

The Planning Board for the Town of Derry held a public meeting on Wednesday, October 7, 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; Jan Choiniere, Secretary, Randy Chase, Administrative Representative, Gary Stenhouse, Town Administrator; John O'Connor, Paul Hopfgarten, Maureen Heard, Members, and Darrell Park, Alternate

Absent: Brian Chirichiello, and Jessica Hodgeman

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk, Mark L'Heureux, Engineering Coordinator

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

Escrow

09-30

Indian Hill Estates

Stone Hill Builders

PID 04003, Goodhue Road

The request is to accept the amended Letter of Credit, # 4952 for the above noted project. The new expiration date will be November 29, 2010.

Motion by Roach, seconded by Choiniere to accept the request as presented. All voted in favor and the motion passed.

09-31

The Goddard School

Derry Realty Trust (Foxcroft)

12 Tsienneto Road, 08079-006

The request is to approve Release #3 in the amount of \$7,711.20, plus any accumulated interest. The amount to be retained is zero.

Motion by Roach, seconded by Choiniere to accept the request as presented. All voted in favor and the motion passed.

09-32

The Woods of Derry II

Edward Cooper

Stark and Lawrence Roads, 03119

The request is to approve Release #1 in the amount of \$67,525.49. The amount to be retained is \$57,574.80.

Motion by Choiniere, seconded by Roach to accept the request as presented. All voted in favor and the motion passed.

09-33

Tire Warehouse

Tire Warehouse

17 Tsienneto Road, 08073-003

The request is to approve Release #1 in the amount of \$79,994.95. The amount to be retained is \$59,677.24.

Motion by Roach, seconded by Choiniere to accept the request as presented. All voted in favor and the motion passed.

09-34

Etz Hayim

Bishop of the Protestant Church

1.5 Hood Road, 32062

The request is to approve Release #3 in the amount of \$8,424.00, plus accumulated interest. The amount to be retained is zero.

Motion by Roach, seconded by Choiniere to accept the request as presented. All voted in favor and the motion passed.

09-35

Enterprise Bank

Keenan & Associates

47 Crystal Avenue, 38020

The request is to establish Letter of Credit Number EB1000, in the amount of \$132,820.56 for the above noted project.

Mrs. Choiniere asked for the location of this project? The parcel is located between River Bank and McDonalds.

Motion by Roach, seconded by Choiniere to accept the request as presented. All voted in favor and the motion passed.

Minutes

The Board reviewed the minutes of September 16, 2009 meeting.

Motion by O'Connor, seconded by Hopfgarten to accept as written. The motion passed in the affirmative with Stenhouse, Roach and Chase abstained.

Correspondence

Mrs. Choiniere reported the Board has received the new edition of *Town and City*, as well as information on the 68th Annual LCG conference. For more information, please see Mr. Sioras.

The Board has also received two requests for rezoning. She read both requests aloud. The first is from David Chism, who owns 3 Nutfield Court. He is requesting a preliminary opinion from the Board as to whether he should be seeking a variance to change the use of the lot which is currently zoned Industrial to a zone that allows multi-family residential. He has potential buyers who are interested in building that type of housing on the property. The second request is from Chris Lunetta and Blanche Garone. The request is for the Board to rezone the neighborhood that lies within the corner of Birch Street and East Broadway, to include Oak Street, Park Ave., Fenway, Grove Street and Wilson Ave. They would like to see the zone change from MHDR to MHDRII. They wish to protect and maintain the character of the neighborhood which is one of the few remaining areas of the old Derry Depot Village; it still retains the architecture from that time period and is mainly single family residential in nature.

Mr. Granese advised both requests will be sent to the zoning subcommittee for consideration and a workshop will be scheduled for a date in the future. The date is yet to be determined. The applicants will be notified of the date of the workshop.

Mr. Chism advised he is not asking for rezoning at this time. He just wants to know if it is possible to rezone the lot. He is looking for preliminary thoughts from the Board, to see if the Board members feel it is appropriate. He has potential buyers for the lot. He has been told that other potential purchasers have approached the town and have been told the land must remain Industrial. He would like clarification.

Mr. O'Connor inquired if there is a purchase and sales on the property? There is not. Mr. Chism said there is no sense in signing a purchase and sales for multi-family if the lot has to remain Industrial. Mr. O'Connor asked what Mr. Chism envisioned for a multi-family use on this lot? Mr. Chism said he would expect it to be similar to Nutfield Court, which has 2 buildings with approximately 20 units each. Mr. Granese said it sounded like Mr. Chism was looking for a variance. Mr. Chism said he could do that as opposed to rezoning, and thought the process would be quicker than rezoning the lot. Mr. Granese said if that is the case, and Mr. Chism is looking for a variance, he needs to see the ZBA. The Planning Board does not have purview. Mr. Chism said he was looking for the Planning Board's opinion on the use of the property. Mr. Granese said he could not give an opinion without actually going out and looking at the site; he is not that familiar with the lot. Mr. O'Connor said he envisions wetlands in that area; the subcommittee would need to review the request and he is not sure if the rezoning process would be expedited enough for Mr. Chism's needs. Mrs. Roach said the normal procedure is to refer the request to the zoning subcommittee. If there is an urgent need, Mr. Chism should go to the ZBA. The Board needs to follow its procedures. The request would be reviewed and then submitted to the Planning Board for a workshop and/or site walk. The process takes time at the Planning Board level. Mr. Granese said it was in Mr. Chism's hands. He could use the Planning Board process or go to the ZBA.

Mr. Chism asked if it is the Planning Board's place to approve or steer his request in a positive way or a negative way. He has heard the Board does that. Mr. Sioras said he recalled speaking with a developer who had inquired about rezoning this parcel. The developer had indicated the wish to build multi-family on the lot. It was explained to the developer that multi-family is not currently allowed in the Industrial zone, and there were two options: he could apply to the ZBA for a variance, or request the property be rezoned through the Planning Board process. There have been a few realtors who have come into the office over the months to inquire as well. They have all been told the same thing. He did not give an opinion pro or con to either option. Mr. Sioras advised the zoning is Industrial and there are uses that can go on the property that are allowed in that zone. He knows Mr. Chism spoke with Mrs. Robidoux and the direction given was to apply for a variance or request a zoning change. The town staff did not mislead anyone.

Mr. O'Connor asked if, when the area was zoned Industrial, did the town do that because the machine shop was there at the time? Mr. Sioras explained this area has always been industrial because that is the use that was there. The use had always been industrial along the railroad bed. The surrounding area has changed over the years to be primarily multi-family residential. However, it is not up to the Planning Board to make a decision for Mr. Chism. He needs to decide how he wants to proceed. If he seeks a variance, he will need to prove hardship and why he feels he should be allowed to change the use and not continue as an Industrial use.

Other Business

Mr. Sioras advised Jim MacEachern, the Chairman of the Charter Commission has asked for a few moments to speak with the Board.

Mr. MacEachern advised the Charter Commission has been meeting over the last few weeks. The decision has been made to continue as a town rather than a city. The Charter Commission has asked the Town Councilors and Mr. Stenhouse to develop a list of items they would like to see addressed in the current Charter. The Commission will be reviewing the Charter section by section. He is extending that invitation to the Planning Board and the Zoning Board as well. If there are items in the Charter the Board feels should be addressed that applies to the Planning Board, he asked that the requests be sent through Mr. Sioras. The deadline for requests would be per the sections. The intent is to review Sections 1 and 2 at the next meeting which will be October 19, 2009. Any requests for changes to those sections would need to be made fairly soon. He intends to speak with the ZBA at their next meeting.

Meeting with Legal Counsel

Motion by Roach, pursuant to 91-A:3,II,(c), to recess and enter a non-public session with legal counsel, and to include Mr. Sioras, Mr. L'Heureux and Mrs. Robidoux in the session. The motion was seconded by Choiniere.

Hopfgarten, Chase, O'Connor, Choiniere, Stenhouse, Heard, Roach and Granese all voted in favor and the motion passed unanimously.

The Board recessed at 7:21 p.m.

The Board reconvened at 7:54 p.m.

PUBLIC HEARING**Zoning Ordinance Amendment**

To amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, and Section 165-31, District Boundaries, to repeal and replace these sections of the ordinance. The purpose of the amendments is to clarify the location of the boundaries of the Zoning Districts and to repeal the listing of tax map and parcel identification numbers by zoning district.

Mr. Sioras explained that when the zoning changes were recently approved by the Board for the area around the traffic circle and on South Ave., it was discovered that the current identification numbers are outdated and no longer in use. The intent is to repeal the existing numbers in the Zoning Ordinance and replace them with the new GIS database. This was based on recommendation from Attorney Steve Clark.

Motion by Roach to open the public hearing, seconded by Choiniere. The motion passed with all in favor.

The floor was open to the public for comment. There was none.

Motion by Stenhouse to close the public hearing, seconded by Roach. The motion passed unanimously with all in favor.

There was no Board discussion.

Motion by Roach to amend Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map, and Section 165-31, District Boundaries, to repeal and replace these sections of the Ordinance, and to forward the amendments to Town Council for approval. Choiniere seconded the motion.

Stenhouse, Heard, Roach, Hopfgarten, Chase, O'Connor, Choiniere, and Granese all voted in favor.

MASTER PLAN

Mr. Sioras advised he is still working with Southern New Hampshire Planning Commission and they will bring back the Existing and Future Land Use chapter for the Board to review. With regard to Visions and Goals, his office has received one response from the Board. He asked the Board members to please send input by the 15th. The input for this chapter needs to come from the Planning Board members for the Master Plan. The visions and goals can be on any section of the Plan, but this information needs to come from the Board rather than staff.

Other

Mr. Sioras advised that on Monday, October 19th the Board will hear a proposal for a new medical office building. This will be commercial development similar to Overlook Medical.

Mr. O'Connor had a question regarding the visions and goals – will the Board have a workshop on this? Mr. Sioras advised the input from the Board members needs to be

given to staff. Staff will compile the input into a draft and the Board will finalize it into something more formal for the chapter.

WORKSHOP

Mr. Granese advised this workshop would not be televised.

Mr. Granese asked if the Board has had a chance to digest the information presented at the last workshop. Normal practice during a workshop limits discussion to the Board members, but in this case, he will allow public comment, limited to three minutes, if someone has something new to say.

Charles Dent, 75 Bypass 28, commented that in addition to the Frost Farm being a state Historic Site, it is also a National Historic Monument under the care of the Department of the Interior. This has no real bearing on the rezoning of Route 28, but is another indicator of how important the Farm is to New Hampshire, the United States and the world.

Frank Bartkiewicz, 9 Fox Den Road, advised that he had Frank Borman, from UNH come to his property. It was discovered that the great white ash in his backyard is the state champion ash. The tree is located on the property line that he shares with Mr. Allison. He would hate to see this lost to commercialism. The land to the rear and the wetlands have not been reviewed in a long time and he feels that someone should re-evaluate them. All of properties on Fox Den have a stipulation that there be no commercial business or farm animals on the lots. He is not sure if this applies to the properties on Route 28, but he would like that to be considered as well.

Diane Coghlan, 8 Fox Den Road said she was disappointed there were so few members of the public here this evening. She inquired regarding the article that appeared on the front page of *The Boston Globe* on Tuesday. Mr. Granese advised the Board would not discuss newspaper articles this evening. Mrs. Coghlan asked if the article was correct? Mr. Granese said that the discussion this evening is about zoning changes, and his comments in the article were miscommunicated.

Margaret Ives, 4 Field Road, asked when will the public hear what has been learned about protecting the historic site? Should the public be involved with drafting the protection? Mr. Granese said that during Planning Board workshops, the Board will tread lightly and take public input. This has been done in this instance. The Board has one draft that it has just received and has not had a chance to review yet. The Board will review this and work on it. This will take time – the Livestock Ordinance took two years.

Mr. Sioras advised he has spoken with Ben Wilson, with the State Bureau of Historic Sites. He was not able to attend the meeting this evening, but will forward his comments and perspectives to the Board. The town has also spoken with the

Department of Resources and Economic Development. Mr. Wilson has great insight into this issue. At Mr. Granese's request Mr. Sioras read aloud an email from Mr. Wilson.

Mrs. Heard asked if the federal designation as a National Landmark has any bearing on how the Board proceeds? She felt the Board should start with that and go from there. Mr. Sioras explained it does not have the same level of protection. He would like to hear from Mr. Wilson first.

Mr. Stenhouse said many people have misconceptions about the types of historic listings. He is intrigued by the draft Historic Overlay District. It shows sensitivity to the area and would benefit the Farm in its preservation effort.

Mr. O'Connor said he has only read half of the document, but feels it is an excellent stepping stone. It will need to be looked at carefully, but is a good foundation. He feels it is good support to receive input from the public.

Mr. Stenhouse asked if this document would be placed on the website to inform the public, and so that they can see the options available to meld economic development and historic preservation? Mr. Granese advised he thought it would be best for the Board to digest this draft, make comments, tweak the document, and then post the second draft.

Mr. Sioras noted the next workshop will be held in November. Mr. Granese directed the Board to review the draft document developed by Mrs. Roach, and bring the changes to the next workshop to discuss. There was discussion about which meeting the workshop should be held. Mr. Sioras stated he would like Mr. Wilson to be able to attend to obtain his input as well. Mr. Granese suggested sending a draft to him. Mr. Stenhouse asked that the next workshop be televised. The date will be announced at the next meeting.

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| Motion by Roach, seconded by Choiniere to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:16 p.m. |
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