

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 6, 2010, 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 (7:01 p.m.); Brian Chirichiello, Town Council Representative; John O'Connor, Maureen Heard, Members; Darrell Park and Frank Bartkiewicz, Alternates

Absent: Randy Chase, Gary Stenhouse, Paul Hopfgarten, and Jessica Hodgeman

Also present: George Sioras, Director of Community Development; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Department of Public Works

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 Mr. Hopfgarten for the evening.

Escrow

#44

Tire Warehouse

Tire Warehouse Central, LLC

Tire Warehouse

Cash Escrow

Parcel ID 08073-003, 17 Tsienneto Road

The request is to approve Release #1, cash escrow, in the amount of \$53,197.24 for the above noted project. The amount to retain is \$6,480.00.

Motion by Choiniere, seconded by Roach to approve as requested, all voted in favor.

#45

Brandy Rock Estates

GRD Realty, LLC (James & Linda Rausch)

GRD Realty, LLC

Letter of Credit, Salem Co-operative Bank

Parcel 04056, 04056-001, 04056-002, 04054-001, Gulf Road

The request is to approve Release #2 in the amount of \$236,069.24 for the above referenced project from Letter of Credit #5185125-A, Salem Co-Operative Bank. The amount to retain is \$12,303.84.

Motion by Roach, seconded by Choiniere to approve as presented. The motion passed unanimously.

#46**Martingate Holdings, LLC****Martingate LLC****Martingate, LLC****Letter of Credit, Enterprise Bank****Parcel 30047, 1 West Broadway**

The request is to approve the establishment of escrow for the above-referenced mixed use site plan project located at 1 West Broadway. The amount to be established is \$45,961.34 on Letter of Credit #19981, dated December 4, 2009, from Enterprise Bank. The expiration date of the Letter of Credit is December 4, 2010.

Mrs. Heard noted the Board has discussed putting a mechanism in place to ensure that when new Letters of Credit are established that the banks have been vetted by Finance. Has this been done? Mr. Sioras advised that Enterprise is a familiar bank to the town. He has met with Finance, the Department of Public Works and staff to put a system in place for checks and balances.

Motion by Roach, seconded by Park to approve as presented. The motion passed with Chirichiello abstained.

#10-01**Hampstead Road & Harvest Drive, LLC****Robert MacCormack****Hampstead Road & Harvest Drive, LLC****Letter of Credit, Enterprise Bank****Parcel 10015, 10024, 10025, Hampstead Road/Harvest Drive**

The request is to establish Letter of Credit #LC-19959, issued by Enterprise Bank for the above noted project in the amount of \$1,423,972.87. The expiration date will be December 30, 2010.

Motion by Roach, seconded by Choiniere to approve as presented. The motion passed unanimously.

Minutes

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

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

Correspondence

There was no correspondence this evening.

Other Business

Mr. Sioras advised at the next meeting the Board will hear the private road petitions and continue the Master Plan update. Mr. Granese asked how many more chapters are left? Mr. Sioras advised there are two draft chapters remaining: the Implementation Strategies and the Land Use. The goal is to have the final draft document to the Board for adoption in February. The update is 90% complete. Mr. Granese commented he appreciated the great work that has been done on the update.

Sign Subcommittee

Mr. Granese reported at the December 15, 2009 meeting with Town Council, it was noted the Planning Board is doing a good job. Councilor Benson asked about the update to the Sign Ordinance and Mr. O'Connor as Chair of the Sign Subcommittee, will provide an update on that.

Mr. O'Connor advised that Town Council had requested the Planning Board review the sign ordinance. There is the primary ordinance which is found in Section 165 of the Zoning Ordinance, Signs and Billboards. In addition, there are many other areas in the Town ordinances and regulations where the sign ordinance is referenced. He has listed those for the Board members on a separate handout. Community members have approached him and asked the Subcommittee to look at regulations for political signs and some of the newer sign types. A few members of the Subcommittee are no longer on the Planning Board, so he would invite other Board members to join. If anyone is interested, please let him know. Bob Mackey, the Code Enforcement Officer has agreed to be a part of this Subcommittee. The Subcommittee will meet and review the regulations; these meetings are open to the public.

Mr. Granese advised another issue raised by Councilor Benson is the need to revisit the LCDR with regard to underdrainage, free flow, curbing and driveway cuts. Councilor Wetherbee has also inquired as to the status of the Open Space Ordinance. Mr. Sioras

advised that he and Mrs. Robidoux had a good meeting with Attorney Clark today and made a lot of progress on the document. Attorney Clark will be returning his recommendations on the document within the next three weeks, and then bring it back to the Board.

PUBLIC HEARING

John & Deanna Obrey
PID 12121-013, 2 Faith Drive
Acceptance/Review, 2 Lot Subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for a two lot subdivision, located in the LDR district. This is an 8 acre lot and is located across from the old Cousin's farm, near the transmission lines. There is an existing PSNH easement on the property. There is an existing house located on the property which will be subdivided off as a three acre parcel. The second lot will be a non-building lot because of the existing encumbered transmission line. The new parcel will be 5.18 acres. All town departments have reviewed and signed the plan. There is a waiver request. NHDES state approvals for the subdivision and septic system have been obtained and are in the file. Mr. Sioras recommends approval of the waiver and the plan. He introduced Tim Peloquin, Licensed Land Surveyor of Promised Land Survey.

Mr. Peloquin advised he has a second waiver to present to the Board, based on the review from Keach Nordstrom. He presented the waiver to the Board. Copies were made and distributed to the Board members. Mr. Peloquin reported he was hired this fall to subdivide the lot into two parcels. There is ample frontage and acreage. The second lot is not intended for residential use at any time and would not accommodate a residence because of the existing easement and wetlands to the rear. PSNH has approached the Obrey's to purchase the lot and there is a signed Purchase and Sales, pending approval of this plan by the Board this evening. PSNH wants to own the land rather than just having an easement upon it; most of this parcel is encumbered by the existing easement.

The Obrey's home is to the east of the parcel at the top of the hill. Faith Drive is the site of an old excavation area and the site was eventually subdivided. The homes were constructed in the early 1990's. This lot was intended to be an 8 acre parcel and has a drainage easement on it as well. The application proposes a 3 acre residential lot with ample land area and good soils. HISS mapping was performed on this lot. They are requesting a waiver on the 5 acre lot from HISS mapping and wetland delineation as the lot is not intended to be residential in nature. He is also asking for a waiver from performing a test pit and perc tests on this lot as well. Prior to the Keach comments, he had been unaware that was a requirement in the towns regulations. The state does not require it.

There is no intention at this time to build on the new lot. He does not know the intentions of PSNH. Mr. Keach suggested that Note 7 be revised. Currently it reads, "No new construction proposed with this submittal. The new lot 12121-13-1 can be considered a non-residential building lot for Public Service of New Hampshire (PSNH) purposes. It is fully understood any site plan proposal for any commercial purposes are subject to all Town of Derry Zoning and Land Development Control Regulations."

The Board had no questions and Mr. Granese asked if the public had any comment?

Keith Renaldi, 13 Faith Drive stated he supports the fact that landowners can do what they want with their property, and he has no problem with the subdivision request and supports the Board granting approval. However, he does have an issue that this will be sold to PSNH and no one knows what PSNH will do with the property. He is concerned they might build transformers, an unsightly structure, or a substation which will negatively impact the gateway to this beautiful neighborhood. That could significantly lower the property values in the neighborhood. It can also present a safety hazard for the many children in the neighborhood. There is also potential for EMF (electromagnetic field) exposure. PSNH's plans could change in the future. He asked if it was possible for the Board to restrict PSNH from building on this lot in the future.

Bill Detlefsen, 34 Old Auburn Road, stated he had a chance to speak with Mr. Peloquin regarding the plan and he wants to second Mr. Renaldi's comments. He agrees with him on all levels and has the same concerns. He would prefer to not have a substation there. Can the Board impose zoning restrictions on this plan?

There was no other public comment and the plan returned back to the Board for review.

Mr. Chiricheillo asked if there is an easement on the property now? There is. He asked if PSNH could build a substation on the existing easement right now, without benefit of this subdivision? Mr. Peloquin stated this was a good question and it could only be done with this Board's approval. He has seen substations constructed on easements before, so it is possible they could do it, but it would have to go through due process. Mr. Chiricheillo asked if the zoning would allow that in this zone? Mr. Sioras thought public utilities were normally exempt from some of the local zoning restrictions. It is possible they would need a variance as this is in a residential neighborhood. If a variance is granted, they would come to the Planning Board for a site plan. The government uses are typically exempt, but he is not positive with regard to public utilities. Abutters are noticed if there is a variance or site plan application. Mr. Chiricheillo said that right now, the Board is looking at a subdivision application and can't put deed restrictions on it. That is not within the Board's purview. But, if PSNH comes back with a site plan, the Board can place restrictions upon the plan.

Mr. Peloquin stated he has seen the Purchase and Sales agreement and there is no indication as to what the proposed use of the lot will be. The Obrey's don't know. Normandeau Associates has been hired to do an environmental study on the parcel.

Mr. Chirichiello noted again the Planning Board has no jurisdiction at this time to put a restriction on a deed based on what may happen in the future.

Mr. O'Connor noted that Mr. Peloquin had made a comment regarding the purchase and sales agreement. At this time, the Board's only purview is the subdivision plan. Mr. Sioras reported he received a visit from Normandeau Associates, and the representative was also not aware of future plans for the new lot. If PSNH came forward with a plan, the abutters would be notified and the plan would go through the review process.

Mrs. Roach commented if PNSH wanted to put up a building, there are architectural regulations to be followed and the Board could ensure whatever is constructed is not obtrusive. The Board does not know what PSNH plans to do.

Motion by Roach to accept jurisdiction of the application, seconded by Choiniere.

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed.

Motion by Roach to approve the waiver from Section 170.24.12 of the LCDR waiving the requirement for HISS mapping for lot 12121-013001, seconded by Choiniere. [It was noted the incorrect Section citation had been corrected by the Board]

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed.

Motion by Roach to approve the waiver from Section 170.25.F of the LDCR to waive the requirement for a perc test and test pits on lot 12121-013001, seconded by Heard.

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed.

Motion by Roach to approve the application pursuant to RSA 676:4,I, Completed application, subject to the following conditions: Comply with the KNA report dated December 22, 2009, with the exception of comment #1 under Planning/Design matters. The parcels should be identified as 12121-013 and 12121-013001 respectively; subject to owner's signature; subject to onsite inspection by the Town's engineer; establish escrow for the setting of bounds, or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from Doug Rathburn that the GIS disk is received and is operable; note the approved waivers on the plan; that the above conditions be met within 6 months and that a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement. Choiniere seconded the motion.

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed.

**Helen L. Hampoian Irrevocable Trust
Parcel ID 06065, 65 Floyd Road
Acceptance/Review, 2 Lot Subdivision**

Mr. Sioras provided the following staff report. The property is located at 65 Floyd Road, The purpose of the plan is for a two lot subdivision, located in the Low-Medium Density Residential District. This is a two acre zone. There is an existing house on the property. One new house lot is being created. All town departments have reviewed and signed the plan. No waivers are required. The state subdivision approval is received and in the file. He would recommend approval of the plan.

Tim Peloquin of Promised Land Survey presented for the applicant, Paul George, who was also present. The property is located on the left hand side of Floyd Road near the intersection of Lane and Island Pond Road. The parcel is 5+ acres. The Hampoian family enjoyed the property for many years and both have recently passed away. The home is a well kept landscaped ranch on a lot that has ample room to subdivide. The subdivision would not take away the existing character of the lot or landscaping. The intention is to build a new home on the wooded area of the lot. The Hampoians had two curb cuts on Floyd Road, one of them was for a wood road and this curb cut has adequate sight distance for the driveway. Both lots exceed the lot sizing requirements for the zone. There is a small wetland to the rear of each parcel but the setbacks are met for buildable area. This is a very straightforward application. He paused for questions from the Board.

Regarding the items on the KNA report, Mrs. Roach asked with regard to the wells. Will the applicant use one well or both? Mr. Peloquin explained both wells will be used for the existing home. They feed into each other. There is ample area to drill a new well and have appropriate radii if needed. He will ensure that the appropriate easement rights are obtained for the new owner upon the drafting of a new septic design.

There were no questions from the public and the plan came back to the Board.

Motion by Roach to accept jurisdiction of the plan, seconded by Choiniere.

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed unanimously.

Motion by Roach to approve the application pursuant to RSA 676:4,I, Completed Application subject to the following conditions: Comply with the KNA report dated December 22, 2009, with the exception of comment #1 under Planning/Zoning matters: the parcels should be identified as 06065 and 06065-001 respectively; subject to

owner's signature; subject to onsite inspection by town's engineer; establish escrow for the setting of bounds or certify the bounds are set; establish appropriate escrow as required to complete the project; obtain written approval from Doug Rathburn the GIS disk is received and is operable; that the above conditions are met within 6 months and a \$25.00 check, payable to RCRD is submitted with the mylar in accordance with the LCHIP requirements. Choiniere seconded the motion.

Chirichiello, Heard, Roach, Park, O'Connor, Choiniere and Granese all voted in favor and the motion passed unanimously.

WORKSHOP

Wilson Avenue Rezoning Request

The purpose of the workshop is to discuss a request received by residents to perform a zoning review of the neighborhood that lies within the corner of Birch Street and East Broadway to include Oak Street, Park Avenue, Fenway, Grove Street and Wilson Avenue. This neighborhood requests consideration pertaining to rezoning the aforementioned area currently labeled as MHDR to MHDR II.

Mr. Sioras advised the Board received the letter in October and has briefly discussed the request. Staff was asked to schedule a workshop to discuss it further. The area is located off Birch Street. This is an older neighborhood, very established and is primarily single family residential. The rezoning to MHDR II would eliminate multi-family. If the Board wants to move the request forward, the public hearing date could be scheduled at the next meeting. This request is similar to one received from the Nortonville residents a few years ago which is located on the other side of Birch Street.

The Board discussed the request. Mrs. Roach did not see any reason not to move forward to public hearing. These are small streets with primarily single family residences located closer together. This is very similar to the Nortonville request which was granted. Mrs. Choiniere agreed.

Mr. Park noted some of the buildings in the proposed area are multi-family. How are those lots affected if the zoning changes? Mrs. Roach advised the existing multi-family lots would be grandfathered. Mr. Granese noted if one of those buildings was torn down, it could not be replaced with a 30 unit apartment building. Mr. Chirichiello asked why the golf course lot is also not included in this request? Mr. Sioras explained that the golf course is protected forever. The Town of Derry has 50% stock ownership of the land that was granted by Gilbert Hood. If the golf course ever goes out of business, the land reverts to permanent open space. Mr. Chirichiello thought it made sense to include this parcel in the request as well, given those circumstances. Mrs. Roach wondered if the frontage lots on East Broadway need to be included and noted the fire station lot was just rezoned to commercial. Mr. Chirichiello did not think it made any difference

whether the golf course lot was zoned MHDR or MHDRII, because it would not change anything. Mr. Park noted there are apartments located adjacent to the golf course. Mrs. Heard indicated she is concerned for unintended consequences; she would like to know what is on the lots.

The Board agreed it was in favor of moving forward to a public hearing. Affected landowners would be notified of the date of the public hearing. The Board began to define the exact area for change: Wilson Ave, Oak, Grove, Park and Fenway. Chris Lunetta of 7 Wilson Avenue said he was fine with including the golf course in the change, but there are apartment buildings on Broadway. He would include the golf course in the MHDRII, but not include the frontage lots that would fall in line with that area. The original proposal did not include the frontage lots on East Broadway. The closest side of Pierce Avenue is also single family (located in the Office Medical Business zone). He also noted, the original area outlined by the request is larger than the Nortonville area.

Mrs. Roach expressed concern over changing anything on Pierce Avenue; there are businesses on those lots such as doctors offices and they should remain in the OMB. Mrs. Choiniere agreed; those lots are right next to the hospital.

Mr. Sioras noted the original proposal went from Fenway, up to the single family homes. He suggested using the back edge of Fenway to make the zone change more clear. The map shows where the area becomes multi-family. He also noted this is one of the original neighborhoods in Derry. He suggested including the back end of Fenway and the golf course. At the next meeting, the Board can schedule the date for the public hearing. Owners would be notified and if the change is approved, the suggested changes would be forwarded to Town Council for approval.

Rockingham Road Area Rezoning Discussion/Historic District Overlay

The purpose of the workshop is to consider rezoning of the parcels identified below 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.

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. Granese advised this was a continuation of previous workshops, specifically focusing this evening on the draft Historic District Overlay. The Board has copies of the draft and it has been posted on line since the last workshop. He had asked that any members of the public with comments should forward those comments to the Board via email. The Board will not be accepting public input this evening; there are people from the state here this evening.

Mr. Sioras advised that at the last workshop, Ben Wilson from the State suggested the Board invite additional people to review the draft ordinance and attend the workshops to provide comment and direction. He reported he spent a few hours with Maggie Stier and Nadine Peterson looking at the Robert Frost Farm, Route 28 and other areas of Derry to gain a perspective on the history of the town. He introduced Nadine Peterson, who is a Preservation Planner with the New Hampshire Division of Historical Resources.

Mrs. Peterson advised Ms. Stier who works for the NH Preservation Alliance was unable to attend the meeting this evening. Mrs. Peterson works for the Division of Historical Resources and has been asked to assist the community with preservation tools and a review of the draft ordinance. She has been asked to speak to the Board this evening regarding the tools that are available for this area and other parts of Derry. She took a quick look at the draft. It is very different from what she has seen in other overlay districts. She has pulled some other examples from Bristol and Canterbury. In a traditional overlay, communities typically establish Historic District Commissions that provide advice to the Planning Board. She did not see that component in the draft and is concerned regarding changes to existing historical resources. The other concern is there is normally a very defined area and this draft is unclear as to where the overlay would be; is this just for this area or will other areas of town be included? Her office normally proposes focusing on an area with high architectural integrity. The East Derry Village area is on the National Register of Historic Places. That might be an area of focus. These types of ordinances can be contentious for a community.

She suggested establishing a process with an easily visible area, and then expanding from there. The Robert Frost area has had some changes over the years. A traditional overlay might not be the answer there. Neighborhood Heritage District is a newer innovative land use tool the Board can consider. The community would establish an advisory committee. It does not have as much teeth or detail as the traditional overlay, but may be the way to go for this area. It gets the neighbors involved. No one in the state has done one yet.

If Derry decides to do an overlay district, especially in East Derry, it may open the town up for grant funding for Certified Local Government projects. This would require a local Historic District Commission. Every year, the state has only five to six communities that apply and there is \$50,000 to 60,000.00 in Federal funds available each year. This is a good funding source for communities. She was glad to see the older historical resources survey that was performed in the 1980s. She would recommend updating that survey so that the town has a current list of defendable resources. A new survey could be funded with this grant money. Their grants typically range from \$10,000.00 to 20,000.00.

Mrs. Peterson recommended tools to preserve character around the Farm would include additional easements or buffers on adjoining properties. When a town changes the zoning from a lighter use to commercial, there is a potential to degrade the historical aspect; however, Derry has architectural regulations in place that will help with that.

Mrs. Peterson offered to come out to the community and hold a weekend workshop to discuss and prioritize preservation areas in town.

Mr. Granese noted the Board did receive a number of emails from residents regarding the draft ordinance. The Board has this material to review.

Mrs. Heard asked if the information on the Neighborhood Heritage District was in the materials the Board would receive from Mrs. Peterson? It is. Mrs. Peterson also advised that information can be found online at www.nh.gov/nhdhr under Quick Links.

Mrs. Roach said she looked at the list of criteria the Board members put together. Mr. Chase has a succinct list. Perhaps the Board could do a special General Commercial district where there could be expanded buffers and only allow specific uses in that zone.

Mrs. Peterson advised her office does not do the planning, but will provide the tools to help manage the change. Mr. Sioras noted that when they toured the town and looked at various areas, Ms. Stier had noted the Board could put specific criteria in place to protect that stretch of Route 28. That was done in the downtown. Mrs. Roach felt the Board could be very specific with regard to uses that are allowed; for example, they can say drive-thru restaurants are not allowed. Mr. Sioras agreed the Board could say it did not want certain types of uses in the zone. Mr. Granese commented Mr. Chase had suggested excluding anything distracting to historical sites in this zone.

Mrs. Peterson said there is a recognizable stretch near the farm that gives one a feeling of the farm, and that is what the Board wants to protect. Mr. Granese said that is why the Board has been treading lightly with this matter. Mrs. Peterson noted the public can be fearful of this type of change and it is important for the Board to be open and hold workshops. It can take a long time to get this type of change through.

Mr. Sioras advised the Board will hold one workshop a month on this issue. A few of the Board members have provided review comments on the draft. Mr. Granese noted the Board has a lot of information and welcomes input. He suggested emailing input to the Board so that the draft can be revised for the next workshop.

Mr. Sioras suggested a site walk to the farm in the spring when the weather is better, so that the Board can get a better grasp of the topography of the road. They will be able to see that the Reynolds' property and the Smith property (nursery) topography makes it difficult to get certain types of development.

Mr. Granese suggested scheduling the next workshop for the second meeting in February. Mrs. Robidoux advised the Board may be discussing the adoption of the Master Plan that evening, but that should not take very long. Mr. Sioras noted the Board may need to save some time on that agenda to deal with more public road petitions as well. Mrs. Roach thought that the month of March would then be a better time to review all the materials.

Mr. Granese suggested scheduling the next workshop for the first meeting in March. Any public input should be emailed to the Board within the next week or so to ensure the Board members have adequate time to review the comments. Hopefully, the Board can come up with a smaller, more user friendly draft.

Mr. Park had comments regarding the rezoning of this area. He does not like the solutions he has seen so far. The Historic Overlay is burdensome. He did not think the Board could make a wholesale change to General Commercial because he felt that opened a can of worms. The town can't spot zone. What takes changes out of the realm of spot zoning? Mr. Sioras advised there can't be a standalone parcel in a zone. There needs to be continuity of parcels. That is per state statute. Mr. Park thought the Board could make a zone out of three lots.

Mrs. Roach stated she was leaning towards creating a separate, very specific general commercial zone and would be happy to draft something for the Board to review. This is a small area. Enforcing architectural design regulations can balance the area. Mrs. Heard would like to see what the Neighborhood Heritage Districts are like and how that might benefit the town.

There was no further business before the Board.

Motion to adjourn by Roach, seconded by Heard; the motion passed unanimously and the meeting stood adjourned at 8:19 p.m.
