

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 16, 2011, at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> Floor) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Jan Choiniere, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; Frank Bartkiewicz, Member; and Anne Arsenault, Alternate

Absent: Darrell Park, Jim MacEachern, John O'Connor

Also present: George Sioras, Planning Director; 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, agendas and material for the evening.

Mrs. Arsenault was seated for Mr. MacEachern this evening.

## **Escrow**

None.

## **Minutes**

The Board reviewed the minutes of the March 2, 2011, meeting.

Motion by Anderson seconded by Bartkiewicz to accept the minutes of the March 2, 2011 meeting as written. The motion passed in the affirmative with Chase abstained.
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## **Correspondence**

Mrs. Choiniere advised the Board is in receipt of a notification of the next Southern New Hampshire Planning Commissioners meeting which will be held on March 22<sup>nd</sup>. The Planning Department has issued a Request for Proposals for professional engineering services. The deadline for submission is April 15, 2011. The Town of Dunbarton is holding a public hearing this evening with regard to a wireless tower application. The Board members were distributed an updated list of Changes in Use, and there is a new copy of *Town and City*.

**Other Business****Request for Extension of Approval – Anthony DeRosa**

Mr. Sioras advised the applicant, Tony DeRosa, has requested a six month extension on the approval of the site plan for 191 Rockingham Road. This is the first request. The Board members had a copy of the written request from Mr. DeRosa. Mr. Granese confirmed this is for the motorcycle shop. The property is located south on Route 28 near Ace Paving.

Motion by Anderson, seconded by Choiniere to approve the six month extension on the site plan approval for 191 Rockingham Road.

Chase, Arsenault, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor, Milz abstained, and the motion passed.

**Public Hearing****Sanmina-SCI Corporation****4 & 6 Linlew Drive, PID 08278-001 and 08278****3 & 11 Ashleigh Drive, PID 08276-001 and 08279****Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. Procedurally this evening, there are three separate plans that are all related to each other. The first two plans are lot line adjustments for Sanmina, the former Allen Motors dealership, and the Ashleigh Drive lot. The consolidations and lot line adjustments are important in that they allow the access from Treasure Lane for the emergency lane. The Board will hear the first two lot line adjustment plans, and then the site plan for Walmart.

The first plan was prepared by MHF Design Consultants. The purpose of the plan is for a lot line adjustment merging 08276-001 into 08279; a lot line adjustment merging a portion of 08278 into 08278-001 that also discontinues Treasure Lane (a private way) and creates an access easement for 08278. This plan will allow for the new emergency access per discussions with the Fire Department for the proposed Wal-Mart store off Ashleigh Drive. There is also a proposed a lot line adjustment that merges a portion of 08279 into 08278 which goes through the conservation easement parcel. Town Department signatures are not required for this plan. There are waiver requests, but no state permits are required. He would recommend approval of the waivers and the lot line adjustment plan. Mr. Sioras introduced Frank Monteiro, of MHF Design Consultants.

Mr. Monteiro confirmed the Board members each had a copy of the plan. He advised he was representing Sanmina this evening. Also present was Attorney Linda Connell, of McLane, Graf, Raulerson and Middleton, and Jafar Salini of Sanmina.

The plan outlines four different lots. He provided plans showing the existing land conditions and the proposed land conditions. The four lots consist of parcel 08279, 11 Ashleigh Drive which contains 53± acres; 08276-001, 3 Ashleigh Drive, containing 4± acres; 08278 which is the old Treasure Masters building, now occupied by Sanmina, and 08278-001, which has a building on it but the building is currently vacant.

There is a paper street also known as Treasure Lane. It was created in 1972 for a residential development intended for parcel 08279, and was never constructed. There is a parking lot in front of the Sanmina offices that has shared access to Linlew between the two lots (08278 and 08278-001). The intent of this plan is to remove Treasure Lane as it is not needed. They will create a new lot line through the area known as Treasure Lane, providing additional land to parcels 08278 and 08278-001. There is a cross access/parking/utility easement between the two parcels and they would retain that easement.

The next request on this plan is to merge parcel 08276-001 into 08279, deleting 08276-001 (3 Ashleigh Drive). The last is to merge a portion of 08279 into 08278. Sanmina will retain lot 08278 for future use. There is an existing conservation easement on 08276-001 that is not changing under the proposed consolidation. It should be noted that parcel 08278 did not have legal frontage. On February 17, 2011, the Zoning Board of Adjustment granted a variance to allow 16 feet of frontage, making this a legal, non-conforming lot. The two lots existed by an easement and had no frontage on a town road; the town had granted a variance back in 1995.

The new lot 08278 will be 55.8 acres and will be sold to Walmart for their development. Sanmina will retain two lots containing 7.9 and 4.0 acres.

Attorney Connell clarified the note on the plan relating to the effective time of the boundary adjustment. This plan will eliminate a private paper street; the variance granted in 1995 allowed subdivision without the construction of Treasure Lane. The two existing lots had frontage on Treasure Lane. The variance granted in 2011 allows that old variance to continue until it is no longer required. They will not record the termination of Treasure Lane and the conveyance until the conservation easement amendment for 08276-001 goes on record.

Mr. Granese opened the public hearing. There was no public comment.

Motion by Anderson, seconded by Choiniere to close the public hearing. The motion passed with all in favor and the plan came back to the Board.

The Board had no questions for the applicant.

Motion by Choiniere to accept jurisdiction of the lot line adjustment application for Sanmina-SCI Corporation, merging parcel 08276-001 into 08279; a lot line adjustment merging a portion of 08278 into 08278-001, discontinuing Treasure Lane (a private way), creating an access easement for 08278 and finally, a lot line adjustment that merges a portion of 08279 into 08278. Anderson seconded the motion.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed.

Motion by Choiniere to grant waivers from LDCR Section 170-24.A.11, two foot contour intervals and Section 170-24.A.12, HISS mapping, seconded by Bartkiewicz.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed.

Motion by Choiniere, seconded by Bartkiewicz to approve the plan pursuant to RSA 676:4:III, Expedited Review, subject to the following conditions: subject to owner's signature, subject to onsite inspection by the Town's Engineer, establish escrow for the setting of bounds or certify that the bounds are set, obtain written approval from Doug Rathburn that the GIS disk is received and is operable, note approved waiver(s) on the plan, that the above conditions are met within 6 months; improvements shall be completed by September 16, 2011; a \$25.00 check, payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, along with the applicable recording fees; and, the mylar to be recorded shall conform to the requirements of the Rockingham County Registry of Deeds.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed.

**Wal-Mart Real Estate Business Trust**  
**3 Ashleigh Drive, PID 08276-001**  
**19 Manchester Road, PID 08276**  
**Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of this plan is for a lot line adjustment between the parcels 08276-001 (Owned by Sanmina) and 08276 (owned by Boomer Wolf, LLC). This allows for the widening of Ashleigh Drive as part of the required road improvements for the Walmart site plan which will follow this plan. These improvements have been coordinated between the developers, Mike Fowler, Public Works Director, and the NH DOT. No department signatures are required, and there are two waiver requests. Topography and HISS mapping are not required for a lot line adjustment; therefore, he would recommend approval of both the waivers and the lot line adjustment.

Attorney Peter Imse of Sulloway and Hollis represented the applicant, Walmart Real Estate Business Trust. Attorney Imse advised this evening the Board would also hear from Jon Brodeur of Doucet & Associates, Jack Merchant of Barry Porter & Associates, Dan Condatore, MMA Architects, and Giles Hamm of Vanasse Associates.

Attorney Imse explained this is a two-step process. The first part is the lot consolidation plan that piggy backs onto the last plan. The final step is the review of the final site plan. This evening, they would like to identify any remaining issues to be addressed so that they can move forward with the approval process.

For this evening, the applicant has filed a request for a conditional use permit, a waiver from the parking calculations, and waivers from the requirement to provide topography and HISS mapping results. They would like to obtain input and rulings on those items if possible. They can come back at a future date, but would like a list of issues to be addressed to take away this evening if necessary. The sign is shown on the plan, but permitted through a separate authority.

Mr. Granese asked that the Board review the application for the lot line adjustment separately from the Walmart site plan.

Jon Brodeur of Doucet & Associates advised the lot line adjustment acquires land for the widening of Ashleigh Drive; that is the major intent of the plan. It is a small sliver of land. The Vanasse Associate plans for the widening note the primary purpose is to allow the widening of Ashleigh Drive.

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

There was no public comment.

Motion by Anderson, seconded by Choiniere to close the public hearing. The motion passed with all in favor and the plan came to the Board for review.

The Board had no questions for the applicant regarding the lot line adjustment.

Motion by Choiniere, seconded by Anderson to accept jurisdiction of the Walmart Real Estate Business Trust and Boomer Wolf, LLC Lot Line Adjustment plan for Parcel ID 08276-001 (now 08279) and 08276, 3 Ashleigh Drive and 19 Manchester Road.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Motion by Choiniere to grant waivers from LDCR 170-24.A.11, Topography and LDCR 170-24.A.12, HISS Mapping, seconded by Bartkiewicz.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed.

Motion by Choiniere to approve the lot line adjustment pursuant to RSA 676:4,III, Expedited Review, subject to the following conditions, subject to owner's signature; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds or certify that the bounds have been set; obtain written approval from Doug Rathburn that the GIS disk is received and is operable; remove the TRC signature block from the cover sheet of the plan set; correct the name of the land owner from "Boomer Wolf, Inc." to "Boomer Wolf, LLC."; Delete Note 5, items B through D on Sheet 1 of 13; correct the spelling of "lot" on Note 5, Sheet 2, that the above conditions be met within 6 months; improvements shall be completed by September 16, 2011; a \$25.00 check payable to Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement, as well as the applicable recording fees; and the mylar to be recorded shall meet the requirements of the Rockingham County Registry of Deeds. Bartkiewicz seconded the motion. Discussion followed.

Mr. Anderson suggested a friendly amendment to change the designation of Doug Rathburn to "Director of IT and GIS". Mrs. Choiniere accepted the amendment.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor and the motion passed with the amendment included.

**Wal-Mart Real Estate Business Trust**  
**11 Ashleigh Drive, PID 08279**  
**Acceptance/Review, Site Plan**  
**155,826 SF retail store with associated parking**

Mr. Sioras provided the following staff report. The purpose of this plan is for a new 155,826 retail store off of Ashleigh Drive. All town departments have reviewed and signed the plan. There is a waiver request for the number of parking spaces required and he would refer the Board to the letter from Doucet & Associates, dated February 28, 2011. He would recommend eventual approval of this plan. There are some engineering review comments to be addressed. The Board will also need to discuss the fair share contribution memo that has been provided by Mike Fowler. Mark L'Heureux is here to speak on behalf of the Department of Public Works. Mr. Sioras recommended the Board hear the application, hear from abutters, and continue the hearing to the April 6<sup>th</sup> meeting.

Attorney Imse introduced Jon Brodeur of Doucet & Associates. Mr. Brodeur provided a slide presentation that updated the project as a result of the last meeting with the Board. He noted they have been before the Board a few times before, and it has been a fluid project. The site design and intent of the design remains intact. The biggest change is in the location of the emergency access road. It has been relocated to the side of the parcel to eliminate the access through the rear of the parcel into a residential development area.



Mr. Brodeur reported they have been successful in working with the town to create the new access and they feel good about the change. The other change to the site is with regard to lighting. The town had requested LED lighting and Walmart has agreed to use it throughout the parking area.

Regarding the parking, the town regulations call for a 5.0 parking ratio. They are requesting a waiver to 4.7. They feel the number of spaces will be adequate. They have exceeded the green space requirement; the regulations ask for 5% and they are providing 7.7% internal landscaping.

In reviewing the grading plans, Mr. Brodeur showed the ponds and drainage features. They have received the NH DES Alteration of Terrain permit. There had been some issues with the state while going through that process, but they have been straightened out. The result is the addition of a basin which interconnects with the adjacent basin. There will be one culvert under the road that connects the two ponds. They have established the existing flow rates and will reduce peak flow. They met the state and local storm water requirements for flow rate and have also met the ~~reduction in requirements for mitigating~~ the run off volume as well.

Mr. Brodeur introduced Giles Hamm of Vannase Associates who spoke with regard to the traffic study. Mr. Hamm explained his firm conducted a detailed traffic analysis of the corridor, which consisted of the 7 intersections between Tsienneto Road and Scobie Pond Road. The improvements proposed by the town and NH DOT were included in the study. They looked at critical peaks and added the redevelopment of the Dodge dealership into the equation. The result is an estimated 360 vehicle trips per hour during weekday evening peak, and 438 vehicles per hour during the Saturday mid-day peak. Included in the calculation was the understanding that the existing store would be redeveloped and have a use in place.

Regarding the Ashleigh Drive improvements, the intent is to widen Ashleigh Drive creating three lanes out and two lanes in. NH DOT will issue the town an amended permit for Ashleigh Drive. Improvements are planned to begin this year. The plan accommodates this plan and the Route 28 widening improvements.

Dan Condatore of Masa Montalto Architects addressed the Board with regard to the building elevations and walked the Board through a slideshow depicting the building and its elements. He explained they wanted an elevation that fit and blended in with the community. They wanted to create a store that had a more human scale. They also wanted to use regional materials, and have added local granite into the façade. A proposed signage plan has been provided as well.

Mr. Anderson asked if there are any other design models for the pylon sign? The monument sign is nice, but he would like to see other choices that are more aesthetically pleasing for the pylon. Mr. Condatore said there are other designs available and he would look into it.

Attorney Imse advised they do have the parking lot waiver and the conditional use permit application this evening. He wanted an opportunity address the points of the conditional use permit. This is found in Section 165-80.B.3 of the Zoning Ordinance. Their responses to the points are as follows.

1. There is a stream that crosses the parcel (08279) and the proposed driveway crosses the stream. There is no other feasible commercial access to the 55 acre site.
2. The Conservation Commission reviewed the design of the crossing. The crossing impacts the narrowest section of the wetlands. The entire area of disturbance is approximately 3000-4000 square feet.
3. The crossing is for commercial access to handle the use from Ashleigh Drive. This is the only feasible site for the crossing. The wetland would need to be crossed at some point.

Regarding the parking lot waiver, they are requesting a reduction down to 4.7 spaces per 1000 square feet of retail space rather than the 5 spaces per thousand as required by the regulations. This is consistent with Walmart's experience in other locations. Past testimony before this Board has indicated the proposed number is adequate to serve the needs of the customers and will have no negative impact on the regulations. They have provided the waiver in writing as well as evidence that the proposed parking is adequate and suitable.

Attorney Imse discussed the residential buffer. The regulations require a 50 foot buffer between the commercial/industrial use and the residential use. The buffer defines the boundary of the property. Section 165-23.D states the Board can determine that the existing vegetation is adequate and meets the intent of the regulation. The Board has asked for additional plantings along the edge of the parking lot. They are asking for a determination this evening that the remaining portion of the buffer does not need to be torn out or re vegetated.

Regarding the conservation easement, Attorney Imse explained there is an easement crossing an L shaped portion of the new property. The easement is held by the town. They have been negotiating with the town and the state to amend the existing easement to allow the crossing. The amendment has been altered to provide a cash contribution to the Conservation Commission rather than placing an easement on the land to rear of the parcel. The Derry Conservation Commission has approved the amendment, they have preliminary DES approval, the NH Charitable Trust though the office of the Attorney General has approved it and the Derry Town Council held its first hearing on the matter last evening. The amendment process should be completed within the next few weeks.

Mr. Granese invited Mark L'Heureux to provide his comments prior to opening the public hearing.



Mr. L'Heureux, Engineering Coordinator for the Department of Public Works stated the engineering review letter cited some items with regard to the plan submittal. He has reviewed them. Many are items that just need a bit of polishing. There are a few items to be added to the plan and he has spoken with Jon Brodeur regarding those points. The framework of the plan is solid, and the applicant's engineer just needs to address the details and make additions or changes. He has been through the plan several times. Regarding the fair share contribution, the department looked at many ways to calculate the formula and Mr. Fowler determined it would be most appropriate to use the volume to capacity ratio. The method is to establish a benchmark of capacity and determine additional volume based on the new development, and multiply that by the proposed cost to widen Route 28. This takes the improved, widened Route 28 and takes the additional trip generation. The applicant then purchases capacity as the fair share contribution.

Mr. Anderson noted the town hired two outside engineering firms to review the plan. Steve Pernaw reviewed the traffic study and Jones and Beach reviewed the plan set. These are the items that will be addressed by the applicant before they come back in April. Mr. L'Heureux provided an update of the Route 28 widening project. The town recently made one last land acquisition purchase. This will allow for the widening of Route 28 from Ashleigh Drive to Ross's Corner (intersection of Tsienneto and Crystal). Improvements will be made to the signalization at four intersections, but the warrant is not yet met to require installation of a light at A Street.

The project was originally estimated at 6.5 million dollars. DOT will contribute \$700,000.00 through a TIF bond and with the Walmart fair share contribution, the latest cost estimate is 5.3 million. Future developers will use the same formula to purchase capacity for their fair share. Route 28 will have raised, concrete islands to restrict cross traffic. The land acquisitions are anticipated to be complete by May 1. The bid opening will be scheduled for May 30<sup>th</sup>. The utility relocation will occur throughout the summer and the town will begin to widen the road by the end of August. The expectation is to be complete to binder course in November of 2011. The department intends to complete the finish binder and perform any subsidiary work in early 2012. Ashleigh Drive will also be widened as part of the proposed Walmart project. The timing of the projects should happen in concert with each other.

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

Scott Lavoie, 6 Thames Drive, stated he felt the new emergency access was in the appropriate place. He was pleased with the new location and believed his neighbors to be pleased as well. His only concern is the future of the land to the rear of the lot. The applicant is saying it has no plans to develop it now, but that could change. He would like the Council to look to the future. That is a valuable piece of land, even though it has a lot of wetland. It is a good buffer. He would like to find a way to preserve that land

and have it put into writing. He feels it would be better to preserve the land now rather than trying to do it later.

Mr. Lavoie noted it has been said that the land is useless because it is so wet and that Walmart won't do anything with it, but he would like to see it as a permanent, untouched buffer. He stated he appreciated the effort to find the new access.

There was no other public comment.

Motion by Anderson to close the public hearing, seconded by Choiniere. The motion passed with all in favor, and the plan came before the Board.

There was no Board comment.

Motion by Anderson to accept jurisdiction of the site plan for Wal-Mart Real Estate Trust, for Parcel 08279, 11 Ashleigh Drive. Choiniere seconded the motion.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Motion by Anderson to approve a waiver from LDCR Section 170-63.B (4) (g), to allow 726 parking spaces (711 retail, 15 restaurant) where the regulations require a total of 785 parking spaces. Bartkiewicz seconded the motion.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Motion by Anderson pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, a Conditional Use Permit is granted to allow the proposed access way from Ashleigh Drive to cross an area of poorly drained or very poorly drained soils, other than prime wetlands, with conditions. After review of the proposal, the Board finds that:

1. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District;
2. Design and construction methods will be such as to minimize detrimental impact upon the wetland, and the site will be restored as nearly as possible to its original condition;
3. No alternative which does not cross a wetland, or has less detrimental impact in the wetland, is feasible;
4. Economic advantage alone is not reason for the proposed construction.

Condition: The amendment to the conservation easement dated November 17, 2003, recorded at the Rockingham County Registry of Deeds at Book 4194, Page 2278, shall be approved by the town and recorded. The amended conservation easement shall be recorded at the same time as the mylar for this plan and is subject to Town Council approval.

Bartkiewicz seconded the motion.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Mr. Sioras suggested the Board may want to continue the plan, but before it did that, it should address the fair share contribution and have that on record.

Motion by Anderson to approve Memorandum MM11-06, from Michael Fowler to David Granese dated March 15, 2011 regarding a fair share contribution by Walmart in the amount of \$424,000.00. The contribution from Walmart is a fair share of the impact on the Route 28 project. All future developers will be subject to the same fair share formula. Bartkiewicz seconded the motion.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Mr. Granese asked if the Board continued the hearing to April 6, would that give enough time to address comments? Mr. Brodeur said they would make it happen. Many of the items are not hard to deal with and he will work with the review engineer and the town to find resolution to the comments.

Motion by Anderson to continue the public hearing to April 6, 2011, seconded by Choiniere.

Chase, Arsenault, Milz, Anderson, Bartkiewicz, Choiniere and Granese all voted in favor.

Mr. Granese said he wanted to thank the applicant for taking the Boards input into consideration, especially with regard to the use of regional materials on the building.

Attorney Imse thanked the Board. He asked the Board if there were any other issues to be addressed between now and the next hearing? Mr. Granese commented Walmart has been very good in working with the town and addressing Board comments. The public had opportunities to be heard and he does not have any remaining issues. Mr. Anderson said the Board can't make a decision on the plan tonight, but the Fire Chief is present. He asked if Chief Klauber had anything else to add? George Klauber, Derry Fire Chief, thanked the Walmart representatives for working with the town. There had been neighborhood concerns and public safety concerns with regard to a second access, but they all worked to find a resolution that worked for everyone.

There was no further business before the Board.

Motion by Choiniere, seconded by Bartkiewicz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:10 p.m.