workshops in the fall. Mr. Granese thought it was beneficial to invite the landowners and abutters to the workshops. Mr. Sioras thought it might be premature to change the zone on Rockingham Road until it can be discussed again. The Board briefly discussed a site visit to the Rockingham Road area but decided one was not necessary at this time. Mr. Chirichiello felt it imperative the Board work on this area fairly quickly. Water and sewer will eventually go down Route 28 and it will behoove this Board and the Town Council to come to a creative decision. Mr. Sioras said a workshop will be scheduled as soon as possible. The board wants to make sure this is rezoned properly. Mrs. Robidoux noted the Board will be reviewing the Historic and Cultural Resources draft chapter of the Master Plan in September. After reviewing that, perhaps the Board could look at a historic overlay as Mr. Sioras had suggested and it can be added as a recommendation for the Master Plan. Mr. Granese concurred.

Motion by Chirichiello, seconded by Choiniere to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 8:20 p.m.