

The Planning Board for the Town of Derry held a workshop on Wednesday, September 9, 2009 at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chair; Virginia Roach, Vice Chair (7:19 p.m.); Brian Chirichiello, Council Representative; Randy Chase, Administrative Representative; Jan Choiniere, Secretary (7:30 p.m.), John O'Connor, Members, Maureen Heard and Darrell Park, Alternates

Absent: Paul Hopfgarten, Gary Stenhouse, and Jessica Hodgeman

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk and approximately 25 members of the public.

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.

Mrs. Heard was seated for Mr. Picillo and Mr. Park was seated for Mr. Hopfgarten for the evening.

Mr. Granese took a moment to thank Phil Picillo for his years of service on the Board. Phil has been on the Board for over three years. He notified Mr. Granese today that he has a new employment opportunity that will take up a lot of his free time and he has tendered his resignation. He will be missed. He brought good ideas and he was very professional; he would like to thank Phil.

Mr. Granese advised that tonight is a workshop and no decisions will be made this evening. He welcomes input from the public with regard to the proposed changes listed on the agenda and then the Board will hold its own discussion.

Minutes

The Board reviewed the minutes of September 2, 2009 meeting.

Motion by O'Connor, seconded by Chirichiello to accept as written. The motion passed in the affirmative with Park abstained.

Correspondence

There was no correspondence this evening.

Other Business

There was no other business this evening.

WORKSHOP**Rezoning**

The purpose of this workshop is to consider rezoning of the parcels identified below from Office Research Development (ORD) and Medium Density Residential (MDR) to General Commercial (GC).

Parcel 05002, 122 Rockingham Road, change from ORD to GC

Parcel 05001, 128 Rockingham Road, change from ORD to GC

Parcel 05090, 134 Rockingham Road, change from ORD to GC

Parcel 05090-001, 138 Rockingham Road, change from ORD to GC

Parcel 03110, 140 Rockingham Road, change from ORD to GC

Parcel 03109, 161 Rockingham Road, change from MDR to GC

Parcel 02090-002, 157 Rockingham Road, change from MDR to GC

Parcel 02090-001, 153 Rockingham Road, change from MDR to GC

Mr. Sioras advised this is a continuation from the August 5, 2009 public meeting. The Board had received citizen petition requests from landowners to change the zoning of their parcels from ORD and MDR to General Commercial. Mr. Reynolds, 134 Rockingham Road, owns parcel 05090. This parcel is adjacent to the state owned 05001 and 05002, which is the Robert Frost Farm. The second request was from the Smith family, 161 Rockingham Road, who own parcel 03109. They own Rockingham Acres Nursery. There will be no decisions made this evening and the Board will receive input from different parties. He is sure this is the first of a few workshops that will carry into the fall and winter. The Board will need to decide if it wants to rezone this area or not, and if it would like to see a combination of zones and uses. This will be looked at sensitively in terms of the Farm.

Mr. Granese asked for public input and advised that comment time would be limited to 3 minutes each.

George Reynolds, 134 Rockingham Road, advised he has lived in his home for 26 years. His property is located just south of the Robert Frost Farm, on the east side of Route 28. He made a request about 10 years ago to change the zone. When he purchased the property, it was zoned residential. It was changed to ORD and he was not notified. He would like it to be General Commercial so that he can expand his business. He has seen changes come to this area of town. Rockingham Road is not the road less traveled. Thousands of cars travel it per day. He often walks the property in the morning and every ten minutes he sees a few hundred cars. In the distance of a half mile walk, he has counted 500+ cars. He had a drawing that he had prepared for the Board that showed the number of businesses located on Route 28 in the vicinity. [This was unable to be shown to the public or the board due to lack of a projector.] 1.9 miles to the south towards the Windham town line and 1 mile north past the Frost Farm to Clam Haven there are 35 businesses, including his own. It seemed like this was the direction the town was moving toward, and that is why he made the request to change the zone. He understands the concerns regarding the Robert Frost Farm. It is a nice place and people come from all around.

Mr. O'Connor asked if Mr. Reynolds' established business drew a lot of customers to the lot? Mr. Reynolds explained he did not get a lot of traffic. He specializes in custom tubular applications for special needs vehicles and sells his product all over New England. He is a small scale manufacturer. His property runs to the brook which leads from a pond located on the Frost Farm property. His lot is on a ridge and follows the hill and tapers off towards parcel 05001. The trees between his property and the state owned property are a deciduous mix.

Frank Bartkiewicz, 9 Fox Den Road, has been a resident for 42 years along with his wife, Joan. The purpose of the workshop tonight is to consider the rezoning of the parcels identified in the August 21, 2009 letter sent to the residents. General Commercial is the highest zone allowed. They oppose the change to General Commercial because of the Frost Homestead and the Fox Den residents will be directly impacted. This change will decrease the value of the homes. The reason the Board is looking at rezoning is because of Mr. Reynolds' property which consists of 10.6 acres, who hasn't been bothered and he can expand. Mr. Bartkiewicz felt Mr. Reynolds could be grandfathered as well as the Nursery. It was stated that 11,000 cars pass on Route 28 each day. Many people do have residences on Route 28 and what will happen if the area is rezoned? It might bring in tattoo parlors, McDonald's and garbage trucks with their back up beepers at 4:30 in the morning, or a strip mall. More accidents will occur because of the increased traffic load. History would be lost and the number of visitors to the Frost Farm would be decreased because of traffic and commercialization. The farm near West Running Brook next to the field where the first potato was planted is gone after the town was told it would remain, the Shepard house was put up for auction, and the Hood Farm has been lost. Do we want this to happen to the Frost Farm?

Mr. Bartkiewicz also spoke with regard to the duplex lots adjacent to Fox Den Road. There is a brook and wetland that runs behind those properties. What are the impacts

to the wetlands and the environment if the land is rezoned? The duplexes were changed from the single family residences that had been proposed during the public meetings. We have commercial areas in Derry with little development on Ashleigh Drive, the old HADCO site, Tinkham Avenue, etc. Do we need more? It has been stated that Route 28 will be enlarged with a TIF district and water and sewer will run south Route 28 toward Salem. This area does not need to become more commercialized. There are enough auto dealers, tattoo parlors and strip malls. He has seen what has been done and allowed to be done to Derry. Stop it tonight; keep the Robert Frost Farm and the area around it. Use the architectural regulations. He asks the Board members and Chairperson, what would they do in the resident's position? He is also speaking tonight for Fran and Art Savard of 11 Fox Den, who were unable to attend due to a family matter. They echo his comments.

Gordon Graham, 22 Drake Lane, spoke on behalf of the Farm. The Board knows the Robert Frost Farm is a valuable jewel and resource for the town. It is why many are here tonight. He provided a brief overview of the history of the farm. This is the site of the Robert Frost homestead and one of the great examples of restoration of a site from a wreck to a jewel. This site used to be a junkyard. The State Planning Office has information on sites in a book and it shows how properties in New Hampshire were refurbished; the Robert Frost Farm is featured. It is a national site for tourists to come and visit. He understands the town pressure to diversify the tax base and to create a commercial zone. It needs to be done wisely. The Board needs to look at infrastructure and traffic and preservation of items in the community that make the community what it is. The Frost Farm is one of those places to preserve. Surely the Master Plan has preservation of historic resources as a highlight because the town has not done that well in the past. He knows the Board will consider it carefully and any changes will keep in mind preservation.

Mr. O'Connor noted the property due north of the Farm is in a General Commercial area and has a 300 foot buffer. Mr. Graham advised he sat on the committee that was charged with looking at land to identify areas in town of critical importance. The Land Advisory Committee commented on this area. The connectivity the Frost Farm has with the Grinnell property and to others is very important. You can walk to the Humphrey playground from the Farm. The town needs to preserve this open space area and preserve the connectivity to Humphrey. There is an easement on the Grinnell property. It is all connected and that is another reason why this area is so important.

Scott Davidson of 138 Rockingham Road provided the Board with a handout, which was retained for the record. He is against rezoning this area General Commercial. The Boston Globe did an article on how certain towns in Massachusetts decided to grow their town 20 to 30 years ago and how the decision affected property values in the area. He picked Route 20 because of the historic sites along it. The Grist Mill in Wayland and others are similar to the Robert Frost Farm. Towns that preserved open space such as Sudbury and Wayland have houses valued well over half a million dollars, where towns such as Marlborough are less than half that. They were in the same range 20 to 30

years ago and went in different directions. Home values were affected. The General Commercial zone is the most liberal or the worst zone you can get. That is the only type of zoning that allows adult entertainment. That would be the worst case scenario, but he can't speak for the future.

Mr. Sioras advised that adult businesses are allowed in the General Commercial zone, but the restrictions and setbacks required for that type of business would not allow it to be in this area of town.

Margret Ives, 4 Field Road, hopes that ideas are generated with regard to going gentle with this property. There has been a dramatic change on the Farm as it went from a junkyard to a tourist attraction. Many people are drawn to the Farm because of the setting. There is modest advertising for the weld lab and for Rockingham Acres. There are no neon signs, nor large parking lots. The ambiance and setting draws people. The Board has heard how people come to the farm for the setting and they will spend their money elsewhere in Derry. Keep them coming, don't distract from the ambiance. Don't allow neon signs and large parking lots. It does not fit what you expect when visiting a national treasure. This is not a large area in Derry to protect, but it is large enough to attract people. Keep in mind the state saved the property and has property across the street, and tried to give it a setting. Two state jewels in Derry are the up and down Saw Mill and the Robert Frost Farm. Please think of some ways to be gentle.

Mr. Sioras confirmed the state owns property across the street from the farm, on either side of Berry Road.

Charles Dent, 75 By-Pass 28, is a Trustee of the Farm. He wanted to speak regarding the value of the Farm to the community. In 1972, the Farm was dedicated on the same day as the first issue of the Robert Frost Stamp. That day there was a great sense of community spirit. The Farm attracts an incredible number of people worldwide. It is a gem, but is also a driver of the economy because of the number of people who come and shop or get a meal. One question he has, is it possible to define that parcel as a historic district to try to protect it? He encourages the Board to be careful with its judgment so the area of the farm can be maintained for generations to come.

Laura Burnham, 16 North Main Street, is also a Trustee of the Farm. In preparing for this meeting, she made a few calls and did research. She spoke with Maggie Stier at the NH Preservation Alliance. Ms. Stier was appalled to think that this area is being considered for a General Commercial zone. She suggested the Board consider this a historic district as was done for East Derry. If it becomes a historic district, there would be an overseeing commission that would approve anything proposed for the abutting properties to help protect the historic nature of the Farm. The land can be zoned Commercial and allow Mr. Reynolds to have his business if the Commission found the plans to be acceptable. Last week, visitors came from Dubai, specifically to see the Farm. She suggests this solution. She would not want to see something detrimental to the property. This is not only our gem, but a world gem as well.

William and Jane Smith, 161 Rockingham Road spoke in favor of the change. Mr. Smith advised his family is not connected with the Smiths that own parcel 05008, directly north of the Farm. Mr. Smith provided the following information. The Robert Frost Farm, and its buffers and easements contain 132 acres. Its frontage is 43% of the total MDR/ORD land under consideration. The total land frontage 925 feet. The buffer is 420 feet. The acreage proposed to be changed is 29.14 acres, excluding the Frost Farm. The land under consideration is privately owned and is 18% of the total area proposed to be changed to General Commercial. It is 1/5 of the size of the Robert Frost Farm, its buffers and easements and represents a fraction of those properties already zoned General Commercial on Route 28. Can those properties pose a detrimental impact to the Robert Frost visitor to warrant a restriction on growth? Does a 14 second window of pastoral setting heading north from Lawrence Road after passing through a lengthy commercial zone warrant a restriction on growth? How many people approach this Farm from the north? How does keeping property owners from enhancing and expanding town tax revenue in a mostly commercial area benefit the Robert Frost Farm? Can the visitors see the parcels to the north? At what point do the buffers become buffers to the buffers? Why is more protection needed from the southern neighbors? How do the existing buffers, frontage and easements not protect the Farm? Can an area that holds 11,000 or more vehicles per day be considered residential? Rezoning adds tax value. He would also like to know how many months a year the farm is open to the public.

Mrs. Smith added that the Farm is a large parcel. She agrees it is a jewel in the area. She understands the concerns of the Trustees but feels that what they are looking for will not have a detrimental impact because the Farm has large buffers and frontage. They represent a small area of Route 28, and the ambiance only represents 14 seconds of driving time as vehicles pass through the area. The land is commercial to the north and south. This is the logical next step to move forward with the towns plans.

Mrs. Heard asked what the Smiths will plan to do with their property if the zoning is changed? Mr. Smith said they have a few different ideas on how to expand what they do now. Mrs. Smith said family members have expressed an interest and they would like to expand and enhance their operation; they are limited now. Mr. Smith added the chain stores such as Walmart have had an impact on their business.

Mr. Chirichiello confirmed a variance had been obtained for the nursery use. He wondered if they could get another one to expand? Mr. Smith was not sure and it would be easier to move forward if the land was zoned commercial. Mr. Chirichiello noted the value on the property will not come until water and sewer are in place. Mr. Smith said it will happen and needs to happen. Mr. Chirichiello felt the nature of the businesses in the area will change once water and sewer go into the area.

Mrs. Burnham reported the Robert Frost Farm is open year round to visitors. Tours are held May 1st through Columbus Day, but people come to walk the property. It is open

as a State Park all year round. There are innumerable visitors when the house is not open for tours.

Scott Lees, 13 Fox Den Road, has concerns. His property is close to Route 28 but the future will allow changes to the area. Maybe the road will become 4 lanes, bringing more people and different types of businesses. Lots may be purchased and combined. He was attracted to that section of Derry because of the setting. His concern is what happens down the road and he does not want to see McDonald's with its golden arches.

Wendy Morrow, 5 Fox Den Road, commented that after the December ice storm, she could hear the traffic on Route 28. It is not pleasing that the buffer that exists now could be at risk. It disturbs her that those trees might be at risk. It provides a sense of security and it needs to be protected. She has concerns that a change in the Garden Center could affect her well water, although she is uphill from them. The well was made deeper by the previous owner. The creek behind them flows downhill and there is a marshland. She is not sure if that has been examined recently to see if its designation should be changed to a prime wetland.

Mr. Dent stated that if Robert Frost was living today he would have been pleased to have a welding shop and a garden center nearby. He does not want anyone to think the Trustees are opposed to development and what the Smith's and Reynolds' would like to do with their property. He is less worried about today than for the next generation. He wants to make sure the Farm is there for people to enjoy for many years to come.

Mr. Smith asked, what would a historic district mean? There are not many old houses in this area. Mr. Sioras advised there are different criteria for creating a historic district. He will speak with the Department of Historic Resources. The districts can range from what was done in East Derry to an old grist mill to a commercial area or a mill yard as in Manchester. In this case, if they look at the homestead, the Farm would be the district. It can vary. In other areas of Derry it could be an area such as Thornton Street, or it could be the Adam's Memorial Building. We would need to look at the state criteria.

Mr. Smith asked how far out would the historic district extend? Mr. Sioras explained the Board would need to determine that over the next few months. The Planning Board can define the boundaries. It could be just the lot, or more depending. He does not know yet.

There was no further public comment.

Mr. Chirichiello asked Mr. Reynolds to explain how he would like to expand his business. This is a pre-existing, non-conforming lot. Does he need more space? Could he get a variance?

Mr. Reynolds said it was possible he could get a variance. But under the Office Research Development zone, there is little he can do; he can't build more structures. He has a machine shop with a barn attached to the house. He is limited with what he can do. He can understand the sensitivity close to the Farm. There are 35 businesses within a mile and half of the Farm. It seemed like the general direction the town was going for Route 28. This is the main route north. He would like to see Route 28 widened so that it is safer for pedestrians and cyclists. This is not a residential road. Regarding protecting the farm, if it is designated as a historic district it might be able to add to the buffer if parcel 05008 is developed (that lot has 40 acres). The mobile home park has 30+ homes. Pleasant Acres has 20+ homes and the town needs to be sensitive to change. If he could get a variance to expand that would be nice. He would like to enlarge the barn.

Mr. Chirichiello said the Board likes to see a win/win situation. If Mr. Reynolds obtains a variance then that might be a win/win. If the area is made into a historic district, will it limit Mr. Reynolds? Mr. Reynolds said that currently, he has a home business. Sometimes he has contracted help. It is small scale, specialized work.

Mr. Sioras advised there is new variance criteria that will take effect January 1. It may allow Mr. Reynolds to expand the use without changing the zone. He can get something from the attorney that explains it. The change in the criteria allows greater flexibility for a reasonable use of the property.

Mrs. Heard asked if the new criteria could benefit the Smith's as well? Mr. Sioras thought it could if they meet the criteria of "reasonable use of a property". The other possibility as suggested by Mrs. Burnham is to look at a historic district for that area that could impose for example, 150 foot buffers for adjoining properties. A district could put in a buffer and other criteria.

Mr. Chirichiello said that once water and sewer go in, there will be more pressure for development in that area. There is General Commercial to the north and south. There is time to think about it.

Mr. Chase said he is not a fan of hodge podging. The Board should either make it commercial or not. The Farm needs to be preserved. He does not want to see a McDonald's next to it. As in other communities, the town can have General Commercial, but can impose architectural design regulations on commercial development. There are no guarantees the ZBA will grant variances. Mr. Chirichiello is right in that Route 28 is a state road and not residential. Something reasonable needs to be done. He suggests making the zone commercial with some kind of overlay to protect the area, the neighbors and the farm. This Board has as much effect on the tax rate as the Town Council, and the Board owes it to the community to doing something about it. The land suggested for change is minimal and won't support a box store on any of them. He does not know what will happen in the next 15 years but the Board

needs to make the changes with regulatory guidelines on how something to be developed will be put in.

Mrs. Roach felt the area needed to keep the ambiance of the farm, but the Board needed to look at the landowners and the future of the town. Maybe the Board could look at General Commercial with restraints to ensure good looking buildings that won't detract from the ambiance and create a win/win.

Mr. O'Connor thought it would be good for Mr. Sioras to speak with the state, and he agreed the Board should put in regulations for the area that allows for the growth on those lots. The architecture can be restricted and he cited the Freeport, Maine McDonalds as an example. Something like that would allow the growth and preserve the area.

There was no further comment from the public.

Mr. Granese noted there was a lot to digest this evening. He asked the Board to think about. Another workshop date will be decided upon at the meeting next week. The Board needs to tread gingerly. There have been good ideas suggested this evening and he agrees with Mr. Chirichiello that within 10 to 15 years, water and sewer will be installed in this area and that there will be commercial growth. He thinks if everyone works together it can be made to work. The Board will need to think about the buildings, height and signage restrictions, etc., and then get public input.

He thanked the public for taking the time to attend and providing input. The Board takes the input wholeheartedly and he thanked them for speaking.

Districts and Boundaries

Proposed changes to Article V, Zoning Map and District Boundaries

The purpose of the proposed change is to repeal and replace sections of this article to clarify parcel boundaries within the various zoning districts of the Town of Derry.

Mr. Sioras noted the Board members all have a copy of the memo that accompanies this proposed change. The Zoning Ordinance reflects information that was contained on the older tax maps and this needs to be cleaned up. You can no longer identify parcels by the old sheet numbers and we should be referencing the new GIS numbers. This section of the ordinance should be repealed based on the attached. This can be placed on the next agenda to schedule for a public hearing in October.

He reminded the Board that the regular meeting will be held on the first Wednesday of October, and the second meeting will be held on Monday, October 19th. The Law Lecture Series will be held in Derry on the second, third and fourth Wednesday's of October.

Mr. Granese reminded the Board that the next workshop date for the potential zone changes will be decided upon next Wednesday. Mrs. Choiniere wondered if the Board could enhance the existing district, rather than creating a new one? Mr. O'Connor noted as part of the Community Profile outcome, a committee has been formed that is looking at reducing the number of zones in town. Mrs. Choiniere asked if something like the Neighborhood Commercial zone could be used? Mr. Sioras explained that is an overlay to allow Mom/Pop type stores. The Board will need to look at this. Does the Board create a historic district or a zone that restricts certain uses? Mr. O'Connor noted a Historic Commission/Heritage Commission was suggested as part of this. Mr. Sioras stated once the town creates a historic district the job of the Heritage Commission will be to review any development plans in the area; they would not be a regulatory board. Right now there is no district in this area.

Mr. Chirichiello noted he has heard horror stories about historic districts in Massachusetts that restrict the homeowner and properties. He does not want to frustrate the Derry landowners. He understands the wish to protect the area, but does not want to be too restrictive.

Mrs. Roach wondered if the Board could create a GCVI zone that could have specifics such as new development will follow the architectural regulations. She has seen businesses and retail that look like regular buildings. The Board needs to look out for the taxpayers. Mrs. Choiniere said the Board needs to look at the area. This is a small area and she would like to accommodate the residents. Mrs. Roach noted water and sewer in the area will add value to the properties. Mr. Chirichiello said if the change is crafted in the right way, it will be a win/win. Mr. Chase added that what visitors to the Frost Farm are looking for, in the way of businesses, could be located next door.

Mr. Sioras commented the state law has changed to make the variance criteria more flexible. Mr. Chirichiello noted if the landowner does not try, he will not know if he can obtain a variance. If he gets a variance, then perhaps the zone does not need to be changed. Mr. Chase felt that now was the time to deal with it, because it involves more than one property. Mr. Chirichiello commented people want to make the most of their property.

Mr. Granese said with water and sewer coming to the area, with the ORD zone, there could be a research and development building on one of the lots and that could lead to potential bio-hazards. He would rather see a nice coffee shop next door to the Farm.

Mr. Park spoke as a devil's advocate and noted that the company that could pose a biohazard would bring more tax dollars; not that he wants that to happen.

There was no further business before the Board.

Mr. Granese reiterated that at the next meeting, the Board will pick a date for the next workshop. The Board can look at the issues, comments and concerns, and decide on a mechanism to make it a win/win situation. The Board can perhaps make it General Commercial, but with restrictions on the type of sign, height, building etc. Mrs. Roach offered to put something together in advance of the workshop to be distributed to the Board members.

Motion by O'Connor, seconded by Roach to adjourn. The motion passed in favor and the meeting stood adjourned at 8:33 p.m.