

The Planning Board for the Town of Derry held a public meeting on Wednesday, August 4, 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; Brian Chirichiello, Town Council Representative; Randy Chase, Administrative Representative; Maureen Heard, Members; Frank Bartkiewicz, Alternate.

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Attorney Steve Clark, Boutin & Altieri, PLLC.

Absent: Dave McPherson, Jim MacEachern, Darrell Park

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.

Mr. Granese sat Mr. Bartkiewicz for Mr. MacEachern.

Escrow

10-26

Project name: Indian Hill Estates

Developer: Brady Sullivan Indian Hill, LLC

Escrow Account: Brady Sullivan Indian Hill, LLC

Escrow Type: Letter of Credit

Parcel ID/Location: 04003, Goodhue Road

The request is to accept Letter of Credit 181 (Centrix Bank) in the amount of \$211,793.75 for the above noted project. The expiration date of the Letter of Credit will be August 2, 2011.

Mrs. Heard asked if the Board had a report from Finance regarding the standing of this bank? Mr. Sioras stated this is a strong bank, but can request Finance to confirm that. Mrs. Heard said she wanted to make sure the bank was in good standing. Mr. Sioras said he would speak with Janice Mobsby and follow up. Mr. O'Connor noted the paperwork is copied to Rita Correia, the Treasurer. Perhaps the forms could be formalized by adding a signature from Finance before the paperwork comes before the Board. Mrs. Choiniere thought that was done prior to each Letter of Credit and that would be standard operating procedure. Mr. Sioras said the Letter of Credit goes to

Finance after the Board accepts it. He advised the department is working on a new escrow policy and can make this a part of it. Mr. Granese also thought the Letters of Credit were approved by Finance first. He asked Mr. Sioras to provide an update at the next meeting on this matter.

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

10-27**Project name: Indian Hill Estates****Developer: Stone Hill Builders****Escrow Account: Indian Hill Estates****Escrow Type: Letter of Credit****Parcel ID/Location: 04003, Goodhue Road**

The request is to release Letter of Credit 4952 (Sovereign Bank) in the amount of \$21,793.75 for the above noted project. The Letter of Credit has been replaced.

Motion by O'Connor, seconded by Choiniere to approve as presented. The motion passed with all in favor.

Minutes

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

Motion by O'Connor seconded by Heard to accept the minutes of the July 21, 2010, meeting as written. The motion passed in the affirmative.

Correspondence

Mrs. Choiniere advised the Board is in receipt of the following: A notice from the City of Nashua regarding a proposed site plan to permit construction of a 180 foot monopole communication tower; a notice from DES of a Shoreland Permit application for a residence on Coles Grove Road, and the updated list of changes in use. The Board members should see Mr. Sioras with any questions.

Other Business

Mr. Sioras advised the next meeting of the Planning Board will be on September 1, 2010. He then introduced David Preece, Executive Director of Southern New Hampshire Planning Commission (SNHPC).

Mr. Preece stated he was here this evening to discuss the services provided to the Town by SNHPC. He first thanked the planning staff for their support and assistance,

as well as that of the Derry Commissioners Brian Chirichiello, David Gomez and Beverly Ferrante. He wanted to reaffirm SNPC's support to the municipality. The Planning Commission was formed 44 years ago with a mission to increase communication between the thirteen communities, inter-government cooperation between Planning Boards and elected officials and to promote regional development. Last year was a very productive year in Derry. He thanked the Board for adopting the Master Plan, which went smoothly because of the cooperation between the town and SNHPC. In addition, SNHCP assisted the town with the update of the Hazard Mitigation Plan, the Open Space Plan, the CTAP Buildout, produced the Access Management Plan for the Route 102 corridor to ease traffic congestion; compiled the Derry Business Atlas which identified and mapped businesses in downtown Derry; and, worked with the Regional Planning Commission and the Towns of Salem and Windham for the rail trail segment that goes from Salem to Derry. They will now work on connecting the trail in Londonderry to Manchester.

This year, SNHPC expects to work on the Energy Efficiency Planning Program. Jillian Harris, who worked with the Board on the Master Plan, will head that project. The intent is to meet the energy needs of the Town of Derry. They will also work on a Regional Source Water Protection Plan which deals with source water protection to make sure the plans in Derry meet state statute and regulations. As part of the project, there will be outreach to the community with the intent of educating the importance of source water protection. They will also prepare a plan for natural disasters. The region has had its share of disasters in the last six years and the percentage keeps increasing. The number of non-profits, such as the Red Cross are limited, and the community needs to prepare. Finally, the nine regional planning commissions will request a grant sponsored by HUD, DOT and the US EPA for a sustainable communities initiative which will involve the creation of Regional Sustainability Plans. They would like to produce 9 regional plans that are interconnected. This will require partnerships with state agencies and communities. They will ask for input from Derry. The application will be submitted in the next few weeks. He advised that the Commission be notified of any needs of the town. Their number one priority is to provide technical assistance to their communities.

Mr. Chirichiello asked how much grant money will be available? Mr. Preece replied that if successful, this will be a three year project, with about 5 million dollars in funding. The funds would be spread across the 254 communities. Mr. Chirichiello asked when it was expected those funds would be dispersed? Mr. Preece said some funds would go to the top communities; Derry might get some assistance for their help in the regional plan, but the formula has not yet been developed. They will create a template and go back to the communities and assist them with sustainability. This would include transportation, housing and economic development.

Mr. O'Connor asked if Mr. Preece could elaborate on the Access Management Plan for Route 102. Mr. Sioras said he could obtain a copy of it. Mr. Preece said they looked at all of the access points and driveways on Route 102 from Londonderry to the village, then made recommendations on how to better move the traffic through the corridor.

This is a useful tool when redeveloping, and assists with reducing driveways onto Route 102.

There were no further questions. Mr. Preece thanked the Board for their time and departed the meeting.

Public Hearing

60 Isinglass, LLC

PID 08001-002004, 10 A Street

Acceptance/Review, Subdivision, Condominium Conversion

Mr. Sioras provided the following staff report. The property is the old health club. The intent is to convert the building into condominiums, which requires Planning Board approval. Essentially, it is a subdivision on paper for condominium purposes. The Board will be seeing a site plan for the uses in the future.

Tim Peloquin, Promised Land Survey presented for the applicant. This is a 3.6 acre lot, and is the site of the former Amerisport and Gold's Gym. The land was subdivided in the late 1980's, and the building constructed in the 1990s. The building has been essentially vacant, although there is one tenant with a medical office use. There are no changes to the property. He created an existing conditions plan to show the lot conforms to the original site plan and regulations. Sheet 2 shows the interior layout. The site plan shows two sections of the building. Derry terms this a subdivision by its regulations. Any altered use of the building will require Planning Board approval and they hope to have an application to the Board in September for the change in use.

Mr. Granese asked if this is the site of the old gym? It is. Mrs. Choiniere asked with regard to the old indoor pool; what happened to it? It was filled in. Mr. Peloquin noted there are two pools to the rear of the building which used to be covered. As part of the change in use, they will be filled and it will become a play area. Mr. Chase confirmed that when the two pools to the rear were constructed, the original indoor pool was filled in.

There was no public comment and the plan came back to the Board.

Mr. O'Connor asked with regard to Head Start, how many children will there be? Mr. Peloquin advised the space will be occupied by Rockingham County [AllianceAction Program](#), and he does not have the answer to that question at this time. The uses will be for daycare, child and adult education and offices. Children will have access to the rear of the building.

Mr. Chirichiello asked if there will be two owners after conversion? There will be. Mr. Chirichiello asked if there will be condominium documents? Mr. Peloquin advised the

realtor, Ralph Valentine could speak to that; he does not have the documents available this evening. They are still being drafted by the attorney. He could see that being a condition of approval if necessary. Mr. Chirichiello asked if there would be a fire wall separating the two units? Mr. Chase said the rating for a wall would depend upon if the building had sprinklers or not and the amount of renovation. Mr. Peloquin stated the Fire Department would require it and they would abide by those regulations. Mr. Chirichiello asked if there is a change in use, will there be an issue with parking? Mr. Peloquin stated there are plenty of spaces. They had discussed the possibility of having limited common parking areas and the attorney did not feel it would be required based on the number of spaces available on site.

Mr. Sioras advised this plan will come before the Board for site plan review. The Board will look at the parking calculations at that time based on the use in the building. Staff asked the same questions. At site plan review, the Board will look at the internal use, not the overall square footage of building. This is an unusual application in that the town does not get many applications for commercial condominiums.

Mr. O'Connor assumed there would be condominium documents. With the TIF program on Route 28, there are no planned street lights to be added to A Street. Will the volume of traffic for the daycare trigger a light? Mr. Sioras noted that is a great question, but falls under site plan issues. Tonight, the Board is only looking at a condominium conversion, which puts a line on a piece of paper. It is suggested that the condominium documents be reviewed by the town's attorney.

Motion by Choiniere to accept jurisdiction of the plan seconded by Heard.

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

Motion by O'Connor to approve the subdivision plan for 60 Isinglass, Inc., Parcel ID 08001-002004, 10 A Street, conversion to condominium pursuant to RSA 676:4, I, subject to the following conditions: Subject to owners' signature; subject to review by Assessing and Fire Administration to confirm address for units; obtain written approval from Doug Rathburn that the GIS disk is received and is operable; condominium documents shall be reviewed and approved by town counsel prior to recording of the plan; the above conditions shall be met within 6 months; and a \$25.00 check, payable to RCRD shall be submitted with the mylar in accordance with the LCHIP requirements. Choiniere seconded the motion.

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

Mr. Granese advised the Board would recess to consult with legal counsel. When the Board returned, it would go into a workshop. The workshop will not be televised this evening. The Board recessed at 7:33 p.m.

The Board reconvened at 8:05 p.m.

Workshop

The purpose of the workshop is to review the draft of a zoning amendment which creates a General Commercial III district. The parcels potentially affected by the establishment of a General Commercial III district include the following:

Parcel 05002, 122 Rockingham Road
Parcel 05001, 128 Rockingham Road
Parcel 05090, 134 Rockingham Road
Parcel 05090-001, 138 Rockingham Road
Parcel 03110, 140 Rockingham Road
Parcel 03109, 161 Rockingham Road
Parcel 02090-002, 157 Rockingham Road
Parcel 02090-001, 153 Rockingham Road
Parcel 02090L, 151L Rockingham Road
Parcel 02090R, 151R Rockingham Road

Motion by Choiniere, seconded by O'Connor to release the GCIII district draft as amended by legal counsel to the public. The motion passed with all in favor.

Copies of the amended draft were provided to the abutters present.

Attorney Clark stated he would need to provide clarification regarding the buffer width. He asked if under E.3, regarding all new signs, does the Board want to keep that in the document? This is different from the current Zoning where the Code Enforcement Officer approves the sign. The Planning Board would review signs at the site plan level under the architectural design regulations. If this is left in the document, any existing use would be required to come before the Board if they wanted to change their sign. The Board should decide if they want to keep this in.

The purpose is generic, but is actually to protect the use surrounding the Robert Frost Farm, so the Board should define "historic site". It could be something that is listed on the National Historic Register.

Mrs. Choiniere noted that the spelling of "requirement" under D should be corrected.

The Board reviewed the document beginning with the purpose.

Mr. O'Connor felt the Board should accept Attorney Clark's recommendation and define "historic site". Suggested wording is "For the purpose of this section, "historic site" shall refer to a site listed on the National or State Register of Historic Places." Attorney Clark

said the Board could add another section under “F” or a new “G” that would define the term for the purposes of the GCIII zone. If this was town wide, it could be more generic. Mr. O’Connor asked Mr. Sioras if the DAR buildings are recorded as historic sites? They are not.

The Board decided to add a Section “G” which states: For the purpose of this zone, a “historic site” is defined as a site listed on the National or State Historic Register.

Mrs. Heard noted there are two sites in Derry listed on the National Register: the Robert Frost Farm and the Matthew Thornton House. There are only 22 sites nationally.

The Board accepted the wording of the purpose, as amended. “To protect and preserve the character of the neighborhood in the vicinity of a historic site, there is established a General Commercial III district which limits and regulates the uses, size, height and architecture of structures in the zone so as to compliment the historic site.”

Regarding Permitted Uses, the suggested changes were accepted. In addition, under number 2 regarding the size of retail stores, the word “a” was removed. The Board determined this section meant that a lot could have a 5000 square foot retail establishment, or a lot could have one building on it, totaling 5000 square feet, that was divided into smaller spaces, such as one at 4000 square feet and one at 1000 square feet. The Board clarified there was a different size requirement for professional office and for retail uses. Mr. Chase noted the Board did not want to allow the creation of strip malls, which would be very difficult with a 5000 square foot limitation. This size restriction would create buildings similar to those on Broadway, but only one story in height. Mr. Sioras commented the Cumberland Farms store is about 2000 square feet [5000 total] and there are now three uses in that ~~space~~building. Mr. Chase felt 5000 square feet gave adequate room, but would not allow a strip mall.

Regarding banks, Mr. Chase said the purpose is to avoid what the town has at the [Danforth] circle. The comma at the end of the sentence will be changed to a period.

The Board had no issues with Item B, area and dimensional requirements.

Regarding item C, Buffer Zones, the Board decided to add the wording “for the buffered area” near the end of the sentence for clarification. Attorney Clark said he would review the LDCR.

Under Section D, Mr. O’Connor felt number 1 should be amended to be consistent with the purpose statement. “Historical” would change to “historic”. The same was true for number 2.

Regarding signage, the Board elected to remove number 3, as the Board can review signs at the time of site plan review. Regarding “excluded uses” Mrs. Choiniere

suggested removing “C” since if a use is not specifically listed as a permitted use, it is not allowed. The Board reconfirmed it will add a section G, defining ‘historic site’.

Attorney Clark advised that he will need to get back to the Board after he has a chance to further review the section in the LDCR regarding buffers. He will be in touch with Mr. Sioras within the next day or two with his recommendation.

Mr. Granese asked for input from the abutters. George Reynolds said he can see the Board is making some progress. He has an 11 acre lot and has questions regarding the building size. The Board advised the size of proposed building would be tied to the use. Mr. Reynolds thought the way it was written was confusing. He asked if the Board knew the height of the existing structures on the Farm? The Board believed the tallest structure to be between 40 and 42 feet high. Mr. Reynolds asked why the Board decided to delete the section referring to the expansion of pre-existing non-conforming uses? Mr. Granese explained current state statute already allows the natural expansion of a pre-existing, non-conforming use and this would be redundant. Regarding signage, Mr. Reynolds asked if the Board could explain what was meant by “monument style”? Mr. O'Connor said it would be similar in style to the sign recently approved for the Water's Edge Salon, located near the circle.

Mr. Reynolds noted the last page speaks to the definition of ‘professional office’. As a manufacturer, he has seen the loss of industry in New England and across the country. He has been building bicycles for the last twenty years. During the last two years, he has worked for a company that manufactures 20-50 foot sail boats. He has had some idea of using his land for a something similar and that would fall outside of the proposed permitted uses. He would need a large barn with several bays to do that. The facility in Raleigh, Massachusetts is also in a residential area. It would be rewarding to work for a company that produces something.

Attorney Clark noted that “natural expansion” is typically within the existing structure and did not want to leave Mr. Reynolds with the impression that what he is proposing would fall under a natural expansion of a pre-existing, non-conforming use. If the Board wants a particular use allowed in the zone, it should be listed under permitted uses. Any owner can seek a variance from the ZBA if the expansion of a non-conforming use exceeds the minimum allowed by law.

William Smith had a question regarding buffers. What if an entire parcel is vegetated? Mr. Granese explained that is why the Board added the wording “for the buffered area”. This alleviates the concern that if a lot is entirely wooded, the “buffer” would be the entire lot.

Mr. Smith asked the Board to explain the new section G. Mrs. Choiniere read the proposed wording.

Mr. Sioras explained he wanted to clarify what Attorney Clark said with regard to the expansion of uses. A non-conforming use cannot automatically expand. The footprint

of the building can be expanded, but a variance would be required to expand beyond the footprint of the building.

The Board discussed the parcels that are included in the proposed zone. Mr. Granese asked if the Board wanted to add or delete any parcels? Mr. Chase suggested adding the two parcels on either side of Berry Road, which are state owned. Mr. O'Connor felt it was more restrictive if the lots were left residential. Mr. Chase agreed, but if the state ever sold the lots, he would prefer to see them zoned commercial. Mr. O'Connor would rather not see those lots sold, but from the point of view of the Robert Frost Farm, they would rather see these kept residential. Mr. Granese conducted a poll of the Board. Mr. Chirichiello, Mr. Chase and Mr. Granese would like to see the lots change to GCIII, Mrs. Heard, Mr. O'Connor, Mr. Bartkiewicz, and Mrs. Choiniere would like to see them kept residential. Mr. Granese said they would stay residential.

Mr. Granese advised the next workshop will be on September 1, which will give Attorney Clark time to get his recommendation back to the Board, and the Board will continue to hold workshops at each meeting until this is ready to move to public hearing.

Mr. Smith asked where does the 5000 square foot restriction come from? That is 3% of his property with the buildings on it and that would be even less on Mr. Reynold's property. Could the size of the buildings be relative to the size of the parcel for retail use? Mr. Chirichiello said the Board did not want to see something similar to Home Depot next to the Robert Frost Farm. Mr. Smith said that 5000 square feet on its own merit is a small use. What does an owner then do with the rest of the land? Mr. Chirichiello said land could be developed as professional office. Mr. O'Connor said the minimum lot areas and other setbacks need to be considered when developing the lots. Mr. Smith thought the long term objective of this zone was to support taxes. That requirement limits development. Mr. Chirichiello said it can be revisited once sewer goes into the area. Mr. O'Connor noted if the proposed amendment to the Ordinance does not pass, the land falls back to the original zone. Mr. Smith did not feel his land would ever go back to residential because no one wants to build a house on a road with this type of traffic and noise. This is not a transient community. Could there be parcels used for apartments? Mr. Chirichiello advised it is not zoned for that use. Mr. Smith said it is hard to use the land as currently zoned and this gross square foot limitation is restrictive. Their last two connecting greenhouses are about 5000 square feet. Mr. Chirichiello explained the Board is trying to zone for the best fit for the majority. Mr. Granese noted the Board could change the size limitation to 15,000 square feet and Town Council could deny the amendment or change the size limitation. This is the starting point. If the Board allowed 25,000 or 100,000 square feet, they could request a change in the future. Some future Board may not listen to the public as this Board has done.

Mr. Sioras commented Tsienneto Road also has limited uses. Tire Warehouse is 5000 square feet. The medical office uses have a size limitation. This area will be more valuable as water and sewer is installed. There may be pressure at that time to rezone the area. Mr. Chirichiello said the Board can't zone on a question mark. It is not known

when water and sewer will reach this area. When the infrastructure is in place, it can be looked at again.

There were no further comments.

Motion made and seconded to adjourn. The motion passed and the meeting stood adjourned at 9:08 p.m.