

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 3, 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; John O'Connor, Members; Frank Bartkiewicz, Darrell Park, Alternates

Absent: Gary Stenhouse, Paul Hopfgarten, Brian Chirichiello, Randy Chase, Maureen Heard

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.

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

Escrow

#10-06

Site Plan – Firewood and Landscape Storage

Paul George

Cash Escrow

PID 03035-001, 230 Rockingham Road

The request is to establish cash escrow for the above noted project in the amount of \$19,051.20.

Motion by Roach, seconded by Choiniere to approve as presented. The motion passed with all in favor.
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#10-07

Harvest Estates

Ronald Mead

Town of Derry

Cash Escrow

PID 10015, 10025, 10024, Hampstead Road

The request is to release cash escrow, held by the Town of Derry for the above noted project in the amount of \$20,000.91, plus any accumulated interest. This is the final release and the amount to be retained is zero.

Motion by Roach, seconded by Park to approve as presented. Discussion followed.

Mrs. Choiniere confirmed the new developer for the project has his own escrow posted for the project. This returns the remaining funds from the first escrow back to Butler Bank. Mrs. Robidoux asked for a correction to the typographical error on the parcel identification numbers to accurately reflect PIDs 10015, 10025 and 10024.

The motion passed with all in favor.

Minutes

The Board reviewed the minutes of February 17, 2010 meeting and the February 24, 2010 workshop.

Motion by Roach, seconded by O'Connor to accept the minutes of the February 17, 2010 meeting as corrected. The motion passed in the affirmative with Roach abstained.

Motion by Roach, seconded by Bartkiewicz to accept the minutes of the February 24, 2010 workshop with a correction to the date of the workshop in the header. The motion passed with all in favor.

Correspondence

The Board has received a letter from Attorney Thomas Grodt regarding hours of operation at the Halligan Tavern (former Firehall Pub & Grille). Mr. Sioras advised that he received a call from Attorney Steven Clark this afternoon and the matter should be referred to Mr. Mackey in Code Enforcement.

Motion by Roach, seconded by O'Connor to forward this matter to Code Enforcement to be handled by the Code Enforcement Officer. The motion passed with all in favor.

Mr. Sioras will forward the letter to Mr. Mackey for his attention.

Other Business

Voluntary Merger 56068 & 56067 – Godin

Mr. Sioras advised this is a voluntary merger of property owned by Gary and Joann Godin, 36 North Shore Road. When two abutting properties are owned by the same parties, the lots can be merged. The property will meet the zoning in the district which requires one acre lots. There is an existing home one lot, the other lot is vacant. He would recommend approval of the application.

Motion by Roach to approve pursuant to RSA 674:39-a, a voluntary merger of Parcel 56068 with Parcel 56067, retaining parcel 56068 and deleting parcel 56067. The motion was seconded by Choiniere.

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

Robert Frost Area Rezoning Workshop

Mr. Sioras advised the next workshop to discuss the Robert Frost area rezoning has been moved to March 24, 2010 at 7:00 p.m. The Board will also hold a public hearing on that evening to adopt the Master Plan. It was noted that meeting will be televised and the public is invited to participate.

Public Hearing

Pinkerton Academy

PID 43001, 22 North Main Street

Acceptance/Review, Site Plan and Determination of Regional Impact Construction of a 57,625 square foot classroom building

Mr. Sioras provided the following staff report. The Board has seen this application before. It is for the new Freshman Academy building at Pinkerton. The Board previously approved the application over a year and a half ago, and granted 2 extensions of approval. The third request for extension was denied by the Board in September of 2009, and at that time the Board recommended the applicant return to the Board in the spring with a new submission that would re-start the time clock for a new approval. There have been no changes to the design or to the Land Development Control Regulations since the original approval on March 5, 2008. This submittal did not require review by the outside engineer. Jay Heavisides and Mary Anderson are both here this evening to answer questions of the Board if necessary.

The floor was opened to public comment and there was none. Review went back to the Board.

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

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

Motion by Roach to approve pursuant to RSA 676:4,I, completed application, the site plan for Pinkerton Academy, PID 43001, 22 North Main Street, with the following conditions: subject to the owner's signature or appropriate designee, subject to onsite inspection by the town's engineer, establish appropriate escrow as required to complete the project, obtain written approval by Doug Rathburn that the GIS disk is received and is operable, update Note 6 on Sheet 2 of the plan to indicate the new expiration date of the amended Alteration of Terrain permit, remove Note 9 as waivers are no longer required, and that the above conditions be met within 6 months. Choiniere seconded the motion.

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

To Amend Section 165-30 Zoning Map, by rezoning certain parcels from Medium High Density Residential District zone to Medium High Density Residential District II.

Mr. Granese advised the purpose of the amendment is to rezone 68 properties that lie within the corner of Birch Street and East Broadway to include Oak Street, Park Avenue, Fenway Street, Grove Street and Wilson Avenue from Medium High Density Residential to Medium High Density Residential II. If the amendment is adopted, these properties will be subject to the Medium High Density District II zoning requirements contained in Section 165-45.1 of the Derry Zoning Ordinance. An amendment to the zoning map delineating the lots in the Medium High Density Residential II District is being adopted to reflect these changes. For the lots affected, this amendment is COMPREHENSIVE IN NATURE.

Mr. Sioras advised the rezoning request was initiated by a citizen petition from the neighbors. The Planning Board held a workshop a few months ago and then scheduled the public hearing. The neighbors were notified. In general, the area encompasses Wilson Ave, Oak, Park, Fenway, the south side of East Broadway including the golf course. This is similar to the rezoning request for the Nortonville neighborhood, across from Parkland Hospital, that was heard by the Board to change from higher density residential to lower density residential and to exclude multi-family housing. His office has received phone calls and several emails.

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

Mr. Sioras read the following into the record at the request of resident Martha Morini, who was unable to attend the meeting this evening; she phoned him this afternoon.

“Thank you for taking the time to enter our statement into public record for the above mentioned zoning change. We, Thomas and Martha Morini, living at 14 Park Avenue for the past 20 years are in favor of changing the zone to Medium High Density Residential II for the 68 properties. The change is critical in order to maintain the authenticity of Derry’s downtown area. Park Avenue and its surrounding, narrow, winding streets are filled with some of the oldest residences in Derry. Equally important, these residences make up neighborhoods that give Derry its character.

The town wisely reshaped our “downtown Broadway” into a lovely street...no wires, nice sidewalks, trees, well-maintained storefronts. With this came the opening of new restaurants and local businesses and a feeling of pride. This project has given a quaintness to our town and demonstrates how important careful planning is. The 68 properties make up a neighborhood with a long history. Our neighborhood and the restored Broadway complement one another. Maintaining residences of historical importance, all clustered together in a neighborhood, says that Derry cares about its future by valuing its past.

Under current zoning, multi-family units could be built by purchasing existing vacant lots, or by purchasing two properties with older homes as “tear downs”. We run the inevitable risk of losing historical homes, a real neighborhood and a key component of what makes Derry “Derry”.

On a different note, multi-family units will increase population, traffic in an already constricted area. We already have more renters living in our little neighborhood due to some single family homes becoming rental properties. This, in itself, has caused problems with traffic. We have renters who don’t know and/or ignore the fact that Park Avenue and Oak Street are one-way streets. We have renters cutting across the apron of Park Avenue at Broadway to enter a driveway into a multi-family unit on the corner of Park and Broadway. The bottom line is: owners of multi-family units don’t live in them; it’s of little concern how their renters treat the neighborhood. Can you imagine an apartment building?

We want to keep our neighborhood a neighborhood of residences owned by families committed to Derry, residences that hold the history of Derry, residences that fit into Derry’s plan to make our town a cohesive unit. We want the zoning change. Thank you very much. Sincerely, Tom and Martha Morini, 14 Park Avenue.”

Mrs. Roach read the following email into the record from Larry Cunningham who was also unable to attend this evening. “Dear Planning Board: I am unable to attend this hearing. I believe it is extremely important for towns to protect their neighborhoods. The zoning change proposed this evening will do just that. I urge the board to vote in favor of rezoning for the 68 properties that are within the noted boundaries from a

Medium High Density Residential District to a MEDIUM HIGH DENSITY RESIDENTIAL DISTRICT II. If left as is, the danger of losing a downtown neighborhood in Derry is very real. Save our Neighborhood. Thank you, Larry Cunningham, 20 Oak Street, Derry, NH 03038.”

Mrs. Roach also noted the Planning Office received four telephone calls from different residents of Park Avenue who could not attend this evening who spoke in favor of the change.

The floor was opened to the public.

Chris Lunetta, 7 Wilson Avenue, provided additional information for the record. In keeping up with the public support for the change for the 68 homes, he presents 72 signatures of owners and residents who are all in favor. He could not meet with everyone, but he did not speak with a single person who was opposed to the change. He provided the signatures to Mr. Granese and the document was accepted into the record. He has previously expressed his opinion on this change to the Board,

Melinde Lutz Sanborn of 2.5R Fenway said she was curious as to what this change might mean to people trying to sell their property. She lives in a condex/multi-family home and has since 1986. She was not a recipient of a letter from the Planning Board and was advised of the meeting by a neighbor. What happens to her property? Is she restricted from selling it as a multi-family home? She is in the second home as you travel from East Broadway onto Fenway on the left. The Board advised that lot is not included in this change. Ms. Sanborn asked if the description provided for the change was then not accurate with regard to people residing on Fenway? Mrs. Roach advised the notice listed specific lots affected by the change. The status of her property would not change. Ms. Sanborn asked then how is this change preserving the character of the neighborhoods if lots have been cut out? Mrs. Roach explained the Board used the end of the golf course as a boundary. There was a question as to whether the large apartment building across the street from Ms. Sanborn was included and the Board later advised it was included in the proposed change.

Kathy Garafalo, 8 Park Avenue, advised she is in favor of this change. They have lived there for 30 years. The main reason they are in favor is that the amount of traffic on Park Avenue has increased tenfold and the traffic speed has been increasing. All the neighbors are in favor, but many could not attend. Everyone takes pride in their homes and their history. Some of the rental properties have been an issue. There is a concern with regard to multi-family because of the historic nature of the downtown and the traffic issues. Many people don't abide by the traffic laws. This is downtown Derry and there is increased traffic. Most people in the downtown area take pride in their homes and have raised families there. It is a great family area. It is close to schools and the downtown. But to put in multi-family homes would lose sight of Derry. She takes pride in the town (she was born here) and it is sad to see people would consider building multi-family. For herself and her husband, Peter, they are in favor of this change.

Blanche and Edward Garone, 16 Wilson Avenue also spoke in favor. Mrs. Garone advised they have lived in their home since 1972. She is firmly in support of this change and would hate to see the landscape of the community change. Beaver Brook borders a lot of the land and she understands it is an important watershed. Traffic is an issue as the roads are not built to accept that level of traffic. There are not a lot of sidewalks, so the safety of the children in the neighborhood is an issue if traffic increases. Mr. Garone stated the biggest endorsement for this proposed change is that he and his wife have lived in their home for 37 ½ years and have never considered moving because it is such a lovely neighborhood. It would be a shame to change, in their opinion.

Dr. Jonathan Sobel advised he owns 11 Wilson Avenue. He lived there for 11 years and still owns the house. He would like to present a counterpart to the previous presentations. His overview of the area is that it is contiguous with one of the largest open tracts of land near the downtown, the marshland, Beaver Brook and the golf course. The area of this proposal is squeezed in between the naturally and permanently protected open space, and the downtown. This is a unique area. His perspective is that those 68 parcels enjoy the best of Derry. Residents can walk to downtown, have less impact on the streets, and enjoy the natural outside. He is hearing that people don't want change. The Master Plan allows for the reasonable and coherent development of the town. This particular area is reasonably designated medium high density multi-family and mixed use. It is a good area because residents can walk downtown. Wilson Avenue has no historic value; it was built out in 1967 and consists of California ranches and split levels. There are historic aspects of the area such as the Boyd Farm which was torn down in the 1820's. The area has direct walking access to the Derry Municipal Center, the Library, the hospital complex, two to three churches and restaurants, as well as the Recreation Department. Is the intent to drive multi-family residents out to East Derry or to have them in an area like this where people aren't driving into town and parking? Or, is the intent of the Master Plan to have multi-family in this area so that people are not driving into town to go to doctor's appointments, use the municipal services, or go out to eat. This area is uniquely posed to be a multi-family area as designated by the Master Plan. The smaller lots cannot be built into a large multi-complex. No homes have been torn down in 30 years. The area has water and sewer. He believes his property stimulated this proposal. His 4 acre parcel of land is in the middle and originally was zoned commercial.

Dr. Sobel stated his property is the only property within this 68 lot area with a submitted request and application with the Technical Review Committee for a subdivision. They missed the work session on this proposed change, which occurred during the time they were completing the application at the technical design committee.

As of September 8, 2009, there were no technical objections to his proposed subdivision plan of 11 Wilson Avenue. He noted he did not receive notice of the Planning Board workshop to discuss this proposed change. However, his plan technically and administratively was before the city to apply for a subdivision. His application is compliant with zoning and wetland setbacks. The city lost the blue prints

for the water and sewer lines in this area resulting in delays in the plan, and he expended funds to relocate the lines. The town upgraded water and sewer in the area in 1989. His application has been delayed so that it could become compliant with more strict state and local regulations with regard to stormwater for this project. They are 100% compliant with state, local and federal regulations for their proposal.

His project is proposing 50% of what is allowed for multi-family units. Based on the four acre property he would be allowed 40 units, but is proposing 20. He is proposing an intermediate development, similar to the condominiums on Birch Street, which is contiguous with his lot. His proposal is consistent with the Master Plan which promotes higher density in the core or center of the town close to facilities to serve the people in the area. He feels his project has low impact on the environment because he would utilize town water and sewer and has its own access from Oak/Wilson. The access used to be called the Oak Street Extension. There are people here before the Board tonight who were aggrieved by a Superior Court decision. The Court case took place between 1986 and 1991 with the town and abutters because the abutters wanted to take over the access to his property. The Court decided he owns that access and could enjoy full use of the property and access, including multi-family development. The decision was final in 1991. He understands the concern on individual parcels. One of the parties had said to his surveyor, Mr. Pearson that he would not let this development happen. He believes this is a grudge match. To eliminate multi-family housing in this zone is to stop this development. That is spot zoning. They are being targeted because they have the only application in process. The two people who submitted the petition do not want new people in the neighborhood. This is classic spot zoning, which is illegal. Changing the regulation to eliminate multi-family is contrary to the Master Plan, the intent of which is to bring people to the downtown without having to commute in. This request takes into account the desire of a small number of people. Rezoning here is illegal spot zoning. There was a case in New Jersey which called it "inverse spot zoning" at the Supreme Court level. He feels this change would be a detriment to people at large and to the downtown and reduces accessibility to the downtown rather than improving it. He requests the Planning Board not approve or support this request. It is contrary to the Master Plan and legal zoning.

Mr. Granese asked Dr. Sobel what is now at 11 Wilson Avenue? Dr. Sobel advised a single family residence. He does not reside there and lives out of town.

Mrs. Roach noted that there had been a previous request to rezone a neighborhood nearby, and it had the same intent: to protect the older neighborhoods with smaller homes and streets. It was rezoned a few years ago. She feels it is important to protect these types of neighborhoods. Someone could purchase a few lots and put up an apartment building. These are older, established homes on smaller lots with lots of family longevity. They deserve to be protected. This request is not spot zoning and has been done before.

Mr. Sioras advised there is no formal application on file in the Planning Office. Technical Review Committee is review of a plan by the Planning, Fire, Police, Code and

Public Works departments prior to formal submission. He checked the records and the TRCs date back to 2005. No formal application has been received that would start review at the Planning Board level. There has been discussion on some of the technical issues. TRC applications do not qualify as formal applications to the Planning Board.

Mr. O'Connor asked with regard to the access road Dr. Sobel owns that leads to Oak Street. Does the town maintain or plow it? It does not. The width of the access road into the property is 50 feet. Dr. Sobel indicated the access way on a plan overview. It was known as Oak Street Extension and is 50 feet by 145 feet. It used to cross over Beaver Brook. That is why the plan proposal is called Residential Site Plan for the Crossing at Beaver Brook.

Chris Lunetta, 7 Wilson Avenue, stated with regard to the historic aspects of the neighborhood, his home was constructed in 1879 and is an exact replica of the Robert Frost house. There is rumor that Robert Frost's son was born in this house, birthed by a midwife which admittedly has minimal historic value. Dr. Sobel has agreed this area is important for walkability but wants to take the character away. If he has a plan that meets all of the requirements, why has it not been approved? He also noted that the Birch Street apartments that were mentioned are in a different zone; they are not located in the MHDR.

Laura Cunningham, 20 Oak Street, commented if Dr. Sobel feels that he is being picked on because he is the only one that has submitted an application, that is because no one else in the neighborhood would do that because they love their neighborhood.

Chas Pearson, 75 Main Street, Sandown, advised he is the surveyor of record for the proposed site plan. He spoke with regard to the time delays with the project. They first met with Mr. Sioras and Mr. Mackey to review the regulations that were currently in place. Based on their comments, he then met with the Conservation Commission, received their input and then began the design of the project. He met with the TRC in December and found there was a different interpretation of the wetland setback boundary by Mr. Durrett. He went back and forth with Mr. Durrett. In the meantime, the State made changes in the designation of Beaver Brook to a Class IV and so they had to comply with the new Shoreland Protection. He has been changing the plan to meet the changes of state and local regulations. The design retained the single family home that currently exists at 11 Wilson Avenue, which would be a buffer between the development and the Garone residence. In order to do that, they gave up some of their density. Mike Fowler and Mark L'Heureux determined earlier this summer that essentially all of their issues had been taken care of, with the exception of the location of the sewer. There is an existing sewer easement that travels east from the circle at the end of Wilson Avenue to the sewer interceptors. The Town had done work on the water lines and there was question as to whether the existing easement would be sufficient. It was found it was not and that the water line was put in across the easement; this resulted in Mr. Pearson having to redesign for a new sewer line and request an easement from the Garone's. This was discussed with the Garone's and it

was requested that they allow a 5' expansion of the sewer easement across their property. Dr. Sobel could use his own property and go to the south along the Garone property line, but that would eliminate the large vegetative buffer along the Garone's property. That is when this proposed zoning change was initiated, unknown to Mr. Pearson or Dr. Sobel. Mr. Pearson said the Garone's and others in the area don't want this project to move forward. There have been many changes in the regulations that have had caused an adjustment in the plan design.

Mr. Sioras agreed there were changes in regulations. There were issues with wetlands and some disagreement with regard to the wetland buffer distances. Mr. Durrett's expertise is wetlands and interpretation of the buffers. This plan came to TRC five years ago. Part of staff's job as the Technical Review Committee is to sit down with any potential applicant and review the technical part of an application. Many months would go by and the town did not hear anything with regard to this proposal. Comment had been made at one point that the housing market was slow and the plan was going to be put on hold. Staff's job is to review the technical issues, but there has been no formal application before this Board so the proposal has no legal standing. The town can review a plan for technical aspect. Yes, there were changes in the regulations, but the applicant should take responsibility for not submitting a plan. The town did not hold up this project for 5 years.

Brenda Borders, 3 Fenway, advised she has lived at her property for more than 20 years. She has always thought it strange that the town expands and builds more schools without installing sidewalks. Traffic is congested on their two way street. How could the town consider a multi-family unit like that and the impact that would have on the schools or without sidewalks, unless it was for senior citizens. Their street is narrower than those behind them and those have sidewalks. Families living in a multi-family would have the same issues. The largest impact would be on the children in this community.

Tony Bruno, 19 Oak Street, has lived there for over 30 years. He spoke with regard to the drainage issues in the area. There is no proper drainage, so water sits on Wilson Avenue and at times can be a foot deep when it rains. If this gentleman wants to put in new drainage with 40 foot wide roads to meet the current regulations, it would require land taking for some properties and he would lose a 30 year old fruit tree and another neighbor would lose his stone wall. He is in favor of the proposed zoning change. Mr. O'Connor asked what was the area like after last week's rain storm? Mr. Bruno reported he had cleaned out the catch basin last week the day before the storm, and it still flooded out. Beaver Brook flooded to the roadway. Mr. Sioras confirmed that this area is within a floodplain.

Edward Garone, 16 Wilson Avenue, advised that they have a garden located on the sewer easement area. That area had over 3 feet of water on it, which is not an uncommon occurrence.

There was no further public comment and the discussion went back to the Board.

Mr. Sioras advised that 71 East Broadway is included in the zone change. The Board had decided properties on the south side of Fenway on East Broadway would not be included in the proposed change. Any existing multi-family use would be grandfathered. Any expansion of those uses would require a variance if this change occurs.

Motion by Roach to forward the proposed zoning change to Town Council for consideration and to indicate the Planning Board supports the proposed zoning change. O'Connor seconded the motion.

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

Motion by Choiniere to adjourn, seconded by Roach. The motion passed with all in favor and the meeting stood adjourned at 8:02 p.m.