

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 28, 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, Darrell Park, Members; Ann Alongi, Alternate

Absent: James MacEachern, Anne Arsenault, Jan Choiniere

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

Mr. Granese called the meeting to order at 7:00 p.m. The meeting began with a salute to the flag. He introduced the staff and Board members present, and noted the location of the exits and meeting materials.

Ms. Alongi was seated for Mrs. Choiniere.

Escrow

None.

Minutes

The Board reviewed the minutes of the March 14, 2012, meeting.

Motion by Anderson, seconded by Bartkiewicz to accept the minutes of the March 14, 2012, meeting as written. The motion passed in the affirmative with Park abstained.

The Board reviewed the minutes of the March 10, 2012 site walk held for the Gagnon project. Mr. Anderson confirmed the draft minutes had been amended with suggested changes.

Motion by Bartkiewicz seconded by Park to approved the minutes of the March 10, 2012 site walk as amended. The motion passed in the affirmative with O'Connor abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of correspondence from Attorney Boutin. The Board has also received an updated copy of the Change in Use applications for 2012. Mr. Anderson asked Mr. Sioras to review the list for the public. Mr. Sioras advised there had been

an application from Terri Schemmler for a dog and cat grooming business to be located at 6 West Broadway (application was withdrawn); Dino's Roast Beef and Pizza, which is a change in name and ownership of an existing pizza shop located at 34 Manchester Road; Sabatino's North which is moving to the former Derry Depot Steakhouse location at 1 East Broadway; AEF Computers, a computer repair shop, to be located at 127 Rockingham Road, Unit 10; Creative Learning Childcare, to be located at 6 West Broadway in the lower level which was the former Metamorphosis Children's Museum; and Brian Ventullo, who will operate a vehicle detailing operation at the Simpson's Painting property located at 131 Rockingham Road adjacent to Dollar Bill's. Mr. Granese commented it is nice to see the new business and the changes in businesses that are expanding.

Other Business

None.

Public Hearing

Representatives for the Starrett hearing were not yet present and the Board moved on to the next application.

Jean Gagnon

PID 12119-001, 103 Old Chester Road and Adams Pond Road

Acceptance/Review, 10 lot subdivision

Continued from February 22, 2012

Mr. Sioras provided the following staff report. The owner is Jean Gagnon/JEMCO Builders. This application was continued to allow a site walk of the property which was held on March 10th. The purpose of this plan is for a 10 lot subdivision. All town departments have reviewed and signed the plan. There is a waiver request for the roadway embankment slope to exceed a 4:1 slope. The staff supports the waiver request. State subdivision and wetland approvals have been obtained and copies of the approvals are in the file. He believes some of the questions have been answered. He would recommend approval of both the waiver and subdivision application. He complimented the engineer on a well-designed project. Staff suggestions have been incorporated into the revised plans.

Eric Mitchell, Eric C Mitchell & Associates, Inc., presented for the applicant. The Board held a site walk on March 10, 2012; Nate Chamberlain from his office attended. Since the site walk, they have resubmitted plan to the town and Keach Nordstrom (KNA) for their final review. They have addressed all of the comments in the first review letter and have received a second letter from KNA stating the same. The few outstanding items can be addressed as conditions of approval such as the Conditional Use permit, escrow, and the waiver for 2:1 side slopes.

Mr. Granese noted that since revised plans have been resubmitted, the Board will need to accept them.

Motion by O'Connor, seconded by Bartkiewicz to accept the revised plans.

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

Mr. Mitchell advised there had been a request by town staff to change the road name from Deer Run Drive to Deer Run. They intend to do that even though it is not noted on this plan set. They have obtained all the state permits required for the project and feel satisfied they have met all the town regulations. Regarding the Conditional Use Permit application, they are crossing the wetland at the narrowest portion of the wetland. The state has approved the wetland permit and they feel the Conditional Use Permit is warranted. KNA is not against the Board granting that permit.

Regarding the waiver, on the road detail, the town requirement is for it to be flatter than 2:1. In areas where they are crossing the wetland, they are proposing a 2:1 slope to lessen the wetland impact. KNA had no issues with it. Mr. Mitchell advised they are asking the Board this evening to grant the waiver, Conditional Use Permit, and conditional approval of the application.

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

Marion Schnitzlein, 11 Bayberry Lane, stated there were a lot of questions at the last hearing and she was following up. It seemed that the answers given were vague, or there were no answers available that evening. She is hoping there will be some answers this evening.

The residents are concerned there will be issues with the existing wells if blasting occurs for the homes on Deer Run. There may even be issues with the wells if no blasting occurs. The existing residents did not feel they should have to pay to have their wells tested. She would want it in writing that if a well test is conducted and it is found there has been a significant change in the operation, condition of the well, or water itself, that they would not be responsible for the cost of correcting the problem. Mr. Granese asked if the Board has ever placed that type of restriction on a plan? Mr. Sioras explained there are some areas in town that have poor water yield. This is not the case in this area. There is enough water here. Mr. Mitchell said he did not anticipate any water issues with the adjacent lots. He agreed there are other areas of town where it is very rocky and there is no water yield. That was particular to a different project. In this area, these are three acre lots and there should be no problem with the bedrock aquifer. Mrs. Schnitzlein said she is hearing "don't anticipate"; she is sure that the residents in that other neighborhood did not anticipate problems either. Mr. Granese said the Well Yield Probability Map [Derry Source Water Protection Plan, Map 6] shows 10.1 to 15 gallons per minute in the proposed development area. There are good flow rates in this area. Mrs. Schnitzlein said that is flow rate. Mr. Granese said that when one fractures for a well, the fracture breaks into the bedrock and grabs water. There is low probability of there being a water issue. Mrs. Schnitzlein explained her concern is if there is an impact. Are they responsible or is Mr. Gagnon responsible if it is found they have a

well issue. Will it be in writing anywhere? They are not paying for repairs out of their own pocket. Mr. Granese said it would be the same as when his home was built. His was the first to be constructed in his neighborhood. When he asked about the other wells in the neighborhood affecting his well, he was told if there was a problem, that would be his issue. The Board cannot put that type of restriction on this plan.

Mrs. Schnitzlein said that for most of their concerns and questions, they would like to see safeguards in writing. Mr. O'Connor said this plan is proposed with three acre lots. The lots on Bayberry are two acres, with some being larger. This subdivision has larger lots. In looking at the United States Geological Society sheets, it is not anticipated there will be any problems. Mr. Granese commented that the Aquifer Transmissivity map shows 1000 to 2000 transmissivity in feet squared per day. There is a lot of water in this area.

Mrs. Schnitzlein had concerns with blasting. It has been said, "they usually take video". Who is "they"? Mr. O'Connor said the Fire Chief issues blasting permits. If she is within so many feet of the blasting area, they [the blasting company] will take video and pictures. The builder will contact the affected residents. Mr. Granese stated Bayberry is outside of the distance required for a pre-blast survey. Saf-C 1607.5 states the minimum distance is 100 feet. The developer may have his own requirement when he contracts with a blasting company. Maine Drilling and Blasting uses a distance of 250 feet. It depends on the company. The builder and the Fire Department will work with the residents.

Mrs. Schnitzlein asked with regard to radon levels in the groundwater before or after blasting. Mr. O'Connor asked if she had radon levels now? Mr. Granese noted that requires private testing. Mrs. Schnitzlein said her house was tested and they have a system that has lowered their levels below the threshold of 4 [pCi/L of air]. Not many of her neighbors have that fixture in their homes.

Mrs. Schnitzlein asked with regard to the covenants that were provided at the last meeting for the developer to consider. Mr. Granese indicated that covenants are not under the Planning Board purview. That is like a condo document. Mrs. Schnitzlein wanted to know why the Board accepted the copy of them and indicated they would be looked at? Mr. Granese said the Board can't tell the builder how to write their documents. Mr. Sioras recalled that during the site walk, Mrs. Martin had asked Mr. Gagnon about the type of homes and she was told they would be three to four bedroom homes, comparable to what is in the area. Mrs. Schnitzlein explained they are concerned with things like farms and animals. Mr. Sioras advised this Board can't impose that type of restriction. There are zoning restrictions in place and there is an Animal Ordinance in town that limits the type and number of animals. Mr. Mitchell stated they did read the covenants as they were forwarded to them. Most of them are common sense items as to what someone can have in their yard. The homes to be built are around 2500 square feet in size. The type of house and their colonial nature fit the neighborhood. Mr. Gagnon has chosen not to put restrictive covenants on these lots. In other towns Mr. Mitchell has seen protective covenants protect neighbors and also put neighbors in conflict. There are zoning laws in the town to be followed that help people be good neighbors to each other. Mrs. Schnitzlein thanked the Board and stated she would still like answers to her questions.

Kelley Martin, 6 Bayberry Lane, said she asked a lot of questions at the last meeting. She feels this plan will be approved and it will be a nice project. This is Mr. Gagnon's right but he has some responsibility, including safety. Who decides the location of the proposed street and the proposed parking area? Mr. Granese said the road and the plan details are on the plan and therefore approved by this Board. Mrs. Martin asked did this go to the Highway Safety Committee for discussion from a safety standpoint?

Mr. Sioras explained that before a subdivision plan comes to the Planning Board, it goes before the Technical Review Committee (TRC). The TRC is made up of staff members and includes himself and Mrs. Robidoux from Planning, Mr. L'Heureux from Public Works, Code Enforcement, Fire Prevention and the Police Department. TRC reviews the plan for initial compliance to the regulations. The TRC did not send this applicant to the Highway Safety Committee because the proposed roadway met the minimum sight distance requirements in the regulations. The TRC did not feel there was a safety issue for Deer Run. Regarding the proposed parking lot, that did not come across as a safety issue; that item is connected to the dam ownership. Mr. L'Heureux advised there were no safety issues noted during review of the plan for Deer Run. The requirements for grades and vertical and horizontal alignment were all met. Mrs. Martin asked if there was a concern for safety with the proposed parking lot? Mr. L'Heureux explained the parking lot is not part of this plan. Mr. O'Connor added that if this plan is approved or not approved, the issue regarding the parking lot will be handled by Town Council. The location of the proposed future lot is shown on the plan, but it is not part of the subdivision review. Mrs. Martin asked with regard to the "non-buildable lot to be deeded to the town". Mr. O'Connor said that is also not part of this plan. That is part of an ongoing discussion between Mr. Gagnon and the Town Council. Mrs. Martin felt the Board had agreed, reluctantly, at the end of the last meeting, that the development and the dam are connected. Mr. Granese disagreed and stated they are two separate issues.

Mr. Anderson asked that Mrs. Martin review the cover sheet of the plan. Lot 12119-010 is the dam lot. It was carved out as a separate lot. That is the one that says it is "non-buildable". The parking easement area proposed on Lot 12119-009 is on the pond lot. Mr. Gagnon will retain ownership of 12119-009 and the pond. He will have ownership of that larger lot containing the parking area if and when it is ever built. That is a Town Council issue, not a Planning Board issue. The dam lot is a non-buildable lot. Mr. Gagnon may grant a parking easement on the pond lot to the town. The lot itself cannot support a home because it can't meet the minimum lot sizing requirements as it is mostly water. It is one of ten lots proposed, but 98% of it is the pond. Mrs. Martin asked how can that lot be carved out, and the Board say "don't look at it". Mr. Anderson said that lot, lot 9, is one lot. Lot 10 is where the dam is located. If the Planning Board approves the subdivision, Mr. Gagnon gets 10 lots. If he chooses to and the town agrees, Mr. Gagnon can in the future deed lot 10 to the town. That is his purview because the lot was carved out. Currently, he cannot deed that area to the town because it is part of the parent lot (12119-001).

Mrs. Martin asked if the Town Council will make its final decision regarding the dam with input from the taxpayers? Mr. Anderson said yes.

Mrs. Martin recalled asking during the site walk if it would be safer to put the public access area on the northern portion of Lot 12119-009 in the area located between Parcel 12119-001 and 12119-002. She felt it would be safer because it would be further away from the dam and the bend in the road. Mr. Anderson said that can be considered in light of other conversations. Mr. Milz added the location of the parking lot is not germane to the subdivision discussion. Mr. Anderson said if Deer Run meets the sight distance for the road, the access they were discussing will meet sight distance as well. He understands the issue with the hill and the curve. The town's engineers would address those issues. Mrs. Martin asked that the town be cognizant of the effect on people who walk along the roadway; there would be issues with cars parked along the roadway; it is unsafe.

Mrs. Martin asked to follow up on the blasting issue. It was mentioned that the developer will work with the residents. She is not comfortable with that and would like something in writing to protect the people potentially affected. Mr. Granese said he was the one who said the developer would work with the residents. He is sure the developer wants to be a good neighbor. He assumes they would let the residents know and ask if they want a site survey. Mr. Mitchell acknowledged there is risk when blasting occurs. The blaster has a liability as does the developer. If a pre-blast survey is required on Mr. Gagnon's side of Bayberry, they will do that. He does not know if that will be required or not. Historically, it has been a non-issue. To give a guarantee is unnecessary and typically unheard of. There are rules in place to protect in instances of proven damage. They would be willing to perform a pre-blast survey of homes within 400 feet of a blast area on Mr. Gagnon's side of Bayberry, but not in the cul de sac or on the other side of the road. They are willing to go the extra effort on that but can't give guarantees.

Mrs. Martin asked what are the next steps? Mr. Granese explained the process would be to hear from the public, close the public hearing, the Board would consider the plan and move on. Mrs. Martin asked when would the closed door discussion be brought to the public? Mr. Anderson said because of the nature of the discussions, he could not answer that question. Mrs. Martin noted any time crunches are not the responsibility of the town. Mr. Gagnon has until the end of the year to make his decision regarding the dam. She hopes that the town is not rushed into anything and that there is due diligence performed. Mr. Anderson said this has been discussed for months. It is a closed door discussion because it involves negotiations. If and when agreements occur, it will be made public. He wanted her to know that her comments and concerns were being heard. Mrs. Martin thanked the Board, adding that she is not just speaking on her own behalf.

Gina Coel, 18 Bayberry Lane, asked if there had been a written estimate for the dam repair? Mr. Granese reiterated the Board is not considering the dam, just the subdivision. Ms. Coel said she was speaking to the subdivision and parking lot safety. If the public lot is a separate issue, will it be discussed at a later date? She felt traffic should be discussed now. Mr. Granese said the dam and parking area are being discussed at the Town Council level and the Board can't discuss it. He understands she has questions but those issues are not on the table tonight. Mr. Milz noted the town may never take ownership of the dam, so the Board can't discuss the possibility of it happening. Ms. Coel felt they should be looked at together because the safety is hand in hand.

Mr. Granese said the town doesn't own the dam and it is still under Town Council discussion. If it goes forward, those issues will be addressed by Town Council.

Mr. Chase said with regard to the dam and parking lot, the Board does not know what will happen on the road in the future and needs to consider what is before it. The Board takes up each development as it comes before it. If all of the plan details meet the town criteria, the plan does not need to go to Highway Safety. Ms. Coel said they know what is there presently. Regarding safety, if the subdivision goes in, it will increase traffic in the area. If a parking lot goes in, that should also be considered because the road and parking lot will affect each other. The parking lot will add more traffic. Mr. Granese said he appreciates the concern, but the parking lot and the dam are not part of the discussion.

Ms. Coel asked regarding the tree line between the homes on Bayberry and the proposed development. Can they have a 20 foot tree line from the rock wall to the back of the property? Mr. Granese said there is at least 100 feet between lot lines and homes, with wetlands in between the adjacent lots. The exception is the Coel lot, but there are wetlands in between. Ms. Coel said that 12119-008 abuts 12126-001 and 12126-002. Can he clear [trees] up to the property line? Mr. Sioras noted that the map utilized during the site walk shows an aerial of the area. He recalled that during the site walk, Mr. Gagnon indicated he cuts selectively on his lots. Ms. Coel said they would like a buffer along the property lines. Mr. Sioras indicated Mr. Gagnon had said he would not cut that far back. That can be a condition on the plan. Ms. Coel said blasting is still a concern. She would not want to see damage to her in-ground pool.

Mr. Mitchell reiterated the pre-blast survey would take place on any lot that was within 400 feet. In looking at the map, the house proposed for lot 7 is close to the cul de sac. He believes Ms. Coel's lot would be well beyond the 400 foot distance. That is why he is reluctant to say there will be a pre-blast survey for all of the properties on Bayberry. Some of those homes may be ¼ mile away from the zone of influence. Regarding the 20 foot buffer, they would be opposed to a no cut dimension because there are some places along the property line where currently there is no existing foliage. They would not want to be in a position where it was said they cut something when they actually did not. Mr. Gagnon had indicated during the site walk that he did not want to cut extra trees and a large lawn area. He cuts for the house, the garage, the septic, the deck area and a small lawn area. Future home owners may cut more. They prefer not to hold to a specific no cut area unless that is a hard condition imposed by the Board. Ms. Coel said she is asking for it to be a hard requirement because she would like assurance that the lots won't be clear cut in the future. It would not necessarily affect her lot, but she would like to see the property values retained in the neighborhood. She would like that to be considered.

There was no further public input.

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

Mr. Granese and other Board members reviewed the aerial map of the area that was prepared by the IT Director. The Board members called Ms. Coel to the table to review the map. They indicated her lot. Mr. Milz noted there are a lot of trees shown between the lots. This plan is

also showing winter green; once the trees leaf out there will be a larger buffer. He felt it would be onerous to impose a 20 foot no cut buffer along the property line. The same would be true from a blasting standpoint. Ms. Coel said she was nervous because of the granite in the area.

Mr. Anderson noted a technical issue. Item #5 in the KNA report speaks to the applicant obtaining house numbers from the Fire Department and placing them on the plan. The Board members do not have sheets R2-R7 with the smaller plan set before them. The town has recently charged the Fire Department to use the E-911 numbering system which requires numbering every 50 feet. The current house numbers do not comply with that numbering system; although he understands these numbers were obtained before the change. Since this will be the first subdivision since the change to E-911, he would like the house numbers to conform. Typically under E-911, every 50 feet there is a number assigned on the left and right hand side of the street so that the Fire Department can locate home easily.

Mr. Park stated that for the past few years he has reluctantly watched this area develop. He frequents the area. He does feel however, this is a well-designed, well thought out plan that meets all of the regulations and requirements. He would have a hard time saying no to this plan. Mr. O'Connor concurred, adding that he would like to discuss the opening of Deer Run onto Adams Pond Road. Is there sufficient sight distance? Mr. L'Heureux said the sight distance is more than sufficient. There will also be a four foot wide gravel shoulder and the strip of trees in the right of way will be removed up to the power line easement.

Mr. Chase asked what happened with the shortening of the road name? Typically the street names end in "street", "avenue" or "road". Mr. Mitchell said the original proposed name is Deer Run Drive. That is a long street name to put on a sign for a small development. Mr. Sioras explained Alan Côté suggested shortening the name so that the sign blade would be shortened, and Mr. Gagnon agreed to keep it to "Deer Run".

Mr. Granese confirmed if the Board accepts jurisdiction of the plan this evening, it will start the 65 day clock.

Motion by O'Connor to accept jurisdiction of the subdivision plan before the Board for Jean Gagnon, identified as Deer Run at Adams Pond, located on Parcel ID 12119-001, 103 Old Chester Road and Adams Pond Road, seconded by Park.

Mr. Sioras clarified the 65 day clock means that the Board has 65 days to approve or disapprove the plan once jurisdiction is accepted.

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

Motion by O'Connor to grant a waiver from the following section of the LDCR, Section 170-26.A.17 to allow a snow platform and 3:1 cut slopes from Station 0+20 right and 1+20 right, as well as a waiver to allow 2:1 fill slopes with guardrails from Station 1+50 and 3+50 left and right to minimize wetland impact. Bartkiewicz seconded the motion.

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

Mr. Granese noted there were a lot of issues raised tonight as well as consideration of the E-911 issue. These should be addressed before we move forward. He would recommend that the abutters hold an informal meeting with the developer to address the concerns they have with regard to safety. He suggests continuing the hearing to April 11, 2012. Mr. Sioras recommended addressing the Conditional Use Permit application before continuing the plan.

Motion by O'Connor, seconded by Bartkiewicz that pursuant to the Town of Derry Zoning Ordinance, Section 165-80.B.2.a, a Conditional Use Permit is granted to allow the proposed access way from Adams Pond Road (to create Deer Run), to cross an area of poorly drained or very poorly drained soils, other than prime wetlands. After review of the proposal, the Board finds that:

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

Discussion followed.

Mr. Anderson confirmed with Mr. Sioras that the motion conforms to recent correspondence from Attorney Boutin.

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

Motion by Milz to delay this hearing for a two week period to April 11, 2012 for the following reasons:

1. To allow re-numbering by the Fire Department of the house lots to be in conformance with the E-911 requirements.
2. To allow the residents of Bayberry Lane to set up an informal, non-binding meeting with the developer to discuss issues the Planning Board cannot address or allow, such as the 20 foot tree line which is not necessary. This meeting will allow the abutters to have their concerns addressed directly with the developer and not have the Planning Board function as a mediator.

Bartkiewicz seconded the motion.

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

Mr. Granese advised this hearing will be continued to April 11, 2012. There will be no further notice. He thanked Mr. Mitchell and Mr. Gagnon for working with the abutters. He thanked the abutters for attending this evening and hopes their issues and concerns will be addressed.

Michael & Michelle Demers

PID 36016, 34 Pinkerton Street

Acceptance/Review, Site Plan Determination

Change in Use from Porky's & Petunia's to Windham Auto Annex

Mr. Sioras provided the following staff report. The parcel is located at 34 Pinkerton Street. The purpose of the plan is for a change in use from Porky's & Petunia's Ice Cream stand (formerly Petals & Cream) to an auto sales business. This is an expansion/annex of the Windham Auto Sales which is located on Route 28, Ryan's Hill. This property was also the former Heimlich's nursery business. The parcel is located in the General Commercial zone. No town department signatures are required. Waiver requests were received this afternoon and copies are in the packets. No state permits are required for this application. Mr. Sioras said in general terms this is a site plan determination application allowing for the change of use only. However, staff feels the number of automobiles shown on the site is excessive and should be reduced. Further explanation of the waivers discussed at the TRC meeting is necessary in order to make this site work overall as currently configured. In general terms, there is a lot on this site.

Tim Peloquin, LLS, Promised Land Survey, presented for the applicants who were also present. Mrs. Demers has been operating Porky's & Petunia's for a number of years. It is tough to sustain the current business model and the site has been for sale for a few years. Mr. Demers operates Windham Auto Sales in Derry. Originally, this was Avante in Salem, the business moved to Windham and it is now located on Ryan's Hill in Derry. Mr. Peloquin submitted photos he took of the existing site on Rockingham Road (Ryan's Hill) about a month ago. The pictures demonstrate that Windham Auto Sales is a nice, clean, car lot. He wanted to point out the pictures were taken without Mr. Demers knowing ahead of time that was Mr. Peloquin's intention. Mr. Demers keeps a clean car lot. Mr. Peloquin stated he saw this in Windham and sees it in Derry. Mr. Demers' idea is to use the property on Pinkerton Street while they are waiting for it to sell. He would like to put cars there. Mr. Demers feels that location is good from a marketing perspective given it is a vacant lot. There will be no servicing of vehicles on site and there is a note on the plan to that effect.

Prior to this application, the lot had 28 parking spaces. There has never been a parking issue and no problem with cars getting in and out of the site. Mr. Peloquin said he has tried to demonstrate the use as a car lot is less intense than the ice cream stand. Mr. Demers will block off the Pinkerton Street access and use Peabody. If required, they can block off one of the access points on Peabody as well. Mr. Peloquin said he felt there was ample use on the existing pavement. There is greater than 24 feet at the entrances, greater than 33 feet in the center and he has created a 12 foot travel lane around the building. He has removed three spaces since the TRC discussion to address Fire Department concerns. There will be 28 used cars, 1 handicap space, 2 employee parking spaces (although they only anticipate having one employee) and two customer spaces. Those spots will be marked on the plan. He understands staff concern with circulation but feels

there is ample access. Mr. Peloquin said he referenced FF James Kersten's memo on Note 17 on the plan. The parking will need to comply with life safety and building codes. It looks like there are a lot of parking spaces on the lot, but there were 28 parking spaces before. Mr. Peloquin said he felt this was a reasonable use and he is hopeful they can obtain approval this evening.

Mr. Granese advised the Board is in receipt of revised plans.

Motion by O'Connor to accept the revised plans for Windham Auto Annex, received by the Planning Department on March 28, 2012, seconded by Bartkiewicz.

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

Motion by Bartkiewicz to open the public hearing, seconded by Park. All voted in favor and the floor was open to the public.

There was no public input.

Motion by Park 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. Milz noted an abutter sent an email. Mr. Sioras read the following email from Joanne Morganti into the record. "Hi, I live at Sunview Condominium and we've been given notice that there is a hearing 3/28 regarding Windham Auto Sales going into the former ice cream shop (Porky's & Peaches [Petunia's]). I would like to voice my opinion that I don't think this is a good location for a used car business. The traffic coming out of "Energy Lane" [Sunview Condominiums] onto Pinkerton Street is heavy as it is and I think a used car place would add too much traffic."

Mr. L'Heureux advised that DPW has a concern regarding the proposed aisle spaces and site circulation. The recent plan submission does show site circulations arrows. Generally speaking, some areas don't meet the minimum aisle space requirements in the LDCR.

Mr. Granese asked if Mr. Chase had any issues from a fire perspective? Mr. Chase said he would be hesitant to allow the closing of the Peabody Street access point adjacent to Pinkerton Street. That is the best access point. He supports the closing of the Pinkerton Street access from a fire and highway safety point of view. He does not recommend closing the 31' wide entrance. The Fire Department can get onto the lot there and gain access to the building and through the rear entrance also.

Mr. Peloquin advised there is a fire hydrant located nearby as well. Regarding the email from the abutter, he felt this use was less intense from a traffic standpoint than the former ice cream stand/restaurant use.

Mr. Granese asked with regard to hours of operation? Mrs. Demers stated 9:00 a.m. to 8:00 p.m.

Mr. Milz recalled at one time, this site was a nursery. Wasn't there a second lot? Mr. Peloquin said there is a vacant lot behind this property, but it is owned by someone else. Mr. O'Connor said he concurred with the re-gating on Pinkerton Street. It is labeled as a swing gate. Will there be chain link? Mr. Peloquin said there is a current gate in place. The Fire Department and Police Department can gain access through the gate utilizing a lock box. The gate on Peabody is existing. It will be open during business hours and closed during non-business hours for security purposes. The Pinkerton Street gate will not be open.

Mr. Anderson stated when he has read the TRC notes and reads the waiver requests, he can't in good conscience vote for the waivers, knowing the issues relative to the Fire Department and setbacks. He can't see the need to put that many vehicles on this lot. Mr. Peloquin felt that some of the waivers were simple; for example, the wetland waiver. Mr. Anderson said he has no issue with the first three. Mr. Sioras said he has spoken with FF Kersten. The original plan had four extra spaces on the north portion of the site in the middle. The staff would not support that. It is unusual to have cars parked under an overhang. That is why FF Kersten wrote the memo regarding the fire wall. It would be tight to get a fire truck behind the building. Staff was not as concerned with the front of the lot as they were with the rear of the lot. That southern boundary has an excessive amount of cars.

Mr. Milz suggested setting up a site walk. He said he has no concept of the rear of the lot and it would be beneficial to see how they plan to put cars under the overhang. Mr. L'Heureux said he would recommend a site walk based on a stop at the site today. It would be difficult to get cars into the back area.

Mr. Peloquin said he is not advocating that a fire truck can get around the building. He feels the Fire Department can get to key points on the lot. They are amicable to a site walk and possibly moving cars from under the overhang.

The Board discussed possible dates for a site walk and a continuance.

Motion by Milz to continue the public hearing for Michael & Michelle Demers to April 25, 2012, and to hold a site walk on Saturday, April 14, 2012 at 10:00 a.m. The motion was seconded by O'Connor. Discussion followed.

Mr. Peloquin asked with regard to the waivers. Mr. Granese said the Board is not going to address the waivers this evening. Mr. Peloquin said he will try to re-work the plan.

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

Mr. Granese noted there would be no further notification of this hearing.

**Margaret Starrett & James Starrett
PID 16059, 15034 & 15035
57, 55 & 53 Conleys Grove Road
Acceptance/Review, Lot Line Adjustment**

Mr. Sioras provided the following staff report. The purpose of the plan is for a lot line adjustment between the parcels. The properties are located near the Derry/Atkinson town line. No department signatures are required for this proposal, nor are state permits. A variance was granted by the ZBA on February 16, 2012 to allow two lots with less than the required frontage. He recommended approval of the lot line adjustment and there is a waiver which he also supports.

Jim Lavelle presented for the applicants. There are three parcels owned by the same family. Two of the parcels have dwellings on either side of a vacant lot. There is an easement for a septic for one of the homes on the middle lot. One of the dwelling lots is in the process of being sold. The intent is to divide the middle lot into two, and join it with the land on either side. Parcel 16059 will become 14,784 square feet (.34 acre) and Parcel 15035 will become 11,268 square feet (.26 acres). Parcel 15034 will be eliminated. There was a variance granted because they were changing pre-existing non-conforming undersized lots and making the lots more conforming. Each lot will have its own septic system on its own lot, rather than having an easement.

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.

There was no public input.

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

Mr. O'Connor asked with regard to the shed. With the new boundary, will it conform to the setbacks? Mr. Lavelle said he believed the shed was portable and could be moved. Currently it is about 10 feet or so from the proposed property line. The current setback is 15 feet. Mr. Anderson said the shed is already there; it does not need to move as it is pre-existing, non-conforming. Mr. Lavelle noted that particular lot line is not being changed. Mr. Milz asked with regard to the second dock that will now be part of Parcel 16059. What happens when the other lot wants a dock? Mr. Lavelle explained that dock went to a trailer that used to be on the lot and was not for the house on 15035.

Mr. L'Heureux advised DPW has no issues with this plan.

Motion by Anderson to accept jurisdiction of the Lot Line Adjustment application before the Board for Margaret Starrett & James Starrett located on Parcel 16059, 15034 and 15035, 53, 55 and 57 Conleys Grove Road. The motion was seconded by Bartkiewicz.

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

Motion by Anderson to grant a waiver from the following sections of the LDCR, Section 170-24.A.11, two foot contours; Section 17-24.A.12, HISS mapping, and Section 170-24.A.13, wetland mapping. The motion was seconded by Bartkiewicz.

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

Motion by Anderson to approve the above noted lot line adjustment plan pursuant to RSA 676:4, III, Expedited Review, subject to the following conditions: subject to owners' signatures; subject to onsite inspection by the Town's Engineer; establish escrow for the setting of bounds or certify that the bounds have been set; obtain written approval from the IT Director that the GIS disk is received and is operable; amend Note #5, LDR requires 200 feet of frontage and three acres; Amend Note #7, ZBA variance was from Section 165-105.B; Label the middle parcel as Parcel 15034; note approved waivers on the plan; that the above conditions all shall be met within 6 months; improvements shall be completed by September 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, along with the appropriate recording fee. Bartkiewicz seconded the motion.

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

There was no further business before the Board.

Motion by Bartkiewicz, seconded by Alongi to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:51 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____