

The Planning Board for the Town of Derry held a workshop on Wednesday, June 23, 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, Chairman; John O'Connor, Vice-Chair; Jan Choiniere, Secretary (7:29 p.m.); Maureen Heard, Member; Jim MacEachern, Member (7:07 p.m.); Frank Bartkiewicz, Alternate and Darrell Park, Alternate

Absent: Gary Stenhouse, David McPherson, Brian Chirichiello, Randy Chase, George Sioras

Also present: Elizabeth Robidoux, Planning Clerk

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

Mr. Park was seated for Mr. McPherson and Mr. Bartkiewicz was seated for Mr. MacEachern.

Escrow

None

Minutes

The Board will review the minutes of the June 16, 2010, meeting on July 7, 2010.

Correspondence

None.

Other Business

Mr. Granese advised the next meeting of the Board will be the public hearing on July 7, 2010. At this time, the summer schedule does not include a meeting on July 21st, but that is subject to change.

Workshop

Rezoning Request in area of 14 North Main Street

Mr. Granese advised the Board will consider rezoning of the parcels identified below from Medium Density Residential (MDR) and Medium High Density Residential (MHDR) to General Commercial (GC).

Parcel 37038, 14 North Main Street, change from MDR to GC

Parcel 37036, 10 North Main Street, change from MHDR to GC

Parcel 37037, 12 North Main Street, change from MHDR to GC

Mr. Granese advised the Board had received a letter requesting the change and had scheduled a workshop. Mr. O'Connor asked if the Board had received correspondence from the other properties involved, other than the original letter requesting the change? Mrs. Robidoux advised that each of the affected properties was notified of the workshop and that the Board would be discussing the change, but the Board has received no correspondence from the other two properties involved. None of the affected property owners were present. Mr. O'Connor noted there are some historic sites in the immediate area, specifically the DAR 1832 house and the Matthew Thornton House located across the street. He would recommend this be tabled indefinitely to the future. Mr. Bartkiewicz agreed. Mr. Granese advised he was personally not in favor of this change to General Commercial because of the historic sites in the area. If changed to GC it was possible that a burger shop could be constructed and that would not be appropriate for this area. The Board discussed and agreed to take no action on this request at this time. Mrs. Robidoux suggested making a formal motion at the next public meeting so that there was an action on record. Mr. Granese agreed that in fairness, it should be placed on the agenda for the Board to make a formal motion.

Mr. MacEachern was now present and Mr. Bartkiewicz was seated for Mrs. Choiniere.

Draft General Commercial III Zone

Mr. Granese advised the Board would now review the draft zoning amendment which creates a General Commercial III district. The Board has been discussing this for a while and has had a chance to review the last set of changes to the document. Is the Board happy with the way it is currently written? Are there any changes or thoughts?

Mr. O'Connor had the following comments. In the Purpose, the Board had changed the distance of 1500 feet to 2500 feet. On the site walk, the Board determined that the 1500 foot distance would be sufficient for the protection of the historic site and would also protect the special tree. If protection of the tree (ash tree) became an issue in the future because of potential development, the Board could address it at the time during plan review as a special condition. He suggested changing the distance back to 1500 feet. The Board agreed.

Under Permitted Uses, #4, “retail sales” is not defined in the Zoning Ordinance; “retail store” is defined and is more in tune with what they are requesting for this area. The term ‘retail sales’ exists under General Commercial II, but he would suggest changing the wording here from “sales” to “store”. The Board agreed.

Mr. O’Connor thought that given the location and the draw of the farm, this zone might be a good place to allow a Bed and Breakfast as a permitted use. It would be a good location for visitors to the area. It would need to be architecturally designed so that it was compatible with the zone. Mr. Granese said that sounded like a good idea, but he is not sure if it would end up as other’s have in neighboring towns. Mr. O’Connor read aloud the definition of “Tourist Home”. He would prefer the more restrictive use of Bed and Breakfast, rather than Tourist Home. Mrs. Robidoux stated if the use is added and it is not defined under the definitions, then the Board would have to create a definition of “Bed and Breakfast”, so that it is clearly defined and not open to interpretation. Mr. Granese had a concern. Mr. Bartkiewicz was concerned if the property was sold, the use could change. The Board decided not to add Bed and Breakfast as a use in this zone.

Regarding signage, Mr. O’Connor noted that under #3, the Board has not yet determined the size limitation of a sign. The Board discussed the need for compliance with the architectural regulations and agreed the wording should be changed to “New signs shall be approved by the Planning Board for compliance with the architectural design regulations.”

Mrs. Heard commented that under #2, Additional Requirements, allowing 2 times the height of the historic structure could result in a very tall building. The Board agreed. There was a short discussion regarding height and the Board agreed that new structures should not exceed the height of the existing structure on the historic site. Number 2 would be changed to read “Construction shall not exceed the height of the historic structure in the zone.” The Board felt anything taller would be intrusive. They did not want anything taller than 40-45 feet. It was noted the barn is taller than the existing farm house, but in the event something ever happened to the barn, the Board did not want to tie height restrictions to the height of the barn.

There were no further comments on the draft from the Board at this time. Mr. Granese asked how the Board would proceed from here. Mrs. Robidoux explained the Board will put this item on the agenda at the next public meeting under “other business”, and can schedule the date for the public hearing. If there are no substantive changes at the meeting, the draft can be forwarded to public hearing. Scrivener errors (typos) can be changed at the next meeting and do not require another workshop.

Mrs. Heard asked if Rockingham Acres was within 1500 feet of the Robert Frost Farm. Mr. O’Connor believed it is.

Rezoning of Parcels in the area of the Robert Frost Farm

Mr. Granese stated the Board would now consider rezoning of the parcels identified below from Office Research Development (ORD) and Medium Density Residential (MDR) to General Commercial III (GCIII).

Parcel 05002, 122 Rockingham Road, change from ORD to GCIII

Parcel 05001, 128 Rockingham Road, change from ORD to GCIII

Parcel 05090, 134 Rockingham Road, change from ORD to GCIII

Parcel 05090-001, 138 Rockingham Road, change from ORD to GCIII

Parcel 03110, 140 Rockingham Road, change from ORD to GCIII

Parcel 03109, 161 Rockingham Road, change from MDR to GCIII

Parcel 02090-002, 157 Rockingham Road, change from MDR to GCIII

Parcel 02090-001, 153 Rockingham Road, change from MDR to GCIII

Mr. Granese commented the Board had conducted a site walk and viewed the majority of these parcels. Is the Board still in agreement that all of these parcels should have a zone change? It was noted the Farm is located on Parcel 05002 and the state owns Parcel 05001. Mr. Granese said this would tie in all of the parcels around the farm. Mr. MacEachern asked if Parcel 03110-001 is landlocked? Mrs. Robidoux confirmed it is; but it has frontage on Feather Bed Lane. Mr. MacEachern noted that is a discontinued road. Mrs. Robidoux advised the Planning Office occasionally gets people in who inquire about upgrading that road to obtain access to the lot coming in either from Island Pond or Route 28. Mr. MacEachern asked if since it has been discontinued, has Feather Bed been taken off the map? It has not. He wondered if the Board wanted to consider a landlocked parcel.

Mr. Granese asked the Smith family if they were still in favor of having their lot rezoned? Bill and Jean Smith, 161 Rockingham Road asked if their parcel would then be subject to the restrictions of the new zone? Mr. Granese advised that the parcel would change to GCIII and yes, be subject to the zoning restrictions.

Mrs. Choiniere was now present and Mr. Bartkiewicz stepped down.

Mr. Smith commented on the 1500 foot distance in and outside of the zone. If a parcel is within that distance, it will be part of this zone. Mrs. Smith asked what is the significance of that 1500 feet? Mr. Park explained the 1500 feet is an overview of what GCIII is in this particular application. In the case of the Smith's, the 1500-2000 feet encourages development in the zone, but with controls so that the historic features of the area are not overwhelmed. Mrs. Heard noted the property needs to be in the 1500

feet or out of it. The area of the zone is not clearly defined. What is the area the Board is trying to protect and place the restrictions on? This 1500 feet sets up two zones. The Board needs to clearly define the zone boundary. Mr. Granese explained that is why he was asking if everyone was on the same page with rezoning these parcels. Mr. Bartkiewicz recalled a discussion during the site walk that would place the boundary at Lawrence Road. There was a brief discussion and the Board determined the intent was to have the zone be these 8 lots. Mr. MacEachern was in support of Mrs. Heard's comments because if the parcels are identified by number, the 1500 foot distance is irrelevant. If that distance is left in, it could be interpreted that it applies to all designated sites and that may cause an issue with other parcels. It puts the buffer in the middle of Parcel 05008, which is zoned General Commercial. It could be interpreted the Board is interfering with the development of that parcel. It should be defined without a specific distance. If a new district called General Commercial III is created, the Board needs to define the boundary.

Mrs. Robidoux said good points have been raised. Even though the Board this evening is speaking with regard to creating a General Commercial III zone for these specific parcels, the Purpose says "historic sites". There are other historic sites scattered across Derry, such as the Matthew Thornton House, and since this will be in the Zoning Ordinance, it would apply town wide. The unintended consequence might be that GCIII zones are created across town.

The Board discussed the merits of removing the Purpose section from the draft and different word choices that might reflect the intent. Mr. MacEachern felt there should be a Purpose for each section of the Ordinance. Some sections of the Ordinance had a Purpose; others did not. One suggestion was to "encourage development of available parcels within the zone, while limiting the impact on the area." Mr. Park thought that would allow the Board more control on the type of development. Other Board members cautioned that the Board does not want to appear too restrictive. Mr. MacEachern thought the Purpose could be added later when the Board revamps the Zoning Ordinance.

Mr. Smith stated the buffer is large and to limit parcels downstream of the farm – that is a long distance. He questioned the height and drive-thru restrictions. Mr. Granese noted this is much better than the Historic Overlay District that had originally been proposed. The Board had worked with that for a time and then Ginny Roach had developed a draft GCIII zone. The Board reviewed both, and determined it would be better to move forward with a new zone at this time than an overlay district.

Mr. Smith suggested taking out the drive-thru and changing the height restriction to one and a half times the height of the historic structure. Mr. Granese commented that one drive-thru is already allowed for a pharmacy. Mrs. Smith spoke to the possibility of adding a Bed and Breakfast use in the zone. It could be a beneficial addition. With a limitation of 5,000 square feet, that would be small for something of that nature. Any architecture would need to be compliment the historic site. Maybe keeping a building

one or two ½ stories would be fine. There are other types of architecture that can go there. It seems that this is limiting when construction is limited to the height of the farm.

Mr. Granese asked if the Smiths wanted the Board to move forward with the rezoning of their property to General Commercial III? There will be a public hearing on the creation of the GCIII zone and one on the rezoning of parcels to GCIII. Mr. Smith noted changes have been made tonight to the draft. Mr. Granese said he just wants to make sure the Smiths still want to move forward with a change in zone on their parcel. Mr. Smith said they do. Mr. MacEachern reiterated that changes to the GCIII zone draft can be made at the public hearing.

Mr. Granese said the Board started this process last year. It took its time and listened carefully to what everyone had to say. The Board feels this draft is ready to move forward to public hearing to see what the public has to say about it, but he needs to feel comfortable that the Board is at a point where there is a solid base that they all agree on. Mr. Smith confirmed changes to the draft can be made at the public hearing. They can.

Mr. Granese asked George Reynolds, 134 Rockingham Road, if he would like the Board to move forward with the rezoning of his property? Mr. Reynolds stated he did. He feels this is a good direction. There has been at least half a dozen meetings on this and the GCIII seems to be a better arrangement than the current Office Research Development zone. He thinks this is ready to move forward to public hearing.

Mr. Granese noted that at the public hearing, any concerns and issues can be discussed. He then asked the Trustees for the Robert Frost Farm who were present if they had any concerns?

Hercules Pappachristos and Claire Ternan, Trustees, were present representing the Robert Frost Farm. Mr. Pappachristos asked for clarification. Understanding the Board can't create a spot zone, can the Board grant a variance to Rockingham Acres and Mr. Reynolds to allow them to expand without going this route? Mr. Granese advised the variance option had been discussed. Mr. MacEachern noted it is harder to go to the ZBA and prove hardship. It is possible this land will be left as Office Medical Research. Mr. Granese commented with the zoning as it is today, a biohazard company could be constructed on one of these sites. Mr. Pappachristos asked if the pharmacy use could be taken out. There are no longer "mom and pop" pharmacies. Mrs. Heard and Mrs. Choiniere both stated they would not be opposed to that suggestion. Mrs. Heard said if the Board keeps the pharmacy use in the zone, she would like there to be a limitation that it cannot operate 24 hours a day. Mr. Pappachristos noted that a pharmacy is one operation that keeps expanding as a result of the aging demographic.

Mr. Granese confirmed that the Board can keep making changes to the draft document this evening. Mrs. Robidoux stated that once the workshop is over this evening, the Board can then get a copy of the revised draft containing all the changes from this

evening and schedule the public hearing to a date certain when they get to the next meeting.

Mr. O'Connor noted that 200 feet north of the Farm, pharmacy has been an allowed use for years. Mr. MacEachern commented the Trustees should not worry about what happens south of the farm, that will be covered by this zone. Just north of the Farm, the property is designated General Commercial and that is not under discussion at this time. A developer could come in at any time with a proposed for an approved use in that zone. Mr. Pappachristos said the Smith's and Mr. Reynolds have been good neighbors. Mr. O'Connor noted that any new construction would have to meet the architectural regulations.

Mr. Pappachristos had concerns with regard to the size limitations in the zone. Shouldn't office buildings have a similar limitation with regard to maximum size? The Board felt that if multiple tenants were involved, the building would have to be at least 5000 square feet. Mr. MacEachern commented that 2500 square feet is about the size of an average colonial home. Mr. Pappachristos suggested changing the size restriction to a minimum of 2500 square feet, not to exceed 10,000 square feet. The Board reviewed the wording of Section A, permitted uses. A building of 2500 square feet would have one occupant; 5000 square feet would be the minimum size for two occupants or more and the maximum size would be what fits within the setbacks of the zone. The Board noted they did not want a situation where the building was 2500 square feet with a lot of occupants. Mr. MacEachern thought the term "at least" implies a minimum. If there are multiple occupants, meaning two or more, then the building would have to be 5000 square feet. Three occupants could be in a building of 5000 square feet, but not less than that square footage. He did not feel this was a bad description, but it does restrict the developer to a smaller building. An attorney in a 2500 square foot building is large for one lawyer; that type of use could get by with about 1200 square feet.

Mrs. Heard asked if the Board was changing #1 or leaving it as is? The Board was leaving it as written. Mrs. Heard asked if something could be added to #5 with regard to the hours of operation for a pharmacy. It could be added under Additional Requirements. Mr. Granese asked if at site plan review the hours of operation would be discussed. Mrs. Robidoux said for a new construction site plan the Board normally would discuss the hours of operation. Mr. MacEachern recommended including wording in the document if the Board wants to restrict something so that nothing is left to interpretation for a future Board. The Board decided to add the following wording to Section F, Excluded Uses: "No 24 hour operation shall be allowed. Hours of operation shall be set by the Planning Board." This allows the Board to determine the hours of operation based on the use. Mrs. Heard noted it is on record that the Board had a concern for hours of operation in this zone.

Ms. Ternan asked if the buffer began at the property line or the house? It begins at the property line, but only in a southerly direction. Mrs. Heard commented that north of the farm is in another zone and the Board is not discussing that tonight. Mr. MacEachern

added the property north of the Farm has its own rules to follow. Mrs. Heard asked if the Board every determined what happens to the Manufactured Housing Park District if the mobile home park goes away? Mr. MacEachern advised that would need to be rezoned to something else.

There was no further discussion.

Mr. Granese advised that on July 7th the Board will vote to schedule a public hearing on the GCIII zone and a public hearing on the rezoning of the parcels. If all goes well, it is possible the public hearings will be held on August 4th. He confirmed that abutters located 200 feet in each direction of the affected parcels will be notified of the public hearing once that date has been confirmed.

There was no other business before the Board.

Motion by MacEachern to adjourn, seconded by Choiniere. The motion passed in the affirmative and the meeting stood adjourned at 8:04 p.m.
