

The regular monthly meeting of the City Planning Board was held on January 18, 2012, in the City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

Present at the meeting were Members Regan, Lavers, Hicks, Foss, Smith Meyer, Swope, and City Council Representative Shurtleff. City Planner McPherson, Ms. Hebert, and Ms. Muir of the City's Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:00 p.m., a quorum was present. The Chair called the meeting to order.

APPLICATIONS

1. Application by the Concord Area Trust for Community Housing (CATCH) for a condominium subdivision for the Endicott Hotel at 3 South Main Street. (2012-0004)

Determination of Completeness

Ms. Hebert reported that the application is complete and ready for public hearing.

Mr. Swope moved and Ms. Smith Meyer seconded that the Planning Board determine this application to be complete and to open the hearing. Motion carried unanimously.

Public Hearing

Ms. Hebert reported that CATCH is proposing to convert one of the two existing condominium units at the Endicott Hotel building into four units and to designate limited common area for all of the units in the basement and first floor of the building. She stated that the existing unit that is to be further subdivided includes the first floor and the basement, and the four additional units would be for non-residential use. The second existing unit, which includes the second, third, and fourth floors of the building, will be renovated by CATCH to accommodate twenty-five market-rate rental apartments.

Mr. Michael Reed, Director of Real Estate for CATCH, and Mr. Richard Uchida, from Orr & Reno, were present on behalf of the applicant.

In response to questions from the Planning Board, Mr. Reed stated that the single condominium unit encompassing the second, third, and fourth floors of the building would be renovated into one, two, and three bedroom market-rate rental apartments, ranging in size from about 600 to 1,000 square foot units.

Mr. Uchida stated that the sub-basement and some of the office space will be accessed through the Pleasant Street Extension side of the building.

Deliberations and Action

Mr. Swope moved to grant conditional final subdivision approval of the condominium conversion for CATCH at 1-5 South Main Street, as prepared by Richard D. Bartlett & Associates and C.N. Carley Associates, subject to the following standard condition:

STANDARD CONDITION:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings and condominium documents to address the minor concerns, corrections, and omissions noted by City Staff.

Ms. Smith Meyer seconded the motion. Motion carried unanimously.

2. **Application by Foco, Inc., for the Friendly Kitchen, for the construction of a new building and parking lot on South Commercial Street. Along with this application is a request for a Conditional Use Permit pursuant to Article 28-7-11(b) of the Zoning Ordinance for the construction of fewer parking spaces. (2012-0005)**

Determination of Completeness

Ms. Hebert reported that the application is complete and ready to be set for public hearing.

Mr. Hicks moved and Ms. Foss seconded that the Planning Board determine this application to be complete and set the public hearing for February 15, 2012. Motion carried unanimously.

3. **Application by Rumford Realty Corp. and Friendly Kitchen, Inc., for the construction of a parking lot at 12-14 & 16 Montgomery Street. (2012-0003)**

Determination of Completeness

Ms. Hebert reported that the application is complete and ready to be set for public hearing.

Mr. Swope moved and Ms. Foss seconded that the Planning Board determine this application to be complete and set the public hearing for February 15, 2012. Motion carried unanimously.

4. **Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4 (f), Architectural Design Review, of the Code of Ordinances.**
 - **Abbott Bennett Group, LLC, for a new hanging sign at 41 South Main Street.**
 - **St. Paul's Church for two new affixed signs at 21 Centre Street.**

Public Hearings and Deliberations and Action on all Sign Applications

The Chair opened the public hearings on all the above sign applications.

- **Abbott Bennett Group, LLC, for a new hanging sign at 41 South Main Street.**

Ms. McPherson reported that this application was discussed at the Architectural Design Review meeting in January. The Architectural Design Review Committee (ADRC) expressed concerns with the variable message portion of the sign; however, no one was present on behalf of the applicant to address these concerns. The ADRC recommended that the application be tabled.

Mr. Chris Bennett from Abbott Bennett Group, LLC was present. He stated that he had not received a notice regarding the Architectural Design Review meeting, although he had received notice regarding the Planning Board hearing.

Mr. Swope moved to table the application until the applicant could meet with the ADRC in February. Mr. Shurtleff seconded the motion. Motion carried unanimously.

- **St. Paul's Church for two new affixed signs at 21 Centre Street.**

Ms. McPherson stated that the ADRC recommended approval of the two new affixed signs for St. Paul's Church, as submitted.

The Rev. Kate Atkinson, Pastor at St. Paul's Church, was present to answer any questions.

Mr. Swope moved to approve the application as submitted. Ms. Smith Meyer seconded the motion. Motion carried unanimously.

5. Consideration of an application for building renovations and revisions to an existing freestanding sign and two affixed signs for Toys R Us at 310 Loudon Road. (2012-0001)

Ms. McPherson stated that Toys R Us is proposing to renovate the building for the first time since 1991. The applicant will be replacing tiles on the front of the building, adding doors at the entry to the store, repainting the building, as well as replacing the existing affixed sign with two new affixed signs and replacing the panel on the freestanding sign. Ms. McPherson reported that the ADRC recommended approval of the renovations and signs as submitted.

Mr. Swope moved to approve the renovations to the building and the signs as submitted. Mr. Regan seconded the motion. Motion carried unanimously.

ZONING AMENDMENT

6. Consideration of a request by Delta Dental on behalf of the Angwin Revocable trust for a partial rezoning of property at 107 Commercial Street from an Open Space Residential (RO) District to an Institutional (IS) District. [Referral from City Council from December 14, 2011].

Public Hearing

The Chair explained that the City Council has referred this zoning request by Delta Dental back to the Planning Board in light of additional information from the applicant, Planning Division staff, the Economic Development Advisory Committee, and the Conservation Commission. The Chair invited the applicant to speak and suggested that the focus of their remarks be limited to the rezoning request and not what the applicant is proposing to be built on the property.

Richard Uchida and Michael Cretella from Orr & Reno, Chris Nadeau from Nobis Engineering, Tracy Tarr from Stoney Ridge Environmental, and Tom Rafio from Northeast Delta Dental were present to present the request and answer any questions.

Mr. Uchida stated that Delta Dental seeks to rezone a 1.4 acre portion of the parcel that is above the flood plan from Open Space Residential (RO) Zoning District to the Institutional (IS) Zoning District. The features of this portion of the property are nearly identical to the commercial and institutional properties along the east side of Commercial Street. He stated that if the property is not rezoned, it will leave the Angwins with the only single family residence in the entire area -- not a practical result for the current owners given that the area is in a flood hazard district.

Mr. Uchida reported that the rezoning and development that Delta Dental proposes actually has the effect of enhancing, rather than adversely affecting, the environment and the natural resources in the area for the following reasons: (1) The 75 foot riparian buffer bordering Wattanummon's Brook and the 50 foot wetlands buffer to the south will be immediately re-vegetated; (2) With the conservation easement in place, the remaining eight and one half acre parcel will be protected in perpetuity; (3) The proposed conservation easement would provide for flood condition management; and (4) Delta Dental proposes environmentally sensitive development on the site.

Mr. Nadeau stated that Delta Dental is considering a LEEDs certified building on the sight with only 15 parking spaces. He stated that he was confident that any adverse impact of runoff from storm water would be mitigated by pervious pavement and rain gardens on site. Mr. Nadeau reported that the restoration of the 75 foot buffer and the 50 foot setback would amount to more than 20,000 square feet of restoration, with only five percent of lot coverage. He stated that he has been involved with the development of other sensitive areas, including the Audubon Society and the Forest Society sites.

Ms. Tarr reported that Stoney Ridge Environmental assessed the area in the fall and that currently a large area of the property consisted of lawn with shade trees. She stated that the area across the brook is where the natural resources are located and would be protected with the conservation easement, as would the undeveloped floodplain on the property. Ms. Tarr reported that the steep banks, agricultural soils, significant wildlife, grassland habitats, and turtle habitats would be protected under the new conservation easement.

Mr. Uchida explained that the proposed conservation easement has been revised as follows: ball fields are no longer being proposed; the re-vegetation of the buffers will take place upon the acquisition of the site; the 50 foot wetland buffer would receive the same protection and restoration as the 75 foot shore

land buffer; and there would be a management plan for the beaver dams and other impediments in the brook. He stated that the rezoning would provide the conservation of the area, which is a priority area for conservation according to the Master Plan. The rezoning would also have this taxable property as part of the Opportunity Corridor.

Mr. Uchida stated that the City could be assured of responsible development of this property with the rezoning; however, if the property remained within the Open Space Residential (RO) Zoning District, permitted uses included the raising of poultry and livestock, which could be more detrimental to the site.

Mr. Uchida addressed issues raised by the letter from the Conservation Commission and suggested that placing a conservation easement on the property would be the best way to protect the property -- without the conservation easement Horseshoe Pond and the buffers would be without protection.

Mr. Uchida explained questions had been raised about this request amounting to spot zoning. He stated that the Supreme Court identified spot zoning as zoning that is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area for the benefit of the owner of such property and to the detriment to other property owners. He also stated that the rezoning is consistent with the part of the City's Master Plan that sets this area as a priority for conservation easements.

Ms. Smith Meyer asked Mr. Uchida to explain the unwavering position of the Conservation Commission. Mr. Uchida replied that Mr. Henninger of the Planning Division had expressed surprise at the Conservation Commission's position.

Ms. McPherson asked Ms. Tarr whether the treatment and flow of storm water, which would be allowed under the draft conservation easement, would degrade the buffers that were proposed to be protected and enhanced. Mr. Nadeau responded that there is only sheet flow that would go into the buffers. Mr. Uchida stated that the language for that paragraph has been revised and softened in the proposed conservation easement.

Mr. Rafio explained that Delta Dental was here for the long run and believes that this is a winning situation for everyone involved. He stated that the project is better for the environment in that 8.6 of the 10 acres will be under a conservation easement; the project keeps Delta Dental in the opportunity corridor; the project provides the City with tax revenue; and the project provides the Angwins with a sale of their property. Mr. Rafio reiterated the changes that were being made in the conservation easement. He stated that Delta Dental is known for doing what they say they will do.

Mr. Frederick Chormann, Jr. and Mr. Christopher Kane, representatives from the City's Conservation Commission addressed the Planning Board.

Mr. Chormann stated that during the Master Plan process, Open Space Residential (RO) Zoning was specifically included with the Urban Growth Boundary along rivers, ponds, and certain named streams,

including the Merrimack River, Horseshoe Pond, and Wattanummon Brook, in order to protect these resources and their buffer zones. He stated that the Conservation Commission agrees that the Open Space Residential (RO) Zoning is appropriate for this parcel because all adjacent land uses are agricultural or conservation, and the land contains important buffers to Wattanummon Brook and associated wetland areas.

Mr. Chormann explained that removing obstacles in riparian zones has impacts further downstream in the Merrimack River. He stated that the area is protected naturally now, but that under the proposal, the protections would be engineered.

Mr. Kane stated that the applicant is offering the enticement of protection to the area through the use of a conservation easement; however, there is no committed grantee to accept the easement and enforce the easement in perpetuity, that this is simply a draft document.

Mr. Rob Morrill, an abutter to the Angwin property, addressed the Planning Board. He stated that he is an abutter to the west of the property and his property is currently under an easement with the Forest Society. He explained that he had a number of concerns with the project, as any raise in the level of the brook affects the agricultural land. He stated that Delta Dental has addressed a lot of the concerns that he and his family had regarding the project.

Mr. Morrill said that it is his opinion that more harm could come to the property without the rezoning and the conservation easement. Although he believes that this is spot zoning, he believes it is a win-win for Delta Dental, the City of Concord, and the abutters.

Mr. Tim Sink, President of the Greater Concord Chamber of Commerce, addressed the Planning Board. He said that the Chamber supports the zoning change and that Delta Dental has always been a good corporate citizen.

Mr. Uchida responded to the comment regarding engineered protections by stating that the engineered approach to designing these systems are to keep them as simple as can be, so that the owners do not have to do too much to take care of them. He stated that some controls would be better than no controls in the current residential zoning. He explained that the removal of the beaver dams and brook management protections that Mr. Morrill was concerned about are addressed and will be carried out under the conservation easement.

Mr. Uchida reported that the applicant had been in negotiations with a grantee for the conservation easement, but the perspective grantee halted the negotiations until the rezoning was passed.

Mr. Swope stated that much of this proposal hinges on having a conservation easement in place, and that without a grantee, the easement is not worth anything. He suggested that the conservation easement should be a condition of the rezoning.

Mr. Uchida stated that it was the intention of the applicant to have the zoning take effect only after the conservation easement was recorded.

Deliberations and Action

Mr. Swope moved to recommend to City Council to approve the partial rezoning of property at 107 Commercial Street from an Open Space Residential (RO) District to an Institutional (IS) District with the conditions that (1) the zoning take effect only after the conservation easement is recorded, (2) Item 3b of the conservation easement, which gives a reserved right for stormwater treatment and flow in the buffers, is reworded to the satisfaction of the Clerk of the Planning Board, and (3) a suitable entity to hold the conservation easement is found. Mr. Lavers seconded the motion.

Mr. Lavers said that he had previously been opposed to the rezoning, but is now more favorable to it. He stated that the applicant had listened to the concerns of the Planning Board and will increase the protections on the land at the time of acquisition of the property. He reiterated that Delta Dental is a great corporate entity within the City. He stated that the City is receiving quite a bit with the conservation easement and the City should be willing to give something, i.e., the rezoning of 1 ½ acres for redevelopment.

Mr. Hicks stated the Planning Division's concern regarding the stormwater runoff should be addressed and that a suitable grantee that will be able to manage the easement on the property must be in place.

The Chair stated that he is not in favor of recommending the rezoning, because he thinks that the proposed development and not just the rezoning is affecting the decisions of members of the Planning Board. He stated that there is no guarantee that a specific building will be built, and that once the property is rezoned, the Planning Board has no control. He questioned whether the Planning Board can add conditions to a rezoning.

Mr. Swope stated that the Planning Board can make any recommendation to the City Council, as the final decision rests with the City Council.

Mr. Hicks stated that he has thought about this project and believes that if the City came to the Planning Board with this request, that the conversation would have taken only 20 minutes and the rezoning would have taken place. He explained that the one and one half acre that is proposed for rezoning is different from the remaining eight acres.

Ms. Smith Meyer stated that the Master Plan process was laborious and well-thought through involving many boards and commissions, including the Conservation Commission. She said that the Master Plan provides guidance to what makes sense for the City and she respects the stance of the Conservation Commission. She stated that Delta Dental and the current property owners were around during the Master Plan and neither asked for any changes to the property at that time.

Ms. Foss explained that this has not been an easy decision for her, as she can see both sides. She said that if the road weren't there, it would probably result in a different decision, but she can't support the motion.

Ms. Swope stated that there appears to be some confusion with the zoning and Master Plan processes. They are separate processes and in reviewing the zoning for the City, not every boundary or parcel was looked at if an issue was not raised. He stated that the zoning process uses a broad brush stroke.

Mr. Hicks stated that he doesn't want to appear to be against the Conservation Commission, but many conservationists are farmers like the Morrills, who were originally opposed to the idea but are now okay with the rezoning. Mr. Hicks stated that that carries a lot of weight with him.

Mr. Swope stated that he has the greatest respect for the Conservation Commission.

Mr. Lavers stated that as an attorney he is not influenced by pretty pictures and that his decision is based solely on the protections that will be afforded by the conservation easement.

The Chair asked why the easement had not been discussed and enacted with the current property owners before the request for the zone change goes forward.

The motion failed on a four-to-four vote. Those voting for the motion included Mr. Swope, Mr. Regan, Mr. Lavers, and Mr. Hicks. Those members voting against the motion included Mr. Shurtleff, Ms. Foss, Ms. Smith Myer, and Mr. Drypolcher.

REGULAR MEETING

7. Annual Organization Meeting:

a. Election of Chair for 2012.

The Chair turned the meeting over to the Clerk of the Planning Board, Ms. McPherson. The Clerk presided over the election and called for nominations for Chair of the Planning Board for the ensuing year.

Mr. Swope moved to nominated Gerard Drypolcher for another term as Chair. Ms. Smith Meyer seconded the motion. Hearing no other nominations, the Clerk closed the nominations and cast one ballot for Gerard Drypolcher for Chair of the Planning Board for 2012. Motion carried unanimously.

Mr. Drypolcher stated that he appreciates the nomination and the honor of serving as the Chair of the Planning Board.

Mr. Drypolcher, the Chair, again presided.

b. Election of Vice Chair for 2012.

The Chair called for nominations for the Vice Chair of the Planning Board for the ensuing year.

Ms. Smith Meyer moved to nominate John Swope for another term as Vice Chair. Mr. Lavers seconded the motion. Hearing no other nominations, the Chair closed the nominations and cast one ballot for John Swope for Vice Chair of the Planning Board for 2012. Motion carried unanimously.

c. Designation of two representatives to the Central New Hampshire Regional Planning Commission (CNHRPC).

Ms. Foss and Mr. Hicks indicated that they are interested in continuing on as the Planning Board representatives to the Central New Hampshire Regional Planning Commission.

Mr. Swope moved and Ms. Smith Meyer seconded the motion that Ms. Foss and Mr. Hicks be reappointed as the Planning Board's representatives to the Central New Hampshire Regional Planning Commission. Motion carried unanimously.

Ms. Foss and Mr. Hicks stated that they have not been receiving emails notifying them of upcoming CNHRPC meetings: the City Planner volunteered to follow up with CNHRPC.

d. Designation of a representative to the Heritage Commission.

The Chair asked for a volunteer to represent the Planning Board on the Heritage Commission. There were no immediate volunteers, and the appointment was postponed. The Chair stated that he would contact members of the Planning Board individually to discuss the role of the representative to the Heritage Commission.

8. Architectural Design Review Committee membership and reappointments.

Ms. McPherson reported that Elizabeth Durfee Hengen and Ron King were both interested in being reappointed as members of the Architectural Design Review Committee.

Mr. Swope moved and Ms. Smith Meyer seconded the motion that Ms. Hengen and Mr. King be reappointed as members of the Architectural Design Review Committee. Motion carried unanimously.

9. Consideration of the minutes of the Planning Board meeting for December 21, 2011.

Mr. Swope moved to approve the minutes of the Planning Board meeting for December 21, 2011 as written. Mr. Shurtleff seconded the motion. Motion carried unanimously.

New Business

10. Referral from City Council in regard to the creation of a local Historic District on Stickney Hill Road proposed by Councilor Shurtleff.

Mr. Shurtleff stated that the Stickney Hill area has remained virtually unchanged for the for the past 50 years, and he thinks that the area should be preserved, which is why he submitted the request for a zoning change to City Council. Mr. Shurtleff stated that at this time, his intent is to ask the City Council to table his request to allow the Heritage Commission time to work on a less intrusive proposal to protect the area, such as initiating a Neighborhood Heritage District.

Mr. Swope moved to table the referral from City Council. Mr. Regan seconded the motion. Motion carried unanimously.

Old Business

11. Further consideration of revisions to previously approved architectural elevations for Twelve North Main Street Realty, LLC – Siam Orchid, located at 12 North Main Street. (2010-0039)

The Chair noted that the applicant requested that this application be postponed pending a discussion with the Architectural Design Review Committee at their next meeting, and therefore no further action by the Planning Board was necessary at this time.

12. Any other business which may legally come before the Planning Board.

Ms. McPherson reported that she received an abutter notice in the mail from the Town of Pembroke regarding a minor subdivision for the New England Flower property. She stated that the proposal is to split the lot in two, with no change of use and no other changes proposed to the site. She stated that the Pembroke Planning Board will hold a public hearing on January 24, 2012 regarding this minor subdivision.

There was no further business to come before the Planning Board, and the meeting adjourned at 9:08 p.m.

A TRUE RECORD ATTEST:

Gloria McPherson
Clerk

djm