

The Planning Board for the Town of Derry held a public meeting on Wednesday, May 5, 2010, at 7:00 p.m. at the Derry Municipal Center (3rd Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: John O'Connor, Vice Chair; Jan Choiniere, Secretary; Randy Chase, Administrative Representative; Brian Chirichiello, Town Council Representative; Maureen Heard, Jim MacEachern, Members; Frank Bartkiewicz, Alternate

Absent: David Granese, Gary Stenhouse, Dave McPherson, Darrell Park

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

Mr. O'Connor, Chair Pro-Temp, 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, agendas and other materials.

Escrow

10-14

Project Name: Firewood & Landscape Storage

Developer: Paul George

Escrow Account: Paul George

Escrow Type: Cash Escrow

Parcel ID/Location: 03035-001, 230 Rockingham Road

The request is approve Release #2 in the amount of \$8,527.68 for the above noted project. The amount to retain is \$4561.92.

Motion by MacEachern, seconded by Choiniere to approve as presented with the condition that Bob Mackey sign the release form. The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the April 21, 2010 meeting.

Motion by MacEachern, seconded by Heard to accept the minutes of the April 21, 2010, with verification of the correct spelling of "Jones and Beach". Choiniere seconded the motion. The motion passed with all in favor.

The Board reviewed the minutes of the site walk held on May 1, 2010.

Motion by MacEachern, seconded by Bartkiewicz to approve the minutes as written. The motion passed with all in favor.

Correspondence

Mrs. Choiniere advised the Board is in receipt of request from PSNH to schedule a public hearing to discuss tree trimming on English Range Road and Stark Road. Mr. Sioras advised a public hearing will be scheduled in June. Every two to three years, PSNH performs this work. A public hearing is required as English Range Road and Stark Road are designated as scenic.

Mrs. Choiniere also advised the new issue of "Supply Lines" is available. There will be an LGC workshop "Practical Steps for Planning Community Transportation" on May 27, 2010, at the Local Government Center. If anyone requires additional information, they should see Mr. Sioras.

Other Business

None.

Motion by MacEachern, seconded by Choiniere to recess the meeting pursuant to RSA 91-A:2, I-b, for the purpose of consultation with legal counsel, seconded by Choiniere.

Chirichiello, Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor all voted in favor and the motion passed.

MacEachern moved to allow Mr. Sioras, Mrs. Robidoux and Attorney Steve Clark to join the session. The motion was seconded by Choiniere.

Chirichiello, Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor all voted in favor and the motion passed.

The Board recessed at 7:05 p.m.

Motion by MacEachern, seconded by Heard to reconvene the Planning Board meeting.

Chirichiello, Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor all voted in favor and the motion passed.

The meeting reconvened at 7:35 p.m.

Mr. O'Connor advised Mr. Bartkiewicz would be seated for Mr. McPherson this evening.

Public Hearing

MTM Realty, LLC

PID 29195, 32, West Broadway

Acceptance/Review, Site Plan Determination

Addition of outdoor seating and relocation of dumpsters

Steve Trefethan called Point of Order. The Board determined he would be allowed to speak. Mr. Trefethan provided the Board with a copy of email correspondence between Mr. Chirichiello and Russ Marcoux, who at the date of the email (July 2, 2005) was the Town Administrator. Mr. Trefethan advised he is the manager of Dom Vincent, LLC, located at 40 West Broadway. He stated he received a copy of the email this evening, and read the email aloud. A copy of the email was retained for the record. Mr. Trefethan stated he wants a fair hearing this evening, so the email is an issue tonight. He believes that one or more members of the town may have formed an opinion that is damaging to himself and his reputation. Being treated by a public servant in this manner is insulting to the hardworking members of the town. He would like Mr. Chirichiello to recuse himself from this matter, to resign as a Town Councilor and to apologize. Mr. Chirichiello stated he would step down this evening in the interest of a fair hearing and to let the process move forward, but he would not resign as a Town Councilor. He also reiterated that this email is from 2005.

Mr. Sioras provided the following staff report. The applicant is MTM Realty. The property is located at 32 West Broadway and is known as The Halligan Tavern. The purpose of this plan is to relocate the dumpster and to show the outdoor seating and the architectural rendering of the seating railing area. Town Department signatures are not required. There is a waiver request from LDCR Section 170-67 B.1, for the solid waste storage area. The waiver request letter is attached. No state permits are required. In May of 2005, the Planning Board waived a site plan pursuant to LDCR Section 170-51. The outdoor seating was approved by the Planning Board back in 2005. Today, the town has architectural design review regulations which were not in place at the time of the May 2005 approval. Per direction and his discussion with Town Counsel and the Code Enforcement Director, it was determined that the Planning Board shall review the renderings as well as the waiver request. The Board should request additional information from the applicant with regard to the seating capacity. The final seating number would be determined per the Building and Fire codes. Mr. Sioras recommended approval of both the waiver request and the site plan determination application. He introduced Tim Moran, one of the owners of the property.

Tim Moran advised Robert Moran, 540 Main Street, Winchester, Massachusetts, was present to assist him with the process this evening.

Mr. Robert Moran asked if the Board had copies of the plan showing the dumpster. The Board does. Mr. Robert Moran advised the restaurant has been open since January of

this year. Dumpsters are required to facilitate the removal of refuse and recyclable material. The area is shown on the plan. The dumpster is located to the southwest corner of the lot and the applicant is proposing to put the refuse area in the corner of the lot, approximately 18 feet from the rear and 3 feet from the western side lot line. They have two dumpsters, one is for recyclables and one is for refuse. The proposal is to locate the area as far as possible from the southwest corner of the building. That is a fire lane and they need the maximum amount of feasible space for safety vehicles and to facilitate traffic around the building. They request the ability to place it as far into the corner as the situation on the site will allow. At the southern border of the property is an existing buffer of approximately 15 feet. This is a non paved area. The intent is to put the dumpster 3 feet into the paved area. They do need space between the two containers for access. This allows safety vehicles, fire equipment and traffic to come around the corner. When the dumpsters are picked up, two to three times per week, the truck drivers drive into the containers, lift them up, empty them and replace them. Periodically, the dumpsters are removed for sanitizing and replaced. The new location would allow access from Central Street and it would allow less time on site for the refuse trucks, and keep the trucks away from the building. They do not feel this deviates significantly from the regulations. It is the safest location, and the dumpsters will be the furthest removed from Broadway and Central Street sight lines as possible.

Regarding the roof deck, Mr. Tim Moran advised the structural plans show the proposed deck addition. The question had been raised regarding the soundness of the structure. They are asking permission to build a deck and leave it open during the hours of operation which are 11:30 a.m. to 1:30 a.m., daily.

Mr. O'Connor asked for clarification as to the orientation of the deck on the plan. The applicant did so. Mr. Robert Moran advised they are proposing the same dimensions as in 2005. Mr. Tim Moran stated an engineer tested the structure and it is sound and similar to that proposed in 2005. Mr. Robert Moran advised that two accommodations have been made for two means of egress and accommodations can be made within the building to remove the window and add stairs.

Motion by MacEachern to open the public hearing, seconded by Choiniere. All voted in favor and the public hearing opened.

John Griffith advised he is the attorney for Property Portfolio Group (PPG), located at 7 Central Street. Barbara Woodward, manager of PPG is also present this evening. He provided handouts for the Board which were retained for the record. Attorney Griffith advised they have been noticed for a site plan determination and have prepared themselves accordingly. Is it clear to the Board that this is what they are hearing?

Mr. O'Connor advised the Board is hearing a waiver request and reviewing architectural renderings for outdoor seating. Attorney Griffith stated if the Board has a question about what it is hearing, then the Board needs to continue the hearing. He was noticed for a Site Plan Determination and the agenda states that as well. Mr. O'Connor apologized for misspeaking and advised this is a site plan determination. Attorney

Griffith said the town no longer has specific forms for Site Plan Determination. Mr. Sioras advised that the Board is reviewing an application for Site Plan Determination. The Board can decide if they need a full blown site plan. Attorney Griffith stated the applicant has filed an application for Site Plan Review with "Determination" written above it. That is ambiguous. Mr. O'Connor reiterated, the Board is reviewing a Site Plan Determination application.

Attorney Griffith said although Mrs. Robidoux has been very helpful, he objects to this Site Plan Determination as it is not an application. There is no provision in the state statutes. He understands that if there is a mild variation then it does not need to come before this Board, it is done administratively by the administrative staff. Because it is here means this is more than a slight change, so site plan review is required. This is not a rubber stamp of a prior approved plan. Previously, the Board waived formal site plan approval. That plan showed a future function room that had a roof with walls, not an open deck. He referred to page 19 of his handout. This shows the prior plan. If the Board looks to the right, it shows the roof and sides. At the time the site plan was waived, the application proposed 120 seats. Page 12 shows the minutes of that meeting where the question was raised with regard to onsite parking. The requirement was one space per three seats which would have been 40 spaces per the site plan regulations. Mr. Sioras later clarified when the Halls asked to increase the number of seats, that more parking was required. (See the email to Russ Marcoux on page 37.) The initial capacity was to be 120 seats. How many extra seats are the applicants planning? The Halls had planned an additional 50 seats which would have been an increase of 40%. This is not a slight expansion. That is a huge expansion, especially downtown where there is a parking shortage and this owner does not have the same number of parking spaces as the Halls had available. They no longer have 18 spaces at the Halcyon Club. Their parking has shrunk with a 40% increase. Mr. Sioras did not include the staff parking when he made the original calculations. Attorney Griffith is sure this was an innocent mistake. With the staff, that adds an additional 20 seats, so 60 parking spaces were required in 2005. Now, the applicant would need about 90 parking spaces. This is not a simple thing to be passed because they had it before. If you look at the original plans that were submitted (page 17), the dumpster is shown to the rear of the building. If the plan was approved, this is where the dumpster was supposed to be. If what the Board did then was final, the dumpster is final too. He had asked Mrs. Robidoux about staff review of these types of applications. He has noticed in reading minutes of Planning Board meetings that some applications have staff review, some do not. The regulations do not indicate why some plans have staff review and others do not. This particular application did not have staff review. The plan in 2005 had staff review after the May 18, 2005 meeting, and when the previous applicant wanted sidewalk seating. He has taken the liberty of preparing a Pro Forma staff review. The Board needs to know the seat numbers and can't decide without knowing the exact number of seats. The existing parking is 10 spaces. The additional parking is indicated at zero. With regard to the lighting, what is it? The 2005 plan would be in accord with the current lighting regulations and he does not think there is any lighting back there. Signage is existing, and the property is on town water and sewer.

Mr. O'Connor asked how long Attorney Griffith planned to speak. Attorney Griffith said he would like an hour. Mr. O'Connor advised that he would allow three to five more minutes and asked Attorney Griffith to wrap up his comments and provide a summary. Attorney Griffith said he did not believe the Board had enough information before it to make a decision and it appeared the Board did not want to have the information. He has provided the information. There is no mention of the Court imposed 20 foot buffer between this property and PPG. The buffer is not 15 feet. If the Board approves the dumpster waiver, it also waives the 20 foot buffer in the back that was imposed by the Court. When the Board looks at the Site Plan Determination, the roof top deck calls for a 4 foot fire escape on the side facing Rig-A-Tony's. This is not the first time the property has come before this Board for a waiver. In November of 2008, the property owner requested a waiver which is on his page 40. The Board approved the waiver in 2008. Page 40 shows an alley way between parking and the building of 12 feet. The fire escape comes down 4 feet. This will only leave 8 feet. A fire truck won't fit in that space; not much will. If people park there near the edge, a car can't get by. There is no hardship with regard to the dumpster. The applicant wants the dumpster as far away as possible from the building, as well as foot and vehicular traffic, but this will put the dumpster with its odors close to people who can't move away from it. They live there. That is not fair. It is not a hardship. This Board has indicated that it is business friendly. There are other existing businesses around this restaurant. PPG owns and operates an existing multi-family building that has a stinking dumpster there. The dumpster is illegal now because it is not located 25 feet from the property line and is partially in the buffer. The dumpster stinks and is affecting the business of PPG. PPG can't rent units.

Mr. O'Connor asked if Attorney Griffith was not in favor of this proposal? Attorney Griffith indicated he had stated he was opposed at the beginning of his presentation. He is opposed to Site Plan Determination because it is not legal and defies the definition of site plan determination in the Board's own codes. The dumpster has no hardship and no other options have been reviewed.

Mr. O'Connor thanked Attorney Griffith for his comments, advising him his time was up and asked that anyone in favor of the application approach the Board.

Neil Wetherbee, 18 Worthley Road, spoke as a patron of Halligan Tavern. For a business that has been there such a short time to seek expansion is a great thing. We are trying to revitalize the downtown and in his trips there, he has seen an increase in foot traffic in the downtown. The use of the municipal parking lot has increased which has helped drive out some of the riff raff in that area. Overall, he thinks this is a great proposal and hopes this application is approved.

Mr. O'Connor asked that anyone else opposed to the application speak. Barbara Woodward advised she is the manager of Property Portfolio Group, located at 7 Central Street. For fifteen years, she has been a visionary investor, business owner and taxpayer in downtown Derry. She has a vested interest in the healthy growth of the downtown. She bought a historical building in a blighted area and sacrificed labor, time and money to upgrade PPG's property. She created green space and wonderful

apartments, utilizing the codes of the City of Manchester when Derry did not have codes. Mr. Kelley complimented her on her work twelve years ago, and afforded advice on code and safety regulations. She also worked with Pvt. LaValley of the Fire Department who assisted her and provided guidance. She advertised romantic apartments for professionals and others, citing the attributes of Derry including the Opera House and fire station. She attracted long term residents and was able to raise rental rates to \$1000.00 a month. During 2005 she planned to upgrade the property because she believed in its potential. However, since 2005 PPG has been forced to expend one million dollars in litigation to protect and defend what was built. PPG is not against growth or change. Positive change and growth means positive prosperity, positive property valuation, business growth and a healthier economic climate. This can only be achieved if the citizens are heard through the codes which afford equal protection for all. Because of non enforcement of codes and procedures, neighbors have been pit against neighbors. The town has bankrupt one owner and appears to have indemnified the present owner. PPG is not properly screened and protected from offensive actions of the more intense use next door. PPG is being exposed and imposed upon by unreasonable actions such as smells, smoking, prying eyes into private space and views of open dumpsters, pests, garbage, waste, dumpster noise until 1:00 a.m., diesel truck fumes and noise, unsightly air conditioners, tenants blocked into or out of their parking spaces, flooding of the patio and garden space, and no water pressure during the day. Now they want to expand the use and put the dumpsters closer to the abutter. She implores the Board not to allow further taxpayer dollars to go to the enrichment of one taxpayer and to stop the unjust treatment of the abutters. Put an end to pitting neighbor against neighbor, and do not allow further encroachment into the buffer, and not foist what the owner's admit would offend foot traffic and put it where people can't move and are forced to see it. She submitted a petition signed by rental tenants and pictures in support of her comments. It was noted that Unit 2 is currently empty. Mr. O'Connor made note of that on the petition and initialed it and so advised Ms. Woodward.

Mr. MacEachern asked if Ms. Woodward lived at 7 Central Street? She does not. She advised some of the pictures were taken by a tenant who filed a complaint to her. Ms. Woodward stated she keeps a low profile regarding meetings such as this because she does not want to lose tenants. This particular tenant stated his son had to be grabbed and brought into the home because of the diesel fumes which enter doors and windows. When vehicles offload at the Municipal Center, they do so behind a barrier which protects pedestrian traffic from the view. People don't even live around this building that could see the offloading. How much less are they [pedestrians] offended than her tenants who have to look at this daily? The food delivery truck blocks her tenants into the driveway. Each one of her tenants has been blocked in on separate occasions. The water runoff damages the lawn and the place where her tenants can sit. It is what they pay for and they have a right to not be offended by the things they are offended by. This Board has the ability to request that she be protected from the day to day operations of the restaurant. She has spoken with the owners and they are willing to help and will do what the Board suggests.

Mr. O'Connor noted the Board only has jurisdiction this evening over the waiver for the dumpster and the architectural review of the outdoor seating. Ms. Woodward disagreed. Her tenants suffer from existing conditions that do not comply with the Derry code. Why compound that by adding to it when the town has not solved the ~~existing~~ existing problems with this property. PPG has a vested interest in the downtown. She upgraded before anyone because she realized the potential that exists for the downtown. She has no objection to the restaurant or their growth, but not if it is given without protection for her business. Her property value has dropped by more than half.

Mr. O'Connor thanked her for her comments and asked if there is anyone who wished to speak in favor?

David Milz, 12 Bonnie Lane, spoke as a citizen and an ex member of the Housing and Redevelopment Authority. He believes this is a good opportunity for Halligan Tavern to expand its business and believes this is a good thing for the downtown. The downtown needs the liveliness that Halligan Tavern has added, and this provides a much needed economic benefit for the downtown.

Steve Trefethan of Dom Vincent, LLC, 40 West Broadway, spoke in opposition to the application. Dom Vincent is a four story, mixed use structure. Most of the bedrooms are on the rooftop side. Odors, dumpsters, parking noise, hours of operation and open rooftop for drinking will cause many issues and devalue his property. Privacy will also be at risk. He represents 44 West Broadway as well and the noise, parking, odors and drinking will affect the value and quality of life for his residents. He is also the owner of a 6 unit building with bedrooms with a view of the second floor of the pub, which will create issues. Twenty plus residents and business owners are all opposed to the change in use of the previously waived site plan. There was a previous agreement that was breached and it applies to this application. As Mr. Trefethan began to refer to the May 18, 2005 minutes, Mr. O'Connor advised Mr. Trefethan only had a few more minutes to speak. Mr. Trefethan referred to the section of the minutes where Mr. Sioras discussed the ten on-site parking spaces, the 18 spaces at the Halcyon Club and 65 spaces outlined in an agreement with the town. There are no longer 18 spaces at the Halcyon Club. Mr. O'Connor noted Mr. Trefethan is repeating comments already made by Attorney Griffith and asked if he had any new comments? Mr. Trefethan said many things were brokered when the town owned this property. This all relates. The agreement was drafted by Attorney Boutin and signed by the Halls. Mr. O'Connor stated there is no agreement between the town and the current party. Mr. Trefethan said the agreement was made between the Halls and the town. Mr. O'Connor said that does not have anything to do with Halligan Tavern, and reminded Mr. Trefethan he only had a few more minutes to speak. Mr. Trefethan said this is the only town in the state that the Planning Board limits discussion to three to five minutes for a Site Plan Determination. Most times, discussion of an application takes an hour or more. He continued by stating the town offered parking spaces and public parking. There should be a Site Plan Determination here because seating will be increased. The hours of operation were originally proposed to be 11:00 a.m. to 11:00 p.m. Mr. O'Connor noted that was the previous owner's hours. The new party has established their own hours.

Mr. Trefethan said he did not know that people could keep their personal businesses open at all hours. Obviously, a business owner does not need to come here and can do whatever they want. Now the restaurant is open until 1:00 a.m. Now, people will be on the open roof, drinking, facing the bedrooms of his tenants, looking at their silhouettes. In 2006 there had been a proposed glass enclosed structure with fixed louvers facing Broadway, not the sides facing the bedrooms. There are problems now because the additional roof top dining will be open until 1:00 a.m. and people will be sitting there at the same time residents are in their bedrooms. There will be people leaving at 1:00 a.m. He represents 20 residents, which covers most of the abutters. There were many people opposed to the plan and Mr. Sioras convinced the Board that it did not need a Site Plan Determination and the fire station could be turned into a restaurant with outside seating. No other town would allow a restaurant on a two lane road with no parking and waived site plan review. He appealed it. Now the rooftop issue is here. This is wide open and he will lose his tenants. He will not stand for that. The Board should be concerned. Almost every resident is opposed to this. These are their homes. Several abutters spoke the last time, including Lisa DiSisto and Dana Langley. All expressed opposition, citing the use was too intense for the property, and there would be issues with snow removal. Mr. Trefethan read the list of concerns from the minutes of 2005 and provided the following summary of the 2005 meeting: At that time, Mr. Nelson urged the Board to require a formal site plan. Members also recommended a formal site plan as they felt a lot of information was missing. Mr. Sioras advised that formal site plans are for new construction.

Mr. Trefethan stated that is false. That is a major change of use. A garage type fire station was changed into a restaurant. The Halls had a relative who was an engineer who said they could not use the roof unless the beams and columns were upgraded. These gentlemen have not provided stamped plans. It could be an issue. How is the deck certified? He does not know if the dumpster will be an issue until it gets there and smells, but an open rooftop during the weekday is an issue.

Mr. O'Connor asked if anyone else would like to speak in favor? Mr. Tim Moran provided pictures of the area around the establishment. They were retained for the record. He advised that the Health Department has given the restaurant a 94 rating. Regarding the issue of rats and flies, the restaurant meets the town regulations. They utilize Southern New Hampshire Pest Control, and can supply documentation of inspections. Regarding the issue raised of filth, rats, and animals, the Health Department has no issue, nor does the pest control company. Regarding the buffer and the smoke, it is common for the businesses on the main street to accept deliveries. This restaurant is the middle of three restaurants along Broadway. Jake D's is on one side and Rig-A-Tony's is on the other. It is not just his restaurant that has food odors; they have also had their fire lane blocked by trucks making deliveries to neighboring businesses. They have done everything that the town has asked of them and passed all of their inspections. Mr. Robert Moran asked that the record reflect that none of the residents who live in the abutting buildings are present this evening; it is just the three who spoke in opposition.

Barbara Woodward, 7 Central Street, manager of Property Portfolio Group, responded to the comment regarding the dumpster. PPG officially made a complaint to the Health Department. The Health Department ordered them to clean up the area and keep the dumpster lid closed. They may say that they are not in violation now, but they were a few weeks ago. Trash blew directly onto PPG's property during the high wind storm.

David Milz, 12 Bonnie Lane asked about the current questions. It appears that the concerns he has heard this evening stem from five years ago. The bedrooms in the abutting apartments all have a sight line of all the other second and third floor bedrooms and they all look into each other anyway. He does not think Halligan Tavern is adding anything to the mix and does not see this as a concern for The Halligan Tavern.

Steve Trefethan, 40 West Broadway, advised he does not live there, but he represents 20 residents. The big issue today is the open roof top dining. The plan was approved for a closed building. This plan has a six foot fence on PPG's side. Looking over a fence is different than 2 french doors and a window. The big issue is noise, the hours and the open roof top dining. He still feels this requires a full site plan review. The last time, 30 to 40 neighbors had concerns and it was waived. There needs to be an open forum for their concerns. Open roof top dining was not approved. It was approved for a closed building to take care of the noise and sight lines. This is a new use for that roof. It has been over seven years and neither the town nor the owner has asked what would you like to see? All it does is cost money and grief. No one has tried to work with the residents. He would not approve open roof top dining.

Motion by MacEachern to close the public hearing, seconded by Choiniere. The motion passed with all in favor and the plan was before the Board for review.
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Mr. O'Connor called for a 5 to ten minute break.

The Board reconvened and Mr. O'Connor asked for the Board to discuss the plan. Mr. MacEachern stated that in his opinion, the Board was determining tonight in regard to the deck on the plan and the waiver request. All other information, although historical and interesting, has nothing to do with the plans before the Board this evening. The Board's job is to determine if the roof top deck – how it is constructed, lighting, and hours of operation – should be addressed and discussed and the dumpster comments. Photographic evidence is not something this Board can address with regard to potential violations. That would be addressed by the appropriate town department or Board and the Board has heard evidence that is being done. The Board addresses what the applicant has asked for, which is the deck and the waiver. Once they ask for the deck, the Board has purview over hours of operation, lighting, and the deck itself, because of the architectural regulations and screening. The Board can ask questions of the owner for clarification. Some items are shown clearly and some need further clarification. Mrs. Heard agreed with Mr. MacEachern that the Board needed to stay focused on the items at hands and what is relevant to this application.

Attorney Griffith called Point of Order. Under the regulations, all of the information to make a determination should be before the Board 14 days prior to the public hearing. No additional evidence can be taken unless a vote is taken by the Board. If the Board does that, his client is severely prejudiced. Mr. Sioras advised that the applicant submitted the application and plan within the appropriate time frame. Mr. O'Connor stated the Board has an application before it. Mr. MacEachern explained there are questions the Board may have based on the abutter's concerns. If that means the Board takes extra evidence, they can do that by vote of the Board. That is procedurally correct. Attorney Griffith advised they are not prepared for a Site Plan review. Mr. MacEachern said the Board is not doing a Site Plan review. There were questions raised, for example about the hours which are currently 11:30 to 1:00 a.m., seven days a week. Mrs. Choiniere asked if that meant the hours were for the restaurant or as proposed for the roof top? Mr. Tim Moran stated those are the current restaurant hours, and they are proposing the outdoor seating be open the same hours as the restaurant. Mrs. Heard asked if food is served the entire time the restaurant is open, or does the kitchen close and the bar remains open? Mr. Tim Moran said food is served Sunday through Thursday until 10:00 p.m., and Friday and Saturday until 12:30. Mrs. Heard asked if the roof top would have food? It will and the bar will be open after the kitchen closes. She asked if there will be an outside bar? There will not. The bar is located inside the building.

Mr. MacEachern advised they are looking for items of concern, such as lighting. Is there any lighting to be proposed inside the railings? Mr. Tim Moran said no. The lighting plan is not on that drawing. He can provide a separate electrical drawing. Mr. Sioras noted a lighting plan was not part of the submitted application. Mr. Tim Moran stated the plan is for overhead lighting that points down, not onto abutting properties. Mrs. Choiniere asked if the sides of the lights will be shaded to prevent light pollution spilling out? Mr. Tim Moran said they will be duck horn lights that shine down and does not protrude light out to the side. There are special light bulbs, similar to what is inside the bar that shine down.

Mr. MacEachern asked if seating would be determined by the life safety codes and the fire codes? Mr. Sioras said it would. Mr. Tim Moran stated he has been in conversation with Michael Scott and Chief Klauber. Mr. MacEachern asked with regard to the stairs that will lead to the parking lot near the drive aisle and the possible minimization of the former. Will the two parking spots remain or will they be moved to accommodate the fire escape? Mr. Tim Moran said the Fire Department requirement was for 8 feet; currently there is 12 feet. The parking spaces will be moved if they have to be to accommodate that. Mr. MacEachern asked with regard to the base of the fire escape stairway. How will that be configured? Will there be a raised concrete pad? He can envision an automobile coming around the side of the building and that could be a potential concern. If a car came around would it hit a raised concrete pad rather than metal stairs? Will there be bollards? Mr. Tim Moran said he did not have that information with regard to whether there would be a pad or bollard there; he will need to check. Mr. MacEachern thought that a barrier could be added to protect the base of the stairs. He does not see that on the plans so wants to make sure safety is addressed.

Regarding the six foot stockade fence, is there any reason that it could not be extended from the gate to then cascade down to protect the views to the apartments on Rig-A-Tony's side? There is about 20 feet of 4' high railing. If another section or two of 6 foot high is added it might minimize the back and forth viewing concern of the neighbor. Mr. Tim Moran said he had no problem adding an extra length. Mr. Bartkiewicz asked if with regard to the stockade fence if it could be more colonial? Stockade in an historic area is not in character. Mr. O'Connor asked to come back to that.

Mrs. Choiniere asked if another section could be added so that there are no views of Rig-A-Tony's. It would still retain a view of the street. Mr. MacEachern thought the cascading section would accomplish that; these are four foot wide sections. Mr. Bartkiewicz said he would like to know if the stockade could be upgraded to something other than stockade. There are a variety of styles that would be a nicer fit for this area. There are many varieties of fencing. Stockade implies stockade. They would like to keep the fencing more in character with the downtown. Mr. Tim Moran said stockade was not their first choice but they wanted to be appeasing. Mr. MacEachern said the concern is that the Board looks at a variety of fence. Wood and lattice will lose the 6 foot height. The Board can look at this because of the architectural regulations. The proposed type of fence gives the best visual protection. He believes Mr. Bartkiewicz is looking for some kind of cap. Mr. Chase suggested something in a more gothic style, with points rather than peaks. Mrs. Choiniere noted there are iron balusters they could match to nicely. Mr. MacEachern said that in looking at the plans, he does not see anything that could be used as a drink rail, so people will not be standing at the railing. Mr. Tim Moran said patrons will be seated at the tables. Mr. Chase asked how the stockade would be treated? It will be a natural stain.

Mr. Robert Moran spoke with regard to the nature of the fence. He proposed presenting a different design to perhaps a smaller review board. The applicants are willing to do whatever looks good there. Should they go forward with stockade or should they look at other options? Stockade is not attractive but they wanted to provide a screen. They can look at options with regard to appearance. Mr. O'Connor asked that the application come back with a slightly different fencing. Mr. MacEachern felt staff could review it. He is comfortable with allowing that. The Board agreed. Mr. MacEachern felt there should be more discussion this evening with regard to the dumpster. Will it be fenced in and is this where it will be? Mr. Robert Moran stated photographs show where they are and it is close to where they will be. Regarding the fence around the dumpster area, it will be as high as the tallest dumpster. They will add fencing; there is none now. Mr. MacEachern asked if they plan to use stockade to match the roof or will it be chain link? Mr. Robert Moran said they are open to suggestion, but this is a paved parking lot that is open to traffic. No one likes chain link fence but it is the most practical. Mr. Tim Moran added it is the most sanitary as well as opposed to a wood fence that could rot. Mr. O'Connor asked if slats would be added to the chain link with slats? Mr. MacEachern confirmed there is nothing there now. There is a fence between the properties. A fence will be added to the dumpster area. He would prefer chain link because wood might attract things they don't want to attract. Green slats might blend into the buffer better.

Mr. Chase recalled during the presentation it was stated the only other place to put the dumpster area that would meet the requirements, was the loading zone. Mr. Tim Moran said that is behind where the gas is delivered. Mr. Chase said it has been brought up that trucks can't get into the area to unload. Mr. Tim Moran said there is a delivery door there. Mr. Chase asked if they can't get in now to unload and the trucks park in the street and wheel the deliveries in, could the dumpsters be placed in the loading zone? If the trucks can't fit anyway, can the dumpsters be there? Mr. Tim Moran explained the trucks do back in; occasionally one parks in the street if there are other deliveries occurring at the same time. Otherwise, two trucks back in and unload. Mr. O'Connor asked if the area to which Mr. Chase referred is the fire lane? Mr. Chase said partially, yes, but it is near the gas tank. Fire safety is the second issue. Mr. MacEachern thought that location would be worse because then the abutter would have a direct view of the dumpster area. Mr. Chase said it might meet the setback there, but not the fire code distance. Both can't be met in that location. He is looking at the hardship issue. Mr. MacEachern said he would rather meet the life safety code.

Motion by MacEachern, given this is a Site Plan Determination for a rooftop deck and a waiver for the dumpster area, to accept jurisdiction. The motion was seconded by Choiniere.

Chase, Bartkiewicz, Choiniere, MacEachern, Heard and O'Connor voted in favor and the motion passed.

Motion by MacEachern to grant a waiver from LDCR Section 170-67.B.1, Solid Waste Storage, with the condition that a chain link fence be provided around the area with the appropriate screening. Heard seconded the motion.

Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor voted in favor.

Motion by MacEachern to approve pursuant to LDCR Section 170-51, Site Plan Determination, subject to the following conditions: Fire Department and Building Department approve the seating capacity for the outdoor seating; revise the plan to accurately reflect the current name of the establishment; at the base of the stairs provide a pad/columns for safety which shall be approved by the Building and Fire Departments; submit a lighting plan to be approved by staff which includes lighting in a downward trajectory; add an additional two sections of fencing, six feet in height, from the stairwell toward Broadway -the third cascading section will be moved down two; final fencing design shall be submitted to staff for review, taking into consideration the suggestions of the Board. Heard seconded the motion. Discussion followed.

Mr. MacEachern asked Mrs. Robidoux to read the motion back to the Board. She complied.

Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor voted in favor and the motion passed.

Attorney Griffith asked if these are conditions precedent or subsequent. The vote does not reflect whether the conditions are precedent or subsequent. The Board has been to the Superior Court on this issue and if it wants to go again, fine. Mr. Sioras stated the conditions are precedent. Attorney Griffith felt the Board should vote on that so that they know what they are voting on.

Motion by MacEachern to affirm the conditions are conditions precedent, seconded by Choiniere. Discussion followed.

Mr. Sioras explained that conditions precedent are to be met prior to the applicant pulling a building permit. Mr. MacEachern noted that is the normal procedure anyway. Mr. O'Connor concurred.

Motion by MacEachern to amend the original motion to state the conditions of approval are conditions precedent, seconded by Heard. Discussion followed.

Mrs. Robidoux advised that the motion was "subject to the following conditions"; unless stated otherwise, those are always precedent. Mr. MacEachern said nothing can be built without final approval.

Motion by MacEachern to withdraw his motions, seconded by Heard. The motion died.

**Granite State Dock & Marine
PID 03032, 238 Rockingham Road
Acceptance/Review, Site Plan Determination
Boat and dock sales, boat winterization**

Mr. Sioras provided the following staff report. The applicant is Granite State Dock & Marine, the property is located at 238 Rockingham Road. The owner is Scott Buckland and he is present this evening. The purpose of the plan is to depict an estimated 25 boat display area and parking layout for both the proposed boat and dock sales, boat winterization and the existing computer shop. The applicant is requesting a waiver from LCDR Section 17-63 B.4.h, Parking Requirements. There are no state permits required. He would recommend approval of this site plan determination application.

Tim Peloquin, Promised Land Survey, advised the property is located near the Windham town line, next door to the previously approved plan for Paul George for the firewood storage. Computer Auto Sales is an abutter across the street. One lot further abuts the Windham town line. In this lot, there is an existing computer repair business and some VW bugs for sale. Granite State Dock and Marine currently operates out of Goffstown. Mr. Buckland is present this evening and would like to relocate to Derry. He sees this as a viable, good location. He sells boats, boat trailers and premade docks. This is a good neighborhood for the use. Boats would be a nice addition to the area.

Mr. Buckland is working on cleaning up the property. As part of the application, Mr. Peloquin performed an existing conditions survey. He converted the car areas for boat storage. There is a viable area for turning around and the pavement is in excellent condition. They are providing 4 employee parking spaces to the left rear of the site and 6 parking spaces for customers, including one handicap space. The rest is boat storage.

The computer repair business is an in and out business and does not have customers browsing. Mr. Buckland's business is more in and out as well and he may have one or two customers at a time tops, so they feel there is viable parking provided, given the use and square footage of the building. They have submitted a waiver for interpretation by the Board. Parking calculations have been provided on the plan. They are providing ten spaces total where 14 are required, based on the unique use of the property.

The Board opened the public hearing by a unanimous vote.

John Kelley, 12 Jean Drive, Seabrook, noted this is an existing use. Mr. Buckland has proven he will beautify the area and make it a viable, community effort and will upgrade the area.

There was no further public comment.

Motion by MacEachern to close the public hearing, seconded by Heard. The motion passed unanimously and the public hearing was closed.

Mr. MacEachern said it was nice to come back to the Board and see new faces and familiar ones. It is always a pleasure to be able to review plans that are detailed and make it easy to review. This is an excellent use of the property and it has been stated it will be good for business.

Mr. O'Connor spoke with regard to the area designated for the wooden dock display. Is that area intended to be for signage? Mr. Peloquin indicated the plan where it details the electric sign will remain. Mr. O'Connor advised his only concern with this plan is that there is an existing shrink wrapped boat on display with markings on the shrink wrap. That contributes toward the total square feet for signage. He would recommend the Code Enforcement Officer review the signs.

Motion by MacEachern to accept jurisdiction of the Site Plan Determination, seconded by Choiniere. All voted in favor and the motion passed.

Motion by MacEachern to grant a waiver from LDCR Section 170-63.B.4H, parking requirements, seconded by Heard.

Heard, MacEachern, Chase, Bartkiewicz, Choiniere, and O'Connor all voted in favor.

Motion by MacEachern to approve pursuant to LDCR Section 170-51, Site Plan Determination, seconded by Bartkiewicz.

Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor all voted in favor.

Motion by MacEachern to include the condition that the sign be approved by the Code Enforcement Officer, seconded by Bartkiewicz. Discussion followed.

Choiniere thought this should be an amendment to the original motion.

MacEachern motioned a friendly amendment to approve pursuant to LCDR Section 170-51, Site Plan Determination subject to the condition that the sign be approved by the Code Enforcement Officer. The motion was seconded by Choiniere.

Heard, MacEachern, Chase, Bartkiewicz, Choiniere and O'Connor all voted in favor of the amendment and the motions passed.

Mr. O'Connor thanked the applicant and Mr. Peloquin for a nicely done presentation. This is one of the entrances to Derry.

Motion by MacEachern, seconded by Heard to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:49 p.m.