

A special meeting of the City Planning Board was held on Wednesday, May 4, 2011, in the Second Floor Conference Room in City Hall at 7:00 PM.

Present at the meeting were Members Drypolcher, Dolcino, Foss, Hicks, Meyer and Shurtleff (representative from the City Council). Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:00 PM a quorum was present and the Chair called the meeting to order.

### Old Business

1. Continuation of the review of the draft **Site Plan Regulations with a focus on Chapter 4**, in general, and Sections 27-30, in particular.

The Board continued its review of the draft Site Plan Regulations with a focus on Chapter 4.

#### Section 27 Landscaping and Erosion Control

Under Section 27.05, Ms. Dolcino asked if there is a time frame for replacing those trees that have been proposed to be retained and which are damaged or destroyed during construction. Mr. Henninger responded that there is no time frame currently proposed in the Regulations but landscaping could be included in the financial guarantee. Ms. Meyer suggested two years would be a good time period.

City staff was directed to add "the Planning Board may require a financial guarantee for the landscaping" to that Section, and refer to a term of two years for such a guarantee.

Under Section 27.06(2), Ms. Foss was pleased that a section on energy conservation had been included. However, the last sentence should read "Evergreen trees should be planted or located ...." Instead of "...should be used".

Under Section 27.06(4), Ms. Foss felt it would be desirable to be a little more specific than "lower growing species". Members agreed to change the wording to "shall be *selected* to avoid interference with utility lines".

Under Section 27.07, Ms. Foss suggested that the sentence in the sixth line read "which cause the least *possible* disturbance to the environment".

Ms. Foss also felt "manageable portions" should be better defined. Ms. Hebert and Ms. Aibel responded that it was more thoroughly spelled out in the NH Department of Environmental Services Alteration of Terrain standards referenced in that Section, and a cross reference to the appropriate subsection can be included.

Under Section 27.08(5), Ms. Foss suggested changing "land" to "site" in the third line.

Under Section 27.08(6), Ms. Meyer suggested “trees” should be changed to “plant material” and the last sentence eliminated. There should also be some reference to not using landscape fabric, and inorganic mulch shall not be allowed. It was agreed that these details should be included in the City’s Construction Standards and Details.

Under Section 27.08(7), Ms. Meyer indicated that the section should state that tree stakes must be removed after the first growing season.

Under Section 27.08(8), Ms. Foss suggested that “construction debris and material” should be changed to “construction material and debris”.

Members agreed that Section 27.09 was a near duplication of Section 27.06(5) and should be eliminated in its entirety and the remainder of the Section renumbered accordingly.

Under the former Section 27.10, [now 27.09], Ms. Dolcino asked how this section on erosion control related to Section 27.07 relative to land clearing restrictions and whether they are different. Mr. Henninger responded that erosion control takes place over a longer period of time.

Ms. Foss reported that she had trouble determining when soil became sediment. It was agreed that the first sentence in former Section 27.10, [now 27.09], needed to be reviewed and re-written for clarification.

Under former Section 27.10(1), [now 27.09(1)], members suggested that the first sentence read “Prior to the start of clearing of the site, an Erosion Protection and Sedimentation Control plan shall be submitted and shall be reviewed and approved by City staff.” Mr. Henninger noted that City staff has no control over land clearing until an application is submitted, so that someone could clear a site, and then apply for a Site Plan approval.

Under former Section 27.10(3), [now 27.09(3)], the sentence, “It shall not be excessively acid or alkaline nor contain toxic materials to plant growth.” should be deleted.

Under former Section 27.11, [now 27.10], there was a discussion relative to the need to require that a letter of credit be issued by a New Hampshire bank. It was agreed to change it to read, “...from a bank authorized to do business in New Hampshire”.

Mr. Woodward noted that there is a definition of a financial guarantee in the Regulations, and suggested this section refer to a “financial guarantee” instead of “cash deposit or a letter of credit”.

## Section 28 Fire Protection

The only comment relative to Section 28 was that in Section 28.05(5), “setback” should be “set back” in this particular context.

## Section 29 Lighting

Under Section 29.02, Mr. Hicks suggested changing “night lighting” to “light pollution”.

Ms. Aibel reported that she had been approached by a citizen asking whether the City has regulations requiring a curfew for night lighting. There was a brief discussion relative to the addition of some night time lighting limitations. Mr. Woodward explained that the City does not yet have night lighting regulations, but the Planning Board has on occasion included night time lighting limits in terms of hours of operation as a condition of approval.

Under Section 29.03, Ms. Meyer suggested moving the last sentence so that it becomes the first sentence of this paragraph.

Under Section 29.04, in the first line of the first sentence, “light” should be “lighting”, and in the third sentence on the fifth line there is an extraneous “and” which should be deleted.

Under Section 29.05, in the second sentence on the second line there is an extraneous “and” which should be deleted.

Under Section 29.06, it was suggested that the second sentence be revised to read “...anywhere above the horizontal plane...”

Under Section 29.07, the first sentence is missing the word “is”, and it should read, “all direct illumination *is* kept within...”.

### Section 30 Sustainable Development

Mr. Henninger pointed out that this was a new section and he solicited comments about details as well as general concepts.

Ms. Meyer noted that there was no mention of requirement that would encourage the use of the least amount of impervious surface or otherwise encouraging permeable pavement.

Under Section 30.01, in the third line there is an extraneous “an”, and in the fourth line, on site should be hyphenated.

2. Further consideration of a report from the Deputy City Manager - Development relative to proposed **changes to the City’s Land Use Regulations and Development Review Procedures** - Part 1.

Mr. Woodward reminded the Board that they had begun the review of this report at the March 30, 2011 meeting when he had introduced the report and provided an overview of the exhibits which were drafts of proposed zoning amendments to both the text as well as the maps. The Board commented that the two changes involving amendments to the Zoning Map would likely require the Board to schedule a public hearing thereon,

and that the Board wanted the Planning Division to provide the Master Plan 2030 and zoning context for each.

In addition, the Deputy City Manager for Development had asked that the Board specifically consider several items in the report itself which the Board had not commented on at the March 30, 2011 meeting. Those items included the Economic Development Advisory Committee's (EDAC) recommendation relative to presentations to the Planning Board wherein EDAC suggests that the applicants present first at public hearings as opposed to the City staff, that the Design Review Committee be formalized as a committee with a member of the committee serving as chairperson, and that the Board not be able to overrule the Design Review Committee except in the case of an appeal from an applicant.

With regard to the first matter, he reported that the current Planning Board practice of having an initial staff presentation at public hearings is a long standing practice in Concord and is not unique to Concord. He reminded the Board that this matter had come up before and after discussion, the Board had always decided to retain the practice.

Ms. Dolcino asked who had requested this change, as her experience has been that most of the time when developers have been asked to address the Board after the staff presentation, they have responded that the staff has done a good job of presenting the application and do not have anything to add.

The Chair indicated that there was some concern that staff could present an application with a negative tone if they do not like the proposed project. His concern with changing the process was that there is a certain amount of technical information offered to the Board by the staff presentation. He personally liked having that base to build on and then offer the applicants an opportunity to add what they felt was omitted or to focus on a point that they felt needed more emphasis. He felt those dynamics worked well now.

Ms. Foss felt strongly that the Board was getting a more balanced presentation from staff than from a developer who has an agenda, which was a huge benefit to the Planning Board. Her experience working in small towns where the local Planning Board does not have the staff to make presentations made her really appreciate Concord's staff presentations.

Ms. Meyer felt that 99% of the time applicants have nothing to add. She felt Planning Board meetings would get much longer if the process was reversed, and that could lead to inefficiency and a lengthier process if it caused meetings had to be recessed.

From his own experience in the process, Mr. Hicks felt that staff worked closely with applicants to make sure that problems were worked out so that by the time an application reached the Board, it was ready for action.

Mr. Woodward noted that prior to each Planning Board meeting, staff reports are linked to the Board's agenda on the City's web site as well as provided to applicants when requested.

He also explained that the Planning Division had two responsibilities. The Planning staff needs to work with an applicant to help them with the application process so that by the time it reaches the Planning Board it is ready to be acted upon. The other responsibility of staff is to keep the Planning Board from being drawn unnecessarily into litigation, and to help the Board be in a defensible position in the event that litigation ensues. He also pointed out that by hearing the staff presentation first, the Board received a standardized introduction to all applications.

The general consensus of the Board was that the proposed change would not make the meetings any shorter or more efficient.

The Chair asked Mr. Baia, who was in the audience, to comment on this recommendation. Mr. Baia responded that the community he came from used the same process as Concord and he agreed that it would likely make Planning Board meetings longer if they changed the process.

On a show of hands, the Planning Board members agreed to not make any changes to its process at this time.

With regard to the issues related to the Design Review Committee, Mr. Woodward explained that the Division was working with the Regional Planning Commission to obtain funding for updated design guidelines which should certainly be of assistance to the Board, the Design Review Committee, and applicants who are subject to the provisions for Design Review.

Mr. Woodward explained that EDAC might not know the history of how the Design Review Committee was created and how it is used by the Planning Board. He explained that Design Review was adopted in the Zoning Ordinance the 1960s and included the Civic and Downtown Districts. With the comprehensive revision of the Zoning Ordinance in 1977, Design Review was expanded to include other districts and to apply to developments that were subject to site plan review. The Design Review Committee was convened by the Board in 1978 as a panel of professionals to offer advice to the Planning Board, and to offer design advice to applicants, many of whom at that time did not retain design professionals of their own. In 1990, the Board formally included a section on the Committee in its Site Plan Regulations, and at the same time, adopted a set of Architectural Design Guidelines, which were prepared by a local architectural firm and remain in effect.

The Design Review Committee continues to function as an advisory panel which provides comments, suggestions, as well as recommendations to both the applicant and the Planning Board. The Design Review Committee does not hold public hearings but meeting notices are posted in accordance with the Right-to-know Law, and the public is welcome to attend and are allowed to speak if they request it. The Design Review

Committee is not a creature of State statutes and not a creature of City ordinance. They exist through the Site Plan Review Regulations, and have no legal powers of their own.

Mr. Woodward reported he had discussed with the City Solicitor the EDAC recommendation that the Planning Board not be allowed to override the recommendation of the Design Review Committee except by appeal of an applicant. The City Solicitor had advised that there is no provision in the statutes for the Planning Board to delegate their power and authority in this situation. Therefore, EDAC's recommendation cannot be implemented because the Planning Board cannot delegate its power to them. The Solicitor had commented that the Design Review Committee is essentially operating as consultants to the Board.

Ms. Meyer reminded the Planning Board that she had spent many years on the Design Review Committee. At that time, she had advocated for adoption of comprehensive design guidelines and she reported that she still feels that is very important. She felt it was important to have a foundation for the Committee to make its recommendations.

Mr. Woodward indicated again that he had been working to get some funding in order to retain a consultant to develop guidelines to help the Committee and the Board, as well as applicants. Ms. Meyer indicated that including sign design would be very important.

Mr. Baia indicated this is the one issue that, since he has been in Concord, has generated the most negative comments from EDAC, developers, and citizens. Everyone seems to understand that this is an advisory committee but also feels that the recommendations are arbitrary. There is confusion that is built into the process for applicants. Generally, the complaint is the lack of consistency. Applicants frequently expressed their need to him for consistency and predictability.

Mr. Drypolcher understood that the concern relative to inconsistency had some merit, but he did not know how to change the structure of the Design Review Committee or its interaction with the Planning Board. He suggested that since Architectural Design Review is a creature of the Planning Board, the Board should meet with the Design Review Committee to discuss the expressed concerns and try to find a level of agreement for improvement of the process or to help for the applicant to better understand the process, and to improve the way applicants are handled throughout the process.

Ms. Meyer mentioned that when she was on the Design Review Committee the Committee often received incomplete applications and that meant applicants needed to return with added information, thus adding to the length of time it took to receive approval from the Planning Board. Mr. Woodward noted that the Planning Division works closely with the Code Division to try to ensure complete information is available to the Committee.

Ms. Foss suggested that Mr. Baia might frame some issues that he'd like the two boards to address in a joint meeting in order to give them a base from which to work.

Mr. Baia indicated that he would discuss with the City Solicitor options for changing the relationship between the Design Review Committee and the Planning Board.

**Property Owner Request for Zoning Change to the Central Business Performance (CBP) District**

Mr. Woodward explained that, as part of the public input process, a request was made by the property owner of 67-69 South Main Street to extend the CBP south to the Storrs Street intersection.

He reported that the CBP District had recently been expanded southerly to Theatre Street to accommodate the construction of the Duprey Center and Mennino Place, leaving roughly a one block area between Storrs Street and South Main Street, southerly to the intersection of these streets in the Urban Commercial (CU) District.

He reported that the Master Plan 2030 defined Downtown Commercial as a land use category comprised of mixed use inclusive of the traditional downtowns of Concord and Penacook. The description of the Downtown Commercial land use category notes that, "the majority of uses in the urban core are housed within architecturally significant 19th century structures in a pedestrian-oriented area, with little or no on-site parking, and parking is generally provided in structures and on the street. North and south of older downtown core within Concord and south of downtown in Penacook, the range of uses should be similar but on-site parking is a necessity."

He reported that the Master Plan contained a Future Land Use Plan which portrayed the areas classified as Downtown Commercial, and the accompanying text in the Land Use Section provided more detail to guide the preparation of land use regulations. The Future Land Use Plan indicates that, "The Downtown has three distinct components foremost of which is the central business district between Centre Street and Theatre Street, wherein there is mixed land use in multi-story buildings which rise at the back of the sidewalks, and where parking is on street in metered spaces or off street in parking garages. To the north and south of the central business district are more mixed land uses but at a lesser intensity and with some on-site parking." This description was the basis for the recent rezoning and the reason the line was drawn where it was.

He reported that the requested rezoning was for the southerly expansion of the Central Business Performance District to supplant an existing Urban Commercial District.

Mr. Woodward explained that in 2009, with the favorable recommendation of the Planning Board, the Zoning Ordinance was amended to expand the Central Business Performance District southerly from Hills Avenue to Theatre Street. The area now requested to be considered for rezoning lies southerly of the 2009 rezoning, and includes the portion of the Urban Commercial District that lies east of South Main Street. The land on the west side of South Main Street would remain in the CU District with the block occupied by St. John's Church remaining in an Institutional District.

He reported that the requested rezoning would encompass nine properties, one of which is the parking lot being created as part of the Sanel Block redevelopment on a 1.29 acre parcel along the Storrs Street frontage. The other eight properties front on South Main Street and are occupied by a mix of land uses including restaurants, retail spaces, offices, apartments, a gasoline station, and an automobile repair facility. These parcels range in size from 0.2 acres to 0.74 acres, and all have some on-site parking with varying degrees of non-conformity as to the number of existing spaces relative to the current zoning requirements. There are 18 parallel on-street parking spaces along the approximately 900 feet of South Main Street frontage of the area requested to be rezoned, with the northerly eight spaces being metered. On-street parking is not permitted along the approximately 1000 feet of Storrs Street frontage. Parking is allowed on the west side of South Main Street with approximately 40 angled and parallel spaces between Concord and Perley Streets, with the northerly ten spaces being metered.

The Zoning Ordinance contains purpose statements for both the CU and CBP Districts as follows:

“The **Urban Commercial (CU) District** is established to recognize areas adjacent to the downtowns of Concord and Penacook as well as proximate to Downtown Residential Districts, within which are permitted a mixture of office, retail, restaurant, service, lodging, and high density residential uses. Appearance is important at these downtown entryways, as is compatibility with the abutting neighborhoods.”

“The **Central Business Performance (CBP) District** is established to encompass the traditional downtowns of Concord and Penacook, incorporating a wide range of uses including retail, restaurant, service, entertainment, cultural, lodging, office, governmental, and high density residential uses as well as mixed use developments. The majority of uses are housed within architecturally significant 19th century structures in a pedestrian-oriented area, with little or no on-site parking, and parking is generally provided in structures and on the street. New buildings and additions to existing buildings in downtown Concord shall be designed in such a manner as to not obstruct views of the State House Dome.”

He reported that this zoning change would make the gas station use at 81 South Main Street, as well as the auto repair use at 89-95 South Main Street, non-conforming uses not permitted in the CBP, and the multifamily dwelling units would not conform to the requirement of being at or above the second floor in the CBP District. Conversion to a CBP District would relieve all uses of compliance with the parking requirements of the Zoning Ordinance in an area with limited on-street parking and remote from the nearest public parking garage (over 1200 feet from the closest point in the area requested to be rezoned). The change would also make the new parking lot built to complement the Duprey Center and Mennino Place non-conforming and could exacerbate parking concerns in the strip retail center at 75 South Main Street.

**Establishment of a Highway Commercial (CH) District in conjunction with revisions to the General Commercial (CG) District**

Mr. Woodward explained that the proposal for establishing a new Highway Commercial District evolved from the consideration of the requirement for parking to the side and rear of principal uses in certain commercial districts. The Master Plan actually created the basis to do this in General Commercial Districts but also called for a separation of automotive sales and major vehicular repair work from the General Commercial Districts which were also intended to permit a mixture of commercial and residential uses. The current zoning has one defined CG District in the text which is non-residential in terms of uses allowed, but does embrace the automotive related uses among those permitted. It is mapped in three locations: Loudon Road, Fisherville Road, and Manchester Street. The proposal would change the Manchester Street CG District to a CH District as the focus of automotive related uses, while retaining Loudon Road and Fisherville Road in the redefined CG District.

He reported that the Land Use Section of the Master Plan categorizes future land uses into groups including one for Mixed (Residential and Non-residential) Land Use Categories in which the General Commercial category is described, as follows:

“(CG) - General Commercial. The general commercial category includes general retail sales and services, professional and business offices, restaurants, and personal service establishments, as well as multi-family residential uses at densities not exceeding fourteen (14) units per acre. Located along some of the City’s major collector roads, the general commercial category requires good vehicular access as the non-residential uses may serve a citywide market. This category is not intended to accommodate motor vehicle sales and repairs, heavy vehicular sales and service, wholesaling, warehousing, manufacturing and uses requiring extensive outside storage, or other types of activities which may generate nuisance impacts of noise, dust, fumes, and light. Maximum lot coverage or impervious surface area (ISA) should not exceed eighty (80) percent, while building heights should be consistent with the prevailing height of existing structures in the CG land use category. Buildings should be oriented to the street with parking placed to the side and rear, attention given to pedestrian access, and buffering and screening for adjacent neighborhoods are of concern for development in this land use category.”

The Land Use Section also includes Non-Residential Land Use Categories, within which there is a description of a Highway Commercial Category.

“(CH) Highway Commercial - The highway commercial category includes general retail sales and services, professional and business offices, restaurants, and personal service establishments, as well as motor vehicle sales and repair uses. Located along arterial and major collector roads, the highway commercial category requires good vehicular access as the uses may serve a citywide and/or regional market. Maximum lot coverage or impervious surface area (ISA) should not exceed eighty (80) percent, while building heights should be consistent with the prevailing height of existing structures in the CH land use category.”

He reported that the future land use categories were portrayed on the Future Land Use Plan and the accompanying text in the Land Use Section provided more detail to guide the preparation of land use regulations as follows:

“Extensive areas of existing as well as future economic development are located on the Heights, including areas for mixed use, commercial development, industrial development, and office parks. ... A General Commercial category encompasses most of the frontage along Loudon Road between Airport Road and Branch Turnpike and Old Loudon Road, with some frontage in the High Density Residential and Institutional.”

“Economic development in West Concord consists of mixed use in the Urban Transitional land use category along Fisherville Road with several nodes of General Commercial, and a Neighborhood Commercial category at the intersection of Knight and North State Streets.”

“Manchester Street is designated as Highway Commercial from Garvins Falls Road easterly to Airport Road, while the west end of Manchester Street between Garvins Falls Road and Old Turnpike Road is included in the Regional Commercial category.”

Mr. Woodward explained that the current Zoning Ordinance included a General Commercial District but it was non-residential in character, having been revised during the adoption process from a mixed use district to a non-residential one. The ordinance contains a purpose statement for the CG District as follows:

“The General Commercial (CG) District is established to provide for a mixture of retail, restaurant, and service uses, including motor vehicle sales and service, serving a city-wide or regional market and which require access from arterial streets and proximity to limited access highways. Appearances from the street, and buffering and screening for adjacent neighborhoods are of concern for development in this District.”

The CG District purpose statement is proposed to be modified and a new statement added for the CH as follows:

“The General Commercial (CG) District is established to provide for a mixture of retail, restaurant, ~~and~~ service uses, **and high density residential uses, including** ~~motor vehicle sales and service~~, serving a city-wide or regional market and which require access from arterial streets and proximity to limited access highways. Appearances from the street, and buffering and screening for adjacent neighborhoods are of concern for development in this District.”

“The Highway Commercial (CH) District is established to provide for a mixture of uses including retail, office, restaurant, and service uses, as well as motor vehicle sales and repair uses, serving a city-wide or regional market, located along arterial

and collector roads and in proximity to limited access highways, and with municipal utility services fully available. Appearances from the street, and buffering and screening for adjacent neighborhoods are of concern for development in this District.”

He reported that the only new non-conformity emerging from these changes appeared to be one small used car sales lot on Loudon Road. The multi-family dwelling units on Manchester Street are already non-conforming and would remain so.

Mr. Woodward asked if the Board preferred to have a public hearing on the zoning maps and whether that should also include zoning ordinance text changes.

Ms. Foss had a question regarding the title “Highway Commercial District”. She associated this with exits off the interstate and suggested that there might be a more appropriate title. Mr. Woodward responded it could be labeled something different.

Staff was directed to place text changes on the agenda for the Board’s regular meeting in May, along with further review of the draft Site Plan Regulations, focusing on Chapter 5, Section 31-36. Mr. Henninger noted that Sections 33-35 were sections unique to site plan review and the rest of the chapter paralleled the Subdivision Regulations. As regards any hearing on zoning changes, the Chair indicated that would be discussed once the Board had completed its review of the proposed changes to the text of the ordinance.

There was no further business to come before the Board and the meeting adjourned at 10:10 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

o