

The Planning Board for the Town of Derry held a public meeting on Wednesday, July 18, 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 Chairman; Frank Bartkiewicz, Secretary; David Milz, Town Council Representative; Jan Choiniere, Darrell Park Members; Ann Alongi, Lori Davison (7:02 p.m.), Alternates.

Absent: John P. Anderson, Jim MacEachern, Joe Donahue, Randy Chase

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. MacEachern.

Escrow

#12-15

Project Name: Indian Hill Estates

Developer: Brady Sullivan Indian Hill, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: PID 04003, Indian Hill/Goodhue

The request is to renew Letter of Credit #181, in the amount of \$211,793.75 for the above noted project. The new expiration date will be August 2, 2013.

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

Ms. Davison entered the meeting.

#12-16

Project Name: Deer Run

Developer: JEMCO Builder and Developer, Inc.

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: PID 12119-001, 103 Old Chester Road

The request is to establish Letter of Credit #20005314, drawn on TD Bank, in the amount of \$535,041.91 for the above noted project. The expiration date will be June 23, 2013.

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

#12-17

Project Name: Derry Walmart

Developer: Walmart Real Estate Business Trust

Escrow Account: Walmart

Escrow Type: Letter of Credit

Parcel ID/Location: PID 08279, 11 Ashleigh Drive

The request is to approve Release #1 in the amount of \$2,165,330.88 and request a replacement Letter of Credit in the amount of \$203,083.20 for the above noted project. Upon receipt of the replacement Letter of Credit, the Board will release the Letter of Credit in the amount of \$2,368,414.08

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

Minutes

The Board reviewed the minutes of the June 20, 2012, meeting.

Motion by Milz, seconded by Bartkiewicz to accept the minutes of the June 20, 2012, meeting as written. The motion passed in the affirmative with Park and O'Connor abstained.

Correspondence

Mr. Bartkiewicz advised the Board is in receipt of a letter sent from the Code Enforcement Officer to the owners of 33 and 35 West Broadway. Mr. Mackey advises there has been an appeal filed with the Superior Court of the June 6, 2012, Planning Board decision approving a site plan for the properties. Per State of NH RSA 677:15, the appeal stays the proceedings upon the decision appealed from. All construction activity related to the site plan approval must cease immediately until such time as the Court makes a final determination.

Southern New Hampshire Planning Commission sent a letter outlining current activities. More information can be found at their website: www.snhpc.org. The Conservation Commission did not hold a meeting on July 9th, but invites its members and anyone interested to join them in a tour of J&F Farms on July 21, 2012, beginning at 8:00 a.m. The Board is also in receipt of the list of the most recent Change in Use applications, information on the 2012 Volunteer of the Year award nominations, as well as the July/August edition of *Town and City*. If any of the Board members require more information on any of the items, they should contact the Planning Office.

Other Business

Mr. Sioras advised that Walmart is targeting September 12, 2012 as an opening date and they are far ahead of their proposed construction schedule. With the opening of Panera Bread, there are many things happening in that area of town. The Board will hold only one meeting in August and that will be on August 15th.

Public Hearing

Revisions to Town of Derry Zoning Ordinance

To discuss the following proposed zoning amendments:

To amend the Town of Derry Zoning Ordinance Article VI, District Provisions, Section 165-35, Office/Medical/Business District (OMB) as follows:

Delete 165-35B.2 and 3, and renumber the section accordingly. Amend the new subsection B.2 to exclude automobile and similar vehicle sales, automobile service station, filling station and automotive repair facility/garage. Amend the new subsection 4.a to delete the exemption from the Growth Management Ordinance; delete subsection 4.b and renumber accordingly.

Purpose of Amendment: to revise the uses allowed by right in the OMB zone.

To amend Town of Derry Zoning Ordinance Article III, General Provisions, Section 165-14, Churches, to add the wording “with the exception of the Industrial IV zone.”

Purpose of Amendment: to resolve a conflict with other sections of the Zoning Ordinance.

To amend the Town of Derry Zoning Ordinance Article V, Zoning Map and District Boundaries, Section 165-30, Zoning Map and Section 165-31, District Boundaries to rezone 26 parcels currently located in the General Commercial zone to Office Medical Business.

Purpose of Amendment: to rezone 26 properties that lie within the area of Humphrey Road to the border of the existing General Commercial III zone (Rockingham Road, Island Pond Road, and Route 28, also known as Webster’s Corner) from General Commercial to Office Medical Business. If the amendment is adopted, these properties will be subject to the Office Medical Business zoning requirements contained in Section 165-35 of the Derry Zoning Ordinance. An amendment to the zoning map delineating the lots is being adopted to reflect these changes.

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

Gary Hamm, 88 and 90 Rockingham Road, said he did not understand the thought process for these revisions. There are no similar businesses of that nature in that area and the change limits the uses of the lots. He rode around the area today. The area across the street from the hospital

has many vacant buildings, and there are many sites for lease. That type of use is not viable right now and that section is far away. He feels this is a misuse of the land. He feels the purpose is to restrict the growth of auto sales and garages. The area the Board would like to change has changed zones a few times in the last 33 years. About 20 years ago, his zoning was changed and he was not personally notified. About 6 years ago, he requested a change in the zoning of his property back to GC and that was approved. He feels the current zoning [General Commercial] is the most viable.

Mr. Hamm said the area currently has auto repair, the plaza, the trailer park, Clam Haven, the auto dealer, Cal's repair and the salvage yard further up Rockingham Road. Over the years, he has been allowed to sell a piece or two from his property without problems. He feels his use of his property will be challenged and is limited under the proposed change. He feels the uses have to all be related to medical. He screens loam and material from his property with no issues, and is located near Allen's Coal. He does not understand why the Boards wants to change to this obscure zoning.

Mr. Granese asked if there was a particular section of the proposed zoning Mr. Hamm did not like? Mr. Hamm said taking the General Commercial away takes auto out of the mix. He wanted to do auto specialty sales and heavy equipment sales from his property when he retired. Currently he owns a septic service. Mrs. Choiniere noted his property would remain grandfathered. Mr. Sioras added the current use would be retained. Mrs. Choiniere asked what happens if the use is changed and the owner remains the same? Mr. Sioras said that the owner must follow the current zoning at the time of the change. Grandfathering is for the use not the owner.

Mr. Hamm said if this change goes through, he won't be able to do anything that is related to his current business. In his travels today he noted there is 20 to 30,000 square feet of space available near Parkland. The medical park near his property was approved and never built. That tells him that it was not a good location for that type of use. All of the medical uses are on Tsienneto Road. Mr. O'Connor noted Town Council has approved the extension of water and sewer in this area which makes it more viable. The properties on Tsienneto Road are owned by entities that separated from the Parkland affiliation. Mr. Hamm reported there are two big buildings that have eight units available for sale. He does not believe there is a climate for that type of use. This change will kibosh using land for a viable purpose in the future. He feels this change will crush the owner's ability to use the land. He does not like this and is opposed to the proposed change.

Gerry and Beth Siragusa own and operate Circle of Friends Day Care and own the antique store at the lights across from West Running Brook School. The properties are located at 45 and 49 South Main Street. They are opposed to this change. They have been in town for 30 years and own what is believed to be the oldest home in Derry. They take care of their property and pay around \$40,000.00 in taxes a year. There is no water or sewer available now. This change puts a hardship on them for any possible changes in the future. Mr. Siragusa said they have had inquiries for the smaller property, but are limited because of the lack of water and sewer. They feel the sole purpose of the proposed change is to keep the area medical related. There are no medical buildings on Route 28 now. It seems like a contradiction. He spoke with Mr. Sioras

who mentioned that the Office Medical Business zone allows uses that fall under General Commercial. When he looked at the proposed changes he noticed it also prohibits an increase in traffic. He feels the language contradicts. They have a large family and they want to involve their children in the business. Property values are underwater and without water and sewer, this is a large concern. They are looking at possibilities to expand their business but feel with this proposal, their options are eliminated and will create a hardship for the taxpayers. Their neighbors also have larger properties and they feel it restricts them from bringing businesses into town. Given the current state of healthcare nationwide, he does not understand the reasoning behind this. This change restricts them tremendously. Mr. Siragusa said he has not had a chance to speak to many people about this yet, but it is concerning. Mrs. Siragusa said that Nutfield Medical has many offices that are empty. The bank is for sale. To rezone these properties to OMB is very restrictive for the properties. Tsienneto Road has all of the medical offices. Why do this when the area has always been General Commercial? It causes a hardship for all the property owners and is extremely restrictive.

Mr. Siragusa also did not like the removal of single family residences from the zone. In Londonderry, they have 55 and older housing areas, single family, assisted living, shops and recreation trails; things that are more inclusive. He feels this change restricts them from even presenting ideas in the future to the Board. This is a hardship to his family and the rest of the 26 lots. Mrs. Siragusa explained they live on the property with the business and with the proposed changes it would make them non-conforming. What if one of their children would like to take over a piece of property for a business and live on it? They own Circle of Friends Day Care and the antique shop which used to have an apartment upstairs. They would like to develop the properties more and have been waiting for water and sewer. They spend a lot of money for EPA compliance for the water. They had hoped there would be other opportunities available to them with the expansion of the water and sewer. But, with these proposed changes, those options are going away. Mr. Granese noted that under the proposed changes, day care, retail sales and home occupations in the existing single family homes would be allowed. What particularly do they not like about the proposed changes? Mrs. Siragusa said they don't like any of it. Mr. Siragusa read the purpose section of the OMB which is influenced by Parkland Medical Center. The General Commercial area the Board wants to change is not Parkland Medical Center or healthcare related. Those uses have nothing to do with this area. Anything allowed in 165-35.B.4 is shot down in 165-36.C.

Mr. Siragusa said he was concerned with Office Medical because single family development and single family homes with one business will not be allowed. What they currently do would become non-conforming and under the existing Section 165-35.C, Prohibited Uses, uses that "would be injurious, noxious or offensive by way of the creation of adverse traffic impacts...". Essentially anything currently allowed in General Commercial 165-32A.1.a through g would have adverse traffic impacts. He feels this is a contradiction. Mr. Granese said he understood what Mr. Siragusa was saying, but noted there are many uses allowed in GC that would still be allowed under the revised OMB. Their current businesses fall under those uses. The language concerns him. They have nothing specific planned for the future, but family members have restaurant and service experience. If they did a restaurant they could continue to live on the property, but not under the OMB. A restaurant might be allowed, but not if they live on the property according to the proposed changes.

Mr. Siragusa asked why the Board did not just keep the area General Commercial and exclude certain uses? That is more expansive and not restricting. They would still need to come to the Board with a new business, but to change it to OMB is a hardship, and is restrictive. They pay taxes and are concerned with the adverse traffic language. They will have more options with water and sewer in the area and are happy to see that coming. They want to work with the town but don't want to see their family restricted from things that might be beneficial to the town and to their family.

Kevin Gilcreast, 9 Norton Street, said this change affects the lots adjacent to him. His concern is why is this encroaching into what he owns? Why add Norton Street into this change? This area is all single family homes. He has been here for 25 years. Why include that section of town to add doctor's offices? Can someone purchase chunks of property and create one big building? Why change the smaller lots and not just the big ones? He is concerned that in 10 to 20 years from now, there may be a big building in front of his house. Who might buy the properties in front of him? He can end up with a doctor's office in front of him. He likes his neighborhood the way it is and does not want to see this here.

Mr. Milz advised Mr. Gilcreast's property is not being changed. His property is adjacent to the existing Office Medical Business zone. Those lots have been OMB for 15-20 years. Mr. Gilcreast said the Fisher's got a notice and they live next door. Mr. Granese explained that since the abutting properties are already OMB, a doctor's office could go there tomorrow. The Board is focusing more on the General Commercial.

Mr. Sioras said what the Board is considering is taking the uses that are in the OMB today and removing some of them. That is why the land owners in the GC and OMB were notified. The district won't change but the uses would. The second part of the change is focused on the people who live in that area of the General Commercial zone. If the Board moves forward, those lots in the GC would become OMB. The existing General Commercial uses would remain, but the Board would remove the four uses that are listed such as auto sales.

Mr. Gilcreast said that was his concern. He does not want the neighborhood to change from what it is. Mr. Sioras said the town gave Nortonville a different zoning designation to protect it. Mr. Gilcreast said he wanted to make sure he understood what the changes were.

Joe Squeglia, Jr., said he lives at 4 Taylor Brook Lane. He and his business partner, Jim Mize, own the AutoMart at 53 South Main Street. They are diagonal from Clam Haven. They have several concerns. First, why is this changing from GC to OMB? He feels the town is taking away their opportunity to grow the business, decreasing property value, and limiting future uses on the property. They purchased the business 9 years ago in the General Commercial zone and have been paying taxes based on a General Commercial use. Now that is being taken away and the town is limiting the use on the property.

Mr. Granese said the existing business would be grandfathered, but any expansion would need a variance as it would be an expansion of a non-conforming use. No one will say they have to shut down.

Mr. Squeglia said this takes away their opportunities for future growth on the lot. Any future owner would be limited to the uses allowed in the OMB. He can't put in a service station. This affects all the land owners in the GC. How will this affect their taxes? The Board did not believe it would change their taxes. Mr. Squeglia said he spoke with Mr. Sioras and it seems that the Board and the town feel there are too many car dealerships in town. Is that true? Mr. Granese asked Mr. Squeglia if he felt there were too many? Mr. Squeglia said he felt there were enough. Mr. Granese said he would go with that recommendation. The Board just recently approved two new used car dealerships; the Board is not picking on that use. With water and sewer coming to the area, there is an opportunity to get some retail development in that area and personally, Mr. Granese would rather see that than an auto sales or gas station. He stressed the Board is not picking on anyone.

Mr. Squeglia said he also felt that there were other things the Board could do to limit the amount of auto sales in an area. The Town of Salem has an ordinance that limits the distance between car dealerships. There are 14 dealers on Ryan's Hill, but AutoMart is the only one in this area. Why did the Board not want to change Ryan's Hill? The Board said because at this time, there is no water or sewer going to that area. Mr. Squeglia said that in order to purchase any of the larger parcels in this area, and fill the lot with vehicles, it would take someone with very deep pockets. He feels that the removal of auto dealerships from the zone harms the landowners. He would not be bothered by an auto sales facility if one were to be located on the old Grandview Flea Market lot that is across from him. If the Board feels there are too many auto dealerships, it can limit the distance between them, and not change to restrictive zoning.

Mr. Sioras said the Board did something similar with gas stations when it formed the GCII on Tsienneto. He is aware Salem limits distances between gas stations but was unaware of any limitations between auto dealerships. Mr. Squeglia said the town has to approve the dealer license before the state will issue it and believes Salem limits the distances between to half a mile.

Mr. Mize asked if water and sewer were to be extended to Ryan's Hill, would the Board change that to OMB also? Mr. Granese said the Board is looking at future uses that are likely 10-20 years in the future. Mr. O'Connor stated the town held a Civic Profile at West Running Brook several years ago. Much of proposed changes came out of that profile. It is what the people said they wanted to see and is part of the recently updated Master Plan. Eventually, water and sewer will go to the Windham town line. In the meantime, the attendees at the Civic Profile said they wanted to see the town go in this direction. The Board has made efforts to do that and has protected the Robert Frost Farm.

Tim Butterfield, DVM, 2 Humphrey Road, said he was born in Derry. He and his wife have raised their children here. He has listened to the residents tonight and can see common themes. He appreciates the opportunity to provide feedback to the Board on this matter. They own four parcels of land: 1, 2, 3 and 4 Humphrey Road. He asked a Realtor in town, Ralph Valentine, his opinion of this change. Mr. Valentine wrote him letter which he would like to make part of the record. He pinpoints some of the other statements made here.

“Dear Tim: You had inquired as to the impact of the proposed revisions to the Town of Derry Zoning Ordinance on your properties. The proposed revisions include the rezoning of your 4 parcels from General Commercial to Office/Medical/Business, and the exclusion of certain automobile related uses from the Office/Medical/Business district. Taking the macro view, the result of the proposed changes would be to reduce the number of users who would be candidates for the future re-development of your properties. The General Commercial zone offers the widest and most varied opportunities for uses in the Town of Derry. The Office/Medical/Business district (OMB) is more limiting in the number of users. If we speak to the purpose of the OMB, it states “...uses to occur within an area of the community where the predominant character has been and will continue to be influenced by Parkland Medical Center...” I don’t believe this purpose statement applies to your property as much now as it may have in the past. There has been a migration of medical facilities to Tsienneto Road. Parkland Medical does not influence the co-location of ancillary medical services as it once did. The exclusion of vehicle related uses doesn’t make sense. Route 28 is the type of primary road and your property is in the type of neighborhood where such services fit in. More important is the paradigm shift going on in the office real estate market. The amount of square footage being allocated to workers today is shrinking. At one point, it was not uncommon for about 300/sf to be allocated per employee. That amount is approaching 150/sf and dropping. And with the proliferation of the “virtual office”, it is fast becoming common for employers to provide a large work area with desks, but the desks are occupied on a first come, first serve basis. In conclusion, I believe that the effect of the proposed change on your properties is that they would likely decrease in value. Best Regards, Ralph Valentine”

Dr. Butterfield added the following comments. Many of the property owners in this zone pay taxes and look at their property as equity. His family does, and feels the opportunity to realize the equity is being reduced. He suggested the Board look to CMC and Elliot Hospital as examples of how hospitals are influencing co-location. Many hospitals have satellite locations or campus settings. He felt the job of the Planning Board was to see if there is too much of this or that in town. Route 28 has a high vehicle count and he feels auto uses fit in the area. The amount of office space per worker is shrinking and he does not feel there needs to be more offices. This change will restrict the OMB as opposed to keeping the lots General Commercial with some restrictions. This change restricts options in uncertain economic times. He feels that in the long haul, there will be a buildup of surplus office space; the Board can look to Styles Road in Salem for an example. Should the long term property values be reduced in an attempt to realize an outcome fifty years from now? He does not think so. He does not think that is a fair approach.

Dr. Butterfield agreed with Mr. Valentine’s conclusion that this change would decrease his property values. He is not the only individual he spoke to that feels the same. This is a tough economic time. He opposes the change from GC to OMB and feels it is an inverse condemnation of his property. People are looking for ways to help their children. He is happy to work with the Board on amendments to the GC. The proposed changes to the OMB are excessive; these lots are not near Parkland and the Nutfield building is not full. The medical industry will change. He asked the Board to please sit in the seats of the 26 landowners and think about what has been said. He is counting on the Board’s fair and objective look at the proposal.

Debbie Allen, 92 Rockingham Road, said she echoed the other sentiments. She has been in town for 30 years; raised three kids and grandchildren. She hopes her son can purchase the property in the future and run the business. If the property is sold, can the business continue?

Mr. Sioras said it can. The only thing that cannot be done is auto sales, auto repair or a gas station. The current business can stay; it will be legal non-conforming. The use can continue but a gas station could not buy the property. Mrs. Allen asked if there are any lots still available on Tsienneto Road? Mr. O'Connor said there is one parcel left. Mrs. Allen said the building in front of Parkland's lot is empty; the day care moved out and that leaves vacant space. She thinks the Board should leave the zoning as is. If AutoMart wanted to expand onto her property, they could not do it without a variance. They are also opposed to this change.

Anna Girginoff, the owner of 123 Rockingham Road, Cal's Corner Auto Repair Shop, asked how does this change affect her property? Mr. Granese explained it would stay the same; however, if she wanted to expand or add a gas station, she would need a variance. Mrs. Girginoff said she does not want to sell the lot for that purpose, but wanted to confirm that her business would be able to stay the same. Mr. Granese said if the business continues to stay the same, that is fine. But, if she wanted to make the business larger, for example, add more service bays, then she would need a variance.

There was no further public input.

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

Mr. Milz said he thought the Board needed to explain the intent of the changes. The intent is not to change or restrict the current uses no matter how they are changed or who they are sold to. The change was only intended for future uses, not existing uses. With the expansion of water and sewer, these properties automatically become more valuable. The concern of the Board was that this area is the next commercial area to be developed in town and they would like to restrict 30-40 houses being put on some of the larger lots. There have been some inquiries. The Board felt it was time to make a change, but wanted to do it with the least amount of impact. The name "OMB" does not mean the intent is to shove in all medical uses. This is the only business type of district that allows for the existing and future uses. The exception is single family homes. The Board feels there are enough of those in this area and the Board also did not want to see an expansion of the auto dealerships in this part of the GC that are found further down on Ryan's Hill. The Board knew AutoMart was there and did not want to change that owner's way of life; the use would be grandfathered. If the owner wanted to expand in the future, he is sure the Planning Board can provide a recommendation to the ZBA on the expansion. The intent is not to change anything. The only restriction would be on automotive properties and new housing. If someone had an auto business and wanted to change the business and sell ice cream, they could do it; other uses that are allowed include day cares, commercial service establishments, bus depots, banks, libraries, indoor commercial recreation, home occupations for existing single family residences, manufacturing, professional offices, public/private educational facilities, public uses, radio broadcast, restaurants and retail sales. The majority of the General

Commercial has been saved in the OMB which was the broadest scope of the current zoning that would overlap without having to create a new General Commercial zone.

Mr. Sioras said Mr. Milz has summarized the intent well. The Town Council agreed to expand water and sewer service to that area of town. There are some issues with septic systems in the area that limit expansion of the businesses on those lots. This area is a prime location for retail/commercial development. The Board saw the development to come and felt it was time to limit some of the allowed uses. The Planning Board approved two car dealerships recently and received criticism for it because residents felt there were already too many all over town. The Board wants to be fair. The owner can still continue with their current uses; the Board is only removing four and did not want to see single family residences constructed at the Grandview lot. Dr. Butterfield can still have commercial uses on his property, but could not have a car dealership or gas station.

Mr. Milz reiterated the Board did not want to restrict the current uses; just the future ones.

Mr. Granese said that given the discussion tonight, he would like to continue with the approach the Board has utilized in the past with zoning changes. The Board can take in this information and put the matter on the September agenda.

Mr. Park said that based on the input tonight, he would like to take the comments and study them before moving forward to make sure that the intent is truly reflected in what the Board is doing and to make sure the changes reflect that. Mr. Bartkiewicz and Ms. Alongi agreed.

Mr. Granese asked if the Board had specific changes it would like to see incorporated? Mr. O'Connor thought that perhaps the car uses could be added back in, but would like to look at Salem's Ordinance to see if it would be of benefit. Mr. Granese thought the matter could be continued to the September 5, 2012 agenda. Mr. Sioras suggested that staff look at the other ordinances and see what can be incorporated. Mr. Park suggested looking at the purpose as well and perhaps change the purpose. Mr. Granese asked the Board to look at the draft in between now and the next meeting. Mr. Milz wanted people to know the change would be to add back in auto sales, repair garages and filling stations.

Mr. Sioras said that what he has been hearing over the last few weeks is that people do not want to see this area called "OMB"; they would like to keep it General Commercial and have the Board amend the uses. The audience in attendance showed agreement by clapping, loudly.

Ms. Alongi asked if they could do that with restrictions? Mr. Milz asked if the Board should consider creating a new district with specific uses? All the uses allowed in GC were allowed in OMB. Mrs. Choiniere noted any changes to the GC would be widespread.

Mr. Siragusa noted the nuisance provision in the OMB under Section 165-35.C. Also, single family is restricted; what if they wanted to expand? Mr. Milz said single family houses would be off the table and not allowed; this meant new construction.

Mr. Granese noted the public hearing portion of the meeting had been closed, but he felt it was in everyone's best interest to continue the hearing to the September 5th meeting. The Board will take into consideration what has been said and work on this, in the same manner they worked on the revisions to the zoning in the area of the Robert Frost Farm. The Board will take its time with these changes.

Motion by Milz to continue the public hearing on the proposed zoning changes to Section 165-35, Office/Medical/Business; Section 165-14, Churches, and Sections 165-30 and 31, Zoning Map and District Boundaries to September 5, 2012, seconded by Choiniere.

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

Mr. Granese advised there will no new notice of public hearing as this matter has been continued. He thanked the residents for coming to the meeting tonight and providing input.

**Estate of William Dearth
Equity Trust Company
PID 45010 and 09127
12 & 16 Old Chester 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 two referenced parcels. There are no town signatures, state permits or waivers required for this project. Normally, he would recommend approval of the application as lot line adjustments are very straightforward, and in this case, the plan will be followed by a 6 lot subdivision application. However, an abutter has expressed concern over the status of Green Lane which is a discontinued town road. He believes that before the Board can move forward, there needs to be clarification as the Board would not want to create a landlocked situation for the property located behind Parcel 45010.

Jim Lavelle of James Lavelle Associates presented for the applicants. He advised there is a note on the plan relative to Green Lane stating "Parcels abutting old Green Road 'discontinued' retain rights over it original location". It is standard law that when a road is discontinued, the parcels serviced by that road for access still have a legal right to pass and repass over the road. When Keach-Nordstrom reviewed the subdivision plan, Steve Keach had suggested adding notes to the plans that provided more clarification as to the process by which the road was discontinued and that this plan does not take away any rights of access.

Parcel 45010 is owned by the Estate of William Dearth. Parcel 09127 is owned by Equity Trust Company. Parcel 09127 had ownership across Green Lane as it existed. This development does not extinguish the rights of the abutters to use the roadway. Mr. O'Connor asked if the entrance to Green Lane is located at the driveway of Parcel 09127. Mr. Lavelle said it is. He will add a note to the plan as to the exact discontinuance of the road. Both parcels would be restricted by continued use of the road. Mr. O'Connor asked how far back does the road go? Mr. Lavelle said it went back quite a ways, eventually to Pond Road. Mr. L'Heureux said he would need to look

at a map, but also thought it went back to Pond Road. Mr. Sioras recalled that when the Board approved the subdivision for D'Amore Lane there had been discussions that Board did not want to impede access to the Simon lot [PID 45009].

Mr. Lavelle said the right to rebuild or reopen Green Lane is a question, but the abutting parcels do have access to their property. Parcel 45009 is vacant now but does have access via Green Lane. Ms. Alongi asked if there is anything on Parcel 09130? Mr. Lavelle said there was, further down Old Chester Road.

Mr. Sioras noted the owners of that property [09130], the True family, were present this evening. Mr. Lavelle said the True's also own to the center of Green Lane. Mrs. Choiniere asked if Green Lane is passable? Mr. Lavelle said there are restrictions at the end of the existing driveway on the smaller lot. There are a few saplings. He would not take an automobile through there. He is not sure what the status is further up the Lane. Mrs. Choiniere asked if there is any reason to keep the Lane on the books? Mr. Sioras said the road was discontinued many years ago. The abutting property owners have deeded rights of access. The Simon family does not want the access limited. If the Lot Line Adjustment is approved, does it take away the right to travel? Mr. Lavelle explained the ownership does not always revert to the centerline of the roadway in all instances when the town discontinues a road. If the land containing the road originally all came from one property for a certain length, it would revert back to that lot. It goes to the centerline when previous ownership cannot be determined. He will add very visible notes to the plan regarding access.

Mr. O'Connor said Green Lane is shown (bird's eye view on the computerr) as more of a path leading to D'Amore. Mrs. Choiniere asked if it is an established right of way? Mr. Sioras said it may be shown as a path that is barely passable. This is not like an old railroad bed that would be very visible.

Mr. Granese asked what was the original lot line on the right side of the property? Mr. Lavelle said it was the edge of Green Lane. They are just moving a small triangle of land from one lot to the other.

He further explained that Parcel 45010, is owned by the Estate of William Dearth and has 11.93 acres. Parcel 09127 is owned by Equity Trust and totals 0.83 acres. They will exchange 28,061 square feet, shown as Parcel A. This will diminish 45010 from 11.93 acres to 11.87 and increase Parcel 09127 from 0.83 to 0.89 acres. There is a well easement for a well located on the larger parcel that serves the home on Parcel 09127 owned by Equity Trust. This may not be an issue with the addition of the water line since the well would no longer be required, but they are defining the well easement by metes and bounds on the plan.

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.

Mel True, 22 Old Chester Road, recalled that he and Mr. Dearth temporarily blocked off Green Lane about 15-20 years ago, to protect the land from the "young bucks" setting fires and other things. They understood that a tractor or rugged truck could get through. Green Lane provides

access for his back field. The Lane is defined to Pond Road by a double stone wall and the Lane can be walked. Regarding ownership, the issue was raised a few years ago when someone wanted to purchase the Simon parcel and build a house on it. Public Service Company of New Hampshire said they could not access the proposed house location as it did not meet their width requirements. He believed that ownership to the halfway point on either side of Green Lane had been established.

There was no further public comment.

Motion by Park, seconded by Bartkiewicz to close the public hearing. The motion passed unanimously and the plan came back to the Board for review and discussion.

Mr. Milz noted the stone walls exist and the path is in between. The stone walls will not be removed. Mr. True can use Green Lane to access his land, and if someone wants to access Parcel 45009, they will have access. Mr. Lavelle concurred adding the only place there are not stone walls are on the smaller lot (Parcel 09127). From their lot onward, there is access and he will add an additional note to the plan.

Mr. L'Heureux said Public Works did not have an issue with the Lot Line Adjustment.

Motion by O'Connor to accept jurisdiction of the Lot Line Adjustment application before the Board for the Estate of William Dearth and Equity Trust Company, 12 & 16 Old Chester Road, PIDs 45010 and 09127, seconded by Bartkiewicz.

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

Motion by O'Connor to approve, pursuant to RSA 676:4, III, Expedited Review, with the following conditions: Subject to owner's signatures, subject to on-site inspection by the Town's Engineer, establish escrow for the setting of bounds, or certify the bounds have been set; remove the Technical Review Committee signature block from Sheet 1; remove the Planning Board approval block from Sheets 1 and 3; obtain written approval from the IT Director that the GIS disk is received and is operable; ensure the plan meets RCRD recording requirements; add notes that make reference to old Green Lane as bound by the stone wall; the above conditions are to be met in 6 months; improvements shall be completed by January 31, 2014; and a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees. The motion was seconded by Bartkiewicz.

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

Estate of William Dearth
PID 45010
12 Old Chester Road
Acceptance/Review, 6 Lot Subdivision

Mr. Sioras provided the following staff report. The purpose of the plan is for a 6 lot subdivision of Parcel 45010, for single family homes, located in the Medium Density Residential district. All town departments have reviewed and signed the plan and there are no waivers requested. Town water and sewer will be available to this site with the extension of water and sewer along the frontage. NHDES subdivision approval has been obtained and there is a copy in the file. He would recommend approval of the subdivision plan.

Jim Lavelle, of James Lavelle Associates, presented for the applicant. Following the previously approved Lot Line Adjustment, the parcel contains 11.87 acres. The lot will be subdivided into 6 building lots ranging in size from 1.67 acres to 2.46 acres. This district has one acre zoning, with 125 feet of frontage. All lots meet or exceed the regulations for soil zoning. State subdivision approval has been granted.

Sheet 1 shows the locus, abutters, zoning information, and the revision block. Sheets 1 and 2 will be recorded at the registry. Sheet 2 shows the lots bounded area. Sheet 3 shows the topography, the test pit locations and 4000 sf septic areas which are located to the front of the lots. Sheet 4 shows the front of the lots with the 4K areas, as well as the test pit data. The next two sheets are the plans prepared by Long Beach Development Associates, Inc. Those plans are the detailed water line extension plans from Hampstead Road. There are two new hydrant locations and improvements to the ditch line and the addition of driveway culverts. The plans were reviewed by both DPW and Keach-Nordstrom. There are a few items that need to be addressed. The last sheet shows the driveway profiles.

Mr. Lavelle said they feel they are ready for conditional approval. His firm has addressed the Keach-Nordstrom comments related to their portion of the plan set, with the exception of the date and form of the discontinuance of the road. That will be addressed and added to the plan set.

Mr. O'Connor noted this plan went before the Conservation Commission. There had been questions with regard to contamination on the site. Is there contamination there? Mr. Lavelle said not that they know of. There is a large building used by the Dearth's who repaired heavy equipment there. He did not see staining of the soil while on site. He is not sure if the future owner would perform a study. There was nothing that tipped him off with regard to contamination. Mr. True might be able to say what went on there. That building will be torn down. The Conservation Commission did not restrict the lot. They questioned the possibility of a study, but did not request it. They did walk the site. There is no poorly drained soil on the entire site. Mr. O'Connor asked if DPW was aware of any contamination? Mr. L'Heureux said he had a passing conversation with Margie Ives regarding concerns with the past use. He is not aware of any testing performed in that area. Mr. O'Connor asked if under normal construction, if the developer notices contamination, would they take it upon themselves to take care of it?

Mr. L'Heureux was not sure of the entire demolition process. If asbestos is found, it needs to be removed; that is typical with any razing of a building. Mr. Lavelle noted that a bank will often require a study if that land is transferring hands. Perhaps Mr. True could answer questions and help with this issue.

Mel True, 22 Old Chester Road, stated he moved to Derry in 1970. At that time, there was a garage on the property that Mr. Dearth used to repair heavy machinery. Regarding possible contamination, Mr. Dearth used to test the bulldozers and move the soil around. He personally feels there would have to be some contamination, but he is not sure of the extent. Mr. Dearth was in business for over 40 years, so he supposes there might be some and he thinks this should be looked at. It may have mitigated itself over the years.

Mr. Granese asked if there are any problems with the existing well on the property? Mr. Lavelle is not aware of any. The water is potable. The well serves the house on Parcel 09127. That house may tie into the expanded water system. The builder will pay for the water line to come down Old Chester Road from Hampstead Road. The requirement to connect to the town water service is a town regulation and not related to any alleged contamination. Each lot will have its own septic system.

Mr. O'Connor asked with regard to the fire hydrant? Mr. Lavelle said there will be two added. Mr. Sioras added that John Cooper came into the office and said he would like to hook into the municipal water line; after discussion, it seems feasible.

Mr. Milz asked what was the reason that Parcel 09127 wanted additional land from this parcel? Mr. Lavelle said to the left of the existing driveway on Parcel 09127, there is a decorative wall and trees. They wanted to keep that with the house.

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 comment.

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

Mrs. Choiniere noted that Sheet 3, the first lot on the left, #8, has a note regarding a 75 foot well radius. Is that left over? Mr. Lavelle said that was left on the plan from when the lots were to be serviced by individual wells; it will be removed.

Mr. Granese asked if DPW had any concerns? Mr. L'Heureux said that so long as the applicant addresses all of the Keach-Nordstrom comments, his concerns will be addressed. The middle hydrant should be moved 65 feet to the south to the lot corner. The applicant added the additional hydrant as requested, but it should be shifted to coincide with the property line to get it away from the culvert inlet. Mr. Lavelle said he spoke with Keith Coveillo at Long Beach who said he can address the comments without a problem.

Motion by O'Connor, seconded by Bartkiewicz, to accept jurisdiction of the six lot subdivision plan before the Board for the Estate of William Dearth, 12 Old Chester Road, PID 45010. Discussion followed.

Ms. Alongi asked if the Board had come to terms with the concerns of the Conservation Commission? Mr. O'Connor said this item needs to be put on the developer.

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

Motion by O'Connor to approve, pursuant to RSA 676:4,I, Completed Application, with the following conditions: Comply with the Keach-Nordstrom Associates (the town's consulting engineer) report dated July 13, 2012; add note to the plan indicating fire protection for the new homes will be provided by fire hydrants located on Old Chester Road; add drainage easement for the culverts located outside of the right of way; under the driveway apron detail, Item 2, driveway materials, please change to 12 inches NHDOT 304.3 crushed gravel and remove 8" bank run gravel; add a post with a placard adjacent to the left rear pin of Lot ~~45010-005~~ 45010. The placard should read "Entering Shepard Conservation Land"; subject to owner's signature; subject to on-site inspection by the Town's engineer; establish escrow for the setting of bounds, or certify the bounds have been set; establish appropriate escrow as required to complete the project; obtain written approval from the IT Director that the GIS disk is received and is operable; subject to receipt of state or federal permits relating to the project; locate fire hydrants as per the Mark L'Heureux email; that the above conditions be met within 6 months; improvements shall be completed by January 31, 2014; a \$25.00 check, payable to RCRD be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees. The motion was seconded by Milz. Discussion followed.

Mrs. Choiniere asked if the environmental testing provision was part of the motion? Mr. O'Connor said it was not a requirement from the Conservation Commission and it is expected the builder will take care of it.

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

**Craig & Snow Bonneau
PID 31088, 2 Howard Street
Acceptance/Review, 2 Lot Subdivision**

Mr. Sioras provided the following staff report. The purpose of this plan is for a 2 lot subdivision, located in the Medium High Density Residential district. A variance was granted by the ZBA on March 15, 2012 to allow the new parcel to have less than the required lot area, frontage, and lot width. The new lot is in keeping with the character and lot sizes of the existing neighborhood. This is one of the town's oldest neighborhoods and pre-dates zoning. The lots are serviced by municipal water and sewer. All town departments have reviewed and signed the plan. There are no waivers requested. He would recommend approval of the subdivision plan.

Robert Balquist of Meisner Brem Corporation presented for the applicant. The applicant wants to subdivide 2 Howard Street into two lots. The current lot has 12,000 square feet with an existing single family residence, and the request is to subdivide that lot into two lots of 6,000 square feet. They were granted a variance for the lot sizing, frontage and lot width. The parcel was previously overgrown. The owner has cleaned the lot up and wants to construct a single family residence on the proposed lot 31088-001. The neighborhood has water and sewer. The plan has been reviewed by the Technical Review Committee and to his knowledge, there are no remaining issues. This plan did not require outside engineering review.

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

Kathleen Blood, 6 Howard Street, said there has been some question as to whether there is an old leach field on the open lot. It was over grown. The lot was regraded and hydro seeded and had a lawn on it within three days, so it is felt there might be a leach field there. Her home is 91 years old and she wonders how structurally sound her home will remain during construction. She is directly adjacent to the new lot. This will directly impact her property value. Mrs. Choiniere asked how long ago was water put into this neighborhood? Mrs. Blood said it is believed this lot was the neighborhood common leach field in the 1940s. They are concerned with the age of the immediate neighborhood if the ground is disturbed. She feels construction of a new home may affect the foundations. Who is responsible when her foundation crumbles or the sewer backs up?

Mr. L'Heureux said historically, this neighborhood is part of the original sewer system that went into town in 1959 or 1960. There has been sewer service in that neighborhood since that time. He can't address questions regarding old septic systems, or how drains were combined. However, the old system has been abandoned for a long time; there are many like this throughout town.

Mrs. Blood said she objects to a building on that lot. Mr. O'Connor asked if she spoke at the Zoning hearing? Mrs. Blood said she was unable to attend, but her husband did.

Dawn Laudano, 5 Lincoln Street, said she lives behind the new lot. There is gorgeous lawn there. She is thrilled it has been maintained and is under new ownership. Her concern is that there will now be a structure on what was an empty lot. Their existing fence is within her property line. She did not consider what might happen when they construct the new foundation. She did not attend the ZBA meeting. She feels this is a small area on which to put another property. From her fence, there will be the proper distance to the new home, but it is still close.

There was no further public comment.

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

Mrs. Choiniere asked with regard to the soil condition. Will there need to be any blasting? Mr. Balquist said they did not perform test pits on the lot, but he did not see any ledge outcrops while

on-site. He does not know the subsurface soil condition. It is also unknown as to the final construction style, other than they are proposing a structure that is 24 x 40.

Mr. O'Connor advised if there is to be any blasting, the Fire Chief will issue the permit and there will need to be a pre-blast survey performed to protect the neighbors.

Mr. Balquist stated there was HISS mapping of the property. The soils are 321BH, which indicates there are no restrictive layers such as ledge or hardpan.

Mr. Granese asked with regard to the variance to allow a lot with less than the required lot area. Mr. Balquist replied the minimum for this district is 10,000 square feet. There was no variance obtained for building setbacks. The proposed building will exceed the minimum setback requirement and the house will be a new single family home with equal or greater value than those in the neighborhood today.

Mr. Park confirmed the typical lot size is 10,000 square feet in this area. Mr. Sioras confirmed that is the lot area under today's zoning, so long as the lot has municipal water and sewer. This neighborhood pre-dates zoning and many of the lots are less than that as a result of past zoning.

Mrs. Choiniere asked what are the surrounding lot sizes? Mr. Granese noted it would have been nice to have a copy of the minutes of the ZBA meeting and asked if they were in the file? He would have been more comfortable with this if he could read them. Mrs. Robidoux said they were not provided. Mr. Blood advised he was the only one who spoke at the ZBA hearing.

Mr. O'Connor reported he looked at the neighborhood the other day. Across from this lot is another open field. He wanted to make sure there would not be any conflicts with driveway locations. This is a nice area; the houses are tight. He felt the house would fit into the space.

Mrs. Choiniere asked if the sides of the driveway could be switched to get away from the neighbor and keep some open space? Mr. Milz said they need to maintain the building setbacks. Mr. Balquist said it might be possible, but they want to use the larger portion of the lot for a two car wide driveway. Mrs. Choiniere noted that moving it would affect the setback and it would require another trip to the ZBA and asked Mr. Balquist to disregard her question. Mr. Granese confirmed the minutes of the March 15, 2012 meeting were not on the website.

Mr. Balquist said the ZBA granted the variance because the lot sizes are in character for the neighborhood.

Motion by O'Connor to accept jurisdiction of the two lot subdivision application before the Board for Craig & Snow Bonneau, PID 31088, 2 Howard Street, seconded by Milz.

Park, O'Connor, Milz, Choiniere, Bartkiewicz and Granese voted in favor, Alongi voted no. The motion passed.

Motion by O'Connor to approve pursuant to RSA 676:4, III, Expedited Review, with the following conditions: Subject to owner's signature; subject to on-site inspection by the Town's

Engineer; establish escrow for the setting of bounds or certify the bounds have been set; 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; subject to receipt of state or federal permits relating to the project; that the above conditions be met within 6 months; improvements shall be completed by January 31, 2014; and a \$25.00 check, payable to RCRD should be submitted with the mylar in accordance with the LCHIP requirement, along with the appropriate recording fees. The motion was seconded by Milz. Discussion followed.

Mr. L'Heureux stated DPW has no issues with the plan as the applicant has addressed all of their comments.

O'Connor, Milz, Choiniere, Bartkiewicz and Granese all voted in favor; Alongi voted no citing she was not comfortable as she has not seen the property; Park voted no stating he was not comfortable putting a new building in this old area. The motion carried.

There was no further business to come before the Board.

Motion by Milz, seconded by Bartkiewicz to adjourn. The motion passed unanimously and the meeting stood adjourned at 9:24 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____