

The Planning Board for the Town of Derry held a public meeting on Wednesday, September 5, 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; Frank Bartkiewicz, Secretary; John O'Connor, Vice Chairman; John P. Anderson, Town Administrator; David Milz, Town Council Representative; Randy Chase, Administrative Representative; Jan Choiniere, Member; Ann Alongi, Lori Davison, Alternates.

Absent: Jim MacEachern, Darrell Park, Joe Donahue,

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk

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

Ms. Alongi was seated for Mr. MacEachern and Ms. Davison was seated for Mr. Park.

Escrow

None.

Minutes

The Board reviewed the minutes of the August 15, 2012, meeting.

Motion by Milz, seconded by Bartkiewicz to accept the minutes of the August 15, 2012, meeting as written. The motion passed in the affirmative with Chase, O'Connor and Anderson abstained.

Correspondence

Mr. Bartkiewicz advised the Board has received a letter from the Southern New Hampshire Planning Commission. There is a three year project to develop a comprehensive plan for the region (Granite State Future) which takes into account many factors such as where people live, and how they get around. Part of this effort is finding out what people really want their communities to be like in the future. In order to find out, "listening boxes" are being placed around the town between September 2012 and March 2013. One of these boxes has been placed in the Municipal Center in the lobby. The box is located on the counter at the bottom of the main stairway.

Other Business

Mr. Sioras advised that the Board will hold a workshop at its next meeting on September 19, 2012. Bob Mackey from Code Enforcement will be in attendance. The topic will be the proposed revisions to the sign ordinance.

The Municipal Law Lecture Series will be held on October 10, 17, and 24th in the Third Floor Meeting room of the Derry Municipal Center. The Lectures are presented by LGC staff and are very informative; especially for newer members of land use Boards. If any Board member would like to attend, please let the Planning Department know so that the Board member can be registered.

Mr. Anderson stated the Walmart ribbon cutting will be on September 12th at 8:00 a.m.

Public Hearing

Revisions to Town of Derry Zoning Ordinance (Continued from July 18, 2012)

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

Mr. Sioras advised that staff had been directed at the last hearing to compile the changes suggested by the Board and the public. Those suggested changes are in the document the Board received in their packets on Friday and copies are also available to the public at the back of the room this evening. Included are changes to Section 165-35, the purpose of the zone. Language has been added to indicate that the addition of water and sewer to the area will have an impact on this zone. Staff also took language from the Town of Salem Zoning Ordinance, at the suggestion of a member of the audience, and added in a distance restriction of 2000 feet between automobile and similar vehicle sales, automobile service stations, filling stations and automotive repair facility/garages. A section regarding home occupations in existing single family residences has been added. Staff discussed the idea that perhaps the zone should not be called "Office Medical Business" and came up with the term "Business Commercial District" to act as a discussion point. None of these suggestions are binding; they are just talking points to begin the discussion about the proposed changes.

Jerry & Elizabeth Siragusa, 49 and 45 South Main Street addressed the Board. At the last meeting, one of their neighbors had a letter from Ralph Valentine. They have one from Prudential Verani. They wanted to determine the impact and what effect there would be if their land was changed from Commercial zoning. Tom Duffy of Prudential Verani prepared the letter. They met with Mr. Duffy and David Delise from Waterstone Properties Development to see what the impact of the proposed revisions, including rezoning, would have. Mr. Siragusa read aloud the letter from Tom Duffy.

"Thanks for meeting with me and David Delise, the owner of Waterstone Properties Development. We have reviewed your property for values and future development of the property. Regarding the impact of the proposed revisions to the Town of Derry Zoning Ordinances on your properties, the proposed revisions include the rezoning of your 2 parcels (with buildings) from General Commercial to Office/Medical/Business, and the exclusion of certain automobile related uses from the Office/Medical/Business district.

It is my opinion, this rezoning would reduce the value of your property. Any time the Town narrows the use of the property, it is taking development rights from you. If they take something away from you, you should be compensated. Therefore, a more restricted zoning results in a reduction in the kinds and population 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 users in the Town of Derry. The Office/Medical/Business District (OMB) is more limiting in the number of users.

Your property abuts a large multifamily complex and is across from a school, which is used for adult education as well as daytime use. It is minutes from Pinkerton Academy. Main Street is a major roadway for residential and commercial traffic. How can the highest and best use not be a full commercial district? Medical facilities and offices already exist in commercial districts. I see no reason to restrict the zoning.

Office uses are the weakest part of the commercial market at this time. Telecommuting and other applications involving electronic transfer of information and communication make it possible for

workers to work from home offices and still have face to face meetings on the internet. At this time, both industrial and commercial uses are more serving to the community than more office projects.

Therefore, I believe this proposed zoning change would lessen your property values. The extension of sewer lines to the area would expand the uses as well as the health and safety for all uses. This should definitely be considered as soon as possible. Best regards, Tom Duffy.”

Mr. Siragusa advised he is also submitting to the Board a citizen protest petition, signed by all 26 landowners. They tried to get information from legal counsel and real estate brokers on the effects of this proposed change. He read the following into the record:

“We, the undersigned landowners in the Town of Derry, in order to promote stability and continuity of zoning legislation, do hereby object to the zoning amendment described below and respectfully petition that a two-thirds vote of the Town Council be required to enact the proposed amendment. The proposed amendment to the zoning ordinance which is the subject of this petition was advertised for public hearing before the Town of Derry Planning Board in The Union Leader newspaper on July 6, 2012. A public hearing before the Town of Derry Planning Board was held on July 18, 2012 and is again scheduled on September 5, 2012. The proposed amendment is a proposal to:

Amend the Town of Derry Zoning Ordinance, Article VI, District Provisions, Section 165-35, Office/Medical/Business to revise the uses allowed by right in the zone and to rezone 26 parcels currently zoned General Commercial to Office/Medical/Business. In addition, the Board will consider amendment of the Town of Derry Zoning Ordinance, Article III, General Provisions, Section 165-14, Churches, to resolve a conflict with other sections of the Ordinance.

The undersigned landowners object to a change in the zoning district from a General Commercial (GC) Zone to an Office/Medical/Business (OMB) Zone. We consider a change in zoning to be a taking of our property rights and property values. There is no legitimate public interest or justifiable reason to change this GC Zone to an OMB Zone. The proposal is unnecessary and will negatively affect existing and potential property values, and commercial and residential uses.”

Mr. Siragusa said that he noticed today the Board seems to want to do something a little different; there is a change to the name of the zone. It is a little confusing. They got input from professionals and legal counsel. The feeling is that the land should stay General Commercial and the landowners should work with the town on the types of development that would be beneficial. Restricting the allowed uses in these economic times will negatively impact the tax base. General Commercial is a broad zone. The last time they were before the Board, they discussed single family residential and auto uses. They don’t want to see this changed. He would need to look at the new version presented tonight. He feels the zone should stay General Commercial because the uses have been and always were commercial uses. Thirteen of the twenty-six affected landowners were commercial uses, not office uses. The major users of the properties have businesses on them, so they want to see the zoning stay the same. He has spoken with George Sioras and John Anderson. He felt confident that by working together, they can come up with a solution that won’t hurt the property rights and that will benefit the town.

Mr. Sioras stressed the items in the 'red-lined document' were not proposed changes but were those items the Board asked to see from the last meeting. These were just ideas gleaned from the last meeting for talking points. The Board is not proposing they vote on those changes.

Mr. Siragusa said that in looking at the document provided for this meeting, is there a whole new zone proposed? He would need to review it. This area has been General Commercial for 15-17 years. There are mixed uses. People live on the properties. They want options to bring development, but not be restricted. It seems the property owners feel the same way. At the last meeting, the Board said the OMB uses can be done in the GC, but there is that restriction in the zone that there can't be any negative impacts to traffic. He felt projects could be voted down because the language is vague. They feel the General Commercial zone allows more options.

Mrs. Siragusa said she felt the proposed changes restrict the town's options with respect to the economy. They have seen their taxes skyrocket. The town should want to bring in business. That won't happen if they change the zone to the OMB. In August, people did not understand what these changes meant. They now feel it will hurt the town to take away the General Commercial zone.

Mr. Siragusa did not think that the Board should make another commercial zone and take away single family residential. He can understand the impact residences have on the school system, but there are things that could be done by working with the property owners. People want to be able to live on the property they work on. Speaking with Mr. Sioras and Mr. Anderson gave them hope that they can maybe do more workshops and talk further. He has confidence that will happen.

Attorney Brian Germaine, advised he represents the owners of AutoMart and ESC Realty, Inc. They are the most affected by this change. He is confused by the redlined document provided this evening. If the intent is to modify the district in this way, then it needs proper notification. This is different from what was originally noticed. If it is the will of the Board to do something like this, this public hearing would be premature. Normally, the town holds workshops with the landowners. It is the Board's prerogative. This redlined document is confusing to many in the room. They thought they were here for a hearing on changes to the OMB. He saw in the document the use of the Town of Salem distance language showing a buffer of 2000 feet in all directions. The Town of Plaistow has something similar with 1000 feet between service stations. It is simple language and seems like a logical solution to the dilemma the Board faces tonight. They are ordinance changes rather than zoning changes.

If the Board continued the hearing based on the OMB changes, there is no public interest served or justifiable reason. The OMB today clearly supports Parkland Medical Center as written. These 26 lots are not near that facility. This is spot zoning, unconstitutional, and a taking. He has had conversations with five affected landowners. Zoning protest petitions are not common and the fact that all 26 landowners signed it is significant. They do not want this change. That is for the Town Council to discuss, not this Board, but this Board can't ignore it.

Attorney Germaine explained a taking occurs when the application of a regulation denies the property owner of an economically viable use of his/her land. There has been a great deal of

testimony from landowners who have indicated they consider this a taking. Legally, he feels this constituted a taking. This proposed change solves little while proposing substantial harm to the property owners. The existing businesses have proven to be economically sound and do not constitute a public or private nuisance to anyone. They offer business growth and employment opportunities. In these strained economic times, that is exactly what Derry needs. It looks like the Board tried to carve out an exception in a creative way, but it will be detrimental to the town in many ways. His client will not have grandfathered rights and may not be able to get a variance because there would be a specific exception to his use. He could not add a 10 x 10 addition to his building, nor could he expand to the next parcel, which he owns. His client would need a variance for that as well. That is unfair to them and they feel they are being unfairly targeted. There are alternatives. Attorney Germaine provided copies of the Plaistow and Salem ordinances. Salem defines a Used Car Dealership as "the sale of 2 or more automobiles". They are more restrictive in Salem than Derry. Attorney Germaine provided a copy of the Salem and Plaistow regulations for the record.

Attorney Germaine indicated the marketplace and demographics dictate economic development. If the market calls for three car lots in that zone, then that is what the marketplace dictates. None of the landowners want this change; none have petitioned for the change. He requests on behalf of AutoMart that the Board vote no and to schedule future workshops. He does not feel his client is opposed to working something out, but they need to work it out in a way that they feel they are protected. AutoMart is the most detrimentally affected by this change. It is not fair they can't expand without going to the Zoning Board. That is a taking.

Dale Smith, 169 Rockingham Road, advised his mother owns the 48 acre parcel on Rockingham Road adjacent to the Robert Frost Farm. He is the co-trustee. When they saw this change, they discussed it. They don't want to see this change and feel it would be a taking. This is not the first time. Back in the 1960's when the Robert Frost Farm was being converted from the junkyard back to the farm, the state wanted to take land by eminent domain. They are suspicious of any proposed changes to their status. On behalf of his mother and as co-trustee, they are opposed to this. Mr. Granese asked if there was something in particular Mr. Smith did not like about the proposed change? Mr. Smith said all of it.

Richard Metz, 94 Rockingham Road, said he has owned his property for 26 years. For 26 years they have had the carrot dangled that someday there would be water and sewer. Now they have the carrot, the Planning Board is coming along with the stick to smack them in the knees. His property has been a gas station and a seasonal restaurant. This change will take away half of his potential use. He has one acre of land, it is odd shaped and located on a corner. This change would be detrimental. Twenty-six property owners signed the petition and are asking the Board to reconsider the changes. Parkland Medical Center is a distant cousin to Portsmouth Hospital and Derry will not see the expansion that Manchester and other communities have of the Elliot Hospital. He is asking the Board to listen to the people. Mr. Granese noted that at the last meeting the Board discussed taking the language referencing Parkland out of the purpose section. They took the input from the residents and incorporated it. Mr. Granese said he got the impression that Mr. Metz does not like the language having to do with gas stations. Mr. Metz said his property and the properties of the other 26 owners are all different and there will be things that are important to one but not another for all of the lots. There is 100 acres or so of

undeveloped land in this area. The Board may want to restrict some of the uses. He has an acre. There is a mobile home park above him that is not going to go away because all of those residents would need to be relocated in comparable housing at the expense of the developer. He wants to be able to use his property to the best of his ability. The other owners have issues with other parts of the proposed changes. Mr. Granese said he is just trying to find out what people don't like. Mr. Metz said he can't sell to a gas station under this proposed ordinance change. How did the HESS station go into the OMB? Mr. Granese said he would have to look back over the minutes; he does not recall. Mr. Metz said during the last few months there have been car dealerships approved on valuable commercial property and in residential zones. He understands the ZBA operates under different rules, but the Planning Board sets up the rules the ZBA operates under. He disagrees with this change.

Janice and William Burke of 133 Rockingham Road were also opposed to the change. Mrs. Burke said they have looked at the new version. They feel it was unfair to see it for the first time tonight. They did not attend the meetings before but have been discussing it with other property owners. In this economy, they are finding it difficult for a "Mom & Pop" to compete with the big box stores. It seems that Derry in developing the north end of Route 28 is getting the big box stores, but the taxpayers are paying for the development and the smaller business owners are paying for the development and getting put out of business. They have been in business for a long time. They live and work here in town and help their community. Her husband has been Citizen of the Year, Business Owner of the Year and they have been Business of the Year and now Derry is saying, "Too bad, we are going to restrict your rights as a property owner." She agrees this is a taking of her property rights in a general business area. They can't sell to whom they want. They are severely limited in who can come in and look at their property. Few are willing to look at their property without water and sewer available on the lot. She agrees that the water and sewer carrot has been dangled for years. It seems that all the eggs have been placed in the northern Route 28 basket with no restrictions on development, but the town does not want to help us at all; the town wants to restrict us. The 26 landowners do not like any of this; it is why they signed the petition. The Board's duty is to listen to the people who help you get to where you are. She understands the Board does not want to see rampant development that is done without thought. If the Board limits the uses to office medical, please remember Parkland Medical Center has room to grow around their own lots. Tsienneto Road is office/medical/business. Londonderry and Windham all have office medical uses and have room to grow those uses. With all of that development, to think that they will come and develop their property is not fair. She asked the Board to reconsider.

Mr. Burke said he did not like any of the suggested changes. Mrs. Burke asked that the Board not restrict their ability to sell their property in a General Commercial zone. Mr. Burke said the people looking at their property would like it for a dealership or an appliance store. Understanding these economic times, these changes limit what they can do with their property. He does not see the purpose in making these changes. He has been here for 32 years. He has lived the American dream here. His wife has taught school in town for 30 years. When 26 people come to the table and say no, there is a reason. Hear them clearly. They don't want their property rezoned, played with or taken. He wants to continue his business on a small level. He can't do that if he can't sell it. These are not the correct choices to help or support the

landowners in the future. It makes him concerned for the future. How can you retain the youth of the community if they have no opportunities?

Mr. Anderson thanked the Burke's and the other landowners for their testimony. He noted they also used the term "been offered a carrot". All the taxpayers will pay to expand the water and sewer to this area of town. Why should the town expand the utilities at the expense of all of the taxpayers and not allow development in the area? They are saying the 26 properties should be the only ones determining what the uses should be when the town is increasing the value of those properties by adding water and sewer. Mrs. Burke asked why should they be paying for the expansion on the northern end of Route 28? Mr. Anderson explained that bond is being paid for by the people developing the land on the north end of Route 28. No taxpayer dollars are being used to pay off the bond. Mr. Burke maintained the taxpayers are still paying for it since they are supporting the merchants there.

Mr. Anderson commented the decision to allow Walmart into Derry was made over 20 years ago and the town lives with those decisions today. Water and sewer were already in that area. None of the taxpayers in Derry are paying for the increased development on Route 28. That is being paid for by the new growth. Is it the best development? That is a conversation that should have taken place 20 years ago. Walmart is not good for the Burke's business. He understands that, but they were there already. The town appreciates all that the Burkes and the other property owners do every day to make their businesses succeed. The Board wants to work with them to find out what is the best way to grow. How can the area be rezoned and developed? How do we help that area of town grow and succeed? That is what we want to do, together with the landowners. The land was not always General Commercial. Some of it was residential. The town as a whole wants to see you all succeed. How to do this together is what the Board is trying to figure out. The town does not want to restrict the property owners or put them out of business. What is the highest and best use when the town spends the money to add water and sewer to Route 28 south?

Mrs. Burke said she wants to reiterate that the Board needs to understand the 26 property owners feel this change will restrict them. They don't feel this is the best use of their land. The Board should listen to the property owners.

Tim Butterfield, DVM, 2 Humphrey Road, thanked the Board for listening. What he has to say seems hollow compared to the compelling and emotional testimony the Board has just heard. No one who signed the petition feels the Planning Board or the Town Administrator is out to get them. Sincere individuals sit on this Board. People are up against it. These are hard economic times. He has a letter prepared by Attorney John Cronin, of Cronin & Bisson, PC, addressed to Chairman Granese. The meat of the letter says:

"The proposed zoning changes substantially deprive [his] client of the economically viable use of its land and does not encourage the wise use of land. In our view, the proposed zoning change unreasonably restricts the use of the land without advancing any legitimate health, safety and welfare concerns. In the current market, there is little or no demand for office space. In Southern New Hampshire, office vacancy rates are at all-time highs and office rents are well below acceptable levels. If you can find a tenant, the market rents would be insufficient to cover construction costs and generate a reasonable return on investment. Medical office space is more

suspect. Recent trends in the medical community indicate that hospitals are acquiring most private medical practices and placing medical office users on the hospital campus or in hospital owned office buildings. Private property owners have little or no chance to compete for the few medical office tenants not controlled by a hospital or related entity. It should also be noted that the area of the proposed zoning change is remote to Parkland Medical Center.

The highest and best use for the subject properties is mixed use development. Our clients are willing to live with the current zoning classification as it is very likely that mixed use development could include residential components. We are also opposed to the classification included in the proposed zoning change stating that any uses that generate adverse traffic impacts or conditions are prohibited. The term adverse traffic impacts or conditions are subjective and not defined. Any use could be prohibited based on adverse traffic impacts even if the level of service is not impaired or options are available for mitigation of negative traffic impacts. We suggest that traffic issues be a matter for resolution by the Planning Board. Based on the reasons stated herein, we respectfully request that you vote against the proposed amendment and leave the current zoning in place.”

Dr. Butterfield added the following comments. In speaking with the property owners, they relayed to him that it is difficult for them to come and speak before the Board. People are speaking from the heart. They were corrected. People want to speak but they feel it might be confrontational. That should not be the case. The signature on the petition is the voice of the people who did not attend tonight. They read the petition carefully before they signed it. He is discouraged to see the redlined document. He was not told about the revisions to the amendments. He was glad to hear it was just what was asked to be done. Attorney Germaine spoke to that already. What is driving this change? Concerned individuals have looked at large vacant parcels and said, “We don’t want this or that.” These issues were discussed today. Most landowners are of the opinion that the land is owned by individuals or groups of individuals. Within reason, they have a right to do what they want with their land. The rights of the landowners are being infringed on what they can do with their land.

He continued to say that his and Mr. Siragusa’s proposal to Mr. Anderson and Mr. Sioras today was to have the Board work with the landowners of the larger vacant parcels to see what they want and to work as a partnership. Other towns have done that. The answer was that has not yet been tried. The Board may not be interested in that. He is not sure what the real sentiment of the Administration and the Board is with regard to the change. When he looks at this redlined version of the changes, he spent time and money reviewing the other version. He prefers to have an attorney review the changes. He suspects this is “pass it in to workshop mode” and the Board feels it will get what it wants eventually. The petition submitted tonight is a powerful document that is reinforced by some of this testimony. He reiterated that many people are not comfortable speaking in front of this Board. He wanted to clarify that when his land went from a Residential zone to the General Commercial zone, it was because his land was a small area located next to the Fairways and the school. His land is now zoned appropriately for the area and per the Master Plan. He feels the residents are strongly against the proposed change from General Commercial to Office/Medical/Business. Fiddling with the name of the zone will not work. Leave it General Commercial with some restrictions. Specifically, he does not like the restrictions imposed during this economic climate. He has traveled that roadway (Route 28) for 40 years. He does not feel the economy will be changing quickly. When he sees restrictions that may require waiting 20 years, he does not like it. Leave the land zoned General Commercial. The real estate

brokers and attorneys say that is the best use for that roadway. He appreciates the work the Board has put in and thanks the members for stepping up and performing a civic service. He asks that the Board please look at the power of the petition.

Mr. Granese apologized if people felt the Board was confrontational. He said that since he has been Chairman, he has believed in transparency and obtaining public input. Typically when Board's hold workshops, it is the time for the Board to discuss matters and not a time for public input. He allows public input during workshops because he believes it is important to hear what people are saying. The Board did that for the Robert Frost Farm. It took a long time to get to the end of that process. He understands being on the "other side" of the table and how it can feel intimidating. The Board does not intend to be confrontational. He explained he likes to ask specific questions, because sometimes people are not really saying what they mean to say and he is trying to figure that out.

Mr. Anderson said he did not mean to imply that the taxpayers are not important. It is important to make sure that misunderstandings are corrected with regard to taxpayer and non-taxpayer funded projects to make sure the people are getting the right information. He apologizes if that did not come across properly.

Bruce Allen, 92 Rockingham Road, said he purchased his property in 1982 and it has been zoned General Commercial. He has worked there every day and has paid taxes. The Board wants to see the zoning changed and it is not fair to him or to his family. He asked that the Board not change the zone.

Anna Girginoff, 123 Rockingham Road, said she is concerned with what is going on. At her age, she would like to know what the situation will be when she decides to sell the property. She had two tenants and now has one as the other could not operate in this economy. She is trying her best and wants the zoning to stay the way it is so that when she wants to sell the land, she knows what can be done on it. She understands she cannot have a gas station there. She has not had a chance to look at the suggestions, but she would like the commercial property to stay the way it is.

Gary Hamm, 88 & 90 Rockingham Road, said he purchased 88 Rockingham Road in 1978 and paid \$724.00 in taxes. Times have changed. When he bought the property, it was General Commercial. At some point the zoning was taken away. After he purchased 90 Rockingham Road, he requested a zoning change. At that time, the storage facility project was on the table. He got it rezoned to General Commercial. Now this comes about. He was baffled as to why the Board would take the uses out of this zone when it is obvious the OMB zone is vacant. He is not sure what the reason is for the rezoning. He is 110% opposed to this change. It should be kept the way it is. He has struggled with these properties and they barely pay for themselves. He is waiting for water and sewer; the properties are an investment for him. He does not want to be restricted in selling to potential buyers. He feels this change is unfair and a taking. He does not like anything about the change.

Martin Taylor, 34 South Main Street, said he owns the Grandview site. He is against taking away his right to sell his land. He feels this change will restrict his ability to sell the property to certain people. He noted he did attend the last meeting.

There was no further public comment.

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

Mr. Granese said at the last meeting, the Board took input and asked the Planning Department to compile the suggested changes. That is what is in red on the document this evening. What are the Board's thoughts?

Mr. Anderson asked if the changes could be read aloud so that the general public listening to the meeting and not able to take advantage of the handouts would know what the Board was reviewing. Mr. Granese read the document aloud, noting the changes in red. [Clerk Note: for brevity purposes, the document is attached to the end of this document.] Mr. Granese said the changes were a result of public input at the last hearing. He wanted to get a sense from the Board and the public so they could move forward to the next public hearing. Mrs. Robidoux commented that the section pertaining to Wireless Communication Facilities can be removed from this document, as subsection B.1.vii actually pertains to the Office Business District, not the Office/Medical/Business. When staff reviewed the proposed changes, it was felt that all sections of the ordinance that referenced Office Medical Business should be amended to coincide with the proposed change. Wireless Communication is allowed in the Office Medical Business zone; therefore a change to this section is not necessary. The Board can amend the other prohibited districts under Wireless Communication at a later date.

Mr. Milz noted the Board has added filling stations and garages back in, with the caveat that they cannot be within 2000 feet of any facility of the same type. The largest change in this district would be the limitation on single family residential. He said when the Board was looking at the larger vacant parcels they realized it was not beneficial to most of Derry to have the larger parcels developed with 60-70 homes on them in a general commercial district. If the Board had to make changes in the General Commercial, then they wanted to allow more uses, not restrict the uses. Mr. Sioras suggested that the OMB allows for everything in General Commercial and adds to that.

Mr. Sioras asked those present to take a look at the map outlining the areas under discussion. The Board had wanted to remove gas stations/auto from the OMB as that did not seem to be a use compatible with the existing area of the OMB. Mr. Milz said the Board wanted to add more things, not restrict more things. The Board wanted to add uses and was not driven by Parkland Hospital. They did not consider Parkland as any part of this. They were looking to expand other uses. Because that area of General Commercial was contiguous to the OMB, it became apparent that combining the zones would allow the addition of more uses. The Board did want to limit single family residential and limit the expansion of auto sales. If they add auto uses and filling stations back in, the only limitation is single family homes. Is there a way to leave the area

General Commercial and limit single family residential? People seem to think the Board is taking away some of their rights and that was not the intent.

Mr. Sioras said the text in the Purpose of the OMB was accurate back when Parkland Medical Center was expanding. The OMB was driven by that. The Board knows that is not happening now, so felt that with the expansion of water and sewer through this area to Webster's Corner, it would expand the commercial opportunities. At the last meeting, one of the landowner's mentioned that other towns limit the distances between the auto related uses. The new thought is to perhaps keep the area General Commercial and put limitations on the distance between the uses, similar to what the Board did with GC II, and to perhaps to allow single family residential but to increase the lot size to one acre with water and sewer, and have the frontage requirement at 125 feet.

Mr. O'Connor measured the distance using the town's GIS system from the corner of Island Pond to just beyond Humphrey Road; that distance is just about 2000 feet. Measuring on Rockingham Road towards Birch Street, 2000 feet would be just before Bradford. The Board noted that it also needs to consider the gas station at Hillside Plaza. Mr. O'Connor agreed that the area should remain zoned General Commercial, but there should be revisions to the nuisance provision so that "adverse traffic impacts" is not misconstrued. This is a busy road.

Mr. Chase expressed bafflement that the residents thought the Board wanted this whole area to be office medical uses. He can see where the confusion comes from. To the untrained eye, the ordinance can be confusing. He agrees that keeping it General Commercial and eliminating single family residential in that area could be effective as there is no single family there and none is proposed. He is in favor of amending the uses allowed in General Commercial. This is the last, large viable area to be developed. He is tired of seeing good commercial land being developed as residential and creating a negative tax impact on the town. He is in favor of the changes to the entire General Commercial, but felt that the lots located in the OMB on the north side of Rockingham Road, up to Bradford Street, should be included.

Mr. Anderson said he likes the concept but feels the process is getting muddled. Should the Board hold another public hearing on the GC/OMB original proposal, or start over and have a new public hearing on the red-lined version with the modifications the Board is discussing tonight? What is the clearest in terms of process?

Mr. Milz said the real reason the Board is looking at this change was brought up in an open meeting. The Board asked how can we increase business in this General Commercial zone, and the discussion leaned toward adding it to the OMB, thinking this resulted in an increase in the number of allowed uses. The only restriction was to be the addition of automobile uses and more housing developments. He does not care what the zone is called. He wants to set up a commercial district for the best commercial development the town can get, increasing the landowner options. But, he wants to restrict the addition of housing. The Board does not want to see an "auto mile" here. If the Board stepped off on the wrong foot by increasing the OMB, that was not the intent. The intent was to add to what the landowners can do with their properties. The Board wants to increase the options.

Mr. Sioras said the Board can take the GC and leave it as is with some of the suggested changes, and schedule the next public hearing. But staff needs to know what the wording will be in order to notice it properly. If the Board wants, it can limit the number of car dealerships as recommended by one of the property owners. The use would still be allowed but they would be so many feet apart. Single family residential can be allowed but maybe increase the lot size. He feels the OMB district is still related to the hospital area. The cleanest thing to do in that district would be to keep that zone as is and take out one to two uses, such as car dealerships. The GC can remain as it is, and they can add in four to five things discussed tonight. The Board needs to define what those would be. Or, the Board does not need to change anything. Mr. Milz noted Salem allows used car dealerships with a 2000 foot distance; Plaistow's distance is 1000. Perhaps Derry should split the difference at 1500 feet?

Mrs. Choiniere said she would like to see the distances delineated from point A to point B between these types of uses.

Mr. Anderson said the Board advertised the public hearing that was continued to this evening with changes to the General Commercial zone and the Office/Medical/Business zone. The Board is not doing that now. The Board should do something with that and begin again with a new public hearing and the proposal the Board will be working on. The Board is now looking at a document that has not been circulated and is developing a third document. The Board has moved far from where it started. It should get rid of the original proposal and begin the process with what the Board really wants to do, which is an expansion of uses in the General Commercial with restrictions on automobile uses and residential houses. Should the Board expand the General Commercial zone west on Rockingham Road? There are lots that are OMB orphans. Does the Board want to allow or add in the opportunity to have offices? He does not feel anyone would object to that, but currently, the GC does not allow it. The Board needs to make sure the allowed uses are as broad as possible. Mr. Milz confirmed the Board can't vote on the changes discussed this evening.

Mr. Chase wanted to make sure the public understood the Board is not trying to restrict or take away property rights; it wants to enhance the area. All zones have restrictions or development would be uncontrolled like it was 40 years ago. We are trying to correct the mistakes that were made then. He understands that the owner's property is most important to them; the Board needs to look at 31 square miles of land and see what is best for all. The owners want to sell their properties for the uses they want, and the Board has to deal with that. The Board does not want to restrict; it wants to enhance property values and rights that benefit the whole town.

Mr. Granese asked the Board to decide if it wanted to move ahead with amendments to the document in front of it, or start over. If the Board moves forward with changes it would put the next public hearing out to the second meeting in October. The Board felt it would be best to start clean.

Motion by Anderson to vote on the amendments as proposed at the July 18, 2012 meeting, seconded by Milz. Discussion followed.

Mr. Sioras said the Board needs to vote on what was legally noticed on July 5, 2012. That is what is noted on the agenda. Mr. Anderson said the Board will start fresh on a new agenda. It can have new wording at the next meeting in order to begin discussion again. A new document will be created that can be formalized to move forward with the public hearing process. The property owners should be given a copy in advance of the meeting.

Chase, Anderson, Alongi, O'Connor, Davison, Milz, Choiniere, Bartkiewicz and Granese voted no to the proposed amendments. The amendments were rejected.

Mr. Sioras noted that from the discussion at the last meeting, staff took the suggested changes and came up with the redlined document. The staff can come up with a new document to discuss in draft form, but in order to do that, will need some direction from the Board. If the Board is in agreement with those changes, it can move forward with the public hearing process. The Board will need to hold a workshop first.

Mr. O'Connor agreed with Mr. Sioras. As a follow up to one of the questions raised this evening, the Board added the General Commercial II zone in 2004. The wording that restricts filling stations is as follows, "Filling station for the sale of gasoline and accessory uses. This includes a mini-mart and/or sale of food items. No additional stations shall be allowed within 1,000 feet of an existing or proposed station." Mr. Sioras said what he was hearing was that the zone should remain General Commercial with some specific restrictions such as 1000 feet between gas stations and used car dealers, and the Board was divided with regard to single family residential.

The Board was polled to see if single family residential should be a use allowed in the General Commercial zone. There was some discussion. Ms. Alongi wanted to know if the use was allowed, could the Board impose a restriction that they had to be set a specific distance from Route 28? The answer was no. Mr. Anderson noted that if residential is allowed, new residents will complain about the businesses that are already in existence. He felt there needed to be an acreage requirement.

Chase – take the use out; Alongi – do not allow the use; Anderson – allow the use with a one acre lot size requirement; O'Connor – for discussion purposes only at the workshop and to obtain public input, to allow the use with an acreage requirement; Davison – do not allow the use; Milz – did not want to see the use in the zone, but for discussion purposes and to allow public input from the 26 landowners, he would say leave the use in with a one acre requirement; Choiniere – take the use out; Bartkiewicz – allow it with one acre requirement; let the people decide. The vote was split.

Mr. Granese said since he had the tie breaking vote, he would vote the way the audience preferred. The audience asked that the use be left in for discussion purposes.

The Board was polled to see if they wanted to allow gas stations in the General Commercial zone with a 1000 foot distance requirement, take the use out of the zone, or leave them as an allowed use?

Chase – allow with a distance requirement; Alongi – allow it; Anderson – allow it with 1000 foot distance requirement; O'Connor – allow with 1000 foot distance; Davison – allow with a distance requirement; Milz – allow it with a distance requirement to allow for public discussion, leaving the distance open for discussion; Choiniere – allow with distance requirement and provide a legend; Bartkiewicz –leave the use in; Granese – leave the use in.

The Board was polled to see if car sales with some restrictions should be allowed in the zone or the use taken out.

Chase – leave use in with restrictions to be determined; Alongi- leave the use in with restrictions to be determined; Anderson – take the use out; O'Connor – allow the use with restrictions; Davison – allow the use with restrictions; Milz – allow the use with restrictions; Choiniere – allow the use with restrictions; Bartkiewicz – allow the use with restrictions; Granese – take the use out.

Mr. Anderson asked if the Board wanted to add the orphan lot in the OMB to the GC zone? This included the following lots, one of which is owned by the town: 74 and 78 Rockingham Road and 51.5 South Main Street. It was noted the property owners for 74 & 78 Rockingham were not in the audience.

Chase, Alongi, Anderson, O'Connor, Davison, Milz, Choiniere, Bartkiewicz and Granese all felt the lots should be added to the General Commercial zone.

Mr. Granese said the Board would hold a workshop on this matter during the first meeting in October. Mr. Sioras said his office will develop the draft and make it available. The Board can review it at the workshop and make any changes. Once the Board is satisfied with the draft, it can move forward with the public hearing process. Mr. Anderson asked that the draft the Board would be reviewing be forwarded to all the affected landowners and to place it on the website so that people could have a chance to review it prior to the meeting. The workshop will be on October 3, 2012.

Mr. Metz asked that when the Board discusses restrictions, that the draft elaborates on what that means. Specifically with regard to distance, from where to where. That information should be included in the draft.

Dr. Butterfield expressed frustration with the fact that input was given when he and Mr. Siragusa met with Mr. Sioras and with Mr. Anderson. The Board has danced around the issue of single family residential in the zone. He and Mr. Siragusa brought good ideas to the table but did not hear anything this evening about their proposals. For a parcel such as the Smith land that backs up to conservation land, what is wrong with having commercial out front and single family homes to the rear? That was taken out. The Board is talking about one acre zoning; what about ¼ acre zoning and a green zone?

Mr. Granese said that can be discussed at the next meeting. The Board will hold a workshop and move forward from there; they are starting from scratch. That discussion will take place on

October 3, 2012. Just because the Board says one acre now, does not mean it will end up that way. The Board just needs to be able to have something on paper to discuss.

Dr. Butterfield said he was frustrated because nothing was mentioned during his discussion with Mr. Anderson or Mr. Sioras about these other types of developments that are cropping up around the country. Mr. Granese said the Board was not privy to those conversations. Mr. Anderson advised the discussion centered around mixed use development. That was his point in asking if the Board wanted to add in the office uses to the General Commercial. That adds another piece and adds to the uses.

Mr. Milz indicated Dr. Butterfield's questions will be up for discussion at the next workshop. The Board set an acre zoning requirement just for discussion purposes only. Dr. Butterfield said at the last meeting, it sounded like the landowners were directed to come in and talk to staff, but then their discussions were not mentioned. There are other areas that have closer density and utilize open space in smaller communities.

Mr. Sioras noted some landowners have existing uses they want to continue. The Woodmont Orchard proposal in Londonderry is a very different, mixed use concept; it can be discussed.

Mr. Granese commented the Board listened to the landowners and stopped the proposed amendments from moving forward and will start over.

There was no further business before the Board.

Motion by Milz, seconded by Choiniere to adjourn. The Board voted in favor and the meeting stood adjourned at 9:09 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____

Amend Article III, General Provisions

Section 165-14, Churches

Churches, together with their customary accessory uses, such as a school directly connected to and controlled by a church, shall be permitted in any zoning district in the Town of Derry with the exception of the Industrial IV zone.

Section 165-28, Wireless Communication Facilities

B. Wireless facilities; regulation and performance criteria — The location, placement on a lot construction of wireless communications facilities shall be in accordance with this section as follows:

1. Location —

- a. Construction of wireless communications facilities are prohibited in the following Districts, except as provided in the Telecommunication Overlay Zone.
 - i. Medium High Density Residential District (MHDR)
 - ii. Medium Density Residential District (MDR)
 - iii. Manufactured Housing Park District (MHPD)
 - iv. Multi-Family Residential District (MFRD)
 - v. Central Business District (CBD)
 - vi. General Commercial District (GC)
 - vii. ~~Office Business District (OBD)~~ Business Commercial District (BC)
 - viii. Low Density Residential District (LDR)
 - ix. Low Medium Density Residential District (LMDR)
 - x. General Commercial II District (GC II)
 - xi. General Commercial III District (GC III)
 - xii. Industrial V District (IND V)
 - xiii. Industrial VI District (IND VI)
 - xiv. Medium High Density Residential II District (MHDR II)

Amend Article IV, Districts

Section 165-29 Enumeration of Districts

For the purpose of this chapter, the Town of Derry is divided into zoning districts as follows —

- 1 GC, General Commercial District
- 2 CBD, Central Business District
- 3 OBD, OfficeBusiness District
- 4 ~~OMB, Office/Medical/Business District~~ BC, Business Commercial District
- 5 ORD, OfficeResearch & Development District
- 6 NC, Neighborhood Commercial District

- 7 MHPD Manufactured Housing Park District
- 8 I-1, Industrial District-I
- 9 I-II, Industrial District-II (**Deleted 7/15/04**)
- 10 I-III, Industrial District-III
- 11 I-IV, Industrial District-IV
- 12 MFR, Multi-Family Residential District
- 13 I-V, Industrial District-V
- 14 I-VI Industrial District VI (**Effective 3/17/04**)
- 15 MHDR, Medium-High Density Residential District
- 16 MDR, Medium Density Residential District
- 17 LMDR, Low-Medium Density Residential District
- 18 LDR, Low Density Residential District
- 19 TBOD, Traditional Business Overlay District
- 20 GC-II, General Commercial District-II (**Effective 7/15/04**)
21. Medium High Density Residential District II (MHDR-II) **Effective 12/2/05**
22. General Commercial III (GCIII) **Effective 01/07/2011**

In addition, the Floodplain Development Overlay District, the Conservation Corridor Overlay District, and the Wetlands Conservation Overlay District and the Groundwater Resource Conservation District shall be considered as overlayments of all zoning districts, and, pursuant to Section 165-142, shall be deemed to be applicable if conflicting with the requirements of any underlying zoning district.

Article V, Zoning Map and District Boundaries

Section 165-30 Zoning Map

The locations of the Derry zoning districts are as shown on the Official Zoning Map of the Town of Derry, New Hampshire which consists of the tax map overlays updated to ~~November 17, 2011~~ **new effective date**, which is hereby declared to be a part of this Article. Included with these are the Flood Insurance Rate Maps and the Floodway and Flood Boundary Maps of the Flood Insurance Study of the County of Rockingham, NH dated May 17, 2005 or as amended, as well as the Flood Insurance Study, both of which were prepared by the Federal Emergency Management Agency; and the Prime Wetlands Maps and the Prime Wetlands Report dated November 11, 1986 which are incorporated herein by reference. Reference is also made to the maps described in Article VIII, Groundwater Resource Conservation District. Any change in the location of boundaries of the Zoning District hereafter made through amendments of this article shall be indicated by alteration of the Zoning Map and Tax Map, and the maps as altered, are declared to be a part of this article. (**Repealed and replaced eff 12/17/09**)

Amend Article VI, District Provisions

Section 165-35 ~~Office/Medical/Business District (OMB)~~ Business Commercial District

A. Purpose. The ~~Office/Medical/Business~~ Business Commercial District is established for the purpose of encouraging appropriate 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, ~~and~~ ancillary healthcare related uses and those permitted uses carried out in a former portion of the General Commercial zone. Additionally, this district will allow for expansion and opportunities for future office, business, commercial and employment growth with the availability of municipal water and sewer to this area of town. It is intended that the types of land use activities which would be allowed within this district will not have a severe detrimental impact on the existing residential uses which may continue to be maintained in the district. For these reasons, certain prohibitions, restrictions, limitations, and requirements are deemed to be necessary and appropriate.

B. Permitted Uses. Land use activities permitted within this district shall be limited to the following, and further, shall be subject to such other limitations as are specified herein:

1. ~~Business and professional offices such as those for doctors, dentists and related health care facilities.~~ Professional Office
2. ~~Single family detached dwellings~~
- 3.2 ~~Single family detached dwellings containing a maximum of one business or professional office of the type described herein.~~ Mixed use business commercial with one residential dwelling unit above or contained within the building footprint.
- 4 3. Those uses allowed pursuant to Section 165-32.A.1.b through g, ~~with the exception of automobile and similar vehicle sales, automobile service station, filling station, and automobile repair facility/garage; with the following limitation: no automobile and similar vehicle sales facility, automobile service station, automobile repair facility/garage or filling station shall be located within 2000 feet of any other facility of the same type.~~
- 5 4. Wireless Communications Facilities
- 6 5. Congregate Care Facilities, Assisted Living Facilities
 1. ~~Congregate Care Facilities and Assisted Living Facilities shall be exempt from Article XIV — Growth Management Ordinance. There shall be a deed restriction that these facilities cannot be converted into multi-family units.~~
 2. ~~Maximum building structure height: 60 feet~~
 3. 2. These facilities shall be subject to the Architectural Design Review Regulations contained within Article XIV of the Land Development Control Regulations (LDCR) (Effective 5/17/07)
6. Hotel
7. Hospital

C. Uses allowed by Special Exception

1. Home occupations in single family residences existing as of January, 2012,
2. The addition of those uses allowed pursuant to 165-32A.1.b through g on a lot containing a single family residence.

Prohibited Uses.

- 1 Any use of land, building, structure, or equipment which would be injurious, noxious or offensive by way of the creation of adverse traffic impacts or conditions, odor, fumes, smoke, dust, vibration, noise or other objectionable features, or hazardous to the community on account of fire or explosion or any other cause shall be prohibited in this district.
2. Other land use activities which are specifically prohibited within this district include, but are not necessarily limited to, the following:
 - a. Sexually oriented businesses as set forth in Article III, Section 165-27;
 - b. Uses which are not expressly permitted in sub-section B of this section.

D. Area ~~Aand~~ dimensional requirements. **(Effective 3/18/99)**

1. Minimum Lot Area:
 - a. With public sewer, 30,000 square feet.
 - b. Without public sewer; one acre, plus 10,000 square feet for each 200 gallons per day of sewage effluent after the first 200 gallons per day, unless the owner can show adequate plans for sewage disposal on a smaller lot.
2. Minimum Frontage Requirement: 125 feet. **(Effective 11/21/03)**
3. Minimum Lot Width: 125 feet at the thirty-five foot front setback line.
4. Minimum Yard Depths;
 - a. Front yard: 35 feet.
 - b. Side and rear yards: 20 feet.