

The Planning Board for the Town of Derry held a public meeting on Wednesday, November 4, 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; Jan Choiniere, Secretary; Brian Chirichiello, Council Representative; Randy Chase, Administrative Representative; John O'Connor, Paul Hopfgarten, Maureen Heard, Members, Darrell Park and Frank Bartkiewicz, Alternates

Absent: Virginia Roach, Gary Stenhouse, and Jessica Hodgeman

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

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.

Mr. Park was seated for Mrs. Roach for the evening.

Escrow

None.

Minutes

The Board reviewed the minutes of October 19, 2009 meeting.

Motion by Heard, seconded by Choiniere to accept the minutes with changes. The motion passed in the affirmative with Hopfgarten, O'Connor and Park abstained.

Correspondence

Mrs. Choiniere reported on the following correspondence: The Board has received three notices of public hearings regarding cell tower construction: two are in Nashua, one is in Henniker. The Board has also received a new issue of *Town and City*.

Other Business

DM Kilrea – Request for Extension

Mr. Granese reported the Board has received a request from DM Kilrea to extend the approval for the 12 lot subdivision. Mr. Sioras advised this is the third request. If the Board recalls, they performed a site walk on this property last year during the approval process. It is located on Gulf Road. Traditionally, the Board does not grant extensions beyond the second request.

There were no representatives present this evening.

Mr. Granese noted in the request letter, the applicant is requesting an additional six months to update the expired Alteration of Terrain permit, and post bond to start construction; are there any other issues? Mr. Sioras advised that the town has received a few calls from other developers who are looking at this site; it is on the market. The subdivision approval is good until December 4, 2009. The conditions of approval still have to be met and a new builder would need to obtain the appropriate state permits. He would not recommend approval of a third extension.

Mr. O'Connor concurred adding he has not seen any activity on this site in the last year.

Motion by O'Connor to approve the request for a 6 month extension on the approval for the DM Kilrea plan, a 12 lot subdivision located at Parcel 04054, seconded by Chirichiello.

Chirichiello, Heard, Park, Hopfgarten, Chase, O'Connor, Choiniere and Granese all voted no, stating the Board does not grant third requests for extensions, this is not the standard operating procedure of the Board. The motion failed and the request was denied.

MASTER PLAN

Visions and Goals and Regional Concerns

Mr. Sioras advised the Board members all have the handouts for these chapters. Staff has been working on the two sections. The Board needs to look at it and provide comments to be incorporated so that they can be added to the Master Plan update. The two sections were developed by taking the recommendations discussed by the Board, staff, the Community Profile and from the recommendations from the Profile Subcommittees. Any changes or suggestions should be emailed to the Planning Department.

Mrs. Heard asked if the two sections were available on line to be downloaded for comment by the Board and public? Mrs. Robidoux said they would be available in the morning. It was noted these are two separate chapters.

Mr. O'Connor stated with regard to the visions and goals, the Board had received a preparatory document on which to provide comment. He forwarded his and does not see those changes incorporated. Who writes the final version? Mr. Sioras advised some recommendations came from the profile meetings. Mrs. Robidoux explained his comments were incorporated into the draft. She took the three sets of comments she received from Board members and incorporated them into the first part of the section. The second part, which contains the final visions and goals only indicates those goals that were perceived to be feasible and obtainable within the next ten years. It did not make sense to include items that were not going to be obtainable. She advised they are looking to the Board to review and make comments and let them know if they agree or disagree with what is in the draft. If the Board members want something to be included they need to state the reasons why they feel that way so that they can be included. Mr. O'Connor asked that recommendations be sent to the Planning Department so that the section can be adjusted. This is the document that will lead the town in the future. This guides the direction of the town.

Mr. Granese asked the Board to provide input. Only three members responded to the request for comment, and the Board needs to do its part. Mrs. Heard asked if there will be a workshop on this specific topic so that the Board can discuss as a group what should be in the final version? The Board should talk it through, rather than work in a vacuum. Mr. Granese suggested that the Board email any suggested changes to Mrs. Robidoux, then a workshop can be scheduled to discuss the section.

Mr. Sioras advised the individual chapters are nearly complete and need to be finalized. This is the time to provide comment on the chapters so that the changes can be included before the document goes to public hearing. He added that the more comments, the better.

Mr. O'Connor noted this process has been going on since early spring. Many people from various Boards, Commissions and subcommittees have provided input. He wanted to remind the public this is a community effort to compile the Master Plan. He noted there will be a Profile follow up meeting in December.

WORKSHOP

Mr. Granese advised that this particular workshop would be televised. The purpose of the workshop is to consider rezoning of parcels from Office Research Development (ORD) and Medium Density Residential (MDR) to General Commercial (GC) and to review the draft of the proposed Historic Overlay District. The parcels to be considered for rezoning are as follows:

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 stated tonight the Board is continuing its workshops regarding the rezoning of Rockingham Road in the area of the Robert Frost Farm. It is likely the workshops will continue once a month. Ben Wilson, Director of the Bureau of Historic Sites, is present this evening. He felt Mr. Wilson could give some good insight and information to the Board.

Mr. Wilson thanked the Board for having him attend this evening. He congratulated the Board for dealing with this issue in a gentle and thoughtful way. He wished all communities in New Hampshire and throughout New England would operate in this thoughtful manner.

The Robert Frost Farm is a National Historic Landmark and receives visitors from all 50 states. Last year, visitors came from 48 states and 20 countries. That is pretty remarkable. This is not just a local draw, but a national and international one as well. People come who love the Robert Frost Farm and who love open, green space. The property is used 365 days a year. In the winter, people cross country ski on the trails. Year round, the trails are used for walking and hiking. People occasionally take the house tour. It is one of the most visited houses in the state after the Tip Top House at the top of Mount Washington. The Robert Frost Farm sees 5,000 to 6,000 visitors each season (May to October) who take the house tour. There is no way to keep track of the numbers of visitors who just visit the site and do not take the tour. The parking lot is full on a daily basis and he is grateful that people use the site.

Mr. Wilson stated no one is more passionate about historic sites than he, and he is the number one advocate for the Robert Frost Farm; although some of the Trustees may challenge him on that claim. He advocates for the site and for responsible zoning for those who live, work and reside near historic sites. It can be difficult to live near a historic site because they try to attract visitors. They are all about public access. That results in increased traffic and a higher demand on municipal services. In some cases, Historic Districts can make it difficult on property owners and the rules and regulations pertaining to these districts can impact the people who live and work near these sites.

There are many different historical districts in the state and he would like to offer some

resources to the Board. The New Hampshire Preservation Alliance deals with zoning issues and historic districts. Maggie Stier works with the Regional Trust Office out of Boston and the Preservation Alliance. He encourages the Board to invite Ms. Stier to discuss historic districts. He will leave a few publications for the Board this evening and will forward contact information on those he has not already sent to the Clerk. Nadine Peterson works for the Division of Historical and Cultural Resources. She also deals with zoning issues and presents workshops and talks regarding historic districts and Historic Commissions. He will make sure the Board has that information. He is not certain he is the best person to assist the Board with development of the Historic Overlay District document. This document is a good stab at creating one, and it is encouraging this is being drafted at the same time the Board is doing the Master Plan update. These types of districts need to be an integral part of the Master Plan. His experience is that the Board will see many people come out for and against. There needs to be a balance and a happy medium. The Board needs to ensure that resident and business owner rights are not being trampled upon, while raising the level of awareness of the historic site. This is one of the last large, open, green spaces in Derry. The easy way out would be to grant variances. He offered to answer questions if the Board had any about this site or other historic districts in the state.

Mr. Wilson explained that normally, historic districts are more than one site. The smallest district in the state is 12 parcels; the largest is over 100 parcels. If this Overlay goes into effect, it would make this the smallest historic district in the state, and this should be a topic for discussion by the Board. Is a Historic Overlay District appropriate for this site? The site itself is protected, meaning the house, the trees and the field. The biggest issue, some of which is addressed in this draft District, is aesthetic changes that could take place surrounding the site. Right now from the field, visitors can see pavement, trees and telephone poles, which could be seen in 1913. The largest concern is the possibility of aesthetic changes. The buffer requirements in this draft are a great start.

Mr. O'Connor had a few questions for Mr. Wilson. He noted that some residents know the property better than others. How would Mr. Wilson deal with a box store that went next to a historic site? He has seen some areas where a nice facility went in that mirrored what is already there. Mr. Wilson said one example would be the McDonald's in Freeport, Maine. That is an attractive building. The town said there would not be golden arches on its quintessential main street. The town told McDonald's to purchase a dilapidated farm located on Main Street, and put the restaurant there. The franchise was able to renovate the existing building and make the site work. Everyone is passionate about the Robert Frost site. Everyone agrees it is a wonderful place. The town will need to be tough and write a document that may have stronger language and be willing to stand up to what may be economic development. There needs to be a balance. The town needs to create tax revenue and it also needs to weigh the quality of life. The Farm lends itself to the quality of life. Derry has changed a great deal since 1930. The Board needs to write a document with some fairly strong language, or not. There is good development and architectural design out there that could fit the General

Commercial model. He spoke of Charleston, South Carolina. It is a living museum. People live and work in the downtown. Charleston is one of the oldest cities with a preservation ordinance. It has a Board of Architectural Review (BAR). When a porch is repaired on a house, the contractor has to go through the BAR and provide information on the materials to be used. The contractor has to follow specific guidelines. The city has taken it to that level of preservation. That is not always possible in the "real world" where a community does not have a lot of wealth or a good revenue stream. Derry does not need to go to that level, but if the town is designing a historic overlay district, it may want to establish a commission made up of volunteers who would review plans and offer comments on the design, similar to what Mr. Sioras does for the Planning Board. There are a lot of ways to do it.

Mr. O'Connor inquired if Mr. Wilson saw any issues the Board should be aware of in light of the new zoning variance criteria and converting property zoned General Commercial and placing an overlay on it? Mr. Wilson felt that was contradictory. He is unaware of any General Commercial uses with Historic Overlay Districts on top of them. He gave the example of Gettysburg, Pennsylvania. At one time, Disney wanted to build a theme park next to the battlefield. The National Trust fought it. Today, you can drive past the battlefield and there are shopping centers across the street. Those battlefields have national significance. But not everything can be protected. Historic Districts don't always have legal teeth, and do not provide total protection for a site. The Robert Frost Farm is a National Landmark, which is the highest rating you can get. If 70 homes were proposed on the lot to the north, and the trees proposed to be cleared to the stone wall between the lots, the National Trust would get involved. He is not sure if the District that is being created can cross the boundary of what is already preserved.

Mr. Hopfgarten commented he heard Mr. Wilson mention the smallest historic district has 12 lots. Are they contiguous or are they across the town? Mr. Wilson said the lots could be within a district itself, for example, along a main street. Normally, they are an overlay. He is not an expert on the subject. Normally, uses are grandfathered in. For example, in Hillsborough, Walmart wanted to build next to a historic site. The property Walmart wanted to build on used to house a small inn. The historic district came to the edge of the property. Walmart was allowed to move forward with the project on their proposed lot, but then withdrew the plan. The general commercial area business had long gone, but the sign was left so the lot was allowed to stay zoned general commercial. Otherwise, it would have been included in the historic district. It is not always contiguous, and there are always grandfathered properties. This situation is odd. The Robert Frost Farm site is by itself without any other historic residences.

Mr. Hopfgarten spoke specifically about Derry. When you look at things that could be a historic district, it is piecemeal across the town. It may be a historic district could not be created because there are not enough properties. He confirmed there is precedent for an overlay. That might be important if the town is ever challenged.

Mr. Wilson recommended the Board look at as many district overlay documents as it can to see what would fit the town and what would not. If the town created a district from Clam Haven south to these properties on this side of the road, the only thing that could be considered a resource that could be controlled by the town would be the stone walls.

Bill and Jean Smith, 161 Rockingham Road spoke with regard to the draft ordinance. Mr. Smith noted that the Board began the meeting with the Pledge of Allegiance which ends with "...liberty and justice for all." He did not think this document provided liberty or justice. What is historically important south of the Farm? The Freeport McDonalds has enough money to buy property and conform to these types of documents. Smaller businesses can't do that. The Robert Frost Farm is protected with land, buffers and easements. The only part not protected is to the north, which is currently zoned General Commercial. It is hard to imagine if development occurred to the south that it could be seen from the Farm because the existing buffers are so dense and well thought out. He asked for liberty and justice for all.

Mrs. Smith did not know why another buffer around the Farm was required. There is state owned property that buffers it (42 acres) with 420 feet of frontage. There are also two parcels across the street so the view from the Farm to the left and right is wooded. The view to the south is wooded and you can't see beyond it. Is it really necessary to have another buffer? It appears the property to the north is what needs to be addressed to be sensitive to the historical nature of the Farm. The draft refers to the immediate abutters having a 100 foot buffer from the property line. Does that include the one on the south portion of the farm? The draft also references, in Section A, paragraph 2, historic significance. What are the historic attributes and who decides that? How do their properties fall into those qualifications?

Mr. Granese noted this is a working draft. Ginny Roach drafted this to be a starting point to create a win/win for all involved. The draft has now been presented to the public for the next workshop and he would ask that comments be provided in writing to the Planning Board. Regarding the draft, right now the Board is looking at it and at the various options. He is not sure if there will end up being an overlay. But because of the sensitive nature of the area, the Board is treading lightly. It will depend on what the final draft looks like. Mrs. Smith asked if all the lots proposed to change to General Commercial are to be considered for the overlay district? Mr. Granese explained that has not been decided yet. The Board has not gotten that far.

Mr. Park noted the Robert Frost Farm has been the focus of these discussions, but the Board needs to balance the needs of the Farm, the needs of the business owners, and the residents on Fox Den so that it can create a win/win for everyone. The Robert Frost Farm is not the only point of discussion, but it has been a focus because it is so important to try to balance the needs of everyone. The protection of the Farm is not the only purpose. The Board is trying to create controlled growth, without stepping on anyone too heavily. Mr. Smith noted traffic is heavy in this area of Route 28. Mr. Park

agreed, but noted that the residents on Fox Den do not hear that traffic today; they might if there is growth in the area. The Board is trying to control the chaos that could occur 30 years in the future.

Mr. Hopfgarten said an overlay could be anywhere in town. If this Overlay District comes to pass, it will overlay existing zoning. The main zoning designation will still be there. There are places that could be included in this overlay, such as the Adams Female Academy, the Alan Shepard House or even the Upper Village Hall. The question would be who manages it? The town already has a Heritage Commission; it is possible it may fall to them to make recommendations. He is guessing the Heritage Commission would recommend parcels for the Overlay District. There are a number of layers to get through before a parcel would be included. The Planning Board would need to approve inclusion into a District as would the Town Council as they have ultimate authority over zoning changes. There are a lot of steps in the process. The Board is in the early stages and liberty is there in the process. There are many steps the various Boards will need to go through before the town can go forward. The public can be involved and help make or influence the final decision.

Mr. O'Connor felt everyone had made interesting points. The Board may need to bring the Heritage Commission into its discussions. What is the overlay the Board is looking at? Is it the Robert Frost Farm, Rockingham Acres, Clam Haven down to the Flea Market? The Board needs to decide what the overlay will be and define the area. There will be a lot of discussion to come. The properties in this area are very important.

George Reynolds owns the property just south of the Robert Frost Farm. He said it seemed the first time the Board discussed the requested zoning change, it would be a simple thing. Then the concerns regarding the Robert Frost Farm came up. About ten years ago, this land was rezoned from residential to Office Research Development. He is not sure what the considerations were then that caused the change. Mr. Sioras explained that at the time there was discussion about trying to find ways to allow for the future development of office parks. The town did not want industrial or commercial zones and wanted to put land aside for non-residential development. In the late 1980-90's, the town was running out of space for a tax base.

Mr. Reynolds was not sure how the change from ORD to GC affects the Farm because it is buffered to the south. He has walked it many times. There is a stone wall along the property line to the north. There is also one to the east. He has walked along all the walls and has cleared the paths when necessary. As a Planning Board, the Board members are the protectors of the town and can plan for the future.

Mr. Park understood Mr. Reynolds may find this process to be slow. The Board is trying to balance Mr. Reynolds' needs and he does not think the Board has any objections to what he is trying to do with his property today. The Board wants to balance his needs with protection of the Farm and the future Derry. The Board does not want Route 28 to

end up looking like South Willow Street. If there are no protections in place, it could end up looking like that.

Mr. O'Connor noted Mr. Reynolds is a small businessman. If he wants to plan an expansion he has the ability to apply for relief from the ZBA. Mr. Granese recalled the Board discussed this possibility a few meetings ago and it was not thought that was the way to go. He understands that the zone was changed from Residential to ORD, and people may not have been notified. He can't speak for the past. Right now, there is an open minded, methodical Board. The Livestock Ordinance took a long time. The businesses have asked the Board to change the zoning on the parcels. Because abutters had concerns, the Board started this process. The Board is trying to protect everyone, not just the Farm for the future. Right now, a bio-hazard company could go on the parcel next to the Robert Frost Farm if they follow the current regulations. The Board decided to initiate discussion on a Historic Overlay District. It may not happen. The Board is working on it.

Mr. Reynolds said he looked into the possibility of a variance, and found that it would be too expensive. He commented that he is very familiar with Robert Frost's works and is familiar with the places of which he wrote, and related a story about how Robert Frost's poem "The Tuft of Flowers" was read in Derry, and helped Robert Frost obtain his job at Pinkerton.

Mr. Granese advised the Board would continue this workshop and will move forward with working on the draft Overlay. The Board will continue to meet once a month on this topic and once the next date is set, will notify the affected property owners. He will contact the people at the state recommended by Mr. Wilson to see if they can attend as well. The meeting date will be posted on the town website once the date has been determined. He asked the public to review the draft Overlay District and to provide comments to the Board at the next workshop.

Mr. Chase asked if the Board should stick with this, or something more appropriate to the area? This does not suit the area as it only applies to one site. Mr. Granese said this is why this is a draft. Mr. Chase thought some of the content may fit the area, but some of it does not. Mr. Granese asked the Board members to send changes by email to Mrs. Robidoux and she can incorporate them. Mrs. Heard asked for the documents provided by Mr. Wilson. Mrs. Robidoux will forward them to the Board members.

Mrs. Heard suggested the Board go as a group to the Frost Farm to see firsthand what the impacts might be. Mrs. Choiniere noted that Mrs. Roach compiled this draft from a number of surrounding towns and wanted it to be a good starting point.

Mr. Hopfgarten reminded the Board that if an overlay district goes into place, it will affect the whole town. He felt if the only place to be protected was the Farm, then the Board would be making a mistake. If the protection of the Farm is the only reason to have this, then maybe the Board should not move forward with it. The Overlay will affect the

whole town. As a Board, he felt they should decide if this is for the Farm specifically or in terms of other parcels in town, what does the Board think would be a useful recipient of this type of district to preserve it?

Mr. Granese commented he looked at this as protecting anything considered historical. He thanked Mr. Wilson for taking the time to spend with the Board this evening and for the public who took the time to speak.

Motion by Chirichiello, seconded by Heard to adjourn. The motion passed in the affirmative and the meeting stood adjourned at 8:27 p.m.