

\*\*\* Unapproved \*\*\*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* December 17, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Jim Bumps, Joe Profera, Brian Fisher.

**MEMBERS ABSENT:** Richard Del Favero.

**OTHERS PRESENT:** Karen Jenne, Glenda Nye, Vicky Lewis, Joslyn Wilschek, Kris Smith, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Dec 3) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Dave LaBelle made a motion to approve the minutes to the Nov 19 meeting as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission began discussion on VEC's request to waive the 45 day notice for their Bridge Street substation upgrade project. Joslyn Wilschek and Kris Smith were present to explain the project and the need for the waiver. Dave LaBelle made a motion to grant the waiver request. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission discussed the Town Plan. They decided to review the Housing and Transportation sections at their next meeting, time permitting.

The Commission reviewed their mail. Their meeting on December 31<sup>st</sup> was canceled. Next meeting will be January 14<sup>th</sup>.

8:15 p.m.: Upon a motion by Jim Bumps and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* December 3, 2012

**MEMBERS PRESENT:** Dave LaBelle, Jim Bumps, Richard Del Favero.

**MEMBERS ABSENT:** Joe Profera, Brian Fisher.

**OTHERS PRESENT:** Karen Jenne, Andy Major, Lois Major, Glenda Nye, Vicky Farrand-Lewis, Robin Smith, Maureen Fountain, Annette Smith, Justin Lindholm, Daniel Lewis, Brian Smith, ZA Bob Kelley.

7:00 p.m.: Vice-Chair Dave LaBelle called the meeting to order. Richard Del Favero made a motion to table approval the minutes to the last meeting. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Because only 3 members were present they decided to table review of the Town Plan and bylaw amendments.

Public Comment: The floor was opened to the public. Annette Smith & Justin Lindholm from Vermonters for a Clean Environment gave a presentation on why industrial wind turbines are bad for a community. Their major points included concerns regarding health and property values.

The Commission reviewed their mail. VEC is requesting a waiver of the 45 day notice for a Public Service Board hearing to upgrade their #45 Derby Substation on Bridge Street. Jim Bumps made a motion to approve the request, seconded by Richard Del Favero. After discussing the issue, Jim Bumps stated that he would have to abstain from voting because the company he works for may be working on the project. Because there were only 2 members remaining to vote, Jim withdrew his motion and Richard withdrew his second. Richard Del Favero then made a motion to table this until their next meeting. Seconded by Jim Bumps. **Approved by a unanimous decision.**

8:05 p.m.: Upon a motion by Jim Bumps and seconded by Richard Del Favero, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* November 19, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Joe Profera, Brian Fisher.

**MEMBERS ABSENT:** Jim Bumps, Richard Del Favero.

**OTHERS PRESENT:** Jane Clark, Lois Major, Glenda Nye, Vicky Farrand-Lewis, Scott Warthin, Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to table approval the minutes to the last meeting. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-102 by the Dailey Memorial Library, PIN #SMSDC024G5CTXM, for site plan approval for a 1,960 sq ft addition to the library. This property is located at 101 Jr. High Drive. Jane Clark, Bob Kelley & Lois Major were present to explain the request. The library is too crowded and needs more room. A Right of Way along the northern boundary is being negotiated with NCUJHS which will provide access to the proposed parking in the rear of the building. The addition is one story with a full basement, there will be a lift for handicap accessibility, there will be a community room in the basement, and the technology center will be expanded. Vicky Lewis made general comments in support of the library. There were no additional comments from interested parties. Dave LaBelle made a motion to close application 12-102 by the Dailey Memorial Library. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Town Plan: Vicky Lewis and Glenda Nye spoke in opposition of wind turbines. Glenda Nye gave the Commission a copy of an article in the Orleans Record titled "Alternative to Wind: VEC Eyes Geothermal Energy".

The Commission went into deliberative session on the above application by the Dailey Memorial Library. After returning from deliberations, Dave LaBelle made a motion to grant site plan approval for application 12-102 by the Dailey Memorial Library as submitted (see attached written decision). Seconded by Brian Fisher. **Approved by a unanimous decision.**

8:20 p.m.: Upon a motion by Brian Fisher and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

\*\*\* Unapproved \*\*\*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* November 5, 2012**

**MEMBERS PRESENT:** Richard Del Favero, Jim Bumps, Brian Fisher, Dave LaBelle.

**MEMBERS ABSENT:** Joe Profera.

**OTHERS PRESENT:** Lois Major, Andy Major, David Hallquist, Harvey McDonald, Robin Smith, Glenda Nye, Dick Fletcher, Karen Jenne, Grant Spates, Brian Smith, Susan Taylor, Merrill LaClaire, Maureen Fountain, Laura Carpenter, Bryan Davis, Bob Kelley.

7:00 p.m.: Vice-Chair Dave LaBelle called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (Oct 22) with the correction that Dave LaBelle seconded the motion regarding the nonbinding question about wind towers and it was approved unanimously. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Town Plan discussion: Vice-Chair Dave LaBelle opened the floor to the public for comments regarding wind towers and the town plan. Glenda Nye, Dick Fletcher, Maureen Fountain, Susan Taylor, Lois Major & Karen Jenne spoke in opposition to wind towers to varying degrees. Most commonly cited concerns were health and property values. Bryan Davis, Grant Spates & Brian Smith spoke in favor. David Hallquist explained the mandates that VEC has to follow and the various cost of electricity produced by renewable resources. Brian Davis, Glenda Nye, Dick Fletcher and David Hallquist all gave the Commission material regarding wind power.

The Commission reviewed their mail.

8:45 p.m.: Upon a motion by Jim Bumps and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* October 22, 2012 as amended**

**MEMBERS PRESENT:** Joe Profera, Jim Bumps, Brian Fisher, Dave LaBelle.

**MEMBERS ABSENT:** Richard Del Favero.

**OTHERS PRESENT:** Danny Lewis, Vicky Lewis, Paul Prue, Bryan Davis, Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (Sept 24) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Town Plan discussion: The Energy section, including wind towers, will be discussed at the next meeting. Because it has been so long since the Commission has reviewed their latest draft of the Town Plan they will review each section. Wind is a hot issue and the Commission would like input from the town. Jim Bumps made a motion that the Planning Commission request that the Town put a nonbinding question on the Town Meeting ballot to poll the town on their opinion on wind towers. **Seconded by Dave LaBelle. Approved by a unanimous decision.**

Capital Budgets and Impact Fees were discussed.

The Commission reviewed their mail.

8:10 p.m.: Upon a motion by Dave LaBelle and seconded by Jim Bumps, the meeting was adjourned.

**The minutes were taken by Bob Kelley.**

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* September 24, 2012**

**MEMBERS PRESENT:** Joe Profera, Jim Bumps, Brian Fisher.

**MEMBERS ABSENT:** Dave LaBelle, Richard Del Favero.

**OTHERS PRESENT:** Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order.

Bylaw discussion: Draft revisions to existing small lots were briefly reviewed. The draft appeared fine, but no action was taken as there were only 3 members present.

Town Plan discussion: It is getting time to start working on the Town Plan. The revised plan needs to be complete by the 1<sup>st</sup> of October 2013. The need for addressing wind mills in the plan was discussed. The Commission will review Morgan's proposed energy plan as a starting point.

The Commission reviewed their mail.

8:00 p.m.: Upon a motion by Jim Bumps and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

\*\*\* Unapproved \*\*\*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* September 10, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** Jim Bumps, Brian Fisher.

**OTHERS PRESENT:** Jesse Tatum, Brent Tatum, Scott Flynn, Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Aug 27) as written. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-085 by Brent & Miriam Tatum, PIN #TRD60005E8T, for preliminary and final plat approval for a 2 lot subdivision. Lot #1 is 119 acres and lot #2 is 5 acres. This property is located at 734 Tonis Road and is in the Rural Residential (RR) zoning district. Jesse & Brent Tatum were present to explain the request. The subdivision is so that Brent's brother, Jesse can build a small house. Access is via a 50 ft wide right of way from Tonis Road. The Tatum property is at the end of Tonis Road. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-085 by Brent & Miriam Tatum. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-086 by Scott Flynn, PIN #TRD04038F2T, for site plan approval for a 4 ft by 24 ft entry deck and an 8 ft by 16 ft deck to an existing apartment house. This property is located at 3865 Darling Hill Road and is in the Residential 1-Acre (R1) zoning district. Scott Flynn was present to explain the request. The 4 x 24 entry deck is to provide access to 3 of the 4 units in the build. The existing access was stone steps that were becoming a hazard. The 8 x 16 deck is to provide a 2<sup>nd</sup> egress from one of the apartments so that the owner would then be able to access the basement without entering the apartment. Parking, circulation, landscaping, etc... are not being changed. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-086 by Scott Flynn. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

After deliberating on the above applications, Dave LaBelle made a motion to grant final plat approval for application 12-085 by Brent & Miriam Tatum as submitted with the condition that a mylar of the approved plat must be filed with the Town Clerk within 180 days of this decision (see attached written decision). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Richard Del Favero made a motion to grant site plan approval for application 12-086 by Scott Flynn as submitted (see attached written decision). Seconded by Dave LaBelle. **Approved by a unanimous decision.**

Bylaw discussion: Draft revisions to existing small lots were briefly reviewed. No action was taken as there were only 3 members present.

A dry hydrant that was installed on Lake Park Road was discussed briefly and it was determined that this was not a project that requires Town review.

The Commission reviewed their mail.

8:00 p.m.: Upon a motion by Richard Del Favero and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* August 27, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Tom Strunjo, Jim Mulkin, Lorraine Starr, Durward Starr, Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (Aug 13) as written. Seconded by Dave LaBelle. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-078 by JM & MM Properties LLC, PIN #NDRT5040G3T, for site plan approval to amend permit #12-008. They are proposing to eliminate the landscaping along the Starr property. This property is located at 4503 US Route 5 and is in the Commercial (COM) zoning district. Mr. Mulkin was present to explain the request. The Starr's have a R.O.W. along the westerly property line and the landscaping would limit their use of the R.O.W, Mr. Mulkin stated that he would probably plant grass along the 10 ft strip. Mr. Starr objected to that has it would limit his use of the R.O.W. The Commission had no problem with the elimination of the landscaping and green strip requirement along the westerly property boundary because of the existing R.O.W. There were no additional comments from interested parties. Dave LaBelle made a motion to close application 12-078 by JM & MM Properties LLC. Seconded by Jim Bumps. **Approved by a unanimous decision.**

After deliberating on the above application, Dave LaBelle made a motion to grant site plan approval for application 12-078 by JM & MM Properties LLC as submitted (see attached written decision). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Bylaw discussion: Existing small lots were discussed. It was further clarified that changes of use on lots less than 1/8 ac that are not on public water and sewer should be restricted.

The Commission reviewed their mail.

8:00 p.m.: Upon a motion by Jim Bumps and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley.*



**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* August 13, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Winston Bartley Jr., Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Jul 16) with the amendment that the new access drive for permit 12-055 be paved 25 ft not 20 ft. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-074 by Winston Bartley Jr. & Elizabeth Willey, PIN #NDRT5075F5C, for site plan approval to convert a 3 bedroom apartment into 3 1-bedroom apartments. This property is located at 3300 US Route 5 and is in the Village Commercial/Derby Center (VC/DC) zoning district. Mr. Bartley was present to explain the request. There are no exterior changes being made. The Commission stated that they do not like hand drawn site plans that are not to scale. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-074 by Winston Bartley Jr. & Elizabeth Willey. Seconded by Jim Bumps. **Approved by a unanimous decision.**

After deliberating on the above application, Dave LaBelle made a motion to grant site plan approval for application 12-074 by Winston Bartley Jr. & Elizabeth Willey as submitted (see attached written decision). Seconded by Brian Fisher. **Approved by a unanimous decision.**

Bylaw discussion: Existing small lots were discussed. It was felt that change of uses should be allowed on lots less than 1/8 ac and that owners should be allowed to rebuild buildings in the same footprint as long as there is no increase in the square footage of the living area. Bob will draft changes to accommodate this for the Commission to review at their next meeting.

Small stoops and stairs were discussed. It was felt that stairs and landings less than 25 sq ft do not require a permit, do not need to meet setback requirement, and may have a roof over them as long as the sides are open. Bob will draft an amendment to clarify this in the bylaw.

The Commission reviewed their mail.

8:20 p.m.: Upon a motion by Dave LaBelle and seconded by Brian Fisher, the meeting was adjourned.

***The minutes were taken by Bob Kelley.***

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* July 16, 2012 as amended**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Dan Lewis, Vicky Lewis, Edith Lindblom-Warthin, Nancy Moore, Gary Sexton, Cecile Provost, Mark Stewart, Stephen Wheeler, Amy Wheeler, Joseph Maillet, Jean Maillet.

7:00 p.m.: Chair Joe Profera called the meeting to order. Jim Bumps made a motion to approve the minutes to the last meeting (Jul 2) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-055 by Nancy Moore, Cecile Provost & Gary Sexton, PIN #RT005044C6T, for site plan approval to convert the existing house & garage into 5 apartment units and to convert the workshop into 2 apartment units. This property is located at 1035 Route 5 and is in the Commercial (COM) zoning district. Nancy Moore, Gary Sexton & Cecile Provost were present to explain the request. It was noted that there was a site visit conducted at 6:30 prior to this meeting with Commission members Dave LaBelle, Brian Fisher, Jim Bumps, and Richard Del Favero present along with Nancy Moore, Gary Sexton and Cecile Provost. The commission resumed review of the site plan. Brian Fisher and Joe Profera had a few questions that were answered. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-055 by Nancy Moore, Cecile Provost & Gary. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-053 by Stephen & Amy Wheeler, PIN #TRD35011F6T2, for site plan approval to relocate their business and residence to Derby. They propose to demolish the existing 40 x 50 building and build a 2-story 40 ft by 50 ft building with an 8 ft by 30 ft 2<sup>nd</sup> story deck and an 18 ft by 40 ft 1-story addition. The 1<sup>st</sup> floor will be used for light manufacturing (Wheeler Sugarworks Inc), the 2<sup>nd</sup> story will be a single family residence and the 1-story addition will be a sugarhouse. This property is located at 259 Derby Pond Road and is in the Residential 1-acre (R1) zoning district. Stephen & Amy Wheeler were present to explain the request. The Commission reviewed the site plan. There were no comments from interested parties. Richard Del Favero made a motion to close application 12-053 by Stephen & Amy Wheeler. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-062 by RHTL Partners LLC, PIN #NDRT5042G3T, for site plan approval to demolish the existing showroom/office and rebuild in the same footprint. This property is located at 4441 US Route 5 and is in the Commercial (COM) zoning district. Architect Mark Stewart was present representing the applicant to explain the request. The Commission reviewed the site plan. There were no comments from interested parties. Richard Del Favero made a motion to close application 12-062 by RHTL Partners LLC. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission decided not to review the bylaw for possible amendments tonight.

Other Business: Edith Warthin and Vicky Lewis had questions about the Commission's recommendation regarding Michele Judd's for a Certificate of Public Good for a residential wind turbine.

After deliberating on the above application, Dave LaBelle made a motion to site plan approval for application 12-055 by Nancy Moore, Cecile Provost & Gary Sexton as submitted with the following condition: The new access drive must be paved for the first ~~20~~ 25 feet from the edge of the pavement on Route 5 (see attached written decision). Seconded by Brian Fisher. **Approved**

**by a unanimous decision.**

Jim Bumps made a motion to site plan approval for application 12-053 by Stephen & Amy Wheeler as submitted with the following conditions: 1) The manufacturing and retail sales are limited to products similar to those in the Jed's Maple Products brochure (exhibit A-5 received 6/11/12), 2) Manufacturing of products that are not similar to those in the Jed's Maple Products brochure will require reapplication, and 3) If the Town paves Derby Pond Road the applicant must pave the access drives for the first 20 feet from the edge of the pavement on Derby Pond Road (see attached written decision). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Brian Fisher made a motion to site plan approval for application 12-062 by RHTL Partners LLC as submitted with the following condition: Parking or displaying vehicles in the greenstrip along Route 5 is prohibited (see attached written decision). Seconded by Jim Bumps. **Approved by a unanimous decision.**

8:05 p.m.: Upon a motion by Jim Bumps and seconded by Richard Del Favero, the meeting was adjourned.

*The minutes were taken by Dave LaBelle and typed by Bob Kelley.*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* July 2, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Durward Starr, Lorraine Starr, Nancy Moore, Cecile Provost, Laura Carpenter, Edith Warthin, Glenda Nye, Susan Judd, Michael Judd, Michele Judd, Krista Barry, Del Green, Richard Joyal, Dick Fletcher, Betty Fletcher, Dale Leroux, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Jun 18) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-055 by Nancy Moore, Cecile Provost & Gary Sexton, PIN #RT005044C6T, for site plan approval to convert the existing house & garage into 5 apartment units and to convert the workshop into 2 apartment units. This property is located at 1035 Route 5 and is in the Commercial (COM) zoning district. Nancy Moore & Cecile Provost were present to explain the request. The commission reviewed the site plan. They felt the plan should have been more professionally drawn. Ms. Provost pointed out that it meets all the requirements of the bylaw. An access permit has been issued by the State for the drive to the 3 stall carport. Landscaping and lighting were discussed. Landscaping is existing and exterior lighting will be motion sensor residential type lighting. The Commission felt a site visit would be necessary due to the lack of detail on the site plan. There were no comments from interested parties. Dave LaBelle made a motion to table application 12-055 by Nancy Moore, Cecile Provost & Gary Sexton for a site visit at 6:30 p.m. on Monday July 16, 2012 and will reconvene the hearing at 7:00 p.m. Monday July 16, 2012. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission began discussion on the proposal by Michele Judd for a Certificate of Public Good for a 140 ft tall wind turbine with a 23 ft rotor diameter and to consider a recommendation to the Selectboard on the issue of intervention as an interested party. This project is located at 2103 Herrick Road and is in the Rural Residential (RR) zoning district. A number of people spoke out in opposition to the proposal, citing concerns with noise, views, health, and property values. The Commission reviewed the Town Plan. The energy section of the plan states in part "Renewable energy resources offer long-term advantages over non-renewable sources. Solar, wind, hydro, and wood or wood gasification may become more prominent in the Towns energy mix. The Town should support efforts to research and develop these other alternative, ecologically sound energy sources." Dave LaBelle made a motion to not recommend the Selectboard seek intervention as an interested party. Seconded by Brian Fisher. **Ayes – Dave LaBelle, Brian Fisher, Jim Bumps. Nays – Richard Del Favero, Joe Profera. The motion passes by a majority decision.**

The Commission reviewed their mail.

9:05 p.m.: Upon a motion by Jim Bumps and seconded by Richard Del Favero, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* June 18, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Elizabeth Bumps, Richard O'Hara, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Jun 4) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission recessed their meeting for a public hearing for proposed bylaw amendments.

Chair Joe Profera read the warning for the Public Hearing. Public Hearing for public input on proposed bylaw amendments to change the side yard setback in the Village Commercial Derby Center (VCDC) zoning district from 20 ft to 10 ft; to delete §401.1 "Existing Small Lots"; to add §303 "Nonconforming Lots"; to add §408 "Adult Oriented Business" with related definitions; and to add Adult Oriented business as a Conditional use in the Industrial (IND) and Commercial/Industrial (COM/IND) zoning districts.

The members of the public present were in favor of the proposed amendments.

Dave LaBelle made a motion to close the Public Hearing. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

There was a brief discussion on the proposed amendment.

Richard Del Favero made a motion to recommend to the Selectboard that they approve the following proposed bylaw amendment:

**Change the side yard setback in §206.1B "VC/DC" from 20 ft to 10 ft.**

Seconded by Dave Labelle. **Approved by a unanimous decision.**

Dave LaBelle made a motion to recommend to the Selectboard that they approve the following proposed bylaw amendment:

**Add the following to Article 3:**

**§303 Nonconforming Lots**

A nonconforming lot is a lot or parcel that does not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable law, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

- 303.1 Development is prohibited on existing small lots less than one-eighth acre in area and on lots with a width or depth dimension of less than 40 feet, except that the sill elevation of an existing structure may be increased in height a maximum of 5 feet.
- 303.2 Any other lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed for the purposes permitted in the district in which it is located, even though the lot no longer conforms to minimum lot size requirements of the new bylaw or interim bylaw, provided the lot is greater than one-eighth acre and has both width and depth dimensions greater than 40 feet.
- 303.3 If a nonconforming lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot.

However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- A. The lots are conveyed in the preexisting, nonconforming configuration.
- B. On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.
- C. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- D. The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 VSA Chapter 64.

Seconded by Brian Fisher. **Approved by a unanimous decision.**

Dave LaBelle made a motion to recommend to the Selectboard that they approve the following proposed bylaw amendment:

**Delete all of §401.1 Existing Small Lots**

Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Brian Fisher made a motion to recommend to the Selectboard that they approve the following proposed bylaw amendments:

**Add the following to Article 4:**

**ARTICLE 4:**

**§408 Adult Oriented Business.**

The intent is to establish reasonable and uniform regulations for Adult Oriented Businesses, which, unless closely regulated, cause adverse secondary impacts on the community, including increased crime, blighting of neighborhoods, decreased property values, depressed real estate markets, harm to minors, spread of disease and an overall decline in the quality and character of surrounding neighborhoods. These secondary impacts are detailed in at least the following studies of adult oriented businesses:

- Department of Planning And Development Director's Report, Adult Cabarets in Seattle, March 28, 2006
- The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence, by Alan C. Weinstein & Richard McCleary
- Crime-Related Secondary Effect of Sexually-Orientated Businesses: Report to the City Attorney, By Richard McCleary, Ph.D., May 6, 2007
- Effects of Adult Entertainment Businesses on Residential Neighborhoods, Prepared for The office of the City Attorney El Paso, by The Department of Planning, Research & Development, September 26, 1986
- Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, By Richard McCleary & Alan C. Weinstein
- Report To: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses, by Peter R. Hecht, Ph.D., March 31, 1996
- Presentation made to the Rome GA City Commission on the Crime Rate Effect of Adult Entertainment, by Captain Marshall Smith, March 6, 1995
- Survey of Texas Appraisers, Secondary Effects of Sexually-Oriented Businesses on Market Values, by Connie B. Cooper, FAICP & Eric Damian Kelly, Ph.D., FAICP. Crime-Related Secondary Effects, Secondary Effect of "Off-Site" Sexually-Oriented Businesses, by Richard McCleary, Ph.D., June 2008

These provisions have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult entertainment materials. Similarly, it is neither the intent nor effect of these provisions to restrict or deny access by adults to adult entertainment materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Adult Oriented Businesses must comply with the following additional criteria:

- 408.1 Setback Requirements. An Adult Oriented Business shall meet the following setback requirements in addition to the parcel boundary setback requirements of the zoning district[s]; and
- A. An Adult Oriented Business shall be located a minimum of 500 feet from the boundary of any residential zoning district. The distance shall be measured in a straight line from the boundary of the residential zoning district to the closest exterior wall of the proposed Adult Oriented Business; and
  - B. An Adult Oriented Business shall be located a minimum of 1,000 feet from any other Adult Oriented Business already in existence. The distance shall be measured in a straight line from the closest exterior wall of the existing Adult Oriented Business to the closest exterior wall of the proposed Adult Oriented Business; and
  - C. An Adult Oriented Business shall be located a minimum of 500 feet from any parcel that is the site of any public library; or any public, private, or parochial school or preschool; or any daycare center; or any public park or playground; or any place of worship or any non-commercial establishment operated by a bona fide religious organization. The distance shall be measured in a straight line from the closest property line of any listed use, parcel or zoning area, and to the closest exterior wall of the proposed Adult Oriented Business.
- 408.2 Screening. All building openings, entries and windows of Adult Oriented Business Establishments shall be located, covered or screened in such a manner as to prevent a view into the interior from any public or semi-public area, including public sidewalks, streets, arcades, hallways, or passageways of any material which has as its primary theme matter depicting, illustrating, or describing, Specified Anatomical Areas or Specified Sexual Activities.
- 408.3 Signs. No sign visible from the exterior of an Adult Oriented Business shall include any image, depiction or linguistic reference to Nudity, Specified Anatomical Areas, or Specified Sexual Activities.
- 408.4 Application Requirements. In addition to the information otherwise required by the Town of Derby Zoning Bylaw, applicants shall include the following supplemental information:
- A. The names and addresses of any Adult Oriented Business establishments within 1,000 feet of the exterior walls of applicant's proposed Adult Oriented Business. The distance shall be measured in a straight line from the property line of the existing Adult Oriented Business to the closest exterior wall of the proposed Adult Oriented Business.
  - B. The names and addresses of the owner of any parcel that is the site of any public library; or any public, private, or parochial school or preschool; or any daycare center; or any public park or playground; or any place of worship or any non-commercial establishment operated by a bona fide religious organization within 500 feet of the exterior wall of applicant's proposed Adult Oriented Business. The distance shall be

measured in a straight line from the closest property line of any listed use, parcel or zoning area, and to the closest exterior wall of the proposed Adult Oriented Business.

- 408.5 Waivers. The setback requirements of §408.1 may be reduced upon approval of the Planning Commission only if the applicant can demonstrate that the regulation is unnecessarily stringent because it fails to provide any reasonable avenue for expressive speech. The setback requirements may be reduced a maximum of 20% below the original requirement.

A waiver request shall be made at the time of application for a conditional use permit. In granting such waiver, the Planning Commission may require additional site mitigation through design and screening requirements as a condition of approval. The request for waiver shall state the reasons why strict compliance with the zoning bylaw setback requirements would result in an excessive burden on communication, and shall propose avenues for lessening that burden through the permitting process.

**Add the following definitions to §1102:**

**Adult Oriented Business:** An Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, or Adult Motion Picture Theater.

**Adult Arcade:** Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or any form of consideration, electronically, electrically, or mechanically controlled still or motion-picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Anatomical Areas or Specified Sexual Activities.

**Adult Bookstore, Adult Novelty Store or Adult Video Store:** Includes any of the following:

- a. A commercial establishment which has as a substantial or significant portion of its stock in trade in the sale or rental for any form of consideration books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, laser or digital video discs, or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities or instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities; or
- b. A commercial establishment with at least 33% of its store area, or 33% of its display or sales area, utilized in the storing and offering for sale or rental for any form of consideration, books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, laser or digital video discs, or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities or instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities.

**Adult Cabaret:** A commercial establishment which regularly offers or features:

- a. Persons who appear in a state of Nudity or Semi-nudity; or
- b. Live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

**Adult Motion Picture Theater:** A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, laser or digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities.



**Nudity:** The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the showing of the covered male genitals in a discernibly turgid state.

**Semi-nude:** The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

**Specified Anatomical Areas:** Any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola; or
- b. The human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**Specified Sexual Activities:** Any of the Following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or
- b. Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

**Add Adult Oriented Business as a conditional use in the following zoning districts:**

- a. Industrial (IND)
- b. Commercial/Industrial (COM/IND)

Seconded by Richard Del Favero. **Ayes – Richard Del Favero, Brian Fisher, Jim Bumps, Joe Profera. Nays – Dave LaBelle. The motion passes by a majority vote.**

The Commission reviewed their mail and briefly discussed other possible bylaw amendments.

8:00 p.m.: Upon a motion by Jim Bumps and seconded by Dave Labelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* June 4, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera.

**MEMBERS ABSENT:** Richard Del Favero.

**OTHERS PRESENT:** Michele Jones, Richard Jones, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (May 21) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-037 by Richard & Michele Jones, PIN #TRD03028C5T, for preliminary and final plat approval for a 3 lot subdivision. Lot #1 – 3.13 ac, lot #2 – 2.09 ac, and lot #3 - 2.28 ac. This property is located at 1150 Beebe Road and is the Residential Two Acre (R2) zoning district. Mr. & Mrs. Jones were present to explain the request. Lot #1 is developed with a single family dwelling. All lots have State permits for water/sewer. Lot #1 has frontage on the Beebe Road and lots 2 & 3 have access via a 30 ft wide R.O.W. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-037 by Richard & Michele Jones. Seconded by Brian Fisher. **Approved by a unanimous decision.**

After deliberating on the above application, Dave LaBelle made a motion to grant final plat approval for application 12-037 by Richard & Michele Jones as submitted with the condition that a mylar of the approved plat must be filed with the Town Clerk within 180 days of this decision (see attached written decision). Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission reviewed their mail.

7:30 p.m.: Upon a motion by Dave LaBelle and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

## DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* May 21, 2012

**MEMBERS PRESENT:** Richard Del Favero, Brian Fisher, Jim Bumps, Joe Profera.

**MEMBERS ABSENT:** Dave LaBelle.

**OTHERS PRESENT:** Nathan Hamblett, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (May 7) as written. Seconded by Dave LaBelle. **Approved by a unanimous decision.**

Bylaw amendments were discussed.

Nathan Hamblett was present and submitted a formal request for an amendment to the bylaw to reduce the side yard setback in the Village Commercial/Derby Center (VCDC) zoning district to 10 ft. ZA Bob Kelley submitted a draft amendment report. After reviewing the report Richard Del Favero made a motion to approve the report. Seconded by Brian Fisher. **Approved by a unanimous decision.** A hearing for this amendment will be scheduled for June 18<sup>th</sup>.

ZA Bob Kelley handed out the latest draft of the amendment to regulate adult businesses. The town attorney has reviewed it and made a few suggestions. The Planning Commission has reviewed 8 different studies concerning the secondary affects adult businesses have on communities and have concluded that it would be beneficial to the town to regulate adult businesses. Below is a list of the studies:

- Department of Planning And Development Director's Report, Adult Cabarets in Seattle, March 28, 2006
- The association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence, by Alan C. Weinstein & Richard McCleary
- Crime-Related Secondary Effect of Sexually-Orientated Businesses: Report to the City Attorney, By Richard McCleary, Ph.D., May 6, 2007
- Effects of Adult Entertainment Businesses on Residential Neighborhoods, Prepared for The office of the City Attorney El Paso, by The Department of Planning, Research & Development, September 26, 1986
- Do "Off-Site" Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, By Richard McCleary & Alan C. Weinstein
- Report To: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses, by Peter R. Hecht, Ph.D., March 31, 1996
- Presentation made to the Rome GA City Commission on the Crime Rate Effect of Adult Entertainment, by Captain Marshall Smith, March 6, 1995
- Survey of Texas Appraisers, Secondary Effects of Sexually-Oriented Businesses on Market Values, by Connie B. Cooper, FAICP & Eric Damian Kelly, Ph.D., FAICP. Crime-Related Secondary Effects, Secondary Effect of "Off-Site" Sexually-Oriented Businesses, by Richard McCleary, Ph.D., June 2008

The Commission made minor changes to the draft (see attached) and drafted a report for this amendment. Brian Fisher made a motion to approve the report. Seconded by Richard Del Favero. **Approved by a unanimous decision.** A hearing for this amendment will be scheduled for June 18<sup>th</sup>.

The Commission reviewed a proposed bylaw amendment addressing nonconforming lots and made a couple of changes. It is proposed to add §303 *Nonconforming Lots* to Article 3 and §401.1 *Existing Small Lots* will be deleted. One of the intents of this amendment is to prevent any further development on existing small lots less than 1/8 ac or with a width or length dimension less than 40 ft (see attached). The Commission drafted a report for this amendment. Richard Del Favero made a motion to approve the report. Seconded by Brian Fisher. **Approved**

**by a unanimous decision.** A hearing for this amendment will be scheduled for June 18<sup>th</sup>.

The Commission reviewed their mail.

8:40 p.m.: Upon a motion by Jim Bumps and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

## DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* May 7, 2012

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps, Joe Profera.

**MEMBERS ABSENT:** Richard Del Favero.

**OTHERS PRESENT:** Nathan Hamblett, Gregory Bliss, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Apr 23) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-024 by James Mulkin & Fred Oeschger, PIN #NDRT5051G4T, for site plan review for outside seating for VT Pie & Pasta. This property is located at 4278 Route 5 and is in the Commercial (COM) zoning district. Mr. Bliss was present to explain the request. The existing restaurant is rated for 125 seats by the fire marshal. The proposed 40 outside seats will bring the total seating to 165. This translates to 55 parking spaces at 1 for every 3 seats. The DHL office occupies approx 1,800 sq ft and requires 7 parking spaces for a total of 62 parking spaces. Mr. Bliss submitted an overall site plan with 67 parking spaces depicted. The outside seating area will be in an existing landscaped area. Pavers will be installed in this area and additional landscaping/fencing will be added around the edge to screen the seating area. A window will be replaced by a door so that the only access with to the seating area will be from the restaurant. This is to satisfy the liquor control officer. There were no comments from interested parties. Dave LaBelle made a motion to close application 12-024 by James Mulkin & Fred Oeschger. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Nathan Hamblett was present to discuss a possible amendment to the bylaw to reduce the side yard setback in the Village Commercial/Derby Center (VCDC) zoning district to 10 ft. He owns the Farmyard Store on Rte 5 and would like to remove the front portion of the building and put an addition on the west side to make up for the lost retail space. This will allow him to have parking in the front and better visibility and appeal from the street, which he feels will be a big help to his business. The commission reviewed the existing zoning and noted that the Commercial (COM) zone further to the west allows for 10 ft side and rear setbacks and the Village Commercial/Derby Line (VCDL) has no setback requirements. The Commission felt that it was reasonable and would be beneficial to the Town to reduce the side yard setback in the VCDC zone to allow better use of commercial properties. Mr. Hamblett will submit a formal request for this amendment at the next meeting.

Bob Kelley submitted a proposed bylaw amendment addressing nonconforming lots. The zoning board recently denied a request to expand a nonconforming camp and felt that there was an error in §401.1 which now allows lots less than 1/8 ac to be developed. The zoning board would like the bylaw to restrict future development on lots less than 1/8 ac. The commission will review the amendment and discuss it further at their next meeting.

The Commission deliberated on the above application, Dave LaBelle made a motion to grant site plan approval for application 12-024 by James Mulkin & Fred Oeschger as submitted (see attached written decision). Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission reviewed their mail.

8:30 p.m.: Upon a motion by Jim Bumps and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* April 23, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Brian Fisher, Jim Bumps.

**MEMBERS ABSENT:** Richard Del Favero, Joe Profera.

**OTHERS PRESENT:** Nancy Moore, Tom Strunjo, Diana Brennan, ZA Bob Kelley.

7:00 p.m.: Vice Chair Dave LaBelle called the meeting to order. Brian Fisher made a motion to approve the minutes to the March 26<sup>th</sup> meeting as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Brian Fisher made a motion to approve the minutes to the last meeting (Apr 9) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Brian Fisher made a motion to recess the meeting for a public hearing for a proposed bylaw amendment. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Vice Chair Dave LaBelle read the warning for the Public Hearing and it was noted that this hearing was table from their last meeting. There were no comments from the public on the proposed bylaw amendment to change parcel #RT005044C6T from Residential 2-Acre (R2) to Commercial (COM) and to combine Apartment House and Apartment Building into one use, Multi-Family Dwelling.

Jim Bumps made a motion to close the Public Hearing. Seconded by Brian Fisher. **Approved by a unanimous decision.**

After a brief discussion on the proposed amendment Jim Bumps made a motion to recommend to the Selectboard that they approve the following proposed bylaw amendments:

- 1. Zoning Map Change – Change parcel # RT005044C6T from Residential 2-Acre (R2) to Commercial (COM). This parcel is a 16 acre portion of the former Provost farm located at 1035 Route 5 between Derby Line and Derby Center.**
- 2. To combine two defined uses, “Apartment House” and “Apartment Building”, into one use “Multi-Family Dwelling”. All references in the bylaw to Apartment House and Apartment Building will be changed to Multi-Family Dwelling. In zoning districts where one is a permitted use and the other is a conditional use Multi-Family Dwelling will be a conditional use.**
- 3. Delete the definitions of Apartment House and Apartment Building.**
- 4. Amend the definition of Multi-Family Dwelling to read as “A residential building designed for or occupied by three or more families living independently of each other in individual dwelling units. A multi-family dwelling is a principal residential use.**

Seconded by Brian Fisher. **Approved by a unanimous decision.**

Vice Chair Dave LaBelle read the warning for application 12-008 by Eric Lawson/JM & MM Properties LLC, PIN #NDRT5040G3T, for site plan review to demolish the existing Village Pizza building and build a 12,000 sq ft building. 9,400 sq ft for retail and 2,600 sq ft for a restaurant. This property is located at 3693 Route 5 and is in the Commercial (COM) zoning district. This application had been table from their March 26<sup>th</sup> meeting. Mr. Strunjo was present to explain the request. A revised site plan was submitted. The plan was changed to maintain the existing easements across the property. The access was moved, the building was moved slightly, and parking was redesigned to accommodate the changes. Landscaping was also modified to take into account suggestions from the Commission at the last meeting and a circulation plan for delivery trucks was submitted. There were no additional comments from interested parties. Brian Fisher made a motion to close application 12-008 by Erik Lawson/JM & MM Properties LLC. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Diana Brennan inquired as to the progress on the amendment to regulate Adult Orientated Businesses. The Commission is waiting to hear back from the Town's attorney.

The Commission deliberated on the above application, Brian Fisher made a motion to grant site plan approval for application 12-008 by Erik Lawson/JM & MM Properties LLC as submitted (see attached written decision). Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission reviewed their mail.

8:00 p.m.: The meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* April 9, 2012**

**MEMBERS PRESENT:** Richard Del Favero, Jim Bumps.

**MEMBERS ABSENT:** Dave LaBelle, Joe Profera, Brian Fisher.

**OTHERS PRESENT:** ZA Bob Kelley.

7:00 p.m.: The meeting was called to order. Because there were only 2 members present all they could do was table the hearing to another date.

Jim Bumps made a motion to table until 7:00 pm April 23, 2012 here in the Municipal building, the Public Hearing for public input on a proposed bylaw amendment to change parcel #RT005044C6T from Residential 2-Acre (R2) to Commercial (COM) and to combine Apartment House and Apartment Building into one use, Multi-Family Dwelling. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

7:05 p.m.: The meeting was adjourned.

*The minutes were taken by Bob Kelley*



**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* March 26, 2012**

**MEMBERS PRESENT:** Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** Jim Bumps.

**OTHERS PRESENT:** None.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Mar 12) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Dave LaBelle made a motion to remove application 12-008 from the table. This application is by Eric Lawson/JM & MM Properties LLC, PIN #NDRT5040G3T, for site plan review to demolish the existing Village Pizza building and build a 12,000 sq ft building. 9,400 sq ft for retail and 2,600 sq ft for a restaurant. This property is located at 3693 Route 5 and is in the Commercial (COM) zoning district. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The applicant could not complete everything the Commission wanted and has requested that the application be tabled until April 23<sup>rd</sup>. Dave LaBelle made a motion to table application 12-008 by Erik Lawson/JM & MM Properties LLC until Monday April 23, 2012 at 7:00 pm here in the municipal building to give the applicant time to work out easement issues. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission reviewed application 12-015 by Main Street Place LLC to raze the buildings and level the sites at 50 & 58 Main Street, Derby Line. The application was submitted today and is virtually identical to application 11-001 which is under appeal to Environmental Court. As per VSA 24 §4470 the Commission has 10 days to determine if they wish to reconsider this application. Dave LaBelle made a motion to reject the request by Main Street Place, application 12-015, to reconsider the razing and leveling of their lots on Main Street, Derby Line because this issue has already been heard by the Commission and is now under appeal before Environmental Court (see attached written decision). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

7:15 p.m.: Upon a motion by Dave LaBelle and seconded by Richard Del Favero, the meeting was adjourned.

*The minutes were taken by Dave LaBelle*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* March 12, 2012**

**MEMBERS PRESENT:** Jim Bumps, Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Tom Strunjo, Jim Mulkin, Nancy Moore, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Feb 27) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Dave LaBelle made a motion to recess the meeting for a public hearing for a proposed bylaw amendment. Seconded by Brian Fisher. **Approved by a unanimous decision.**

There were no comments from the public on the proposed bylaw amendment to add Petroleum/Propane Bulk Storage as a Conditional Use in the Commercial/Industrial (COM/IND) zoning district.

Dave LaBelle made a motion to close the Public Hearing. Seconded by Jim Bumps. **Approved by a unanimous decision.**

After a brief discussion on the proposed amendment Dave LaBelle made a motion to recommend to the Selectboard that they approve the proposed bylaw amendment to add "Petroleum/Propane Bulk Storage" as a Conditional Use in the Commercial/Industrial (COM/IND) zoning district. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-008 by Eric Lawson/JM & MM Properties LLC, PIN #NDRT5040G3T, for site plan review to demolish the existing Village Pizza building and build a 12,000 sq ft building. 9,400 sq ft for retail and 2,600 sq ft for a restaurant. This property is located at 3693 Route 5 and is in the Commercial (COM) zoning district. Mr. Mulkin & Mr. Strunjo were present to explain the request. Mr. Mulkin has a contract to buy the property. A letter from attorney John Monette, representing abutting property owners Dr. Durward & Lorraine Starr was passed out to the Commission explaining easements and right that they have in the Lawson property. Easements include a 30 ft strip on the west side of the property and 15 ft along the east side of the property. All aspects of the site plan were reviewed. Concerns were expressed regarding the greenstrips, circulation for deliveries, and the freestanding sign. The applicant is working with the Starrs to resolve easement issues. Dave LaBelle made a motion to table application 12-008 by Erik Lawson/JM & MM Properties LLC until Monday March 26, 2012 at 7:00 pm here in the municipal building to give the applicant time to work out easement issues. Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission discussed bylaw amendments to 1) change the zoning district of a 16 ac parcel, PIN #RT005044C6T, located at 1035 Route 5 from Residential 2-acre (R2) to Commercial (COM) and 2) replace references to apartment house and apartment building into one use defined as a Multi-family dwelling. Dave LaBelle made a motion to begin the amendment process and warn a Public Hearing for April 9, 2012. Seconded by Brian Fisher. **Approved by a unanimous decision.**

After deliberations, Richard Del Favero made a motion to grant site plan approval for application 12-007 by U.S. Fish & Wildlife Service as submitted with the condition that the signage onto the private roads (Lake Park Road, Cove Road, Windswept Drive) be installed stating "Private Road – No Public Lake Access" (see attached written decision). Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission reviewed their mail.

8:35 p.m.: Upon a motion by Jim Bumps and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* February 27, 2012**

**MEMBERS PRESENT:** Jim Bumps, Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Paul Hamelin, Ted Cantwell, Cindy Cantwell, George Grady, Anne Andrus Grady, Ken Sturm, Cecile Provost, Gary Sexton, Nancy Moore, Pat Vana, Karen Jenne, Bruce Lippens, Karen Lippens, Lewis Rose.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Feb 13) as written. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-007 by U.S. Fish & Wildlife Service, PIN #TRD17001A1T, for site plan approval for 2 parking areas, 1 turnaround area, 1 hanging entrance sign, and 2 informational kiosks for the Eagle Point Wildlife Management Area. This property is located on Eagle Point Road and is in the Shoreland (SD), Residential 1-Acre (R1) and Rural Residential (RR) zoning districts. Mr. Hamelin & Mr. Sturm were present to explain the request. There were interested parties from the area that expressed concerns with the location of the turnaround. After all testimony Dave LaBelle made a motion to close the hearing on application 12-007 by U.S. Fish & Wildlife Service. Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission began discussion on whether the town should become an interested party in the wind towers outside of Derby Line proposed by Encore Derby Line Wind LLC. Ms. Jenne was present and urged the Commission to recommend that the Town should file as an interested party. Dave LaBelle made a motion to recommend to the Selectboard that they intervene as an interested party because it doesn't meet the criteria of §402.5 of the bylaw. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Ms. Moore, Ms. Provost & Mr. Sexton were present to discuss a bylaw change for a project they would like to do on the former Provost farm between Derby Center and Derby Line. They would like the zoning on the property changed from R2 to COM as they would like to convert the old farm house into apartment and the R2 zone doesn't allow this. All the property on the other side of Route 5 is zoned COM so this would not be spot zoning. The Commission liked the proposal and will proceed with the amendment.

9:00 p.m.: Upon a motion by Dave LaBelle and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Dave LaBelle*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* February 13, 2012**

**MEMBERS PRESENT:** Jim Bumps, Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Clark Curtis, Ken Laplume, Marc Nadeau, Tom Roberts, Claire Roberts, Keith Beadle, Mitch Wonson, ZA Bob Kelley.

7:05 p.m.: Vice-Chair Dave LaBelle called the meeting to order. Brian Fisher made a motion to approve the minutes to the last meeting (Jan 30) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

Richard Del Favero made a motion to recess the meeting for a public hearing for a proposed bylaw amendment. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Vice-Chair Dave LaBelle read the notice for the public hearing for public comments on a bylaw amendment for a change to the Zoning Map by changing 2 parcels (MSTDL027A6L & MSTDL029A6L) from Village Residential One/Derby Line (VR1-DL) to Village Residential Two/Derby Line (VR2-DL). These parcels are located on the west side of Main Street between Elm and Beech Streets. Chair Joe Profera arrived took over for the Vice-Chair.

Keith Beadle, Derby Line Village Trustee, stated that the Trustees are in favor of the amendment. It was noted that the parcels on either side are in the VR2-DL zoning district. There were no other comments on the proposed change. Dave LaBelle made a motion to close the Public Hearing. Seconded by Brian Fisher. **Approved by a unanimous decision.**

After a brief discussion on the proposed amendment Dave LaBelle made a motion to recommend to the Selectboard that they approve the following bylaw amendment: Change 2 parcels (MSTDL027A6L & MSTDL029A6L) from Village Residential One/Derby Line (VR1-DL) to Village Residential Two/Derby Line (VR2-DL). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-003 by Thomas & Claire Roberts, PIN #TRD06040A2T, for preliminary and final plat approval for a 3 lot subdivision. Lot #1 – 3.7 ac, lot #2 – 3.1 ac, and lot #3 6.5 ac. This property is located at 1900 North Derby Road and is the Residential One Acre (R1) zoning district. Mr. & Mrs. Roberts were present to explain the request. The Commission reviewed the subdivision plat. There was no testimony from interested parties. Dave LaBelle made a motion to close the hearing on application 12-003 by Thomas & Claire Roberts. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 12-006 by Douglas & Vivian Spates, PIN #NDRT5022G3T, for preliminary and final plat approval for a 2 lot subdivision. Lot #1 – 1.0 ac and lot #2 – 2.78 ac. This property is located at off Route 5 west of Country Side Commons and is the Commercial (COM) zoning district. Mr. Wonson was present to explain the request. This same subdivision was approved in 2006, but the owner did not file the subdivision plat with the Town Clerk within the required 180 day which voided the application. The Commission reviewed the subdivision plat. There was no testimony from interested parties. Dave LaBelle made a motion to close the hearing on application 12-006 by Douglas & Vivian Spates. Seconded by Brian Fisher. **Approved by a unanimous decision.**

The Commission began discussion on a proposed amendment by Marc Nadeau to add Petroleum/Propane Bulk Storage as a permitted use the Commercial/Industrial (COM/IND) zoning district. Mr. Nadeau and Mr. Laplume were present to explain the request. Safety and

regulations concerning this use were discussed. There are 3 COM/IND districts in the Town. The area around Citizens Road, 3 lots at the beginning of John Taplin Road, and the Tivoly lot at the end of Baxter Drive. Mr. Nadeau is interested in developing a lot on Citizens Road. The Commission thought the request was a good idea as a conditional use in the district. Fire protection would be reviewed on a case by case basis during conditional use and site plan review. A Public Hearing will be scheduled for March 12<sup>th</sup>. ZA Bob Kelley submitted a draft report for this amendment. Dave LaBelle made a motion to approve the report. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

After deliberations Dave LaBelle made a motion to grant final plat approval for application 12-003 by Thomas & Claire Roberts as submitted with the condition that a mylar of the approved plat must be filed with the Town Clerk within 180 days of this decision (see attached written decision). Seconded by Richard Del Favero. **Approved by a unanimous decision.**

Dave LaBelle made a motion to grant final plat approval for application 12-006 by Douglas & Vivian Spates as submitted with the condition that a mylar of the approved plat must be filed with the Town Clerk within 180 days of this decision (see attached written decision). Seconded by Jim Bumps. **Approved by a unanimous decision.**

The Commission reviewed their mail.

8:12 p.m.: Upon a motion by Jim Bumps and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* January 30, 2012**

**MEMBERS PRESENT:** Jim Bumps, Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Nancy Moore, John Moore, Gary Sexton, Cecile Provost, Richard O'Hara, Rick Dubois, ZA Bob Kelley.

7:00 p.m.: Chair Joe Profera called the meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Jan 16) as written. Seconded by Richard Del Favero. **Approved by a unanimous decision.**

The Commission began discussion on a proposed amendment to regulate adult businesses. The Town's attorney has reviewed the draft and made a few suggested changes. The Commission agrees with the changes and made a few additional changes. The Commission was given studies showing the adverse secondary affect adult businesses may have on a neighborhood and will review them for their next meeting. Mr. O'Hara and Mr. Dubois support the regulation of adult businesses.

Other bylaw amendments: A group of people were present to discuss the former Provost property between Derby and Derby Line. They would like to purchase the property and restore the barn and convert the house to apartments. The property is currently in the R2 zoning district and multi-family dwellings are not allowed. They were wondering if the Commission would be receptive to a bylaw change to allow this use on the property. The Commission was willing to look into it further. Possible changes were discussed and it was felt that changing the property to COM may be the best option. The Commission would like some time to think about this and will have it as an item on their agenda in 4 weeks.

The Commission reviewed their mail.

8:55 p.m.: Upon a motion by Jim Bumps and seconded by Dave LaBelle, the meeting was adjourned.

*The minutes were taken by Bob Kelley*

**DERBY PLANNING COMMISSION \*\*\*MINUTES\*\*\* January 16, 2012**

**MEMBERS PRESENT:** Jim Bumps, Dave LaBelle, Joe Profera, Brian Fisher, Richard Del Favero.

**MEMBERS ABSENT:** None.

**OTHERS PRESENT:** Richard Hoffman, Dave Bouffard, Clark Curtis, ZA Bob Kelley.

**Public Hearing on Bylaw Amendments.**

7:00 p.m.: Chair Joe Profera called the Public Hearing to order for public comments on a proposed bylaw amendment to Article 3 Nonconformities. This is a total rewrite of Article 3 to allow more flexibility and greater clarity in how nonconformities will be treated. There were no comments from the public. The Commission discussed the amendment in detail. Dave LaBelle made a motion to close the Public Hearing. Seconded by Brian Fisher. **Approved by a unanimous decision.**

**Regular Meeting.**

7:25 p.m.: Chair Joe Profera called their regular meeting to order. Dave LaBelle made a motion to approve the minutes to the last meeting (Dec 19) as written. Seconded by Jim Bumps. **Approved by a unanimous decision.**

After a brief discussion on the proposed amendment to Article 3 Dave LaBelle made a motion to recommend to the Selectboard that they approve the following bylaw amendment to have Article 3 read as follows:

**ARTICLE 3: NONCONFORMITIES**

*In conformance with Title 24 VSA §4412(7), the following provisions shall apply to all nonconformities existing on the effective date of this bylaw.*

**§301 Nonconforming Uses**

*A nonconforming use is a use of land that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including uses improperly authorized as a result of error by the administrative officer. Section 206 of this bylaw identifies the uses that are currently permitted in each zoning district, as well as those uses that are authorized upon the granting of a conditional use permit.*

**301.01 A nonconforming use may:**

- A. Continue indefinitely or*
- B. Be converted to or restored to a conforming use or*
- C. Be reestablished if it has ceased to exist or been discontinued for a period of less than six (6) months for any reason or*
- D. Be changed to another nonconforming use provided that it is of the same or a of more conforming nature (the Zoning Board of Adjustment shall make the determination using the Conditional Use criteria in making their decision) or*
- E. Increase the number of dwelling units (nonconforming multi-family dwellings only) with conditional use approval and providing all the following criteria are met:*
  - 1. The increase in units shall not modify the external dimensions of the structure;*
  - 2. The increase in units shall not increase the livable square footage of the structure;*
  - 3. The increase in units shall not increase the total number of bedrooms within the structure.*

**301.02 A nonconforming use shall not be:**

- A. Moved, enlarged or extended or*



*B. Reestablished if it has ceased to exist or been discontinued for a period of six (6) months or more for any reason or*

*C. Reestablished if it has been replaced by a conforming use.*

**301.03** *Intent to reestablish a nonconforming use shall not confer the right to do so.*

**§302** **Nonconforming Structures**

*A nonconforming structure is a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including structures improperly authorized as a result of error by the administrative officer.*

**302.01** *A nonconforming structure may be:*

*A. Continued indefinitely or*

*B. Enlarged, altered, or extended provided any enlargement, alteration, or extension is in conformance with all applicable sections of the current bylaw or*

*C. Reestablished within the same footprint if damaged or destroyed by fire, explosion, accident, natural disaster, public enemy, or other accidental means outside the control of the owner, provided a permit application for the restoration or reconstruction is submitted to the administrative officer within six (6) months of the date the nonconforming structure was damaged or destroyed or*

*D. Increased in height, provided any increase is in compliance with the maximum building height for the district in which it is located or*

*E. With the approval of the Zoning Board of Adjustment, enlarged, altered, or extended provided any enlargement, alteration, or extension does not bring the building any closer to the property line causing the nonconformity. The Zoning Board of Adjustment shall use the Conditional Use criteria in making their decision.*

**302.02** *A nonconforming structure shall not be:*

*A. Enlarged, altered, or extended if the enlargement, alteration, or extension is any closer to the property line causing the nonconformity or*

*B. Reestablished if, in the opinion of the administrative officer, it has been damaged, destroyed or deteriorated into an unusable condition for a period of six (6) months or more for any reason or*

*C. Reestablished if, in the opinion of the administrative officer, its existence has been discontinued for a period of six (6) months or more for any reason or*

*D. Reestablished if, in the opinion of the administrative officer, it has been replaced by a conforming structure.*

**302.03** *Nonconforming structures may be maintained. Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure provided that such action does not increase the degree of nonconformity.*

The motion was seconded by Brian Fisher. **Approved by a unanimous decision.**

Chair Joe Profera read the warning for application 11-107 by NCUHS, PIN #TRD56001E4T, for site plan approval for a 24 ft by 72 ft heavy equipment storage building. This property is located at 633 Upper Quarry Road. This application was tabled from their Dec 19<sup>th</sup> meeting. Mr. Hoffman was present to explain the request. There was a site visit on December 20, 2011 at 11:00 am with the following present: Joe Profera, Dave LaBelle, Brent Hilliard, Richard Hoffman, and ZA Bob Kelley. As a result of the site visit there were no further questions from the Commission. There was no testimony from interested parties. Dave LaBelle made a motion to close the hearing on application 11-107 by NCUHS. Seconded by Brian Fisher. **Approved by a unanimous decision.**

Clark Curtis was present to discuss a proposed bylaw amendment to change the zoning district of his property on Main Street in Derby Line from VR1-DL to VR2-DL. The Derby Line Village

Trustees support this change. The Curtis property and the one next door are in the VR!-DL district while properties on either side of them are in the VR2-DL district. The Commission agrees with the proposal but would like to change the Curtis property and his neighbor's property to VR2-DL. The Commission approved a report required for the amendment and set a tentative public hearing date for Feb 13<sup>th</sup>.

Adding Petroleum/Propane Bulk Storage as a permitted or conditional use in the COM/IND was very briefly discussed and it was decided it would be best to have this as an agenda item on their Feb 13<sup>th</sup> meeting.

The Commission went into deliberations on the NCUHS application. After deliberations Jim Bumps made a motion to grant site plan approval for application 11-107 by NCUHS as submitted (see attached written decision). Seconded by Dave LaBelle. **Approved by a unanimous decision.**

The Commission reviewed their mail.

8:25 p.m.: Upon a motion by Jim Bumps and seconded by Brian Fisher, the meeting was adjourned.

*The minutes were taken by Bob Kelley*