

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 14, 2012, at 7:00 p.m. at the Derry Municipal Center (3<sup>rd</sup> 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 (7:29 p.m.), Members; Ann Alongi, Alternate

Absent: Darrell Park, Anne Arsenault

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk, Mark L'Heureux, Engineering Coordinator; 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.

Ms. Alongi was seated for Mr. Park

### **Escrow**

None.

### **Minutes**

The Board reviewed the minutes of the February 22, 2012, meeting.

Motion by O'Connor, seconded by Choiniere to accept the minutes of the February 22, 2012, meeting as written. The motion passed in the affirmative with Bartkiewicz abstained.
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### **Correspondence**

Mr. Bartkiewicz advised the Board is in receipt of a notice from DES regarding the upcoming Drinking Water Source Protection workshop to be held on May 2<sup>nd</sup>. The Local Government Center has also forwarded a flyer advertising the upcoming Local Officials Workshops. If any member is interested in attending the workshops or would like more information, they should contact the Planning Office. The Board has also received the new edition of *Town and City*.

**Other Business****Request for Extension of approval – BR-10, LLC**

Mr. Sioras advised the Board has received the first request to extend the conditions of approval for the Bartlett Road subdivision. The applicant is waiting for the Alteration of Terrain approval. Mr. Anderson asked when the original approval was granted? It was granted in September. The applicant is asking for an additional six months.

Motion by O'Connor to grant a six month extension of conditional approval for BR-10, LLC, for Parcel ID 04084, seconded by Choiniere.

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

**Southern New Hampshire Planning Commission, Presentation of Regional Comprehensive Plan**

Jack Munn, Chief Planner and James Kupfer, Intern, of Southern New Hampshire Planning Commission (SNHPC) presented. Mr. Munn introduced James Kupfer, who has interned with the Commission for about a year. Mr. Kupfer outlined his background for the Board. The presentation this evening is on the Regional Comprehensive Plan (RCP). This is an informational presentation on the regional plan. He provided a brief overview.

There are 14 key elements to the plan and it mirrors most community's Master Plans. The Plan is intended as an advisory guide for the 13 member communities. Population data from the 2010 census was utilized to prepare the Plan. According to projections, by 2015, 50% of the region will be built out. A key step in the development of the RCP was the creation of the sustainability vision statement. Mr. Kupfer provided an overview of the regional zoning map and future land use map. They were prepared by Amy Kizak utilizing comprehensive land use data from the 13 member communities, as each community defines land uses using different thresholds. The benefit of this Plan to the Planning Board or municipality is that it can be used as a resource for Master Planning, grant applications, and economic development. Mr. Munn advised they wanted to present the information to the Board so that the Board members were aware of the document. He invited them to review it when they had time. A copy of the Plan is available on the Town of Derry website, as well as SNHPC's website.

**Other**

Mr. Granese congratulated Mr. Fairbanks on his election as Town Councilor and thanked him for his time sitting on the Planning Board.

**Public Hearing**

**Zoning Ordinance Amendment** – The Planning Board for the Town of Derry will hold a public hearing to review the following proposed amendments to the Town of Derry Zoning Ordinance:

To amend Section 165-5, Definitions, to **delete** the following terms from this section of the Zoning Ordinance: Contractors Yard; Drive In Restaurant or Refreshment Stand; Retail Store; Vehicular Sales or Repair Facility.

To amend Section 165-5, Definitions, to **amend** the following terms in this section of the Zoning Ordinance: Agriculture; Commercial Service Establishment; Hotel; Professional Office; Restaurant; Wireless Communication Facilities.

To amend Section 165-5, Definitions, to **add** the following terms: Commercial Agriculture; Non-Commercial Agriculture; Automobile and Similar Vehicular Sales Facility; Automobile Repair Facility/Garage; Automobile Service Station; Church; Filling Station; Indoor Commercial Recreational Facility; Industrial Establishment; Light Industrial Establishment; Manufacturing; Drive In Restaurant; Retail Sales Establishment; Wholesale Business.

To **amend** Section 165-14, Churches

To **amend** Section 165-42, Industrial District–IV (IND IV), subsection A, Permitted Uses, and subsection C, Prohibited Uses.

The purpose of the amendments is to clarify the definitions contained in the Ordinance as well as the uses allowed in the Industrial IV district. Copies of the proposed amendments are available at the Office of the Town Clerk, 14 Manning Street, the Derry Public Library at 64 East Broadway, and the Planning Department at 14 Manning Street. The proposed amendments may also be viewed on line at [http://www.derry-nh.org/Pages/DerryNH\\_BComm/planning/index](http://www.derry-nh.org/Pages/DerryNH_BComm/planning/index).

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

There was no public comment.

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

Mr. O'Connor recalled that at the last public hearing he requested further clarification be obtained from Attorney Boutin with regard to excluding churches in the Industrial IV zone. That has not been received as of yet.

Motion by O'Connor to continue the public hearing to the next available meeting in order to receive the legal opinion, seconded by Bartkiewicz. Discussion followed.

Mr. Sioras advised he would speak with Attorney Boutin. The next public hearing date would be April 11, 2012. Mr. O'Connor said he wanted to make sure there was no liability to the town if the town moves forward with the proposal to exclude churches in this zone. There were no comments on the proposed changes from the Department of Public Works or Code Enforcement.

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

**Stage Crossing, LLC****Bruce Olson****Rocco & Jamis Clow****26079, 26078, 26077; 49 Hillside Avenue, 3 Holmes Street & 5 Holmes Street****Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The properties are located at 49 Hillside Avenue, 3 Holmes Street and 5 Holmes Street. The purpose of the plan is for a lot line adjustment between the three parcels. No town department signatures or state permits are required for this application. There is a waiver request attached to the member packets requesting a waiver from the wetland mapping requirement. Mr. Sioras advised he would recommend approval of both the waiver and the lot line adjustment plan. If the lot line adjustment is approved, it will be followed by a subdivision application this evening.

Jim O'Neill, Surveyor, presented for the applicant. The purpose of the plan is to adjust the far left lot, owned by Clow, the small rectangular lot in the middle owned by Olson, and the far right lot that is now owned by Stage Crossing, LLC. During the survey for Stage Crossing, it was found that the uses on the Olson lot had crept over the lot lines. The intent is to transfer land to Mr. Olson, who will trade land with Mr. Clow. This will even out the lots and clean up the uses so that they are on their own lots. It will make everyone as conforming as possible. He believed Mr. Olson had a variance granted to allow a structure 4 feet from the property line, and they have held that four foot distance to the lot line.

Mr. Anderson asked if the two sheds and gravel driveway are not on Mr. Olson's property? Mr. O'Neil explained this area is open, and used to contain the old water tower. They want to make sure the driveway and buildings owned by Mr. Olson are on his lot. Mr. Anderson asked how long have the structures been there and were town permits obtained? Mr. Olson, 3 Holmes Street, advised that he has lived on the property since 1977. The shed was there when he moved in. He has renovated and reconstructed it since then. The other structure is a dog pen.

Motion by O'Connor to open the public hearing, seconded by Milz. The motion passed with all in favor and the floor was open to the public.

Stephen Cote, 47 Hillside, stated he had two concerns. The first was that when the lot (26079) was sold at auction, he was not notified, and there are only three abutters. When he spoke to Town Hall, he was told there was a 50 foot buffer and others were notified. He sent letters to the Planning Board and Town Council and no one got back to him. He would like to make sure that the town makes sure that abutters are correct when the town is sending out notices. When the Clow's purchased their land, they were told by their realtor that they owned to his fence. They were not notified there was a paper street in between. He would like the builder to put in a hedgerow to define the property line so that the new home owners don't think they own to his fence.

*Mr. MacEachern was now seated.*

Mr. Sioras advised this plan is for a lot line adjustment. The second question asked by Mr. Cote has more to do the upcoming subdivision application. With regard to his first question, the property went to auction. The Planning Board would not have notified him of that. Mr. Cote said the GIS says there is 50 feet to the property line but everyone on the other side of the street was notified but him. He should have been notified. Mr. Anderson stated his points regarding notification are understood and it will be taken care of for the future.

Gail Adams, 48 Hillside, advised neighbors were notified, it was in the paper and on cable, so everyone was aware of the auction. Regarding the old water tower land, the cement and rocks that were left, how will that be taken up? Will they blast? She would also like reassurance with regard to that piece of land. There is a bend in the road there. She is worried about erosion. What kind of house will be built on the lots and how tall will the homes be? She wants to make sure there is no erosion onto Hillside.

Mr. Granese advised the Board is discussing the lot line adjustment and will get to the public hearing for the subdivision next.

Eva Marvel, 53 Hillside, said she is concerned with the subdivision plans in that they show the houses coming out onto the road; can the driveway locations be changed? As cars exit the driveways the headlights will be shining right into her front door as she is located across the street. She is on the corner of Hillside and Holmes.

There was no further public comment.

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

Motion by O'Connor to accept revised plans for the Lot Line Adjustment before the Board for Stage Crossing, LLC, Bruce Olson, Rocco & Jamis Clow, Parcel IDs 26079, 26078, and 26077, 49 Hillside, 3 and 5 Holmes Street. The motion was seconded by Choiniere.

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

Motion by O'Connor to accept jurisdiction of the above noted Lot Line Adjustment plan, seconded by Bartkiewicz.

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

Motion by O'Connor to grant a waiver from the following section of the LDCR, Section 170-24.13, Wetland Mapping, seconded by Anderson.

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

Motion by O'Connor, seconded by Bartkiewicz to approve the Lot Line Adjustment plan, subject to RSA 676:4, III, Expedited Review, subject to the following conditions: remove the department signature block as TRC signatures are not required for a lot line adjustment; revise Note 2 to indicate the lot line adjustment is between parcels 26079, 26078 and 26077; revise the recording note such that it reflects one sheet has been recorded at the RCRD, and the plan is on file with the Derry Planning Department; subject to owner's signatures, 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; note the approved waiver on the plan; update the revision block; that the above conditions be met within 6 months; improvements shall be completed by September 30, 2013 (setting of bounds); 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 appropriate recording fee (It is recommended that the plan be reviewed by RCRD prior to submission for Planning Board signature to ensure the plan meets RCRD recording requirements); (subsequent) file corrective deeds for Lots 26078 and 26077. Discussion followed.

Mr. MacEachern asked this makes it two lots? Mr. Anderson advised it stays as three lots. Mr. L'Heureux confirmed the Department of Public Works had no issues with the plan.

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

**Stage Crossing, LLC**  
**26079, 49 Hillside Avenue**  
**Acceptance/Review, 2 Lot Subdivision**

Mr. Sioras presented the following staff report. The property is located at 49 Hillside Avenue. The purpose of the plan is a two lot subdivision. This is the old water tower storage lot that was recently auctioned. All town departments have reviewed and signed the plan. There is a waiver request in the member packets from Section 170-24.A.13 of the LDCR for wetland mapping. The surveyor has made revisions to the plan; there will need to be a motion to accept the revised plan. No state permits are required for this project. He would recommend approval of both the waiver and subdivision plan.

Jim O'Neil, Surveyor, presented for the applicant. He advised that after the previous application, they took the remaining lot and split it into two parcels that will meet all aspects of zoning. Originally, there were nine separate lots deeded to Stage Crossing. This is an old neighborhood. The intent is to run utilities down Hillside and tie into water and sewer. With regard to access to the lots, the access is better on Holmes Street. Hillside is travelled more and Holmes is a dead end. Hillside also has grade issues which resulted in this configuration to keep the access on Holmes Street.

Ms. Alongi asked if they propose to bring the driveway to the back of the property off Holmes rather than entering on Hillside for 26079-001? Mr. O'Neil explained traffic and the grade were both issues on Hillside.

Motion by Bartkiewicz, seconded by Alongi to accept revised plans for the two lot subdivision before the Board for Stage Crossing, LLC, Parcel ID 26079, 49 Hillside.

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

Mr. O'Neil said the plans were revised based on the comments from Vanasse Hangen Brustlin, Inc. (VHB), the town's outside consulting engineer. He does have a response letter and he confirmed that was included in the member packets. The letter details the changes made to the plan.

Mr. Anderson noted Sargent Street is a paper street. Was Sargent evaluated as access? Mr. O'Neil stated they will not use that as access. They did evaluate it, but it was cost prohibitive.

Mr. O'Connor spoke with regard to Note 8 on Sheet 2 which reads, "No blasting allowed within 20 ft of utilities and a hydraulic hammer will be required if ledge is encountered." Does that mean there will be blasting in other areas? Mr. O'Neil said the lot is an open area. Almost centered in the plan, there is an underground concrete pad where the tower sat. The size and thickness of the pad is unknown. He added Note 8 per the request of DPW and it speaks to the installation of utilities. He does not anticipate blasting for the concrete pad; they would use a hammer hoe to break it up and then haul it out. Mr. O'Connor advised if blasting were to occur, the appropriate procedure would be followed such as notification of abutters, pre-blast surveys and permits from the Fire Department.

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

Stephen Cote, 47 Hillside, expressed his concern with delineation of the property lines along Sargent. He asked that a hedgerow be planted along the line so that it was very clear for new owners. He wanted to make sure, if the town kept control of the paper street, that the property line was marked. Mr. Anderson felt the property markers would show the property line and new owners would be able to see them on this plan as well. Mr. L'Heureux indicated the town has not required trees to mark the property line in the past. The town has no plans for Sargent Road at this time. If the right of way was to be extinguished, there would be a process to revert the land back to the abutting property owners. Sargent Street goes to Beacon Street. It is an open area with some woods. Mr. O'Neil said the Sargent Street right of way is not clearly defined; although you can follow the Cote fence for some of it. The width of Sargent Street varies, but is approximately 40 feet wide.

Mr. Anderson noted if the town abandons the right of way, the abutters to Sargent Street would own to the middle of the paper street and on either side, each abutter would gain about 20 feet. Mr. O'Connor commented when the bounds are set on street sides, they are set with granite bounds; iron rods are typically used within the lot. Mr. O'Neil further explained the bounds are about 3 feet long and 4-6 inches are exposed in the woods; in lawn they try to keep them to an

inch or less to allow for mowing purposes. Mr. Cote stated that if there is to be no hedgerow, he would like to see the bounds clearly marked. That is their largest concern.

Gail Adams, 48 Hillside, had questions with regard to the old water tower area. She believed the thickness of the pad to be measured in feet. Mr. Anderson said typically, a pneumatic hammer is used on the end of an excavator. Mr. L'Heureux explained it is a thick pad and it will take time to remove it from the site. The pad is not the real issue; the larger issue is the foundation under the pad. That is about four feet thick and went around the perimeter of the tank. He recalled the foundation for the water tank on the Walmart site became an issue. It needs to be broken up with a hammer.

Mr. O'Connor asked if the foundation is near the location of the proposed house? Mr. O'Neil said it appears it is in the center of the tree line, but he has not field verified the location. It would be in the area of the house and driveway. He would like to avoid it, but it will need to be excavated. Mrs. Adams asked with regard to installation of the water and sewer. Where will those be on Hillside?

Mr. O'Neil showed Mrs. Adams where the utilities are planned to be installed. They will mill and overlay before her driveway. There should not be any construction in front of her house.

Eva Marvel, 53 Hillside had concerns with the location of the two proposed driveways. There will be traffic for both homes coming in and out directly in front of her house. Mr. O'Neil said there will be two driveways, one across Hillside from her driveway and then one beyond that. Ms. Marvel said she also has a concern with regard to construction vehicles. How will they access the lots? Mr. O'Neil felt it was likely they would use the proposed driveway locations. There will be some roadwork performed on Hillside and they will create a shoulder and clear brush. Ms. Marvel asked if the size of the homes was known? Mr. O'Neil said he provided a standard building box for the plans; he does not know the eventual size of the homes. The building envelope is shown on the plan. He does not expect there will be "McMansions". Ms. Marvel explained the land is wooded and high; will they level the land to put the homes in? Mr. O'Neil assumed that when the concrete is pulled out, they will need to grade the hill. That was the high point in the neighborhood. It is likely the hill will come down some, but he does not feel it will be more than six to eight feet. But that will be decided on site once the concrete is removed. Ms. Marvel asked with regard to timeframes? Mr. O'Neil advised they would need to have this plan approved, move beyond the appeal period and then apply for a building permit. Ms. Marvel noted most of the homes in the neighborhood are one story and between 1200 and 1800 square feet. Mr. Granese said he would assume the builder would not put in homes that would look out of place.

Bob Mackey advised that zoning does not specify the maximum size of a house, but the home would need to fit within the building envelope. Mr. Anderson confirmed that per building codes, the homes could not be more than 30 or so feet, maximum height. Ms. Marvel said she was worried about blasting. She does not feel it is a good idea to blast in this area. There are old homes in the neighborhood. Mr. Granese reiterated if there is blasting, the neighbors will be notified, there will be a survey, and a permit will be obtained.



Mrs. Adams stated her house was a ranch and is now a garrison. She had been told there was no legal height limit and you can go as high as you want (3 stories). Mr. Mackey explained that for wood frame construction, the building codes limit homes to three stories for a single family residence. Mrs. Adams felt the new homes could be fairly high if they have to go over the old tank bed. Mr. O'Neil thought there was a 20 foot vertical distance from the old tower area to Mrs. Adam's property. He assumes they will bring the level of the land down. Mrs. Adams said she was worried about the erosion because her property is in a gully. She does not want to be dealing with erosion in the front yard, flooding, or a mud slide.

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.

Mr. MacEachern said there is a problem resulting from the lot line adjustment. The lots need 100 feet of frontage. Neither proposed lot meets that. 26079-001 only has 95.72; in addition, he would rather see the driveway on the frontage of the property. There is only 96 feet of frontage on Hillside and 98 feet on Holmes for 26079-002. In looking at this, he now believes they should not have done the lot line adjustment because now the lots are less conforming. He does not want to create two non-conforming lots. They can be made to conform if the driveway is taken off Holmes for 26079-001 and by adjusting the line on Hillside. The lots need to be conforming, or this needs to go to the Zoning Board of Adjustment.

Mr. O'Neil explained 26079-001 has 100 feet of frontage. There is an additional 4.27 feet along Hillside Avenue near the property line between the two proposed lots. Mr. MacEachern asked that the plan be corrected to show clear conformation to the frontage requirement. Mr. O'Neil said his interpretation was that there had to be a total of 100 feet of frontage, not that it had to be contiguous on a corner lot. He felt because 26079-002 is a corner lot, it had contiguous frontage. He felt he could get the remainder of the frontage from the 20 foot wide driveway access. He has looked at the driveway profiles and reviewed previous comments; there would be three switchbacks to get them to work off Hillside Avenue at a reasonable grade. Sargent is a paper street, is steep, and he can't use that as access. He is using Holmes for the driveway access because of the grade on Hillside and Holmes has less traffic. There are currently 5 to 6 homes on Holmes Street. Mr. L'Heureux said the proposed driveways are in the best spot. Mr. O'Neil stated he could make the adjustment to the lot lines to make the frontage conform.

The Board discussed the frontage requirement and the fact that one of the lots was a corner lot. Mr. Mackey advised per the Ordinance, the frontage is to be along one street. When the plan was originally proposed the applicant was considering utilizing half of Sargent Street, which would have given them the appropriate frontage for each lot. The Board could approve this contingent upon the 100 feet requirement, or the applicant can go to the ZBA. Mr. O'Neil did not feel it would be an issue to make the lot conform and there would not be an issue with the setback. Mr. Anderson asked if there would be an issue with creating a driveway that had less than a 20 foot width? He did not want to fix one problem and create another. Mr. Mackey said there is no width requirement for residential driveways.

Mr. Granese confirmed the frontage required is in the Zoning Ordinance under Section 165-45 and the LDCR under 170-25.A.6. Mr. Anderson confirmed the 1.84 foot difference would be adjusted. Mr. MacEachern suggested making the driveway access 18 feet wide which will keep it clean.

Motion by O'Connor to accept jurisdiction of the above noted subdivision plan, seconded by Choiniere.

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

Motion by O'Connor to grant a waiver from LDCR Section 170-24.3, wetland mapping, seconded by Bartkiewicz. Discussion followed.

Mr. Anderson noted the review consultant commented there should be justification for the waiver request. Mr. O'Neil advised there are no wetlands on site as noted in his March 10, 2012 response letter, and this is the highest point in the area. Mr. Mackey and Mr. L'Heureux did not see any issues with granting the waiver request.

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

Motion by O'Connor to approve the above noted subdivision plan, pursuant to RSA 676:4, I, Completed Application, with the following conditions: change the lot line approximately 1.84 feet to allow creation of lots with sufficient frontage; re-adjust the frontage measurement for Parcel 26079-001; comply with the VHB report dated March 6, 2012; 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; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; note approved waiver on the plan; update revision block; obtain appropriate driveway permits; the above conditions are to be met within six months; improvements are to be completed by September 30, 2013; a \$25.00 check, payable to RCRD should be submitted along with the mylar in accordance with the LCHIP requirement along with the appropriate recording fees. (It is recommended the plan be reviewed by RCRD prior to submitted for Planning Board signature to ensure the plan meets RCRD recording requirements.); the 1 ½" mill and inlay detail is to be noted on the plan; the temporary pavement detail should be added back onto the plan and the applicant shall address any additions to the plan as suggested by the Department of Public Works. The motion was seconded by Bartkiewicz.

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

**Forest Avenue Properties, LLC  
32025, 37 Crystal Avenue  
Acceptance/Review, Parking Lot Expansion**

Mr. Sioras presented the following staff report. The purpose of the plan is to construct a 17 space parking lot expansion on the Plaza One commercial building site. The project also includes the construction of several outside display spaces for the sale of bulk tenant wares such as passenger cars and equipment, and an upgrade to both the landscaping as well as the drainage system to facilitate the expanded parking area. There will be no expansion of the existing retail building on the property. All town departments have reviewed and signed the plan including the Conservation Commission which held a site walk. Waivers have been requested for the project and are detailed in the letters from Long Beach Development Associates contained in the member packets. There are no state permits required for this project and he would recommend approval of both the waivers and the site plan application.

Todd Connors of Long Beach Development Associates presented for the applicant. Chris McCarthy representing Forest Avenue Properties was also present. The project is located at 37 Crystal Avenue and is a 3.15 acre parcel in the General Commercial zone. The land is encumbered by the Conservation Corridor Overlay District (CCOD) and the Groundwater Recharge Conservation District (GRCD). The project does not involve direct impact to the CCOD but does add pavement, which he will discuss later in terms of the GRCD.

Mr. Connors reviewed the existing conditions sheet. There is an existing retail building totaling 10,400 square feet. There are tenants on two levels; the first floor tenants are on the Crystal Avenue level and the basement tenants access the building to the rear from a small parking area. The applicant would like to expand the parking lot in the rear. Currently there are 40 spaces. The regulations require 52 parking spaces for all of the combined uses, so they are short on parking spaces. This limits the ability to acquire new tenants with a higher and better use. In addition to the parking lot expansion, they would like to create 11 outdoor display areas for cars sold by one of the existing tenants.

The bulk of the new parking will be to the rear of the building. There are three display spaces along Crystal Avenue; two existing parking spaces would be removed for the display area and handicap parking upgrade. There are 8 proposed display spaces to the rear which would allow for specific locations for the used car display. This is their attempt to locate dedicated spaces for used cars that are for sale. They would have specific locations and not be part of parking calculation.

They have also tried to renovate the landscaping. They will add landscaping to the front, T-Bones side, and to the rear of the property. They propose to add several landscape islands. Mr. McCarthy wants to add green to the lot and make it a more attractive retail location. They will utilize wetland plantings along the wetland buffer in the rear.

Regarding the amount of pavement, they are adding 11,500 square feet. They have checked regulations for compliance with the GRCD and find that to be a 33% maximum impervious

surface requirement. That includes rooftop and hardtop. They are at 26.7% impervious with the additions they have proposed and they still comply with the requirements of the GRCD.

With regard to drainage, along the south property line they propose a small drainage basin. They want to collect runoff into a small pond and treat it before it goes into the wetland. The pond will have a sump that will be routinely cleaned. They are proposing additional landscaping and lighting. There will be a total planting of 9 deciduous trees with a mix of red maple, Japanese lilac and crab apple. They are proposing 44 shrubs in islands and along the perimeter.

A review letter has been received from Keach Nordstrom Associates (KNA) and Mr. Connors has had an opportunity to discuss the letter with staff and with Steve Keach. There are two items he would like to discuss with the Board. Regarding item #13, it is suggested that they curb the islands. There are some advantages to curbing the islands as it will protect the island and the shrubs. Not curbing them allows for groundwater recharge and irrigation and it is cost effective. After speaking with Steve Keach, they could curb two islands behind the building on the east side and can use bituminous pavement. The other six islands they could curb but would prefer not to as they are in areas of existing pavement and they would have to use granite curbing. That is more than the project can handle. He does not see a safety issue if they don't curb the islands; it is more of a maintenance issue. The owner is willing to replace the shrubs that may get run over by the plow truck.

Review item #18 has to do with the signs along the frontage. The northern sign is located half way into the right of way. The southerly sign has its base completely in the right of way and the majority of the sign hangs into this property. He understands this is an opportunity to correct this, but there are no plans to move the signs. If they move the signs, it will create a traffic issue given the amount of existing space between the building and the road. Because there are so few spaces in front, they don't want to replicate the problem that occurs at T-Bones under their sign. They can add a note to the plan that if a permit is pulled for the sign (other than a name change), they would need to move it. Right now, they are trying to invest in the property, not the sign.

Mr. Connors advised there are five waiver requests; three are in connection with the landscape requirements. The first is from LDCR 170-64.B.1; they have no room to plant four trees in the 15 foot tree strip because of the distance between the building and the existing right of way. There is a hardship relative to the placement of the original building as it was constructed prior to site plan review or landscape requirements. The second is from LDCR 170-64.B.2, tree plantings. The requirement calls for 11, they are proposing 9 trees. The north, south and front have wall to wall pavement and they are creating as much green space as they can. They are trying to make up in shrubs what they are lacking in required trees. The requirement is for 29 shrubs and they propose forty-four. The third waiver is from LDCR 170-64.B.4, 25% of the trees or shrubs are supposed to be behind curbed islands. They would like to curb the back two islands but not the front. They don't want to squeeze the landscape into two back islands; they want to spread it around the site. They are trying to remain flexibility with the plantings.

The fourth waiver is from LDCR 170-63.A.2 which requires a 15 foot front landscape strip along the right of way and a 10 foot side property line strip. Because of the pavement, they don't have room for a 15 foot strip to the front or side lines. They would have to eliminate the shared access

with the neighbor in order to meet this requirement. They can't put in a 10 foot strip along the property line with T-Bones because they are carrying the pavement out using the existing area. The hardship would be that they would lose the parking on the side and to the front. That is not a tenable position in which to be.

The fifth waiver is from LDCR 170-63.A.6. They would like to not curb the 15 foot island to the front. This is an existing property with pavement and they can't physically complete the requirement. However, they are proposing to upgrade the site.

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

There was no public comment as there was no public present.

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

Mr. Anderson noted the plan shows three display vehicles in the front; why can't they meet the landscape requirement for the front? Mr. Connors said along that line they currently have ten parking spaces located from the right of way to the rear of the building. They will eliminate three spaces, change two to handicap parking, and add 3 display spaces. Mr. Anderson felt that since they are creating the display area, they could meet the landscape requirement. Mr. Connors said he would still need the waivers as the regulations call for a 15 foot tree strip, with four trees, spaced 25 feet apart. He could plant one tree instead of putting two landscape islands with two shrubs. He is adding green space in front of the display cars where currently there are cars parked and no green space. He will also add a triangle shaped landscape island on the T-Bones side of the property line.

Mr. Anderson asked with regard to the building to the south labeled as owned by Briana Joy. Mr. McCarthy advised that is an existing insurance company and not part of this plan.

Mr. Granese asked if there is a car dealership on the lot now? Mr. Connors advised the tenant has had space in the building since January. Mr. McCarthy explained this is the space formerly occupied by InkSpot. The tenant has five cars on site, but does mostly wholesale through the auction, so he does not need a big physical presence. Ms. Alongi asked who are the existing tenants? Mr. Connors stated the current tenants are Rockingham Music, The Pawn Guys, American Nails, Birth Right, First Nutrition, Crystal Auto, BobbyVan Realty, an open space, Sheer Cuts, and Saturn Dental, which is a denture lab. There are no plans to remove any tenants, just to upgrade the property.

Mr. MacEachern felt it was a good plan to clean up the back. He supports Mr. Connors' comments with regard to the curbing, especially to the front and side. He is concerned with the ability of the fire trucks to access the rear of the site and wants to make sure they have enough room to swing to the back of the building. He would recommend that the signage be moved out of the right of way since they will be working in that area anyway. Mr. Connors said the north sign straddles the right of way and the south sign has its base in the right of way. Mr. Milz

agrees with the engineering review letter and can see moving the sign that is in the right of way, but felt it would be onerous to move both if there is no change to the larger sign. Regarding the three car display area, what are the plans if they lose the tenant? What will happen to the display areas?

Mr. McCarthy explained the intent is to use the display for the existing tenant. They would use the area for an additional tenant in the future or add parking. The overall plan is to improve the property and to increase the desirability for new tenants.

Mr. MacEachern suggested a condition of approval would be to allow the three spots for the autos, but if there is a change in tenant, they would need to come back to the Planning Board. He would have an issue with a steam shovel or backhoe being parked on Crystal Avenue. He has no issues with the auto display. Mr. Milz agreed. He felt the pawn Guys sign should move while work was being done to the front; otherwise, this was a good presentation for site improvements.

Mr. Anderson said the car dealership is a wholesale dealership. There is no permit from the town yet to run a used car lot. Mr. Connors said he believed the realtor discussed this with Mr. Mackey and the decision was that the tenant could display cars. Mr. Sioras recalled the tenant did fill out paperwork for a bonded dealer office and the realtor was told they needed to go through the site plan process.

Mr. O'Connor noted the Technical Review Committee notes with regard to fire access and maneuverability. He asked for Mr. Chase's opinion. Mr. Chase said that without using a scale, it appears the site is tight. A fire truck would need to access the rear of the building in the event of an incident of substance. In the winter time, the fullness of the lot would dictate where a truck could go. It would be hard to pull a truck to the rear. Mr. Connors felt it would not be more difficult than it would be today. They are proposing landscaped islands where cars park currently. He does not believe the plan will make it more difficult to get to the rear of the site. An ambulance can get to the rear without an issue. He assumes any fire would be fought from the front of the building.

Mr. O'Connor asked if the land shown on the site plan between the insurance company and this lot was level? Mr. Connors said there is no barrier there but it is not level. The land slopes down in that location.

Mrs. Choiniere noted the three car display area to the front and the two areas to the back. She would not want to see a used car lot at this location. Mr. Connors said they have set aside 11 spaces for the used cars: 3 in the front, 6 on the back and 2 on the side. Mrs. Choiniere said she understood the cars are not in sight, but thought there were only supposed to be a few because this was a wholesale dealer, not a used car dealer. Mr. Connors said the intent was to create the three car display area to the front. The applicant recognized the need to park the extra cars. It was felt it was cleaner to say here are the spaces to store cars and these are not included in the total parking calculation. The intent is to delineate where the cars can be parked and the extent to which they may occupy the site. It was noted there would be no repair of vehicles on this site.

Mr. Anderson felt this was putting the cart before the horse. The wholesale operation is approved by staff, but this plan turns it into a used car lot. This has not gone through the correct process. He has no problem approving the parking lot upgrade but has a problem with the used car operation being tied to the parking lot improvements. It seems like a used car lot with a parking plan. Mr. Mackey is no longer present and he can't be asked questions tonight. It appears this is a used car lot with no permission and it may be operating in violation of regulations. He felt this should be sent back to staff and the tenant should apply for the appropriate permit and the used car use should be separated from the parking under the rules of the town.

Mr. MacEachern agreed they were two separate plans. He has no issue with the parking lot, but felt the tenants can't be tied to the property. Mr. Connors said he understood Mr. Anderson's concern. If there is no retail sale license, then the tenant can't do it. However, he was told he would need to go through the process of a public hearing and submit an application to expand the parking lot and add the display area. That is noted as the purpose of his plan. If he should not be here with this application showing both items, then why was he not told that? Staff has signed the plan already. The intent was very clear that this plan was to have 11 used cars for sale. If the tenant is operating without the appropriate permissions, Code Enforcement should address that. Tonight they would like the approval to do what the plan says.

Mr. Granese read from the Technical Review Committee notes. "Bob noted the plan identifies additional uses as used cars, vehicle rental and equipment rental. That is three additional uses on the site. What are they planning to do exactly? That should be more clear. Mr. McCarthy stated they plan to keep it open. They have a current parking shortage.... Mr. McCarthy said he does not envision the current used car dealer expanding his footprint.... a Change in Use application will need to be filed with the town. This is standard practice and assists the Fire and Building Departments; it is important to keep up to date contact information for the businesses.... There are no uses on the site that require a Special Exception from the ZBA but that could change depending upon future uses at the site."

Mr. Connors said that following the TRC, per the meeting, he changed Note 1 to comply with the comments. Going into the TRC meeting the applicant was open ended as to the uses and was told that they had to be more specific. Therefore, he amended Note 1 accordingly to read "The purpose of this plan is to expand the existing parking area, add outdoor display areas and improve the existing landscaping and drainage. Outdoor display limited to bulky tenant items specifically used cars. There will be a maximum of 11 used cars on site in designated spaces." That was done to address Mr. Mackey's concern. Mr. Connors noted Mr. Mackey signed the plan. Since he did that, Mr. Connors considered the issue of use resolved.

Mr. MacEachern asked if the wholesale car dealer is in the building now? Does he have a permit to sell used cars? Todd said he did not know, but would have to say no, based on what was said earlier. Mr. MacEachern commented the wholesaler wants to now sell retail. There is a change in use process he would need to go through and he should see Mr. Sioras who has the authority to tell them it is signed off, or it is a substantial enough change that it should go to the Planning Board. That is his job as Planning Director to make that decision. From what he can understand,

Mr. MacEachern believes Mr. Sioras has not seen anything from anyone that would allow this to be done.

Mr. Sioras stated that once Mr. Mackey became aware the business wanted more than wholesale, it was an expansion of the use and that would require a site plan before the Planning Board. That triggered this plan. Mr. MacEachern asked if anyone has come to Mr. Sioras with paperwork asking to sell used cars? Mr. Sioras said when Mr. Connors came to staff, he explained they wanted to show an expanded retail use to sell used cars and at the same time, expand the parking lot. That triggered the site plan review that the Board has before it this evening.

Mr. MacEachern said he had no issue with the front display or parking lot expansion. The issue is the sign off on the dealership. Mr. Sioras said the tenant wants to sell cars and that is what triggered this plan and they came in with a 17 space parking lot expansion as well.

Mr. Granese said he understands that if the Board approves this plan, then the wholesaler can go to Mr. Mackey and say the Planning Board approved this, so I want my permit. Or, Note 1 can come off the plan. The tenant needs to go through the proper channels to get a used car license and then come back to the Board for the front display. Mr. MacEachern added the Board can then do its due diligence with regard to hours and things like that.

Mrs. Choiniere asked if instead of display areas, could they be shown as parking areas; then when the plan comes back it can be re-designated as display area? Mr. Milz felt that instead of earmarking the area as display for cars, it can be marked as display. It is in the Board's purview to approve the parking lot and generic display area, but new uses would need permission to use the area for display.

Mr. Chase said he did not think the currently designated spots were good choices for handicap parking. Normally, they are the spots closest to the building. Here, they are near the right of way and one is located in the rear. Mr. Connors said that currently, there are no handicap spaces on site. They are upgrading the plan by adding three spaces. There is a reason why they are where they are proposed. Typically, a handicap space is 20 feet long; ordinary spaces are 18 feet long. The distance from the front of the building to the right of way is fixed. There are 18 foot long spaces with a 24 foot drive aisle behind. If he moves the spots to the front of the building, they would not be compliant. It meets ADA requirements as shown. He would agree it would be better to have the spaces in front of the building. If Mr. Mackey is okay with the spaces being 18 feet long, he is happy to move them.

Mrs. Choiniere asked if lines could be added in the drive aisle to draw attention to the spaces? Mr. Connors said he could do something from there to the sidewalk. There is no ramp and it may be that they will build one. That has not been figured out yet; it is part of the KNA comments. He will take the Board comments into consideration as well.

Motion by MacEachern to accept jurisdiction of the parking lot expansion application before the Board for Forest Avenue Properties, LLC, located on Parcel ID 32025, 37 Crystal Avenue, seconded by Choiniere.



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

Motion by MacEachern to grant waivers from the following sections of the LDCR, Section 170-64.B.1, street tree strip; Section 170-64.B.2, deciduous/ornamental tree; Section 170-64.B.4, 25% trees/shrubs planted within curbed islands; 170-63.A.2, 10 and 15 foot setback from property lines; 170-63.A.6, curbed landscape islands. The motion was seconded by Milz. Discussion followed.

Mr. Anderson asked if Public Works had an issue with any of the waivers? Mr. L'Heureux said that typically DPW prefers not to advocate for waivers, but in this case the site is restrictive. He does not see them as a detriment to the expansion of the parking lot.

Alongi, Chase, O'Connor, MacEachern, Milz, Choiniere, Bartkiewicz and Granese voted in favor; Anderson voted no. The motion passed.

Motion by MacEachern to approve the above noted parking lot expansion plan pursuant to RSA 676:4, I, Completed Application, subject to the following conditions: Comply with KNA report dated March 12, 2012, subject to owner's signature; subject to on-site inspection by the town's engineer; establish appropriate escrow as required to complete the project; obtain written approval from the IT director that the GIS disk is received and is operable, 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 six months, improvements shall be completed by September 30, 2013; (subsequent) new tenants shall complete a Change of Use with the Planning Department; if any existing tenant should alter a use, the tenant shall complete a change in use; and Note 1 should be eliminated from Sheet C2. The motion was seconded by Choiniere. Discussion with regard to the motion followed.

Additional conditions as designated by the Board are: the sign located to the south currently located entirely in the right of way shall be moved, and the sign to the north shall be moved if the sign changes; amend condition one to read "Comply with the KNA report dated March 12, 2012, less waivers already approved, per the explanation contained in Steve Keach's email dated March 14, 2012"; and, prior to use of display areas, proper permits for the use of the display areas must be obtained per the current LDCR and Zoning Ordinance.

Mr. Connors noted if he removes Note 1 that takes away the purpose of the plan and all plans should have a purpose. The issue is with the 11 display spaces for the cars. Note 1 says the spaces are only for used cars. If he removes Note 1, what can he put in those spaces? Can he put anything he wants? Should he amend the note to say the purpose of the plan is to identify where the display might be? Mr. Sioras suggested amending Note 1 to read, **"The purpose of the plan is to expand the existing parking area. Any future display areas or expansion of the site shall come back to the Planning Board for further site plan review."** Mr. Anderson said he would not want to limit him to 11 spaces and have him have to come back each time he had 12 cars. Mr. MacEachern said the purpose would be to limit the parking area to the number of spaces shown inclusive of a display area in the front of the building. Mr. Connors said they

wanted to limit the display areas. Mr. MacEachern explained the Board was saying they wanted the tenant to come to the Board if there is a change of use. Mr. Anderson said there is no approval tonight for a used car lot and the Board can specify the amount and approve the use. Mr. Granese noted there was a motion on the floor with conditions. If the plan is approved tonight, then the tenant would need to obtain a separate retail approval from the town and then come back to the Board. Mr. Connors said he was under the impression that is what he was doing. He now understands that the Board wants him to come back with a tenant change in use. Mr. Granese said when he originally saw the plan, he thought there was already a permit in place to sell used cars. That does not appear to be the case. Mr. Connors said what they want to do is sell 11 used cars and he understands that he will need to come back for that.

Mr. Chase also noted this is not one isolated case, the Board had made similar requests before. The wording for the revision to Note 1 was confirmed to be as noted above by Mr. Sioras.

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

There was no further business before the Board this evening.

Motion by Choiniere, seconded by Milz to adjourn. The motion passed with all in favor and the meeting stood adjourned at 9:38 p.m.

Approved by: \_\_\_\_\_  
Chairman/Vice Chairman

\_\_\_\_\_  
Secretary

Approval date: \_\_\_\_\_