

The Planning Board for the Town of Derry held a public meeting on Wednesday, December 14, 2011, at 7:00 p.m. at the Derry Municipal Center (3rd floor meeting room) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman, John O'Connor, Vice Chair; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; Michael Fairbanks, Ann Marie Alongi, Alternates

Absent: Jim MacEachern, Jan Choiniere, Anne Arsenault, Darrell Park

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Robert Mackey, Code Enforcement Officer

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 the exits and meeting materials.

Mr. Fairbanks was seated for Mr. MacEachern and Ms. Alongi was seated for Mrs. Choiniere.

Escrow

#11-32

Project Name: Bunker Estates

Developer: JEMCO Builders & Development, Inc.

Escrow Account: JEMCO

Escrow Type: Letter of Credit

Parcel/Location: PID 02020-001, 65 Fordway

The request is to authorize the Treasurer for the Town of Derry and/or her designee to draft Letter of Credit #20001082, drawn on TD Bank, in the amount of \$62,122.86 on December 22, 2011, if the original, amended Letter of Credit is not received by that date.

Mr. Granese advised it will be up the Board if they want to accept this. The bank has approved the renewal but the Town does not have the original in hand.

Motion by O'Connor to approve the draft of the Letter of Credit. The Board will follow up at the next meeting verify the original was received. Seconded by Bartkiewicz. The motion passed with all in favor.

Minutes

The Board reviewed the minutes of the November 30, 2011, meeting.

Motion by O'Connor, seconded by Bartkiewicz to accept the minutes of the November 30, 2011, meeting as amended. The motion passed in the affirmative.

Correspondence

None

Other BusinessReview of Sign for Pinkerton Place

Mr. Sioras advised that as part of the conditional approval of Pinkerton Place (Goodwill/Woof Meow), the Board placed a condition that they would like to review the proposed sign for the development. There is a colored rendering of the sign in the packets this evening. Randy LaClaire is present to answer any questions. The Board is being asked to approve the proposed sign.

Mr. Granese asked where will the sign be located? Mr. LaClaire advised there are two locations: one at Manchester Road and one at the entrance off Ashleigh. The two signs will be exactly alike with all the landscaping as shown on the rendering. Ms. Alongi confirmed the colors shown will be the colors on the sign.

Motion by O'Connor to accept the artist rendition of the sign for Pinkerton Place as presented to the Board this evening, seconded by Bartkiewicz.

Chase, Alongi, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor.

Mr. Granese asked for an update on the project. Mr. LaClaire advised the tenant has been secured for the third site and it is Panera Bread. They will look to come to the Board at the next meeting with the rendering of what the building will look like. Mr. Granese complimented the developer on the work at the site.

Motion by O'Connor to amend his previous motion regarding the rendering for the sign to include the drawing number which is 06550 AE R5, seconded by Bartkiewicz. The Board confirmed they were in agreement with the amendment.

Mr. Anderson was now seated.

Public Hearing

**Betley Chevrolet-Buick, Inc.
PID 08073-001, 50 North Main Street
Acceptance/Review, Site Plan Determination/Architectural Review
Addition of canopy and change in façade**

Mr. Sioras provided the following staff report. The applicant is Betley Chevrolet-Buick-Geo, Inc. The parcel ID is 08073-001, 50 North Main Street. The purpose of the plan is for a new exterior façade, a new main entrance and the construction of a 20 x 50 canopy over the new car delivery area. This is part of the new corporate design. He would recommend acceptance and approval of the application. There is a color drawing in the packet.

Todd Connors, Long Beach Development Associates, presented for the applicant. Betley Chevrolet is located on the corner of Tsienneto Road and North Main Street in the General Commercial II area. The lot is five acres and this is a well-developed car dealership. They have applied for a site plan determination which includes a new façade and interior renovations. The dealership is under direction from Chevrolet to upgrade the property to be consistent with the new corporate identity and upkeep of the dealership brand.

The first part of proposed changes involve interior renovations and the upgrade of the interior service areas, showroom and customer areas. That is not part of this application. Before the Board this evening is the façade improvement plan. The intent is to repaint the building and back areas. In the front, they will replace the existing mortar and block with ACM panels, which have a brushed metal surface. Some will carry the blue Chevy color. They will add the Chevrolet and Betley lettering. Also part of this proposal is the addition of a 20' x 50' canopy to the left side of the building. This will be over the new car delivery area. They will also add an arch over the main entrance. The applicant is not proposing expansion of the site or any expansion of use. There will be no change to the parking or car storage areas. The changes are limited to the structure.

Mr. Anderson asked if there was a rendition or picture of the building as it is currently so the Board could see a current versus the proposed? There was not. Board members felt the proposed would be an improvement to the property which has a dated look to it.

Motion by Anderson to open the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the floor was open to the public.

There was no public comment.

Mr. Anderson inquired of Mr. Mackey if there are any code issues and if the site conforms to the current regulations? There are no issues and it does.

Motion by O'Connor to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the plan returned to the Board for review.

Motion by O'Connor to accept jurisdiction of the site plan determination application before the Board for Betley Chevrolet-Buick, Inc., located on Parcel ID 08073-001, 50 North Main Street. The motion was seconded by Bartkiewicz. Discussion followed.

Mr. Anderson asked regarding the corporate name. The marquis is not referencing Buick. Mr. Connors explained it is one of the dealership tags. The business is known as Betley Chevrolet-Buick. There are no plans at present to add the Buick name to the building. If they do, he will come in and speak with Mr. Sioras who will advise the best way to proceed. Mr. Sioras said if that happens, he will bring the matter to the Board administratively and ask the Board to address it.

Chase, Alongi, Anderson, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor.

Motion by O'Connor to approve the plan pursuant to LDCR Article IX, Section 170-51, Site Plan Determination, with the following conditions: subject to owner's signature, that the above conditions be met within six months and the improvements shall be completed by June 30, 2013.

Chase, Alongi, Anderson, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor.

Floodplain Regulations

To discuss proposed amendments to the Town of Derry Zoning Ordinance and the Land Development Control Regulations to be in accord with new FEMA standards.

To amend various sections of Article VII, Floodplain Development District to delete definitions of "Area of Shallow Flooding", "Breakaway Wall", "Flood Boundary and Floodway Map"; "Flood Insurance Study"; references to Zones A1-30, AO, AH and the FHBM; amend the definitions of "Area of Special Flooding Hazard", "Development", "Flood Elevation Study", "Manufactured Home"; add definitions for "Manufactured home park or subdivision", "new construction", "recreational vehicle", and "violation"; delete requirements in Zone A, add procedures for the Building Inspector for construction in Zone A; amend "regulatory floodway" and "special flood hazard area"; add requirements for the ZBA with regard to Notices of Decision and to change references to the County of Rockingham to Rockingham County.

To amend Article IX, Conservation Corridor Overlay District to change the reference of County of Rockingham to Rockingham County and to delete reference to Flood Boundary and Flood Insurance Maps.

To amend the Land Development Control Regulations, Sections 170-32 and 170-68, Special Flood Hazard Areas to change the reference of County of Rockingham to Rockingham County and to delete reference to Flood Boundary and Flood Insurance Maps.

Mr. Sioras advised the Board has discussed the proposed changes at a workshop. The Federal Emergency Management Agency (FEMA) does a site visit every few years with Code Enforcement and makes suggested changes to the regulations. Most of these are housekeeping items. The proposed changes are noted in red. There are changes to the lettering of the zones and some of the language in the definitions. These changes will keep the town in compliance with the Federal Insurance program so that when there are major flood events, such as Tropical Storm Irene, the residents are eligible for reimbursement. Mr. Mackey meets with FEMA during these visits. The suggested changes would be forwarded to Town Council if the Board approves them, as this is a zoning amendment.

Mr. Mackey agreed many of the changes are housekeeping items. There has been rewording of some of the definitions. There used to be several designations in the A zones for the 100 year flood areas and now there will be just A and AE. There are some regulatory changes if someone is building in the floodplain or if the ZBA grants a variance. Derry is a bit more stringent in that if someone is in the 100 year floodplain, they are also in the Conservation Corridor Overlay District. The uses in the CCOD are limited. The town is less likely to see active construction in these areas because we classify it as conservation land. Every five years or so, FEMA reviews the town regulations before conducting the site visit and suggests changes to keep the town current so that we fall under the FEMA program. This allows people to obtain flood insurance if they need it.

Ms. Alongi asked how would someone know if their land was in a floodplain? Mr. Mackey explained there are Floodplain maps in his office which are based on aerial photos. They were last updated in 2005. There is also a layer showing the floodplain areas on the town GIS.

Mr. Milz confirmed that all of the proposed changes were suggested by FEMA and not drafted by staff.

Mr. Anderson questioned the permitted and prohibited uses allowed in this zone. Wildlife management is permitted, but piggeries and mink farms are not. Mr. Mackey explained that piggeries and mink farms are more agriculture. There have been no recent issues or concerns with either of those uses. The uses had been added as an attempt by the town to regulated those particular uses.

Motion by Anderson to open the public hearing, seconded by Bartkiewicz. The motion passed with all in favor and the floor was open to the public.

There was no public comment.

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

Motion by O'Connor to accept the recommended changes to Article VII, Floodplain Development District and move the changes forward to Town Council for recommended approval. The motion was seconded by Bartkiewicz.

Chase, Alongi, Anderson, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor.

Motion by O'Connor to accept the recommended changes to Article IX, Conservation Corridor Overlay District, and to move the changes forward to Town Council for recommended approval. The motion was seconded by Bartkiewicz.

Chase, Alongi, Anderson, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor.

Motion by Anderson to approve the recommended changes to LDCR Sections 170-32 and Section 170-68, Special Flood Hazard areas to change the reference of County of Rockingham to Rockingham County and to delete reference to Flood Boundary and Flood Insurance Maps. The motion was seconded by O'Connor.

Chase, Alongi, O'Connor, Fairbanks, Milz, Bartkiewicz and Granese all voted in favor. Anderson voted no stating that phrasing will likely be asked to be changed again.

The motion passed by a vote of 7-1-0.

Workshop

The Board held a televised workshop to discuss proposed zoning changes in the Industrial areas located near or adjacent to Route 28/Manchester Road.

Mr. Sioras advised that administration and the ZBA had asked the Board to look at the Industrial IV zone. Currently, there are limited uses allowed. Mr. Mackey gets many requests for uses that end up going to the ZBA. This would clean that up. The proposed changes reflect the uses that are there today.

Mr. Mackey said that in speaking with Mr. Sioras, the Industrial IV zone is the only industrial zone that allows retail business. This stems from a lawsuit in the 1970's where an applicant wanted to put a driving range in this area. What is in the ordinance is the wording that was put in at that time. Staff looked at the definitions that we have and what has gone into this zone. There is a mix of service uses, retail, and restaurants. More and more, they are trying to adhere to the uses currently allowed by the Zoning Ordinance. In this instance, the zone has developed and considering what could come into the zone, the Ordinance needs to be updated to reflect the uses and what the town wants to see there. He is not recommending this verbiage be put into the other industrial zones. This zone is more commercial/retail than Industrial. He feels it is more

appropriate to add these uses. Along with that, there is a need to have definitions in the ordinance that back up and clearly define the uses we are talking about.

The Board can see where they have added to the existing uses. The proposed changes cover what is there and what the Board wants to see there. As the Board runs down the list, “retail business” has been changed to “retail sales establishment”. There is a new definition for that in the Ordinance. There was not one for “retail business” before. They also wanted to cover the restaurant uses which include full service and drive-in. The drive-in restaurant is not so much the A&W type as those are not seen much today. “Commercial Service Establishment” covers things like laundromat, and service type businesses including locksmiths.

“Indoor Commercial Recreation” covers such things such as The Sports Zone and the health clubs in the area. “Professional office” includes chiropractors, doctors and other licensed professionals. All of these terms have the appropriate definitions to back them up, including “Hotel”. They have added “Industrial Establishment” and “Light Industrial Establishment”. “Manufacturing” may be redundant given Section 1. The Board may want to look at that and perhaps just say manufacturing rather than listing the types. The Board can always prohibit a certain type of manufacturing if it does not want them in the zone. Regarding “Automobile vehicle sales, repair and service station”, those have been added because retail sales exclude those particular uses and those uses are currently in the zone.

The intent is to put uses in the ordinance that are in the zone to keep people from having to visit the Zoning Board, assuming these are the types of businesses the Board wants to allow in IND IV.

Mr. Granese asked with regard to auto vehicle sales, repair and service stations. Why do these need to be in this zone? Mr. Mackey said that they do not need to be there if the Board does not want those uses. There are existing uses such as VIP and Second Chance Auto. Over time, that type of business could be phased out.

Mr. Chase said that given the joint meeting held a few months ago between the ZBA, Conservation Commission and Planning Board, those uses should be allowed. It was noted that meeting was held because of the use that was proposed to be located adjacent to the aquifer. Mr. Fairbanks recalled three to four auto uses proposed in that area coming before the ZBA. He asked if Ashleigh Drive is part of this Industrial IV area? It is. Mr. Mackey indicated the TIF district is in the IND IV. The IND IV goes up Manchester Road to the Londonderry town line. On Scobie Pond Road it is IND III. These uses would not be appropriate there. He confirmed the Ashleigh Drive area is IND IV and the uses proposed meet the vision the Board had for that area. Mr. Fairbanks agreed the Board could take out auto sales and phase them out over time.

Mr. Mackey noted that once Walmart goes in, the smaller places will eventually be phased out as other development comes in and takes them over. Mr. Granese said if that area is being developed for retail, he would rather see retail uses other than used car sales, although there is nothing wrong with that type of business. They are allowed in other areas of town.

Mr. Anderson suggested removing automotive vehicle sales and prohibiting them. He also suggested adding non-profit organizations under prohibited uses. The question came up, would this include churches? Mr. Mackey said there is a blanket statement in the Ordinance that churches are allowed in every zone. If the Board prohibits churches, that statement would also need to be changed. Mr. O'Connor suggested making sure this does not conflict with existing RSAs.

Mr. Sioras noted the Board was also looking at a document with numerous changes to the definitions contained in the Zoning Ordinance. The proposed changes to the definitions would make Mr. Mackey's job a lot easier and lessen the chance of someone appealing his interpretation. Mr. Mackey agreed and said the changes would make his job easier because one can refer back to an exact definition and it would leave less open to interpretation.

Mr. Granese asked if the proposed changes can go on line? Mrs. Robidoux said she could do that. Mr. Sioras suggested cleaning up the wording first and bringing it back to the Board to look at. It can then be scheduled for a public hearing. Once it is cleaned up it can be put online. Copies would be available in the office as well.

Ms. Alongi asked if Mr. Mackey has the authority to talk about the aesthetics of a site when a new building is constructed? Mr. Granese said the Planning Board does look at that and has in the past made suggestions for changes to what has been proposed. They did this for Walmart and CVS. Mr. Sioras said the town does have Architectural Design Regulations, so the Board can require certain characteristics within certain zones.

Mr. Milz asked for the next step. Mr. Sioras said if the Board is content with what has been proposed, it can be cleaned up and a date proposed for a January hearing. Mr. Sioras noted this will need to go to Town Council for approval and he would prefer to move this forward sooner rather than later so that it keeps moving, especially given the interest in Ashleigh Drive.

Mr. Fairbanks asked if there is a difference between "Camping Trailer" and "Travel Trailer"? Why distinguish between the two? Mrs. Robidoux said the travel trailer is more like a fifth wheel. Those definitions will be looked at again. He also had a question regarding "Home Occupation". It says "no outside display" does that mean there cannot be a sign? To him, that says anyone with no outside display is not a home occupation. Mrs. Robidoux said that referred more to the display and storage of material, for example if someone had a landscaping business, so that they can't store bark mulch or gravel in the yard. Signs are allowed for home occupations under the sign ordinance and all home occupations require a special exception. Mr. Mackey suggested tweaking the definition. Mr. Fairbanks felt the current wording said if there was no outside display, it was not a home occupation. Mr. Milz suggested, so that it is more clear, adding the words "other than the permitted sign". Mr. Mackey noted most home occupations don't have any outside display. The Board agreed the wording should be clarified.

Mr. Chase commented with regard to the proposed permitted use "restaurant, full service". That does not coincide with the proposed definitions. Under permitted uses the term will be changed to "restaurant". Regarding "Produce Stand", did the Board want to put a size limitation on them? Mr. Anderson asked if the issue was that they could migrate into a full blown flea market? Mr.

Mackey said he was thinking more in terms of operations like Chakarian. That started as a small farm and evolved into what it is today. They are now more commercial. Mr. Anderson wondered if it made sense to set a limit so that anything over 200 square feet needs to go to the Planning Board for site plan review? Mr. Mackey said anyone can open a produce stand. The intent is to maybe limit the size so that they can't be expanded. Mr. Anderson agreed that something like that could become a neighborhood nuisance if there was a lot of vehicle traffic. 200 square feet is getting to be more commercial. Mr. Fairbanks commented there is the business at the end of High Street – is that a produce stand or something else? That is almost year round. Mr. Sioras also noted J&F Farms which expanded from a produce stand and the former Cousin's Farm. Mr. Anderson asked if the Board wants to regulate produce stands as they start out so that the neighbors have a chance to weigh in? Maybe there should be different sizes for different parts of town. Mr. Granese felt a 6' x 9' was a good size. Mr. Mackey noted many are the size of a standard shed which is 10' x 10' or 10' x 12'. Mr. Anderson suggested making the maximum size 150 square feet and anything beyond that would require review. Mr. Fairbanks asked where is the definition used in the ordinance? Mr. Mackey said it talks about produce grown on the premises is allowed in the residential zones. Mrs. Robidoux commented that produce stand is not allowed in any zone by right currently, but with the movement toward sustainability and home farms, more people will be looking for a place to put extra produce. Should there be some level of protection? Mr. Milz did not feel that any of the existing ones were an issue. Mr. Anderson indicated one of the concerns would be the one pointed out by Mr. Fairbanks which has grown; it is on a dangerous intersection as well. Mr. Mackey noted that in MDR, the sale of farm produce is allowed. Mr. Granese agreed the Board should define the size. The Board agreed on 150 square feet, but the definition should be looked at again.

Mrs. Robidoux asked the Board to look at the definition of "nursery" as it needs some work. The way it is currently written, it can be interpreted that you can grow and sell your nursery stock, but you can't bring in stock for retail sale. Mr. Anderson suggested stopping at the end of the first sentence. Mr. Milz felt that pointed to the difference between Chakarian's and a business like Bensons or Derry Feed that have a garden center, and might bring in flowers and things to sell seasonally. Mr. Mackey said there is a difference between people who are growers rather than retailers. Mr. Anderson suggested that the use could be handled under "commercial agriculture".

Mr. Fairbanks said given the situation with The Granite House, he knows there was discussion at the ZBA about whether that use was a boarding house or a hotel. Does the Board need a definition to fit this type of facility? Mr. Mackey said that use is defined as a 'sober living facility'. The zoning definition of what it is, versus the classification under the building and fire codes is different. At 16 or less residents it is classified as a boarding house under fire and life safety codes. If the occupancy level goes above 16, it becomes a hotel under life safety codes; this is not really a hotel. It may be that the Board needs to add a definition. Mr. Milz thought it was a lodging house. Mr. Anderson said as he reads the definition of hotel it talks about transient residents. Mr. Mackey said transient is normally defined as 30 days or less, where the Granite House residents are there typically for three months. Mr. Anderson asked if this would be picked up in Lodging House? Mr. Fairbanks suggested Group Residence, even though the length of stay is relatively short term. Mr. Mackey said technically it falls under a lodging house.

Mr. Sioras suggested separating out the permitted uses in the IND IV zone and the proposed changes to the definitions. The definitions can be worked on and brought back to the Board after the holidays. It is important to move the IND IV uses forward. Mr. Milz agreed. Mr. Sioras said the changes will be made to the permitted use section of the IND IV zone and brought back to the Board in January. He, Mr. Mackey, and Mrs. Robidoux will work on the definitions and bring those back at a later date.

Other Business

Mr. Granese advised the next meeting of the Board would be January 11, 2012.

There was no further business to come before the Board.

Motion by Anderson, seconded by Milz to adjourn. The motion passed and the meeting stood adjourned at 8:10 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____