

The Planning Board for the Town of Derry held a public meeting on Wednesday, June 6, 2012, at 7:00 p.m. at the Derry Municipal Center (Cable TV Studio) located at 14 Manning Street in Derry, New Hampshire.

Members present: David Granese, Chairman; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; John P. Anderson, Town Administrator; Randy Chase, Administrative Representative; Darrell Park, Jan Choiniere (7:04 p.m.), Members; Ann Alongi, Lori Davison, and Joseph Donahue, Alternates.

Absent: John O'Connor, Jim MacEachern

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 exit and meeting materials.

Ms. Alongi was seated for Mr. O'Connor, Ms. Davison was seated for Mrs. Choiniere, and Mr. Donahue was seated for Mr. MacEachern.

Escrow

#12-11

Project Name: Pinkerton Freshman Building

Developer: Pinkerton Academy

Escrow Account: Pinkerton Academy

Escrow Type: Cash

Parcel ID/Location: PID 43001, 22 North Main Street

The request is to approve Release #1 in the amount of \$48,308.40 plus any accumulated interest. This is the final release of cash escrow. The amount to retain is zero.

Motion by Bartkiewicz, seconded by Park to approve the request as presented. The motion passed with all in favor with Chase abstained.

#12-12

Project Name: Pinkerton Academy CTE Buildings

Developer: Pinkerton Academy

Escrow Account: Pinkerton Academy

Escrow Type: Cash Escrow

Parcel ID/Location: 43001 and 40005, North Main and Pinkerton

The request is to establish cash escrow in the amount of \$40,435.20 for the above noted project.

Motion by Bartkiewicz, seconded by Anderson to approve as presented. The motion passed with all in favor.

#12-13

Project: Covey Run

Developer: Covey Run, LLC

Escrow Account: Covey Run

Escrow Type: Letter of Credit

Parcel ID/Location: PID 31021, 81 North High Street

The request is to renew Letter of Credit #68059605, drawn on Bank of America in the amount of \$248,823.90 for the above noted project. The expiration date will be June 30, 2013.

Motion by Bartkiewicz, seconded by Anderson to approve as presented. The motion passed with all in favor.

Mrs. Choiniere was now seated and Ms. Davison stepped down.

Minutes

The Board reviewed the minutes of the May 23, 2012, meeting.

Motion by Milz, seconded by Bartkiewicz to accept the minutes of the May 23, 2012, meeting as written. The motion passed in the affirmative with Chase, Granese, and Park abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a letter from NH Department of Environmental Services requesting municipalities amend their zoning ordinances to include provisions for aquifer and well head protection. Also included is a flyer outlining Best Management Practices for groundwater protection. The Board is also in receipt of an updated list of Change in Use applications.

Other Business

Voluntary Merger, Parcel ID 29139 & 29140, 33 & 35 West Broadway

Steve Trefethen called Point of Order. Mr. Granese asked him to wait for a moment.

Mr. Sioras advised these lots are located on West Broadway, adjacent to Veteran's Hall. One of the lots has the house that will be torn down for the proposed parking lot. The other is the

Granite House lot. Lot 29140 will be deleted. Steven Trefethen called Point of Order and the Board advised this was not a public hearing. Mr. Sioras advised the process is the Board would proceed to a vote. These requests are handled as administrative business during the meeting and not during a public hearing. This is through the Assessing Office.

Motion by Anderson to approve the application for voluntary merger of Parcels 29139 and 29140, seconded by Milz.

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

Voluntary Merger, Parcel ID 55038 and 55037, 1 and 3 Lake Shore Avenue

Mr. Sioras advised the owner, Barbara Hoyt, phoned today and requested the application be withdrawn. The Board took no action on this item.

Schedule a Public Hearing to discuss proposed changes to the LDCR, Sections 170-24 & 170-26

Mr. Sioras stated the Board has discussed the revisions to the Land Development Control Regulations (LDCR) relevant to the E-911 house numbering requirements. As discussed proposed changes were prepared and reviewed by both Mr. Sioras and the Fire Chief. Chief Klauber approved the suggested wording. The next action would be to schedule this for a public hearing.

Motion by Anderson, seconded by Milz to schedule a public hearing to discuss the proposed changes to LDCR Sections 170-24, Final Application Phase Submittals and Section 170-26, Streets, to June 20, 2012.

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

Other

Mr. Sioras reminded the members that the Board will meet once a month for the summer schedule. Meeting dates are July 18 and August 15th.

Public Hearing

CCN Realty, LLC

29139 & 29140, 33 & 35 West Broadway

Acceptance/Review, Site Plan

Parking Lot Expansion and Change of Use to Sober House

Mr. Granese recused himself from this hearing. Mr. Bartkiewicz stepped up as Chair Pro-Temp.

Mr. Sioras provided the following staff report. The project is for a parking lot expansion on the lot holding the dilapidated house next to Veteran's Hall. The purpose of the plan is to construct a 15 space paved parking lot with associated site improvements including drainage, utilities and landscaping. All town departments have reviewed and signed the plan. There is a letter dated May 21, 2012 from Long Beach Development Associates requesting two waivers. The first is from LDCR Section 170-64.C.1, Landscape and Buffering Requirements. The second is from LDCR Section 170-65.L, Stormwater Management Requirements. There are no state permits required for this project. He would recommend approval.

Steve Trefethen called Point of Order. He had issues he wanted to discuss with the Board before the meeting starts. The Board denied the Point of Order and stated Mr. Trefethen would be allowed to speak during the public hearing portion of the meeting. Mr. Trefethen stated he felt he should be allowed to address the Board before the public hearing. Mr. Anderson said only a Board member can call Point of Order. Mr. Trefethen's discussion is not on the agenda and he can speak during the public hearing. Mr. Trefethen felt his Point of Order should be addressed. It was not about the meeting in general. He felt it should be addressed before the Board got started. The Board again denied his request.

Todd Connors of Long Beach Development presented for the applicant. With him was Eric Spofford who is in charge of The Granite House, the tenant at 35 West Broadway. Mr. Connors described the scope of the project. He provided a copy of the site plan on the screen for the Board and public.

The property is located between the Marion Gerrish Community Center and the Park and Rec hall. There are three residential buildings. To the left is a two family building. That lot (parcel 29138) is under common ownership (his client) but is not included in this application. The middle lot is the old Mariner's Inn property. To the right, is a single family home that is to be demolished. The parking lot is to be constructed on this site. The Mariner's Inn is located at 35 West Broadway. 33 West Broadway will be merged with 35 West Broadway per the previous action of the Board this evening on the Voluntary Merger. Tonight, the applicant is requesting a change of use on the property which was a former 16 room/occupant rooming house to a sober living facility. There will be 16 bedrooms used by 30 residents and 1 staff member.

The ZBA granted a variance for the sober living use that was not defined in the ordinance and was not allowed in the Central Business District. The applicant wanted to expand the density from 16 to 30 guests and one staff member for a total of 31 occupants. The variance was approved several months ago. The application before the Board tonight is for a parking lot expansion.

The intent is to demolish the existing single family home at 33 West Broadway and construct a parking lot. The parking lot access will be from the alley right of way that is located to the north of the parcel. That driveway would open up to 14 regular parking spaces on the east side and one handicap space to the west. They have matched the existing grade as best they can. They are connecting to the alley in the back and will have a fixed elevation there. They will grade it across the lot evenly and end up behind a retaining wall that borders the sidewalk on West Broadway. They will add drainage and have designed a catch basin system. This was designed

to handle the increase in runoff as the pavement will have more impervious surface than the existing roof. There will be a single catch basin on the south east end of the parking lot that discharges to two perforated concrete catch basin structures that are 6 feet deep and 6 feet wide with an open bottom. They will be placed in a crushed stone bed. The intent is to collect the runoff and discharge it into the ground. They performed test pits that were 12 feet deep and found good permeability which will meet the town requirements. The drainage system will reduce the runoff from the property to West Broadway. The plan also includes landscaping. They will plant 13 trees, 8 shrubs and will meet the green space requirements for the parking lot, facade and frontage trees. They will propose two wall mounted downward facing light fixtures to provide low level security lighting from the parking lot to the building.

Mr. Connors advised he has indicated an area on the plan for snow storage and has added a note to the plan that excess snow will be trucked off as necessary. Originally, they had wanted to use the shed located in the northwest corner for solid waste but will now relocate that per the comments from the town's consulting engineer. They will slide one of the trees down and add a pad for the 4 x 6 dumpster. It will meet all town requirements for screening and be 25 feet from all property lines. They will remove the shed and will comply with town regulations for solid waste. Mr. Anderson confirmed that when Mr. Connors said "solid waste" he meant MSW (municipal solid waste).

Mr. Connors stated a lot of work has been done on the property. The building has been renovated on the exterior and there have been some interior renovations. Currently, the owner is installing the emergency fire code stairs and water line for the sprinkler system.

With regard to parking calculations, the LDCR does not have a calculation for this particular use. After discussing this with the TRC, he phoned other sober living facilities and performed an on line record search. He has provided a memo that summarizes his findings. There are two facilities in Manchester and one other in the region. They generally do not provide parking for the residents and it is usually on street parking for the staff. Typically it is a facility controlled benefit without resident parking. A national search found facilities in California and Minnesota which had different parking calculations. After reviewing them, Mr. Connors said he felt that 15 spaces would be sufficient for this facility. They are allowing one space for the staff member in residence, 5 spaces for visitors and 7 ½ spaces for the residents. They can fit 15 spaces on this property and that seems to exceed the national and southern New Hampshire requirements.

Mr. Connors advised he has received the review report from Vanasse Hangen Brustlin. There are no items that they will have an issue addressing. There are two items that Bryant Anderson, the consultant, felt might require a waiver. One was for the shed which did not meet the setback requirements. They have moved that and will use a dumpster, so a waiver will not be required. The other item had to do with curbing, which will be added to the plan so they will not need to apply for a waiver for that item.

They do have two written waiver requests. The first is from Section 170-65.L, Stormwater Requirements which requires a direct connection between the private on site drainage and the town drainage system. Given the topography it would be costly to create that pipe connection. They are far from an outlet. They have instead made the drainage system larger which reduces

the total site run off to the street. The second waiver is from 170-64.C, Residential Buffers. To the west, the property line is between one residential structure, with Marion Gerrish Community Center beyond that. The client owns all three residential properties and essentially, they would be buffering from their own property to their own property. In between 35 and 37 West Broadway is a 10 foot wide driveway that leads from West Broadway to the rear access right of way. The 10 foot wide driveway is shared by both lots across the property line. They are addressing the LDCR landscape requirements and don't feel an additional buffer is required. Mr. Connors asked Mr. Spofford to explain the sober living facility. They have had discussions with Mr. Mackey, the Code Enforcement Officer, with regard to what is included and what is not in that use.

Mr. Spofford advised that this sober living facility is restricted to men only who have graduated from primary, inpatient treatment. They range in age from 18 to 35 years old. The facility offers housing and some supported living skills as they transition from inpatient back into the community. Many of the residents go back to school or enter the work force. On average, the residents stay between six and nine months while they rebuild their lives and relationships in a safe, structured environment until they go out into their own apartments and homes.

Mr. Bartkiewicz asked Mr. L'Heureux if he had any comments or issues with regard to the plan. Mr. L'Heureux stated the owner is currently in the middle of installation of the water main for the sprinkler system. During excavation he had an opportunity to observe the soils and they are outstanding for a drainage system of this type. The applicant is meeting the town requirements with regard to utilities and structures. Mr. Anderson asked if Mr. L'Heureux had any issues with the waiver requests? Mr. L'Heureux said that DPW is not opposed to the waiver requests.

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

Mr. Bartkiewicz stressed that the Board is specifically discussing the parking lot plan.

Steven Trefethen, of Dom Vincent LLC, advised they own several properties within 200 feet of the project. His family has businesses in two other locations. He advised he wanted to raise a Point of Order earlier. At the ZBA meeting, the ZBA Chairman stated during the vote that he was voting for the variance because his mother was an alcoholic. Mr. Trefethen asked if any of the Planning Board members had issues such as family members or their own substance abuse issues that would sway their vote and make them biased to the application. Mr. Bartkiewicz reiterated that the zoning issue had been decided prior and was not on the table for the Board tonight for discussion. The Board was discussing the parking lot plan.

Mr. Trefethen stated he had a package he wanted to present to the Board. Mr. Bartkiewicz asked what is the purpose of the package? Mr. Trefethen said to file an objection against the Granite House. Mr. Milz asked if he meant against the parking lot? Mr. Trefethen said yes, because he was noticed for a parking lot expansion and a change of use. He wants to enter them into the record. He has an objection against the parking lot and the expansion of use. He wants to enter his information into the record and go through it with the Board. Mr. Anderson stated the town's

attorney was present. He asked if she could present the Board with any thoughts prior to them proceeding?

Lynne Sabeau, Esquire, of Boutin & Altieri, PLLC, advised the Board that the change of use was addressed by the variance. The Board has no authority to question the granting of the variance. Mr. Trefethen had an opportunity to appeal that decision to Superior Court which ruled his appeal was filed too late. The Superior Court dismissed the matter; it did not rule on the variance, just on the matter of the timing of the appeal. At this point, the variance is granted. Mr. Anderson asked if that meant that Mr. Trefethen cannot get two bites at the apple? Attorney Sabeau said Mr. Trefethen can object to the site plan as presented only. Mr. Trefethen said his packet speaks to the site plan. Mr. Bartkiewicz asked if the Board could accept any material that did not deal with the parking lot? Attorney Sabeau said the Planning Board has the discretion to accept anything and give it weight given the limited scope of the plan. Mr. Bartkiewicz said the packet could be left at the back of the room and any interested Board members could pick it up. Mr. Trefethen said he wanted it entered as evidence or it will violate his rights. He still felt he should be able to call Point of Order. He has tenants and neighbors who are concerned with the parking lot and waivers, and he is speaking for them. Mr. Anderson said he would like to see the authorization for Mr. Trefethen to speak on their behalf. Mr. Trefethen said he was not speaking just for himself and he would prefer Mr. Anderson step down because Mr. Anderson is leading the charge in a legal battle and should recuse himself. Mr. Bartkiewicz said Mr. Anderson is a member of this Board. Mr. Anderson added Mr. Trefethen should make his points, but if he is representing others, then he should have written authorization to do so. Mr. Trefethen said the Court has evidence that the tenants and business owners are not in favor. He speaks for the people they manage and from whom they collect rent.

Mr. Milz stressed the Board is only looking at the parking lot. Mr. Trefethen said the Board has privity over the change of use as well and it was noticed as such; much of his packet has to do with the parking lot. The ZBA has authority over the variance but the Planning Board needs to rule on whether the change in use can happen or not. He is not sure why he was noticed for a change in use to a sober house. Mr. Anderson said the attorney addressed that. Mr. Trefethen said his packet is four pages dealing with parking and other matters. The Board can disregard what it wants, but it has to accept his packet and it has to let him speak.

Mr. Bartkiewicz said Mr. Trefethen can speak but first he would like an opportunity to consult with legal counsel.

Motion by Anderson to recess the meeting to consult with legal counsel, seconded by Milz. Staff members (Sioras, L'Heureux and Robidoux) were invited to attend. Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz voted in favor and the meeting recessed.

Motion by Choiniere, seconded by Park to reconvene the meeting. Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz all stated Aye, and the meeting reconvened at 7:30 p.m.

Mr. Bartkiewicz asked Mrs. Robidoux to explain the Notice of Public Hearing. Mrs. Robidoux stated the application received by the town stated the application was for a "Site Plan Final

Phase, including parking lot expansion and change of use". She is not allowed to change what the applicant puts on the application. Mr. Milz stated the Board is not obliged to discuss the change in use because it has been handled, but does need to notice it as presented. Mr. Bartkiewicz asked Mr. Trefethen to hand out the packets to the Board members but direct the Board's attention only to the appropriate sections dealing with the parking lot.

Mr. Trefethen said the packet looks larger than it actually is. There are four pages of notes followed by more detailed objections regarding the parking lot, Granite House, setbacks, and buffers. He said he was noticed for a site plan parking lot expansion change in use. He directed the Board members to the page in his packet noted "1". This is a copy of the legal notice and abutter notice.

Mr. Trefethen said he objects to the use as a Sober Living Facility, but the Board has already addressed that. Regarding the Planning Board application (item 2), he stated the notice says it is for a site plan, but the application is for a Lot Line Adjustment. Regarding the 15 space parking lot and sober house, he has highlighted portions of the letter from Todd Connors of Long Beach to Mr. Sioras regarding the application. "...a 15 space paved parking lot..." and "...proposes to change the use from an existing 16-occupant rooming house to a renovated 31-occupant sober house with 16 bedrooms. Per zoning variance, a sober house is defined as congregate housing..." This is part of the application the Board accepted and the engineer [for the project] defined the use. Mr. Anderson asked Mr. Trefethen to contain his comments to the parking lot expansion only. The Board is not dealing with the expansion of the sober house to 31 occupants. All comments should be contained to the parking lot. The Planning Board is not dealing with the use, just the parking lot expansion. Mr. Trefethen said it was submitted as a change of use application. Mr. Milz reiterated the Board is not discussing that.

Mr. Trefethen said his fourth point deals with wording contained in the waiver request letter dated May 21, 2012. "Loss of the driveway would present an unnecessary hardship to the landowner. Accommodating an existing condition and allowing a reasonable situation to continue while expanding the use of the adjacent property under common ownership does substantial justice." He feels this is a variance application and the Planning Board does not have the authority to decide on a variance. Only the Zoning Board does. Mr. Milz explained the applicant is applying for a waiver on something over which the Planning Board does have purview.

Mr. Trefethen's point number five involved the parking calculation memorandum prepared by Mr. Connors. In it, Mr. Connors speaks of calculations country wide, and not related to the Derry ordinance. He discusses other facilities and their parking. "There are no current local regulations in place relative to the number of required parking spaces necessary to support the project...Parking for this facility must accommodate residents, staff, and visitors. Although there is ample public parking both street-side and in municipal parking lots..." Mr. Connors also discusses other facilities in his letter such as the Tirrel House in Manchester, and The Phoenix House which prohibits resident parking. "Often they are regulated as multi-family or congregate living..." Derry's Zoning Ordinance and Land Development Control Regulations have calculations for congregate care. This use is not like a high school or college; they don't stay overnight. With regard to the parking statistics, the parking lot is for 15 spaces. He did not hear

Mr. Connors talk about a handicap space. There is not enough parking in town. Many towns cited in this memorandum don't have winter bans. There is no overnight street parking in Derry during certain months. He feels this use would also have 31 cars on site at a time. He did not feel fourteen spaces and one handicap space is enough parking in a Town where the requirements are very specific, where a winter ban is in effect from November to April and where the building is being used in an overnight capacity and the applicants are asking for double the amount of residents. The Granite House believes that comparing off street parking for a sober living facility in Derry, New Hampshire is similar to off street parking requirements of sober living facilities in Los Angeles, California; Manchester, New Hampshire; and St. Paul, Minnesota. He directed the Board's attention to the colored pictures in his second packet that show the public transit systems. Derry has a population of 34,000 people, or 910 persons per square mile. In Los Angeles, the population is 4,065,585 with a metro area of 1,775,984, or 2,100 persons per square mile. St. Paul and Minneapolis, Minnesota have populations of 285,068 and 382,578 respectively, with a population density of 7019 persons per square mile. Manchester, New Hampshire has a population density of 3320 persons per square mile. They all have metro area bus systems. That is where these calculations came from. There is no mass transit system here.

Under the statute, "multi-family" is defined as any structure containing more than two dwelling units per RSA 674:43, I, Dwelling Unit. Multi family dwellings, including independent adult communities require 1.25 spaces per bedroom or a minimum of two spaces per dwelling unit. The Granite House would require 1.25 spaces per bedroom. With 16 bedrooms, there would need to be 20 spaces and a handicap space. Mr. Spofford has stated there are two employees plus himself. The word "hotel" was used during the ZBA meeting. Hotel, motel or inn requires 1.25 spaces per room, plus one space per 50 square feet of function, meeting or conference space. There are no snow storage spaces identified on the site plan and there is no note on the plan indicating snow is to be removed from the site. This is clearly a violation of 170-67 (C) and the plan should be returned for corrections and additions. There are also no rules in place for residents of the Granite House like others that do not allow residents with vehicles. There is also no buffer at the back of the property. A 20 foot buffer is required. This is the same issue that has been in front of the Supreme Court with Halligan Tavern and Property Portfolio Group. The Supreme Court made Halligan Tavern put the 20 foot buffer back, regardless that the lot is in the Central Business District. It is used for residential only. The Planning Board should order the Granite House to have a five foot buffer installed on all sides of the property along with a 20 foot buffer for the residential property in the back. There should be staggered trees. Mr. Oven owns the building to the back. He spoke with Mr. Oven briefly and Mr. Oven was very concerned about the buffer and what he should get. He did mention staggered trees. He is not testifying on his behalf but mentioned it because Mr. Oven said he had a conflict with another meeting and would try to get here later.

Mr. Trefethen said he also feels this application violates Section 170-88(a), Process, because the plan does not show neighboring buildings, those across the street, and within a 200 foot radius of the property as is required by the regulation. The plans are not complete. Photographs of the immediate area were also not included in the application.

Mr. Trefethen spoke to Section 170-67 (f), Offensive Uses. The Planning Board may require an applicant to install appropriate mitigation safeguards and/or implement Best Management Practices to prevent the proposed use or uses from being deemed "offensive". The Planning Board can attached conditions to any approval including mandatory criminal checks and mandatory substance abuse testing. Mr. Anderson said the Board is only looking at the parking lot. Is Mr. Trefethen suggesting the town check the cars in the parking lot for valid licenses? Mr. Trefethen said it is in his paperwork. He wishes that the notice had cited for only the parking lot, it would have been simpler. In conclusion, the Planning Board retains the authority to protect the citizens of Derry from uses that are not permitted in any particular zone. He asked why this Planning Board is so restricted and it can't do anything. He has been in business for 30 years and he feels everything is being avoided. The ZBA does not set conditions. If conditions are not in place, who controls The Granite House? It is not the ZBA. This is next to the Marion Gerrish Center which home schools children.

Mr. Bartkiewicz asked Mr. Trefethen to confine his comments to the parking lot.

Mr. Trefethen said regarding parking, site lines, boundaries, and fences, this plan does not meet the buffer requirements. There should be a 5 foot buffer with trees on all sides. There is no snow storage, where does the dump truck go? There is no contract for that to say someone will remove it. Will the snow occupy six to seven parking spaces until they can remove the snow? The Planning Board, if this is the final meeting, has privy to control what goes on next to a place where 200 to 300 children play. We are allowing admitted substance abusers in that zone. His experience since the Granite House moved in is that there is no parking on that end of town. He has had many complaints from the brokers in his real estate office. Mr. Anderson asked if the complaints are documented? Mr. Trefethen said he has been in his current location for 15 years and now his realtors can't park on the street. The road is full. This plan will also call for the loss of some street parking; he saw that on a plan somewhere. Mr. Anderson said there will be no loss of street parking. Mr. Trefethen said most congregate care facilities have stipulated areas where the people congregate. There are 18, 19 and 25 year olds hanging out on the porch. Mr. Bartkiewicz noted Mr. Trefethen was getting away from discussion of parking lot items. Mr. Trefethen stated if the ZBA does not deal with that, if the Planning Board is saying it won't protect its residents - other Planning Board's listen and set conditions. Maybe there is another meeting he does not know about.

There was no further public input.

Motion by Milz 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. Sioras read into the record the following from Mrs. Robidoux, which was addressed to him and Mr. Granese. "I spoke today with Janet Conroy, who is on the Board of Directors for the Marion Gerrish Center. MGC is a direct abutter to The Granite House but leases from the Town of Derry. The Town of Derry received the notice of public hearing. Janet directed me to Bill Wheeler who is President of the Board of Directors. When I spoke with Mr. Wheeler this morning, he indicated that the only concern the Board of Directors had with the project was with the runoff from the Granite House that goes into the MGC driveway. It habitually washes away

portions of the driveway. He indicated that when Todd Connors was before the Board of Directors at their meeting, that concern was noted. Mr. Wheeler said The Granite House occupants are decent neighbors. The Board of Directors are not planning to attend the meeting this evening, and have no complaints other than the run off. He also stressed that this has been a long standing problem and The Granite House did not cause the issue. I advised the information would be passed on to both of you so that it can become part of the record tonight.”

Motion by Milz to accept jurisdiction of the parking lot expansion and change of use plan before the Board for CCN Realty, LLC, 33 & 35 West Broadway, Parcel IDs 29139 and 29140, seconded by Choiniere.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz all voted in favor and the motion passed.

Motion by Milz to grant a waiver from the following section of the LDCR, Section 170-64.C.1, residential buffering requirements/general requirements. After review of the waiver request, the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. He also moved to grant a waiver from the following section of the LDCR, Section 170-65.L, Stormwater management requirements/infiltration system. After review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Choiniere seconded the motion. Discussion followed.

Mr. Anderson suggested an amendment to the first waiver, 170-64.C.1, that it is conditioned upon the continued common ownership of the property by the same owner. If the property to the west is sold to a different owner, the buffer and landscape requirements are required to come back to the Board for consideration. Milz agreed to move the amendment, seconded by Choiniere.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz all voted in favor and the motion passed.

Mr. Milz began a motion to grant conditional approval but did not complete the motion.

Motion by Anderson, seconded by Park to recess the meeting and consult with legal counsel. Staff members (Sioras, L’Heureux, and Robidoux) were invited to attend.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz all voted in favor and the meeting recessed.

Motion by Anderson, seconded by Milz to reconvene the meeting.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere and Bartkiewicz all voted in favor and the meeting reconvened at 8:09 p.m.

Mr. Milz apologized, adding that he jumped over the fact they did not discuss the waivers and consider the merits.

Motion by Milz to withdraw the previous motion with regard to granting of the waiver requests, seconded by Choiniere. The motion passed in favor and the previous motion became null.

Mr. Anderson asked Mr. Connors if he could describe the plan status with regard to the buffers and setbacks, and the additional issues relative to the understanding of the regulations and how it fits together?

Mr. Connors stated his understanding is the 20 foot rear buffer applies where a residential use abuts a commercial use. The sober living facility is considered a non-residential use, although it is not defined as multi-family. The property between the sober house and Marion Gerrish is a two family not a multi-family, so that requires a 10 foot buffer in between the two (35 and 37 West Broadway). He does not feel the buffer to the rear is required. It was not mentioned during TRC. There is a multi-family building to the rear and the LDCR does not require that buffer between two commercial properties. The structure on the property behind is more in line with Veteran's Hall; the parking lot and portions of Granite House abut the long, wooded portion of the adjoining lot to the rear.

Mr. Sioras asked Mr. Connors to explain the drainage. Mr. Connors said with regard to stormwater drainage, when they dug the test pits they went down 12 feet. They were in the nicest sand and gravel. It is perfect material for underground infiltration. They have designed adequate storage for the stormwater. A full set of calculations has been prepared and been peer reviewed by both Mr. L'Heureux and VHB. He feels they meet the regulations for a 25 year storm and go beyond that by reducing the drainage from the site to the West Broadway system.

Mr. Anderson noted on a daily basis there are a number of people on site while the building is under construction. Where do the contractors and excavators park? This is a construction zone which impacts parking in that area. That is public parking and the contractors can use it. Mr. Connors, after consultation with Mike Starr, indicated that on some days there aren't any contractors there, but there can be up to five tradesmen with their personal vehicles. Therefore, it can be assumed that five or more vehicles will take up parking in this area that are associated with the workmen and staff. Mr. Anderson asked for clarification of staff. Is one staff member there at a time or two? Mr. Connors explained during the day there are two staff members; overnight there is only one. Of the current 16 residents, only five of them have vehicles. Mr. Anderson noted that is less than one third of the current population.

Mr. Donahue recalled Mr. Sioras read a letter into the record regarding drainage to the Marion Gerrish property. Mr. Sioras stated the Board of Directors at Marion Gerrish have indicated there is a long standing issue with water runoff from the adjacent property, and they did speak to Mr. Connors about it.

Mr. Connors said as part of the preparation for this application and meeting, he met with the Technical Review Committee, and Highway Safety to discuss the driveway to the rear. There is

no loss of street parking, and they will restripe some spaces located on Maple Street as part of this project. In addition, he went before the Board of Directors at Marion Gerrish and discussed this plan. Their primary concern is runoff. The alley behind the properties grades down into the Marion Gerrish Community Center parking lot. When it rains, the alley funnels water into the Marion Gerrish parking lot. Because the alley is old and is in bad shape, along with the water there is debris. It is a nuisance and needs to be cleaned up. Water from the Mariner's Inn and the proposed parking lot area run toward West Broadway, not Marion Gerrish because they are lateral and the street is downhill. When they widen the alleyway and re-crown, it will pitch more of the stormwater from the alley into the property, and into their drainage system. Despite the pavement, the alley will be wider and there won't be more run off. There may be less. He noted they had a cordial conversation.

Ms. Alongi asked that Mr. Connors explain the snow removal. When it builds up, will it take up parking spaces? Mr. Connors explained that there is a snow storage area depicted on the plan, as well as a note regarding snow removal. He pointed out the designated snow storage area for the Board members. On the plan, they don't label where the snow banks will be. It is assumed the snow will be pushed back from the parking lot. When the accumulated snow banks start to encroach into the parking lot, they move the banks into the snow storage area. Note #3 indicates that if the area becomes full of snow, it should be removed in accord DES regulations. This is a standard note on all his plans and the note has been there since the beginning.

Fred Oven asked to comment. The Board advised the public hearing had been closed.

Mrs. Choiniere said she understood Mr. Connors to say that since the properties were under common ownership, he did not feel the buffer was necessary between the two buildings. Does that need to be a note on the plan? Mr. Anderson said it can be added as an amendment to any waiver. Mrs. Choiniere wondered how that could become known to future owners. Mrs. Robidoux suggested the Board could make a condition to record the Notice of Decision at the Registry.

Mr. Sioras said he wanted to clarify the issue of the rear buffer per a request of Attorney Sabean. There is a right of way between the Oven property and applicant's lots. A buffer is only required when the property line directly touches residential property on the rear of the lot. Since there is a right of way in between, a 20 foot buffer is not required.

Motion by Milz to grant a waiver from the following section of the LDCR, Section 170-64.C.1, residential buffering requirements/general requirements. After review of the waiver request, the Board finds that specific circumstances relative to the plan, or conditions of the land in such plan, indicate that the waiver will properly carry out the spirit and intent of the regulations. Mr. Anderson added this was as discussed in the original motion such that so long as there is common ownership of the Granite House lot and the two family lot to the west, the landscape buffer in between the lots is waived.

Milz also moved to grant a waiver from the following section of the LDCR, Section 170-65.L, Stormwater management requirements/infiltration system. After review of the waiver request the Board finds that strict conformity to the regulation would pose an unnecessary hardship to

the applicant and the waiver would not be contrary to the spirit and intent of the regulations. Anderson added that as outlined by the engineer, the applicant has expanded the system beyond the minimum size required by the regulation. Park seconded the motion.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere, and Bartkiewicz voted in favor and the motion passed.

Motion by Milz to approve, pursuant to RSA 676:4, I - Completed Application, with the following conditions: comply with the Vanasse Hangen Brustlin, the town's consulting engineer, review letter; subject to owner's signature; subject to on-site inspection by the Town's engineer; establish escrow for the setting of bounds or certify that the required 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; revise depicted location of exit door to the rear of 35 West Broadway to the satisfaction of Fire Prevention; note approved waivers on the plan, the above conditions all shall be met within 6 months, and improvements shall be completed by November 30, 2013. Anderson added an amendment that the Notice of Decision be recorded in the Rockingham County Registry of Deeds. Milz agreed to the amendment, Park seconded the motion.

Chase, Park, Alongi, Donahue, Anderson, Milz, Choiniere, and Bartkiewicz all voted in favor and the motion passed.

Mr. Anderson asked how quickly will the single family home be razed? Mr. Connors said the intent is to remove it fairly quickly and start working on the parking lot.

Mr. Granese resumed his seat as Chairman.

Forest Avenue Properties, LLC
PID 32025, 37 Crystal Avenue
Acceptance/Review, Site Plan Determination
Change of Use: 800 SF of retail to office space for used car sales
Continued from April 25, 2012

Mr. Sioras provided the following staff report. The Board has seen this plan before as it was continued from April 25th. It is a change in use at 37 Crystal Avenue (Plaza One). The purpose of the plan is a change the use to used car sales. The Board has a revised alternate plan proposal in the packets. He asked Mr. Connors to provide an update on the changes since the last meeting.

Mr. Connors of Long Beach Development Associates presented for the applicant, Chris McCarthy, who was also present. This application was continued from April 25th. The Board asked that he address the concerns of the Board regarding the layout of the three requested display spaces. He has provided an exhibit of what they had before the Board previously and replaced that with an alternative he would like to discuss with the Board tonight. To recap, he took the two primary issues identified at the last meeting. The first was the arrangement of the display spaces. In the northwest corner of the property, they reconfigured it to two display

spaces which meets the dimensional requirements of 9 feet wide, 18 feet long with a 24 foot wide drive aisle behind. This gives more room to add landscaping. They want to make this an attractive corner. They relocated the third display area to be in front of the office. This addresses the concern that the display area was far from the office. They can't get all three cars there because it would not be fair to the other tenants. They felt this was a decent compromise.

The second issue was the access between this parcel and the parcel located directly to the south. There is 11 feet of driveway on each side of the property line used by both landowners. There is a platted right of way on the deed for Cody Bear (Benway-Johnson). Explicit in the deed is 10 ½ feet on each side that is intended for the joint enjoyment of the property owners. He has shown this on the bottom side of the building. He is not sure if that addresses the Board's concern regarding the use of the right of way, but the right of way is legal. His hope tonight is that they can discuss the proposal with the Board and see if they are headed in the right direction.

Mr. Granese confirmed the right of way between the lots benefits both properties. Does that mean that no one can put up a partition between in the middle of it? Mrs. Robidoux said that would impede the access and she would think since the purpose is access, she did not think a property owner could do that. Mr. Anderson asked if it was a common right of way in the deed? Mr. Connors said it is a 21' wide right of way for the use of both lots, non-exclusive, and that on both sides of the line, they should feel free to come and go. It seemed to be set up for two lanes of travel given the deeded width and the regulations in place at the time the deed was created. It is clear that both properties are to use the right of way for access. He did not think anyone could put a fence down the middle and survive a legal challenge.

Mr. Granese asked if the existing condition had handicap spaces? Mr. Connors said that right now, there are no handicap spaces. There are not many lines drawn either. Mr. Granese asked why the handicap spaces cannot be moved to the front of the building? Mr. Connors explained that the Americans with Disabilities Act (ADA) code requires 20 foot long spaces. The north side of the property has 20 feet of space and the 24 foot wide drive aisle. On the street side, he only has 42 feet. He would prefer to have the handicap spaces in front of the building, but it won't meet code. Mr. Granese said he likes the two display spaces, but is concerned with the location of the handicap spaces adjacent to them. It would be safer to have them in the front of the building. Mr. Milz said if the car business goes away, those two spaces will not be used for display and would then be available for customer parking. He is okay with that. He agrees he would want to see the handicap spaces in front, but understands they can't because of ADA requirements which can't be waived. It looks awkward, but fulfills the needs.

Mr. Donahue spoke with regard to the first handicap space on the left. He felt that when that person backed out, it would interfere with the adjacent display space. Mr. Connors said it appears that way, but the display space does not project into the handicap space. The car will not be in the way of the handicap parking space.

Mr. Granese asked if there is a handicap ramp? Mr. Connors said they intend to reconstruct the sidewalk on the side of the building and will address that then. Mr. Granese suggested taking the handicap space on the left and moving it to the right. Mr. Connors said he can move the spaces

over one space and get away from the display area. Mr. Anderson asked if the topography went downhill in that location? Mr. Connors said it does not; it transitions further to the east.

Mr. Donahue said that was one of his points. The only other concern would be if people were standing in the parking lot looking at cars if that would interfere with movement from the handicap space on the left. If that space was moved down, that would take care of that concern.

Mrs. Choiniere felt if the handicap spaces were moved to the right, it would place them more in line with the proposed ramp. Mr. Connors said the center access aisle will line up with the sidewalk. As per the previously approved plan, they will provide striping across the area to designate the crossing.

Mr. Chase asked if the rear of the building remains the same as the last plan and will have one handicap space? Mr. Connors said a separate plan was submitted with the application that shows notes, locus and abutters. He would note the drawing before the Board is an exhibit for the display areas. The rear portion was approved as part of the parking lot expansion. They have made no changes to that.

Ms. Alongi asked if one can drive to the rear of the building and come out on the other side? Mr. Connors said yes. Per the parking lot expansion plan, someone can drive around to the rear, go past the two bays of parking spaces and go out on the south side. They have been asked to put an exit only arrow on the access to the south.

Mr. Anderson felt this was an improvement to the previous plan. Personally, he does not want to see used cars on Crystal Avenue as he feels there are enough in town.

Mr. Chase asked if the two display spaces are at the same elevation as the 24 foot travel lane and the parking spaces? Mr. Connor said they are. They will sit on the existing pavement. They are not repaving the parking area, but will cut the landscape area out of the pavement. They will restripe, just not repave this area.

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

There was no public comment.

Motion by Choiniere 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. L'Heureux advised DPW has no issues with the plan. This is more user friendly for future uses with parking spaces. The display area was not an item addressed in the regulations but he feels this plan is better for future flexibility on the lot with future tenants.

Mr. Granese asked what the plantings will be in the landscape areas? Mr. Connors said maple, spirea, yews, evergreens, rhododendron, and red dogwood. There is a good mix of native vegetation. He added that the plan seen by the Board two months ago had the landscape legend;

he did not repeat it on this plan. He noted the exhibit before the Board this evening was emailed yesterday to the Planning Office. He handed out 11 x 17 plan sheets to the Chairman and Clerk depicting the previous submittal and the revised exhibit.

Motion by Milz to accept jurisdiction of the site plan determination application before the Board for Forest Avenue Properties, LLC, 37 Crystal Avenue, PID 32025, seconded by Bartkiewicz.

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

Motion by Milz to approve the site plan determination application, pursuant to LDCR Article IX, Section 170-51, Site Plan Determination, with the following conditions: Subject to owner's signature, subject to on site inspection by the Town's engineer, establish appropriate escrow as required to complete the project, the above conditions shall be met within 6 months, improvements shall be completed by November 30, 2013, and the handicap spaces will be shifted 9 feet to the right (east). The motion was seconded by Bartkiewicz.

Chase, Park, Alongi, Donahue, Milz, Choiniere, Bartkiewicz and Granese voted in favor. Anderson voted no. The motion passed.

Planning Board Discussion, Zoning Amendments - Webster's Corner

To discuss proposed zoning amendments to the Office Medical Business zone and a proposed rezoning of 26 lots currently zoned General Commercial to Office Medical Business, located in the area of the intersection of Rockingham Road/Route 28/Island Pond Road

Mr. Sioras advised the permitted uses in the Office Medical Business (OMB) zone have been revised as per the last meeting. In addition, the Board has the listing of uses from General Commercial that are allowed in the OMB as well, along with the appropriate definitions. That addresses Mr. MacEachern's concern from the previous meeting. The Board also has the matrix of uses so that the Board can see what uses are allowed in each zone.

The hope is that the Board will allow staff to move forward and notice the changes for the July 18, 2012 public hearing.

The Board had no issues or comments.

Mr. Granese thought the changes looked good. Mr. Sioras said that he felt the Board has done a good job in explaining why it wants to make this change. It complements the water and sewer expansion in the area. It is hoped there will be high end development as a consequence.

Mr. Anderson asked if the lots were changed to OMB would the town still allow or restrict non-medical related commercial business such as a grocery store? Mr. Sioras said retail uses would be allowed. The Board removed single family residential, auto and similar vehicle sales, automobile service stations, filling stations and automobile repair facility/garage.

If the Board is in agreement, Mr. Sioras said the final draft can be made available for the June 20th meeting and the Board can schedule this for a public hearing on July 18, 2012. The Board was in agreement.

There was no further business to come before the Board.

Motion by Anderson, seconded by Choiniere to adjourn. The motion passed with all in favor and the meeting stood adjourned at 8:55 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____