

The Planning Board for the Town of Derry held a public meeting on Wednesday, January 25, 2012, 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; Jan Choiniere, Jim MacEachern, Members; Ann Marie Alongi, Alternate

Absent: Darrell Park, Anne Arsenault, Michael Fairbanks

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Mark L'Heureux, Engineering Coordinator; Tom Carrier, Deputy Director of Public Works; Lynne Guimond Sabeau, Esquire, Boutin & Altieri, PLLC.

Mr. Granese called the meeting to order at 7:04 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.

Ms. Alongi was seated for Mr. Park.

Escrow

#12-05

Project Name: Boomer Wolf, LLC

Developer: Same

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel/Location: PID 08275, 19 Manchester Road

The request is to approve Release #1 in the amount of \$267,252.05 and request a replacement letter of credit in the amount of \$127,404.00 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release Letter of Credit #1036 in the amount of \$394,252.05.

Motion by O'Connor to approve as requested, seconded by Bartkiewicz. Discussion followed.

Ms. Alongi noted the amount to be released is \$127,494.00. Mrs. Robidoux asked that the amount of the Letter of Credit to be returned to the bank be corrected to \$394,746.05.

The motion passed as amended.

Minutes

The Board reviewed the minutes of the January 11, 2012, meeting.

Motion by MacEachern, seconded by Bartkiewicz to accept the minutes of the January 11, 2012, meeting as written. The motion passed in the affirmative with all in favor.

Correspondence

Mr. Bartkiewicz advised the Town has sent an escrow renewal reminder letter to JRV Homes for the project located at 38 Maple Street. The current Letter of Credit will expire on February 26, 2012. The January issue of *Town and City* is on file in the Planning Office. The Board has also received an updated Panera Bread plan, which will be addressed by Mr. Sioras.

Panera Bread

Mr. Sioras advised that at the last meeting, the Board reviewed the elevations and architectural elevations for the Panera Bread. After the meeting, Mr. LaClaire realized he had misspoke regarding the drive through wall (west elevation), which actually faces Manchester Road. Mr. Anderson had also expressed concern that the wall was long and blank. Mr. LaClaire met with the architect and they have developed a new color scheme for that side of the building.

Randy LaClaire, RKL Consultants, apologized to the Board for misspeaking at the last meeting. During the design development, the orientation of the building was shifted several times. The drive-through does face Manchester Road. He spoke with the tenant, the architect, and the developer and they all agreed the proposed color was not a good one to face Manchester Road. They came back with a new color, "sienna clay", for the Manchester Road elevation. Ms. Alongi asked if the building is still being moved so that the drive-through faces Ashleigh Drive? Mr. LaClaire advised the drive-through will still face Manchester Road to accommodate the traffic flow. Ms. Alongi asked if this will cause any issues with stacking of cars at the drive-through into the parking lot? Mr. LaClaire said that the civil engineer addressed that during the design. The current orientation of the building is the one that allows for the best traffic flow. If the front of the building faced Manchester Road, that would cause traffic to back up into the parking lot from the drive-through. There are no traffic issues with the current configuration. Mr. Anderson thanked Mr. LaClaire for taking a second look at the orientation and the color. The sienna clay is a better color than the original brown that had been proposed.

Other Business

Schedule Public Hearing for Rezoning of Industrial IV Zone

Mr. Sioras advised he would like to suggest a change to the proposed date for the public hearing. In speaking with Mr. Anderson with regard to the use of Churches in the zone, the thought was

to add “church” back into the list of prohibited uses in the Industrial IV zone. If the Board does that, the date of the proposed hearing would need to be amended from February 22 to March 14. Mr. Anderson stated the correspondence from Attorney Boutin indicated he was not in favor of the prohibition of “church” in the Industrial IV. In discussion with Mr. Sioras, they revisited that. The use is allowed in every other zone and they felt it would be acceptable to prohibit the use in this one zone as this is the TIF district and the tax revenues are used to pay off the bond. They would like to add the use back in as a prohibited use for consideration during the public hearing.

Mr. O’Connor stated he would like further clarification from Attorney Boutin. There has been prior litigation in the state (as noted in the RSA text) on this issue. He would like Attorney Boutin to say he is comfortable and that the town is not leaving itself open to future litigation before he could be in agreement with the prohibition. Mr. Milz noted that the request to add this use back into the list of prohibited uses is just for discussion purposes during the public hearing. This will give the Board an opportunity to listen to public testimony either for or against the prohibition. It can always be removed at the public hearing. Mr. O’Connor said he would be comfortable with that and Attorney Boutin would have time to further research it. Mr. Sioras agreed it would allow development of a public record for or against the prohibition and the Board can always hold more than one public hearing if required.

Motion by MacEachern to schedule a public hearing for March 14, 2012, to discuss amendments to the Industrial IV zone of the Town of Derry Zoning Ordinance, seconded by O’Connor.

Alongi, Chase, O’Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

Source Water Protection Plan

Mr. Sioras advised Mr. O’Connor had forwarded good questions. Mr. Durrett needed a bit more time to respond to them. The answers will be incorporated into the final draft of the Plan. In discussion with staff, it was determined that time should be allowed for the Board to provide comment or ask questions. He would like to continue the discussion to February 22. Any comments or questions can be forwarded to him or the Advisory Committee. The answers to Mr. O’Connor’s questions will be shared with the Board.

Motion by MacEachern to continue discussion of the Derry Source Water Protection Plan to February 22, 2012, seconded by Bartkiewicz. Discussion followed.

Mr. O’Connor extended compliments to the Advisory Committee, made up of Craig Durrett, Tom Carrier, Liz Robidoux and Paul Dionne. This is a huge document; it is very intense and a massive amount of work went into it. He is impressed with what they did. He thanked Mr. Durrett for working on a response to his questions as well.

Mr. Carrier advised Mrs. Robidoux will send an email to the Board members with Mr. Durrett’s answers to Mr. O’Connor’s questions and comments. The Committee wanted the Board to look at the comments. He is happy to answer any questions the Board might have on the Plan.

Questions can be forwarded to Mr. Sioras and the Committee can get back to the Board in advance of the February 22nd meeting. The intent is to allow time for the Board to digest the Plan, ask questions, and formulate a response so that a final form of the Plan can be developed prior to a Board vote. The draft will be finalized based on the comments received.

The motion passed with all in favor, with the exception of Mr. Anderson.
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There was no other business.

Public Hearing

Hampstead Road and Harvest Drive, LC 10024-012 and 10024-013, 19 and 21 Harvest Drive Acceptance/Review, Lot Line Adjustment

Mr. Sioras presented the following staff report. The proposal is for a Lot Line Adjustment between Parcel 10024-012 and 10024-013, located on Harvest Drive. This will allow for a more suitable driveway location relative to grades/topography for Lot 10024-013. Because this is a Lot Line Adjustment, town department signatures and state permits are not required. There are no waiver requests for this plan.

Tim Peloquin, Promised Land Survey presented for the applicant. In addition to Mr. Sioras' comments, he would add that this is an equal land area they are transferring. There are no violations of the Zoning Ordinance. As they were placing the 40 foot driveway on Lot 13, they ran into a 14 foot area of ledge. It would be expensive and unsightly to blast the lot for the driveway in that location. If they come in at the proposed location, the driveway becomes more gradual. It makes for a nicer lot. The lot still meets the frontage requirement in the zone. Both lots are still greater than 3 acres each.

Mr. MacEachern noted the new location of the driveway is now closer to the curvature of the road. Will this cause any sight distance issues or additional safety issues? Is the left end of the lot too steep to allow a driveway? Mr. Peloquin said that the new location is actually better in terms of sight distance, although it results in a longer driveway. There is no problem with sight distance. Mark L'Heureux advised the sight distance requirement is 500 feet.

There was no public comment.

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

Motion by MacEachern to accept jurisdiction of the lot line adjustment application before the Board for Hampstead Road and Harvest Drive, LLC, located on Parcel IDs 10024-012 and 1024-013, 19 and 21 Harvest Drive. Bartkiewicz seconded the motion.
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Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor. The motion passed with an amendment suggested by Choiniere to correct the parcel ID to "10024-13". It was noted the plan has the correct Parcel ID numbers.

Mr. L'Heureux advised he was all set with the plan.

Motion by MacEachern to approve the plan before the Board pursuant to RSA 676:4:I, Completed Application, subject to the following conditions: Subject to owner's signature; subject to on-site inspection by the Town's Engineer; establish escrow for the setting of bounds, or certify the bounds have been set; obtain written approval from Doug Rathburn that the GIS disk is received and is operable: that the above conditions are met within 6 months, improvements shall be completed by August 30, 2013, and a \$25.00 check, payable to the Rockingham County Registry of Deeds should be submitted with the mylar in accordance with the LCHIP requirement. Bartkiewicz seconded the motion.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese voted in favor with an amendment by Anderson to change "Doug Rathburn" to "IT Director". The motion passed.

Ruth D. Sawyer 1991 Trust
06040, 125 Island Pond Road and Mill Road
Acceptance/Review, 2 lot subdivision

Mr. Sioras provided the following staff report. Linda Kneeland, one of the heirs is present this evening. The purpose of the plan is for a two lot subdivision per the family estate agreement. One parcel will be 32.11 acres and the other will be 36.85 acres. All town departments have reviewed and signed the plan. There are several waiver requests. The waiver request from Section 165-48 is not required for this project; both lots exceed the 3 acre minimum for the zone. Mr. Sioras advised he would recommend approval of both the waiver requests and the subdivision plan.

Tim Peloquin, Promised Land Survey, presented for the applicant. He surveyed the boundary of the Ruth Sawyer property (69± acres) and integrated the town GIS topography (Sheets 2 and 3) so that the Board can see the general land features which include some brooks and wetland areas. One has ample frontage on Island Pond Road, the other will have ample legal frontage (over 1000 feet) on Mill Road. This subdivision will create two large lots off of one lot; each lot will have road frontage on a different road. There is no intent to develop the lots at this time.

Mr. Sioras advised he received a visit from an abutter this afternoon. Michel Walters of 22 Alyssa Drive advised he was not able to be present this evening, but had no objection to this plan.

There was no further public comment.

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

Motion by MacEachern to accept jurisdiction of the 2 lot subdivision application before the Board for Ruth D. Sawyer 1991 Trust, located on Parcel ID 06040, 125 Island Pond Road and Mill Road, seconded by Choiniere.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

Mr. Anderson asked that staff comment on the waiver requests. Additionally, he noted in the TRC comments that Mr. Mackey indicated the subdivision should have more detail with regard to topography. Why would the Board grant a waiver? Mr. Peloquin advised the waiver requests are for soils, wetlands and setbacks. If someone pulled a building permit, the septic plan would have to show that the lot met all of the applicable setbacks. The town would see that when and if the lot got developed.

Motion by MacEachern to grant waivers from the following sections of the LDCR: Section 170-61.A.12, HISS mapping; Section 170-24.A.13, Wetland mapping, and Section 170-24.A.6, Setback lines, seconded by Bartkiewicz.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

Mr. MacEachern asked if all of the TRC comments had been addressed? Mr. Sioras explained the separate departments only sign off on the plan if their comments have been addressed. Mr. L'Heureux had no issues with the plan.

Motion by MacEachern, seconded by Bartkiewicz to approve the 2 lot subdivision plan pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: Subject to owner's signature, subject to on site inspection by the town's engineer, establish escrow for the setting of bounds, or certify the bounds have been set, obtain written approval from the IT Director that the GIS disk is received and is operable; correct the plan header, body and lots to note the correct map and lot numbers as designated by Fire and Assessing (Parent lot is 06040, and new lot is 06040-001); note approved waivers on the plan; subject to receipt of state or federal permits relating to the project; that the above conditions be met within 6 months; improvements shall be completed by August 30, 2013 (bounds set); a \$25.00 check, payable to Rockingham County Registry of Deeds shall be submitted with the mylar in accordance with the LCHIP requirement, along with the applicable recording fees.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

MTM Realty, LLC**PID 29195, 32 West Broadway**

Compliance hearing to determine whether conditions precedent of the application approved on May 5, 2010 have been met. **Continued from January 11, 2012.**

Mr. Sioras provided the following overview. This hearing was continued from 2 weeks ago. There is one remaining condition of approval, which was to have the fire escape/stairs reviewed by the Fire and Building Departments. The Board has a copy of the memos from Mr. Kersten, Interim Director of Fire Prevention and Mr. Mackey, Code Enforcement; there is also the revised set of plans received two weeks ago, showing the changes that had been requested by the Fire and Building Departments previously. A letter was received from Steve Trefethen today regarding his review of the revised plan. Mr. Anderson noted each Board member has a copy of the letter from Mr. Trefethen and has read it, and it is part of the record. Mr. Granese noted the letter was unsigned. Mr. Sioras advised Attorney Sabean is present if the Board has any questions.

Attorney Robert Moran presented for the applicant. He advised the issues have been narrowed down. The plans have been revised and accepted by the board, pending comments from Mr. Mackey and Mr. Kersten. His understanding, from reading those memoranda dated January 20th and 19th respectively, is that they have reviewed the plans and the plans are in compliance, with the reservation that once the deck is constructed there may need to be some slight revisions and the as built condition may be slightly different than what is on the plan. But it will be in compliance. Mr. Granese agreed. Mr. O'Connor had a question with regard to Mr. Kersten's letter. He had reached out and although Mr. Kersten could not attend tonight, he provided the clarification that it was inferred there may be slight adjustments as he inspects the construction and items such as the location of exit signs may need to be adjusted to meet code requirements.

Mr. Granese confirmed with Attorney Moran that there have been no material changes to the property since the November 30, 2011 hearing. Attorney Moran said there have been no changes. Mr. Granese noted the Board should determine if there are any conditions subsequent to be added as a result of the letters from the Fire and Building Departments. He asked with regard to the fencing detail. It appears the original fence design has been changed from what was approved. Attorney Moran advised the plan submitted in November had the correct fence detail on it that showed 4 sections of 6 foot high fence, one section of cascading fence and then the four foot sections. He did notice that the most current plan set had that detail changed. That is unfortunate as that was not the intent. The plans were to focus on the fire escape detail. The plans previously submitted in November of 2011 do show compliance with the Board's request and that is what will be built. Mr. Milz asked if that part of the fence would be addressed when they pulled a permit? Mr. Sioras said that can be addressed this evening. Mr. MacEachern said that that particular issue was dealt with previously by the Board and approved in the original motion, so it will need to be there. That aspect has already been dealt with and previously approved and appears in the minutes. Attorney Moran said it will be drawn in before they do anything. Mr. MacEachern said the item on the table this evening is the fire escape detail and Fire and Building Department comments. Mr. Granese stated that on the current plan, it appears that the entire fence detail [leading to the gate] is 6 feet high. Where the Board previously approved six foot sections, with a cascading section, he wants to make sure there are no

differences in what was approved, between the old and new plan. Attorney Moran said they are only dealing with the issue of the fire escape following the January 11th meeting. That the fence detail has an error is unfortunate but he suggests it is inconsequential. Mr. Granese explained that he is looking down the road and does not want there to be any areas open for interpretation as to what was approved. He wants to make sure all details are set in stone so there is no question.

Mr. MacEachern suggested if Board gets to the point of approval tonight, that they add an amendment to the approval, citing the fence detail that the Board is approving tonight with the exception that the fence detail will need to be changed to be as previously approved on the plan received by the Board on November 4, 2011 for the roof top deck and not the current plan set. Mr. Granese said he would agree to that. He does not want to leave anything open to interpretation. Mr. MacEachern noted that this evening, the Board is only dealing with the staircase issue. Mr. Granese noted the column is now off the detail plan. Mr. Milz commented that in Mr. Kersten's letter, he makes comment that there is no requirement for a bollard at the bottom of the exterior stair.

There was no public comment.

Motion by O'Connor to close the public hearing, seconded by Bartkiewicz. The motion passed with all in favor.

Motion by O'Connor as to MTM's compliance with the remaining condition precedent, were the fire escape/columns provided at the base of the stairs (fire escape), and were they approved by the Fire and Building Departments, and to add clarification that the fence detail on the roof top deck will comply with the design print received on November 4, 2011, seconded by MacEachern. Anderson offered the amendment that the plan be referenced as the drawing revised on November 2, 2011, rather than the received date. O'Connor and MacEachern accepted the amendment.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

Motion by O'Connor that based on the Board's vote on November 30, 2011 that the applicant MTM Realty, LLC met five of the six conditions precedent to the Board's May 5, 2010 approval of MTM's site plan, and its vote tonight that the sixth and final condition precedent has been met, the Board finds that MTM has met all conditions precedent to approval of the plan for Parcel ID 29195, 32 West Broadway and that the Board considers the MTM plan, approved in its entirety, subject to the revision of the fencing detail to that shown on the November 2, 2011 revision of the plan. Bartkiewicz seconded the motion.

Alongi, Chase, O'Connor, Choiniere, MacEachern, Milz, Anderson, Bartkiewicz and Granese all voted in favor and the motion passed.

There was no further business before the Board this evening.

Motion by MacEachern, seconded by O'Connor to adjourn. The motion passed and the meeting stood adjourned at 7:50 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____