

The Planning Board for the Town of Derry held a public meeting on Wednesday, March 05, 2014, 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: Frank Bartkiewicz, Secretary; Randy Chase, Administrative Representative; Jan Choiniere (7:22 p.m.), Ann Marie Alongi, Members; Lori Davison, Frank Mazzuchelli, Alternates

Absent: David Granese, John O'Connor, Darrell Park, Al Dimmock, Jim MacEachern

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

Mr. Bartkiewicz, Chair Pro-temp called the meeting to order at 7:04 p.m. The meeting began with a salute to the flag. Mr. Bartkiewicz then introduced the staff and Board members present.

Ms. Davison was seated for Mr. Park; Mr. Mazzuchelli was seated for Mr. MacEachern. Ms. Alongi was elevated to Secretary pro-temp.

Escrow

None.

Minutes

The Board reviewed the minutes of the February 19, 2014, meeting.

Motion by Alongi, seconded by Davison to accept the minutes of the February 19, 2014, meeting as written. The motion passed with Chase abstained.

Correspondence

Ms. Alongi advised Board members received an email from Ann Evans relative to the proposed changes to the livestock ordinance. All Board members have a copy and it can be considered during the workshop. Southern New Hampshire Planning Commission has forwarded a letter relative to the annual traffic counts. They are looking for a list of traffic count sites for the 2014 season. Mr. Sioras noted SNHPC performs traffic counts all around town as part of the town's membership. They have a list of locations that they do every year, but they are looking for any additional locations. The Board is also in receipt of the most recent edition of *Town and City*.

Other BusinessSchedule public hearing for proposed changes to LDCR Section 170-30, Fire Protection

Mr. Sioras said the Board has been working on suggested amendments to the LDCR. Fire Chief George Klauber, James Kersten and Randy Chase have worked on the suggested changes. It was finalized at the last meeting. This matter can be scheduled for a public hearing on March 19, 2014.

Motion by Alongi, seconded by Davison to schedule a public hearing on March 19, 2014 to consider proposed changes to the Land Development Control Regulations, Section 170-30, Fire Protection.

Chase, Alongi, Mazzuchelli, Davison and Bartkiewicz voted in favor and the motion passed.

Request to extend approval – Richard Murdoch

Mr. Sioras advised the Board is in receipt of a request to extend the conditional approval for Richard Murdoch. This is the first request. The property is located at 23 Lane Road and the project was a for a two lot subdivision, which would create one building lot. The applicant is requesting an additional six months on the conditional approval granted this past August. Staff recommends the Board approve it.

Motion by Alongi, seconded by Davison to approve a six month extension on the conditional approval for 23 Lane Road.

Chase, Alongi, Mazzuchelli, Davison and Bartkiewicz voted in favor and the motion passed.

There was no further business to come before the Board and it moved into a workshop.

WORKSHOP – Changes to the Town of Derry Zoning Ordinance, Article XX, Livestock

Mr. Mackey stated since the last meeting, he, Mr. Sioras, and Mrs. Robidoux sat down with the town attorney to receive his input. The motive behind the revisions was to make changes to Article XX in the Zoning Ordinance to deal with nuisance situations such as crowing roosters. The Board members should have a copy of the existing regulations followed by the proposed changes. There is also a separate red-lined document that shows all the proposed changes, along with some verbiage regarding the suggestions from the attorney. Not a whole lot has changed overall from the existing regulation. The attorney suggested removing some of the proposed changes. Under Lot Requirements, it was suggested that the lot setback be given its own section. The structure setback will remain at 20 feet which is in excess of the building setback for the zone; the decision was to keep it more restrictive for livestock and fowl. The changes to the

nuisance provision are the most significant. Originally this section had discussed roosters, their confinement, and hours during which they could crow. The attorney suggested removing all of that. They have taken out the word “public” so that the standard for a nuisance becomes much lower. This makes prosecution a lot easier since it is hard to prove something is a public nuisance. Complaints will be dealt with under the nuisance provision. There was some tweaking of the language.

There had been previous discussion relative to a tiered fine system under the penalty section. The attorney advised the Zoning Ordinance is not the place for that. This regulation is part of the Zoning Ordinance and as such, the Building Inspector, or his office, has to prosecute an action. He and Ms. Bishop work hand in hand; she typically receives the original complaint. When it gets to the point that an enforcement action has to be taken, a violation of this section of the Ordinance would be prosecuted the same as any other violation of the Zoning Ordinance.

A typical zoning violation is handled as follows. Ms. Bishop or Mr. Mackey receives a complaint, for example chickens running loose. They go out and identify the problem, explain the Ordinance to the property owner and explain what needs to be done to comply with the Ordinance. This is followed up by a letter if the owner has not complied within an appropriate time frame. If there is still no compliance, a second letter is sent. If there is no compliance following that, the town attorney sends a letter to the property owner, advising there could be court action. The idea is to gain compliance, not to fine people right away. State law, under RSA 676:17, states that the fine can be up to \$275.00 per day of violation. This law needs to be followed because the Livestock regulation is part of the Zoning Ordinance.

Other changes were made to Pre-Existing Non-Conforming Status. The attorney advised that a horse/animal on an undersized lot could be considered a pre-existing, non-conforming use. It had been hoped that the horse/animal could not be replaced if it was no longer on the property but the attorney explained the use is protected (not necessarily the animal itself). This section should refer one back to the section in the Ordinance dealing with pre-existing non-conforming uses and structures (Article XIII). This would mean that a property owner would have one year to replace the use or the property reverts back to the underlying zoning.

Along with the text changes, a few definitions were added. “Nuisance” is one of them. There had been some thought to adding language to the definition that would explain what a nuisance might be, such as crowing roosters, but the attorney said those should be left out.

Mr. Mackey felt it was time to move the changes forward as what is in this document accomplishes the original goals. Ms. Bishop said this document is better than the current regulation. She is a bit disappointed with some things, but it is a workable document. Mr. Mackey advised that Chapter 20 of the Town Code deals with dogs running loose and the feeding of ducks at Beaver Lake. It may be that they can look at that Code and see if it should be revised. Ms. Bishop agreed it is antiquated. Mr. Mackey said any changes to the Town Code are handled at the Town Council level and would not come before the Planning Board. Ms. Alongi said she wanted to make sure Ms. Bishop was comfortable with the suggested changes in this document. Ms. Bishop said this falls under Code Enforcement, not Animal Control. She and

Mr. Mackey work together when a complaint comes in but the enforcement is done through his office. Normally, any complaints are solved quickly once the homeowner is educated.

Mrs. Choiniere was now seated.

Mr. Sioras asked Mr. Mackey to address the concerns raised in Ms. Evans' email to the Board. He provided Mr. Mackey with a copy of the email. Mr. Mackey noted she requested the Board keep the ordinance to something that is short, concise, fair and minimally invasive. He noted not a lot has changed from the current regulation other than taking out the public nuisance provision. Regarding penalties, they have opted not to move forward with a tiered system and are just referring to what already exists in the Ordinance. Even if they did not include Section 165-161 to cross reference to Section 165-132, any violations of Article XX would fall under Section 165-132 because that is the standard penalty provision. Mrs. Choiniere noted that in the Zoning Ordinance, Section 165-132, Violations and Penalties follows the section that discusses the Building Inspector. It seems as if that would not go with Livestock. \$275.00 per day seems excessive. Mr. Mackey explained that if anyone violates any section of the Zoning Ordinance that is the standard penalty provision. That is not to say the town would do that. He explained the enforcement procedure process which includes meeting with the homeowner, letters requesting compliance and then finally, a letter from the town attorney advising court action was imminent. It is not the town's intention to go looking for violations so they can fine people. Mr. Sioras advised he spoke with Mrs. Choiniere today on this topic. The fines relate to the state statute, RSA 676:17, and are not something the town has put into place. Mr. Mackey noted all Board members should have a copy of RSA 676:17 in their packets. For any town with a Zoning Ordinance, this is the standard to be followed. Ms. Alongi reviewed Section 165-132 in the Zoning Ordinance. Ms. Bishop said that the first action by the town is always to attempt to educate the homeowner. Mr. Mackey said in the unlikely event a violation gets to the level of court action, it would be up to the judge to set the penalty. There is no set amount. The town would ask for reimbursement of attorney fees as well, but there is no guarantee as to what the judge would require. Section 165-132 states, "Whoever violates any of the provision of this Chapter (this means the Zoning Ordinance), of the Town of Derry Building Code or any provision or specification of any application, plat or plan approved by, or any requirement or condition of a permit or decision issued by the Code Enforcement Officer, Building Inspector, or local land use Board, shall be punishable upon conviction by a fine not exceeding \$275.00 per day for each violation." Article XX would fall under Section 165-132; there is no way it cannot. If the town did not have Section 165-132, there would be no enforcement.

Mrs. Choiniere asked when would Ms. Bishop have to go to the state? Ms. Bishop said that the dog control laws are under state statute; this is the town's regulation. The state does not have a lot of laws for these types of violations. In cases of abuse, she would go to the ASPCA or in severe cases, to the state veterinarian. Mr. Mackey further explained that state won't step in for chickens running loose or lack of fencing.

Mr. Sioras advised the document would go back to legal counsel for a final review. If the attorney is satisfied with the document, then it will come back to the Board to be scheduled for a public hearing, likely in April or early May.

Mr. Bartkiewicz thanked Mr. Mackey and Ms. Bishop for their assistance with the revisions.

Motion by Alongi, seconded by Choiniere to adjourn. The motion passed with all in favor and the Board stood adjourned at 7:33 p.m.

Approved by: _____
Chairman/Vice Chairman

Secretary

Approval date: _____