

The Planning Board for the Town of Derry held a public meeting on Monday, October 15, 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; Randy Chase, Administrative Representative; Jan Choiniere, Member; Lori Davison (7:09 p.m.), Alternates.

Absent: Jim MacEachern, John P. Anderson, Joe Donahue, Darrell Park, Ann Alongi

Also present: George Sioras, Planning Director; Elizabeth Robidoux, Planning Clerk; Robert Mackey, Code Enforcement Officer

Mr. Granese called the meeting to order at 7:01 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.

Escrow

#12-22

Project Name: William Dearth 6 lot subdivision

Developer: Hampshire Ventures, Inc.

Escrow Account: Same

Escrow Type: Cash

Parcel ID/Location: PID 45010, 12 Old Chester Road

The request is to approve Release #1 in the amount of \$127,941.12 for the above noted project. The amount to retain is \$34,953.12.

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

#12-23

Project Name: Stage Crossing – Hillside Avenue

Developer: Stage Crossing, LLC

Escrow Account: Same

Escrow Type: Letter of Credit

Parcel ID/Location: 26079, 49 Hillside Avenue

The request is to approve Release #1 in the amount of \$16,264.80 and request a replacement Letter of Credit in the amount of \$5,378.40 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 \$21,643.20.

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

Minutes

The Board reviewed the minutes of the October 03, 2012, meeting.

Motion by Milz, seconded by Bartkiewicz to accept the minutes of the October 03, 2012, meeting as written. The motion passed in the affirmative.

Correspondence

Mr. Bartkiewicz reported the Board has been provided with an updated copy of the Planning Board schedule.

Other Business

None.

Public Hearing

Estate of William Radford PID 03152, 19 Kilrea Road Acceptance/Review, 3 Lot Subdivision Continued from October 03, 2012

Mr. Sioras advised per his staff report, he is recommending this hearing be continued to the next meeting. The plan has been revised but was not received in time to obtain the final TRC signature. The next meeting will be on November 7, 2012.

Motion by O'Connor to continue the public hearing for William Radford, 19 Kilrea Road to November 7, 2012, seconded by Bartkiewicz.

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

Workshop

Discussion of revisions to the Town of Derry Zoning Ordinance, specifically, signs.

Mr. Sioras advised the previous draft had been revised by Mr. Mackey and Mrs. Robidoux based on the discussion at the previous workshop. Attorney Sabean has also provided comments and those are available in the separate document.

Robert Mackey reviewed the changes implemented since the September 19th workshop and simultaneously reviewed the comments on the 9/19 draft provided by Attorney Sabean. He advised the Board should have two drafts before it. The draft with blue edits is from Attorney Sabean and was received today. She has suggested some editorial changes, and rewording of a few definitions. There were few items of concern, which the Board can discuss as it works its way through the draft prepared by staff for this meeting. That document is dated 10/15/2012.

With regard to “billboards”, Attorney Sabean provided a more in depth definition than what staff came up with. He would prefer to use her definition. Regarding “abandoned signs”, the Board changed the time frame to determine abandonment from 120 days to 60 days. Attorney Sabean feels that may be too short a time frame. Typically with non-conforming uses, the time limit is one year. He has no issue with the 60 days.

Ms. Davison entered the meeting and was seated for Mr. Park.

Mrs. Choiniere asked how often are there abandoned signs? Mr. Mackey said it is rare, but there should be something in the ordinance to cover it. Normally when a business shuts down, the sign is removed. He still feels the time frame should be 60 days. If a business has shut down, two months is an adequate time frame to tell them to remove the sign. Mrs. Choiniere asked what happens if the town can't find the former business owner? Mr. Mackey said they would be more apt to find the former business owner within 60 days than a year. Mr. Milz suggested keeping the time frame at 60 days. He felt the town would be more likely to get in touch with the building owner if the former business owner can't be located. Would the town send a letter at 60 days asking for compliance? There needs to be an enforcement timeframe as well, such as 30 days. What would be a reasonable time frame for enforcement? Could there be the 60 day period for notice, with a 15 day period for compliance? Mr. Bartkiewicz felt those were adequate time frames.

Mr. Mackey said they would use those time frames more for an unsafe sign to bring it into compliance. Unless of course the sign posed an imminent danger, in which case the town would insist it be repaired immediately. Mr. Milz recalled the Sublime sign that hung at 6 West Broadway for over a year after they moved. Mr. Mackey felt 20 days might be adequate to bring a business owner into compliance. Staff can work on the dates. Mrs. Choiniere asked what happens if the town has to take down the sign? Can the town charge the landowner? Mr. Mackey said if the town pursued the legal avenue for enforcement, they might be able to place a lien. There are provisions for when a building is sold that the town can obtain the costs expended. He will need to check and see if that would apply to signs. It is likely they would be dealing with the building owner at that point.

In the staff draft, changes will be made to accommodate the attorney comments on the definitions. He liked the additions the Attorney made to “interactive digital sign”. She also made changes to “sandwich board”, “special event” and “unsafe signs”. Under General

Provisions, Item D, Attorney Sabean had some comments with regard to temporary signage while waiting for the permanent sign. She caught a conflict with Section 101.C. A permit is not required for a temporary sign, so that section will be amended accordingly.

Under Section 101.3, Signs in Commercial and Industrial districts, on page 8 of the staff draft, staff added provisions for shopping malls. Under the current regulations, businesses are allowed three signs per business. The intent of the change is to avoid one sign on the pylon, one sign on the building, and then the business owner asking for another sign out on the lot. In the new draft, staff changed what was allowed to two signs on the pylon and one sign on the building. Allowance has been made for identification numbers on the rear doors to assist emergency responders.

Under Section 101.5, Traditional Business Overlay District, the Board at the last workshop discussed multi-tenant buildings. The current regulations are limited to 50 square feet of signage per lot. With multi-tenant buildings such as 6 West Broadway, that is very limited. This has been changed to limit the size to 50 square feet for single tenant buildings. Multi-tenant buildings may have one, 10 square foot sign per tenant, no matter how many tenants in the building.

On page 11 of the attorney draft, Attorney Sabean had comments with regard to political signs (165-101.7). She had a concern that the current state law may not be Constitutional, but it has not been challenged. Mr. Mackey's opinion is that the town should quote the RSA and use that until the state changes it.

With regard to electronic signs, the Board had discussed whether to allow them or not. If allowed, perhaps they should be in the General Commercial and Industrial IV districts as those are the districts with the broadest allowable uses. Staff looked at Manchester and Nashua's regulations and proposes to allow electronic message boards with text only. In the definitions, the town is still prohibiting flashing, moving signs, but electronic message boards would be allowed with certain provisions. Section 165-101.11, proposed "Electronic signs are allowed in the General Commercial and Industrial IV districts only. All illumination elements on the face of the electronic sign shall remain at a fixed level of illumination for a period of not less than five (5) seconds. Changes from one message to another shall be accomplished by the change of all illumination elements on the face of an electronic sign simultaneously, with the provision that the sign may fade to complete darkness and then re-illuminate with or fade to the new message. Electronic signs shall be equipped with the ability to adjust the brightness of the sign, and shall not be operated at a brightness which is substantially greater than other sources of illumination in the area. Electronic signs contain only text and do not contain additional symbols, graphics or images."

Mr. Mackey advised the wording came from the Town of Nashua. The intent is to keep the signs from scrolling and flashing, so that only the text changes all at once. It also keeps the brightness of the sign in keeping with the surrounding area. Although subjective, it is easier to measure how the brightness fits into the surrounding area, than by limiting the lumens and measuring with a light meter.

Mr. Milz asked why this section had not been reviewed by the attorney? Mr. Mackey advised the changes were made after the last workshop; the attorney was working on the draft that was sent to her before the last meeting. The new changes will go back to her for another review.

Mr. Mackey said staff will look at the comments provided by Attorney Sabean, and incorporate them. He feels the rest of the changes are okay. This will need to be reviewed by the Board one more time and the attorney will also need to review it before it can be taken to public hearing.

Mr. O'Connor asked if these changes are approved, will the current sign permit application be revised and updated? Mr. Mackey said it would. Mr. O'Connor commented on State Chapter 236. Under roads, does Derry have any Class I, II, or III roads? If Route 102 is a state road, Class III, shouldn't there be a provision in the town's regulations so that if a sign is to be located on a state road, the applicant is on notice they may need to comply with state administrative rules as well? Mr. Mackey asked if Mr. O'Connor was speaking with regard to billboards or signs? Typically the state talks about off premise billboards and on site signs. Mr. O'Connor said he was looking at the wording "advertising device". He felt there may be potential conflicts with the proposed changes and definitions. Mr. Mackey said staff would take a look at that to make sure there were no conflicts. It may be that something will need to be added.

Mr. Chase noted that Island Pond Road and Windham Road have shared jurisdiction with the state. During certain times of year, the state has jurisdiction for maintenance and the town does at other times. He believes the state waives its jurisdiction in the urban compact area. Mr. Mackey noted that from Berry Road to the Windham town line, Rockingham Road falls under state jurisdiction. Mr. Chase said it used to be that the state maintained Manchester Road up to Ross's Corner. Now, it ends maintenance at Scobie Pond Road. Mr. Sioras recalled the state denied an application by Brookstone for a sign on Route 111 twice. Mr. O'Connor recalled they wanted to install something similar to the sign on South Willow Street that faces Exit 1 off Route 293. Mr. Mackey noted that Brookstone was denied at the ZBA level as well for the proposed sign. Mr. Chase said Route 111 is another road with limited access; the state has jurisdiction over all curb cuts on Route 111. Mr. Sioras commented that Route 102 from Pond Road to Londonderry is part of the urban compact and falls under town jurisdiction. Mr. Mackey reiterated he would look at the administrative rules and state statutes to ensure there were no conflicts.

Mr. Milz asked if the Board members were in favor of Mr. Mackey's verbalizations of the proposed changes to the draft before the Board this evening? He has no disagreement. Mr. Granese and Mr. Bartkiewicz concurred.

Mr. O'Connor asked for clarification of electronic reader boards versus digital boards. He does not want to restrict businesses but also does not want Derry to look like South Willow Street in Manchester. He feels there should be some sort of lumen restriction. There have been medical studies done with regard to light intensity. He does not feel the town should deny LEDs but the town should control them. Mr. Mackey would likely need to be supplied with a light meter.

Mr. Mackey stated the intent behind the electronic reader boards is to make them more of a message board with text. It is possible someone could still have bright text. Mr. Milz felt that

could be dealt with on a sign by sign basis. He felt small business owners will use what is generally commercially available. Mr. O'Connor said he was talking about the 2 x 3 signs.

Mr. Granese said that Derry Pizza has an LED message board. That would be an electronic sign. It is not offensive or bright. Mr. Sioras said there are also electronic signs located at the fire station at the circle and at Pinkerton Academy. Bob noted LED is the new technology. Ms. Davison said she felt the Board should be limiting the amount of movement and brightness on a sign, or the town will end up like South Willow Street. The sign there is like a drive in movie screen.

Mr. Mackey said that is why for the few signs like that in town he had the applicant give him a letter stating it would not change copy more than one time per hour. Following that, the town prohibited those types of signs. The current wording allows for five second intervals to keep the text from scrolling or flashing. Ms. Davison noted the fixed level of illuminations would keep the sign from looking like a flashing cartoon.

Mr. Sioras stated people agreed the sign on South Willow is an unsafe sign. Ms. Davison commented there is one like that on the Haverhill/Plaistow town line that is also distracting. Mr. Mackey advised that under General Provisions, Section 15-101, Item 1, there is a prohibition against that type of sign; only electronic reader boards are allowed.

Mr. Sioras said staff will prepare a clean draft for the Board to review and bring it back to the Board in November so it can be scheduled for a December public hearing. The Board had promised to get this back to Town Council by the end of the year.

Mrs. Choiniere asked if the Board had come to an agreement that there would be a 60 day provision under abandoned signs? Mr. Mackey said he would like 60 days; the verbiage can be added with regard to compliance time frames. Mr. Milz felt the town needed to give the landlord time to comply. Mr. Mackey agreed and suggested 30 days. Mr. Milz thought 15 business days would give the owner almost 3 weeks.

There was no further discussion.

Motion by Milz to adjourn, seconded by Bartkiewicz. The motion passed unanimously and the meeting stood adjourned at 7:36 p.m.
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Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____