

The regular monthly meeting of the City Planning Board was held on May 20, 2009 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Chair Drypolcher (who arrived at 7:43 PM), Vice Chair Swope, Members Dolcino, Foss, Gross, Hicks, Meyer, Shurtleff, and Alternate Member Kenison (who was seated for absent Member Harrington). Mr. Woodward, Mr. Henninger and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:06 PM a quorum was present and the Vice Chair called the meeting to order and seated Alternate Member Kenison for Mr. Harrington, who was not expected.

APPLICATIONS

Major Subdivisions

1. Application by **Preferred Homes, Inc. on behalf of Claude M. and Lisa M. Turgeon** for approval of a major subdivision of property located at **127 Lilac Street. (#2009-22)**

Determination of Completeness

Mr. Henninger explained this proposal to subdivide a 2.91 acre residential lot with frontage on Lilac Street and Tower Circle into four lots. The subdivision involves the construction of a cul-de-sac at the end of Tower Circle to create three new lots for development purposes.

He reported this application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and set it for public hearing on June 17, 2009. Mr. Shurtleff seconded. Motion carried.

Consideration of Setting a Hearing on Revocation

Mr. Henninger explained that Parcels P23-1-17 and P23-1-4 were the subject of a resubdivision application in 2008, which reduced this residential lot to 1.2953 acres. The plat was recorded in the Merrimack County Registry of Deeds on December 9, 2008. However, the title transfer of the 1.6141 acre parcel which was to be removed from this parcel was never completed. The City Solicitor has recommended the revocation process as a way to remove any cloud that may occur to the title.

Mr. Gross moved and Ms. Foss seconded that a public hearing relative to the revocation of the recorded subdivision plat of Paul Lillios and Lisa Turgeon at 127 Lilac Street and 69-73 Village Street be set for June 17, 2009 prior to the public hearing for the application for a major subdivision of this property. Motion carried.

Consideration of Request for Waiver

Mr. Henninger explained that the applicant also requested a waiver of Section 7.03(5)(a) of the Subdivision Regulations to allow for consideration of preliminary and final subdivision approval at the June 17, 2009, Planning Board meeting. He reported that City staff recommended that the Board grant the requested waiver given that this subdivision involved the creation of just three new lots and the cul-de-sac terminus to an existing street.

Mr. Kenison moved that the Planning Board grant a waiver of Section 7.03(5)(a) of the Subdivision Regulations to allow for consideration of preliminary and final subdivision approval at the June 17, 2009, Planning Board meeting. Mr. Shurtleff seconded. Motion carried.

2. Consideration of the revocation of the recorded plat of a major subdivision of property of **Scott Bussiere on Graham Road. (#2003-37)**

Public Hearing

Mr. Woodward explained that the Planning Board, at a meeting on August 18, 2004, granted conditional final approval of the major subdivision application of Emerald Abode LLC for an eight lot conventional subdivision with a new cul-de-sac to be named Julie Drive, on property on Graham Road in a Residential Open Space (RO) District. A plat was recorded on August 31, 2006, and some site work was done in the fall of 2006, but nothing has occurred on-site since that time. The City's Zoning Ordinance was amended in 2007 to include mandatory cluster development in the RO District. As noted in a letter to the owner of the Emerald Abode Subdivision, the Planning Division reviewed the state of construction and permitting of the subdivision, and concluded that there was a failure to achieve substantial completion by the fourth anniversary of the date of the subdivision's approval and, therefore, the subdivision had not attained a vested status against changes in ordinances and regulations. The Division has also offered suggestions to the owner as to how compliance might be achieved with the amended ordinance in a manner that would substantially preserve his investment to date.

He reported that RSA 676:4-a provides for the revocation of a recorded plat for failure to fulfill conditions of approval (construction of the improvements) within four years, or failure to attain a vested status. The process to revoke a plat involves the Board voting to revoke the plat and ordering the Clerk to initiate the requisite notification process which extends to the owners or abutters the right to request a hearing prior to the recording of a declaration of revocation.

He reported that the Planning Board, at a meeting on April 15, 2009, considered a report from the Planning Division concerning the revocation of the recorded plat of the Emerald Abode Subdivision based on a failure to achieve substantial completion and to attain a vested status pursuant to RSA 674:39 against changes in ordinances and regulations. As the site is in the RO District, compliance with the Cluster Development standards, as amended in March of 2007, is now mandatory. After discussion, the

Board voted to find that the Emerald Abode Subdivision had failed to achieve substantial completion within four years of the date of approval and therefore had failed to become vested pursuant to RSA 674:39, and must comply with changes to the City's Zoning Ordinance adopted on March 12, 2007. The Board then set a public hearing for the consideration of revocation of the plat.

Mr. Gross asked if the City had received a written commitment from the property owner, given the subdivision's failure to achieve substantial completion and to attain a vested status, to not convey lots in reliance on the current plat. Mr. Woodward responded that he had not but it would be a reasonable request.

Scott Bussiere, owner of the property, indicated he felt he was substantially complete. The only thing that has not been completed on the proposed road is gravel, crush and pavement. However, while he disagreed with the conclusion that the subdivision was not substantially complete, he also indicated that he was planning to submit an application to amend the plat so as to comply with the City's cluster development regulations, and that he would do so within the next 60 days. He also indicated his willingness to provide the written assurance that he would not convey lots in reliance on the currently recorded plat.

Mr. Gross moved to stay for a period of ninety (90) days the Board's action to direct the Clerk to file the declaration of revocation at the Merrimack County Registry of Deeds, based on the property owner's representations relative to the filing of an application within sixty (60) days to bring the Emerald Abode Subdivision into compliance with the City's Zoning Ordinance, and subject to the submittal of a written instrument from the property owner agreeing to not convey any lots in reliance on the currently recorded plat during the 90-day period of time. Ms. Dolcino seconded. Motion carried.

Minor Site Plans

3. Application by **26 Centre Street LLC** for a site plan of property located at **26 & 26 ½ Centre Street. (#2009-18)**

The Vice Chair reported that the applicant has requested postponement until the Board's June 17, 2009 meeting.

4. Application by **Alex Moody on behalf of William R. and Claire A. Moody** for a site plan of property located at **285 Village Street in Penacook. (#2009-21)**

Determination of Completeness

Mr. Henninger explained this proposal to renovate an existing mixed-use building which contains six residential units and an automotive repair facility. The applicants propose to convert the automotive repair bays to a 1,189 square foot laundromat.

He reported this application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and open the public hearing. Mr. Shurtleff seconded. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to renovate an existing mixed-use building which contains six residential units and an automotive repair facility. The applicants propose to convert the automotive repair bays to a 1,189 square foot laundromat, and to convert an existing paved area along Village Street into a single handicapped parking space and renovate the two side-by-side overhead doors into a storefront. No other changes are proposed to the property other than repairs and maintenance to the siding and roof.

He reported that on-street parking is not required in the CBP District. The applicant proposes to convert, by marking and signage, a paved area in front of the existing garage into a single handicapped space. An unpaved parking area exists on the rear of the site which is accessed by a private common drive from Washington Street. The applicant's surveyor has shown a possible paved parking lot layout for 12 spaces on the rear of the lot. The applicant is not requesting approval for this layout at this time. A more efficient layout could be obtained if the parking area was laid out using the common access drive over the two parcels next door along Washington Street.

He reported that the Design Review Committee had reviewed a building elevation and heard testimony from the applicant explaining his proposal to remove the existing overhead doors and to replace them with large bay windows and two large doors centered in the space. The framework will be white aluminum. The intent is to make the laundromat appear separate from the residential building to which it is attached. The panels below the main windows will be infilled with white aluminum and the panels above the display window will be infilled with an opaque glass. The Committee also suggested an alternative design whereby he could construct a display window to replace one bay and then split the other bay with display space and a door.

The Design Review Committee recommended approval as submitted and indicated they would also support the suggestion made by the Committee.

Mr. Henninger reported that no traffic impact fees are due for the proposed change of use since the proposed use will generate less traffic than the existing use.

Alex Moody, applicant, and William Moody, property owner, were present to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:28 PM.

Deliberations and Action on Application Deliberations and Action on Architectural Design Review

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for modifications to the site and building at 285 Village Street for the Village Street Laundromat subject to the applicant fully detailing the architectural elevations noting all proposed colors and materials. Mr. Shurtleff seconded. Motion carried.

Ms. Foss moved that the Planning Board grant conditional minor site plan approval for the conversion of an automobile service facility to a 1,189 square foot laundromat at 285 Village Street subject to the following conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.
2. Traffic, recreation and school impact fees shall be assessed for any construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - a. Transportation Facilities - (\$0.0)

Mr. Shurtleff seconded. Motion carried.

Major Site Plans

5. Application by the **Concord Regional Solid Waste/Resource Recovery Cooperative** for approval of a site plan for property on **Whitney Road**. Along with this application are requests for Conditional Use Permits pursuant to Section 28-2-4(j), Table of Principal Uses, L-4, Materials Recycling and Processing; Section 28-7-11(b), Construction of Fewer Parking Spaces; Section 28-3-3(f), Conditional Use Permit Required for Disturbance of Buffers in the SP District; 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, and Section 28-4-4(d), Conditional Use Permits Required for Certain Disturbance of Bluffs and Buffers, of the Zoning Ordinance. (#2009-12)

Recessed Public Hearing

Mr. Woodward explained this proposal to construct a 55,210 square foot regional recycling facility off Whitney Road, east of the Merrimack River. The building has been designed to accommodate a future expansion of 5,600 square feet. The Cooperative will receive and process recyclable materials from the surrounding communities as a single

stream where the glass, plastic, and paper materials are mixed together and collected in one container.

He explained that the site has been designed with a 47,600 square foot recycling facility and a 7,610 square foot office space. The site improvements also include an employee parking area, loading docks, 1,000 gallon diesel fueling station, trailer parking and storage, and a scale facility to weigh the recyclable material.

He reported that the construction of the proposed facility also requires the extension of Whitney Road a distance of 1,600 linear feet to access the buildable portions of the property. The City's Master Plan calls for the extension of Whitney Road southerly to Sewalls Falls Road. The road will generally follow the old road alignment of Hannah Dustin Drive, which was discontinued following the construction of Interstate 93, and will include the repair of an existing 96-inch culvert which facilitates the road crossing over Burnham Brook. There is an existing waterline that was laid out along the future city street from Hoit Road to Sewalls Falls Road for the benefit of the Concord Monitor. The proposed construction includes the extension of municipal sewer, overhead utilities (power/phone/cable), and a closed drainage system. The roadway extension will require the approval of Conditional Use Permits for disturbances to the buffers to bluffs, buffers to wetlands, and buffer to the Shoreland Protection District.

He reported that the applicant had applied for a Conditional Use Permit to allow for the proposed use of the property for materials recycling and processing within the Industrial (IN) District.

He reported that the applicant had also applied for another Conditional Use Permit to construct fewer parking spaces than would be typically required by the Zoning Ordinance. The recycling center does not anticipate using the amount of parking required by the City's Zoning Ordinance, which would be 122 spaces. The facility, when operating at full capacity, will employ 35 people. The applicant proposes to construct 50 parking spaces and has shown where the remaining 72 spaces could be located on the property, if at some point in the future the additional parking is required.

Mr. Woodward reported that the building will be a metal framed structure with a combination of vertical and horizontal metal siding and a standing seam roof. The Architectural Design Review Committee reviewed the architecture and landscaping and made a favorable recommendation to the Planning Board for the design of the building, landscaping, and site layout.

The applicant will be seeking LEED certification for the construction and design of the 7,610 square foot office area and plans to incorporate recycled materials into the design of the building.

He reported that the site will be serviced by municipal water and sewer. A city water line currently runs from the end of Whitney Road southerly to Sewalls Falls Road. The applicant proposes to extend the sewer line from the existing terminus of Whitney Road to the proposed recycling facility.

He reported that the applicant will construct the first 1,600 linear feet of roadway, to provide access to the site, and has provided a design for the construction of the remaining length of road, which extends to the limits of property. The proposed extension of Whitney Road will cross Burnham Brook over an existing 96 inch corrugated metal culvert, which is deteriorating and in poor condition. The roadway improvements include renovations and repairs to the culvert, which will involve 1,065 square feet of temporary wetland impact and 511 square feet of permanent wetland impact.

Mr. Woodward explained that the roadway has been designed with a reduced roadway width to avoid unnecessary disturbances to the buffers. The City's subdivision standards for a nonresidential collector street would require the road to be constructed with 40 feet of pavement, consisting of two 12-foot travel lanes, and 8-foot shoulders, as well as two 8-foot landscaped panels, and 5-foot sidewalks on each side of the street. The Engineering and Planning Divisions have recommended an alternate design for Whitney Road, consisting of 34 feet of pavement, including two 12 foot travel lanes and 5-foot shoulders, with a 5-foot sidewalk on the east side of the street. The revised roadway design will require a waiver to Section 8.02(c)(1) of the Site Plan Regulations, which requires the construction of new roads for the purposes of accessing a site be designed and constructed in accordance with the standards for public streets, as contained in the Subdivision Regulations.

He reported that the extension of Whitney Road will require the conveyance of a 66-foot wide road right-of-way through the property, to a point across from the proposed access drive to the recycling facility. The remaining section of roadway will be constructed by others at some point in the future, when access is needed to the land southerly of this project. The applicant will be required to provide an agreement to convey the remaining right-of-way to the City at such time the property is subdivided or developed in the future, or at such time the City proposes to extend the road.

The layout of the roadway creates a nonbuildable parcel of land westerly of Whitney Road between the road and the Merrimack River. The parcel includes the land within the Open Space Residential District, Shoreland Protection Overlay District and buffers to the bluffs associated with the Merrimack River and Burnham Brook. Both the Conservation Commission and Planning Staff have recommended that the applicant consider placing a conservation easement on this property, to further protect the natural resources along the Merrimack River.

The design of the employee parking lot includes pervious pavement, rain gardens, and a bioretention cell. Areas of the site that will see heavy truck traffic will be surfaced with traditional pavement.

He reported that the applicant proposes to construct a 1,000 gallon above ground diesel fueling facility which will be used only by off-road equipment owned and operated by the Cooperative. The design will include a concrete pad with spill containment, and will need to obtain all necessary local and state permits prior to construction.

He reported that the site plan includes the layout of a future rail spur onto the property. This would not be constructed until the rail service is an economically viable option for the transport of materials off site. The construction of the rail spur will require the approval of a Wetlands Permit by the NHDES and the actual design of the rail spur will need to be approved by the Planning Board at a later date.

Mr. Woodward explained that the Planning Board opened the public hearing for this site plan application on April 15, 2009, and recessed the hearing to allow the Conservation Commission time to conduct a site walk and to provide the Board with comments regarding the Conditional Use Permit requests for impacts to the buffer to the bluff, buffer to the wetland, and buffer to the Shoreland Protection Overlay District.

He reported that an on-site field review was conducted by the Commission with the applicants present to explain the project in the field and respond to questions. On the site walk, existing erosion was observed on the bluff above the Merrimack River opposite and slightly south of the proposed driveway entry to the site. At their regular meeting following the site visit, the Commission was not able to achieve a quorum. However, the members assembled provided their comments and consensus views on the Conditional Use Permits associated with the application. At the meeting, Commission members indicated that they had no objection to the CUP pursuant to Section 28-4-3(d) related to disturbance of the wetland buffers. As to the CUPs pursuant to Section 28-4-4(d) related to disturbance to the buffers to bluffs, and Section 28-3-3(f) related to disturbances in the Shoreland Protection District, the Commission offered the following comments:

1. The proximity of the extension of Whitney Road to the area which exhibited erosion on the Merrimack River bluffs was of concern to the Commission. Consideration of a shift of the road to the east at that point appears to be feasible and the Commission suggested that the road be moved as far away as possible from the bluffs. The Commission noted that while erosion in these types of bluff areas is hard to predict, it is often an accelerating process and they expressed concern that in the future, the City could be faced with having to take extreme measures to control the erosion in order to protect the extended Whitney Road. Therefore, steps should be taken now to minimize and prevent future erosion.
2. The Commission indicated that the land between the extended Whitney Road and the Merrimack River should be considered for protection by conservation easement so that the fragile slopes, and the vegetation which helps to stabilize them, won't be intentionally disturbed in the future.
3. It was suggested that a review be made of historic aerial photos and maps to determine what changes had occurred in the course of the river and the adjacent bluffs over time. This could provide some guidance as to how the river and bluffs will change in the future and how rapidly the changes might occur.

(Mr. Drypolcher arrived at 7:43 PM.)

Mr. Woodward reported that the Board had received a communication from CMA Engineers on behalf of the Cooperative addressing five issues related to the application which had been raised by City staff.

The first issue related to the Conservation Commission's expressed concern about the proximity of the road to the bluff particularly as it continued southerly from the crossing over the Burnham Brook ravine and ascended the bluff above the Merrimack River. The future extension of Whitney Road to the south does start to move further from the bluff but the transition area near the project driveway can move further to the east. One recommendation from the City staff was to remove a grass panel on the westerly shoulder to reduce the width of the road improvements, and the second was to shift the alignment slightly to the east. The applicant indicated they preferred not to change their design due to engineering costs and the fact that they are seeking bids in an attempt to fast track the project. However, they did admit that the road could shift between 8 and 18 feet easterly. The Planning Division is of the opinion that the road will be a City responsibility forever and the small cost and delay at this time may prove prudent over the long run.

Secondly, both the City staff and the Conservation Commission have recommended that the land between the road and the river should be protected with a conservation easement to limit any loss of vegetation and terrain alteration in that area that could hasten the bluff erosion. The applicant does not disagree but does not want to provide an easement now as they apparently would like to use the easement for future mitigation needs. They propose that they not be required to provide the easement until a time not later than December 31, 2014, or until any further extension of Whitney Road or for a period of no more than four years. The staff continued its recommendation that the easement be provided prior to the issuance of a building permit as is generally required for applications that involve easements. If the Board wishes to allow the easement to be provided at a later date, then at minimum an agreement to convey an easement should be required which would specify the time frame, as well as require that no vegetation be removed or terrain altered between the limit of road work and the river.

A third issue related to maintenance of litter on Whitney Road. The Planning Board recessed the public hearing on this application to allow the applicant to develop a management plan dealing with trash that falls off trucks en route to the plant that will cause litter on the road and roadsides as well as the site. The applicant has responded that the Cooperative plans to subcontract for operations at the facility and will include language in the operator's contract requiring the operator to ensure that there is no litter on the site and on Whitney Road on a daily basis if and as required. This suggestion is not what the staff would have envisioned in response to the Board's concerns.

The fourth issue relates to a maintenance program for the mechanical separation device. This mechanical stormwater treatment system, while used privately, is something the City has not utilized to date and this will become the first one for which the City will become responsible. The applicant suggests that their responsibility for the device be

limited to “until any further extension of Whitney Road or for a period of no more than four years”. The staff has recommended the latter.

The last issue addressed by Cooperative was the cost of improvements. This information was provided to evaluate the amount of a credit that the applicant would be eligible for against the Traffic Impact Fee. As noted in the Impact Fee Worksheet, the investment in Whitney Road, exclusive of the minimum frontage required for development of the lot, is far in excess of the fee that would be due, thereby eliminating the impact entirely.

Mr. Gross asked for an explanation of the applicant’s plans for mitigation purposes at a later date. Mr. Woodward responded that they were preserving their ability to provide mitigation for a possible project in the future, perhaps off site and unrelated to this project.

Ms. Foss indicated she is aware of the erosion taking place on this site and the erosion pressures on the site. She also noted that the bluff in that area is the site of an active bald eagle wintering area so it would be a good idea to keep that in mind as construction is planned.

Paul Schmidt from CMA Engineers and Jim Presher, director of the Concord Regional Solid Waste/Resource Recovery Cooperative, were present to answer questions from the Board.

Mr. Gross asked what the remedy would be for a neighbor finding that the operator was not doing an adequate job of cleaning up litter. Mr. Schmidt responded that the Cooperative would be the owner of the facility and would ultimately be responsible for the facility even though there would be an operator with whom they subcontracted. He reported that litter control will be carefully spelled out in the Cooperative’s agreement with the operator.

Ms Foss asked if there was any ability to move the building in order to bring the road further from the bluff,. Mr. Schmidt responded that the building location is constrained on three sides and on the fourth side they are retaining the ability to expand the building. It is tight all the way around and it would really hamper the site if the building needed to be moved around. He explained that the proposal already meets the 50-foot buffer to bluffs requirement. They are comfortable with the way the site is laid out. They feel the slope has been there for some time and there has been some erosion that they feel is due to ground water seepage and not to the river.

Mr. Drypolcher asked for an explanation about the future mitigation. Mr. Schmidt explained that right now there is not a specific project that they are looking to mitigate but there is the possibility that they may in the future need to mitigate other projects. They are not certain that there is the ability on this site to provide a match for another project because they have not studied it but they wanted to preserve the ability to use it for mitigation if they needed to. They would like that flexibility and are willing to provide a legal document to that end.

Attorney Tupper Kinder was also present on behalf of the Cooperative and explained that the question of the conservation easement is one of fairness from the point of view of the Cooperative. The project itself does not at this time have any impacts that would call for mitigation. Any impacts are caused by construction of the road which is being constructed for the benefit of the City. It is unusual for a developer who has no impacts on his own project to provide mitigation. However, the Cooperative may have impacts in the future on its other projects and might be able to use the area of the conservation easement as mitigation on its other projects. Consequently, they would like to provide the conservation easement in a way that would allow them to use it for mitigation on its other projects.

Pete Dearness, operator of the State rail line, noted that there are some vernal pools between the railroad and the project site. This is the location of a future railroad spur and he hoped this project would not affect that future development. His interest at this time is to encourage the Planning Board to approve the project and to not restrict the Cooperative from having the ability to add the spur at a later date.

There was no one else who wished to speak for or against this application and the Chair declared the hearing closed at 8:14 PM.

Deliberations and Action on Application
Deliberations and Action on Architectural Design Review

Ms. Foss suggested that the area between the project site and Burnham Brook might also be a potential for mitigation.

Mr. Gross moved that the Planning Board approve the Conditional Use Permit to allow the Materials Recycling and Processing use in the Industrial District pursuant to Article 28-2-4(c) of the Zoning Ordinance. Ms. Meyer seconded. Motion carried.

Ms. Meyer moved that the Planning Board approve the Conditional Use Permit to allow the construction of fewer parking spaces pursuant to Article 28-7-11(b) of the Zoning Ordinance. The CUP will allow for the construction of 50 paved parking spaces, rather than the 122 spaces that are required by the Zoning Ordinance. If the Zoning Administrator determines that the parking spaces are needed in the future, the additional spaces will need to be constructed, as shown on the site plan. Ms. Foss seconded. Motion seconded. Motion carried.

Ms. Meyer moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-4-3(d) of the Zoning Ordinance, Conditional Use Permits required for disturbances of wetland buffers, to permit impacts to the wetland buffers. Mr. Shurtleff seconded. Motion carried.

Mr. Gross moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-4-4(e) of the Zoning Ordinance, Conditional Use Permits required for disturbances of bluff buffers, to permit impacts to the bluff and buffer to the bluff subject

to the applicant working with the Engineering and Planning Divisions to shift the proposed roadway to the east as much as possible. He further moved that the applicant shall work with the Engineering Division to revise the road section between stations 9+80 and 16+00, and the proposed future roadway layout and right-of-way easement from the entrance to the recycling facility to the property boundary, to further minimize the impacts to the bluff to the greatest extent possible. The 8-foot grass panel will be eliminated, and the road shall shift up to 18 feet to the east, to move the roadway away from the bluffs associated with the Merrimack River. Mr. Kenison seconded. Motion carried.

Mr. Shurtleff moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-3-3(f) of the Zoning Ordinance, Conditional Use Permits required for disturbances to the Shoreland Protection District, to permit impacts to the Shoreland Protection Overlay District, subject to the applicant working with the Engineering and Planning Divisions to shift the proposed roadway to the east as much as possible, to revise the road section between stations 9+80 and 16+00, and the proposed future roadway layout and right-of-way easement from the entrance to the recycling facility to the property boundary, to further minimize the impacts to the bluff to the greatest extent possible. The 8-foot grass panel will be eliminated, and the road shall shift up to 18 feet to the east, to move the roadway away from the bluffs associated with the Merrimack River. Mr. Gross seconded. Motion carried.

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for the site plan, landscaping plans, and building design for the Major Site Plan Application of the Concord Regional Solid Waste Resource Recovery Cooperative as submitted by the CMA Engineers and Warrenstreet Architects. Ms. Meyer seconded. Motion carried.

Mr. Gross moved that the Planning Board grant a waiver to Section 8.02 (C)(1), Site Access, of the Site Plan Regulations to allow for the construction of Whitney Road to a different standard than what would be required by the Subdivision Regulations. The roadway has been designed with a reduced roadway width to avoid unnecessary disturbances to the buffers to the bluffs, wetlands, and Shoreland Protection District. The City's standards would require the road to be constructed with 40 feet of pavement, consisting of two 12-foot travel lanes, and 8-foot shoulders, with two 8-foot landscaped panels, and 5-foot sidewalks on each side of the street. The Engineering and Planning Divisions have recommended that the applicant provide a design for Whitney Road, consisting of 34 feet of pavement, including two 12 foot travel lanes and 5-foot shoulders, with a 5-foot sidewalk on the east side of the street. Ms. Meyer seconded. Motion carried.

Mr. Gross asked for discussion regarding proposed Condition #12 for the site plan. After having heard testimony by the applicant that they would include language in their contract with the operator relative to maintenance of litter on Whitney Road, he suggested changing in the third line after the word "shall", by deleting the phrase "submit a maintenance plan for the" and inserting "commit to inclusion of a provision in the subcontract for operation of the facility in conformance with the terms set forth on

page 2 of its letter of May 19, 2009 relative to" and then pick up "clean up of trash and debris from the Whitney Road right-of-way. The applicant shall guarantee performance of such provision. The plan shall be approved by the Planning and Engineering Division".

He explained that the intent would be to gain a guarantee that the Cooperative would take responsibility and that it would mean a single telephone call from the City to the owner in the event of a complaint would resolve the litter issue.

Shurtleff moved to accept proposed Condition #12 as amended.

Regarding proposed Condition #10.f, Mr. Gross suggested that the Planning Board accept the commitment of the applicant to not disturb the easement area in any way until the conservation easement is granted.

Mr. Kenison suggested adding they "shall provide an agreement to convey an easement which shall guarantee a non-disturbance agreement that there shall be no disturbance of this land prior to the actual conveyance of the easement", that the easement shall be conveyed no later than January 1, 2014, and that this provision shall be binding on any successor.

Mr. Gross moved that the Planning Board grant conditional Site Plan approval for the Site Plan application of the Concord Solid Waster Resource Recovery Cooperative as submitted by CMA Engineers and Warrenstreet Architects subject to the following standard and special conditions:

Standard Conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for all private and public improvements shall be obtained from the Engineering and Planning Divisions. The applicant shall revise the plans to address minor corrections and omissions as noted by Staff. No construction activity may commence prior to the preconstruction conference.
2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
3. Prior to the release of a financial guarantee for any public improvement, an as built plan shall be provided to the City Engineer in form and content acceptable to the City Engineer.

4. No certificate of occupancy for any building or use shall be issued until all public and private improvements have been substantially completed to the satisfaction of the City Engineer.
5. No certificate of occupancy for any building or use shall be issued until the City Council has accepted the extension of Whitney Road as a city street.
6. The wetland buffers and buffer to the bluff shall be clearly and permanently marked before, during, and after construction of the sites.
7. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following State permits shall be obtained and copies provided to the Planning Division:
 - a. NH Department of Environmental Services Alteration of Terrain Permit
 - b. NH Department of Environmental Services Standard Dredge and Fill Permit
 - c. NH Department of Environmental Services Shoreland Protection Permit
 - d. NH Department of Environmental Services Sewer Connection Permit
 - e. NH Department of Environmental Services permit for 1,000 gallon above ground diesel fueling station
8. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitil, FairPoint Communications, and National Grid.
9. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - a. Transportation Facilities - 7,610 sq. ft. (Single Tenant Office Space)
 - b. Transportation Facilities - 47,600 sq. ft. (Manufacturing)

Special Conditions:

10. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:

- a. Conveyance of a right-of-way easement and temporary turnaround easement to the City of Concord from the Concord Regional Solid Waste Resource Recovery Cooperative for the extension of Whitney Road across the property known as Tax Map P27, Block 2, Lot 12.
 - b. Conveyance of a confirmatory right-of-way easement to the City of Concord from Wheelabrator Concord Company for the extension of Whitney Road across the property known as Tax Map P27, Block 2, Lot 17.
 - c. Conveyance of a drainage easement to the City of Concord from Wheelabrator Concord Company for the extension of Whitney Road across the property known as Tax Map P27, Block 2, Lot 17.
 - d. Conveyance of a well access and maintenance easement from the Concord Regional Solid Waste Resource Recovery Cooperative to Wheelabrator Concord Company for the maintenance of an existing well on the property known as Tax Map P27, Block 2, Lot 12.
 - e. Conveyance of an agreement to convey the remaining right-of-way on the property known as Tax Map P27, Block 2, Lot 12 to the City of Concord as shown on the Whitney Road Easement Plan, at such time the property is subdivided or developed in the future, or such time that the City of Concord proposes to complete the extension of Whitney Road.
 - f. Conveyance of a conservation easement to the City of Concord on or before January 1, 2014, on the land to the west of the Whitney Road and the future Whitney Road right-of-way to the Merrimack River, on the property known as Tax Map P27, Block 2, Lot 12 as shown on the Whitney Road Easement Plan. The applicant shall provide an agreement to convey an easement which shall guarantee that there shall be no disturbance of this land prior to the actual conveyance of the easement. This provision shall be binding on any successor.
11. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall work with the Engineering Division to revise the road section between stations 9+80 and 16+00, and the proposed future roadway layout and right-of-way easement from the entrance to the recycling facility to the property boundary, to further minimize the impacts to the bluff to the greatest extent possible. The 8-foot grass panel will be eliminated, and the road shall shift up to 18 feet to the east, to move the roadway away from the bluffs associated with the Merrimack River.
 12. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall commit to the inclusion of a provision in the subcontract for

operation of the facility in conformance with the terms set forth on page 2 of its letter of May 19, 2009 relative to clean-up of trash and debris from the Whitney Road right-of-way. The applicant shall guarantee performance of such provision. The provision shall be approved by the Planning and Engineering Divisions.

13. The Concord Solid Waste Resource Recovery Cooperative shall maintain, according to the manufacturer's specifications, the Contech Vortechs Model 4000 stormwater treatment system for a period of four years beyond the acceptance of the street by the City Council.

Ms. Meyer seconded. Motion carried.

(Mr. Drypolcher now presided as Chair.)

6. Application by **Tropic Star on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, Jean B. Chase, and Dale G. Fifield** for approval of a site plan of property at **36 Burns Avenue, 9 East Side Drive, and 155 and 157 Loudon Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(b), Construction of Fewer Parking Spaces, and Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. (#2009-04)

Public Hearing

Mr. Henninger explained this proposal to demolish an existing auto service building at 155 Loudon Road and an existing Burger King Restaurant at 157 Loudon Road, and to construct a new 13,225 square foot CVS Pharmacy and a new 2,598 square foot Burger King. A drive-up window is proposed for both the Burger King and the CVS. A total of 101 new parking spaces are proposed. A companion subdivision, which consolidates both commercial lots and a portion of 36 and 42 Burns Avenue to create a 2.10 acre site for redevelopment, was approved by the Planning Board in February of 2009.

He reported that the applicants have submitted a request for a Conditional Use Permit to defer the construction of six parking spaces. A request for a Conditional Use Permit has also been submitted to allow two driveways on Loudon Road where only one is allowed and with spacing between driveways of 100 feet and 195 feet where 200 feet is required. The applicant has further requested a CUP for spacing between driveways for the relocated entrance on East Side Drive. The existing driveway is shifted 30 feet northward away from the Loudon Road intersection but is only separated by 110 feet from the Loudon Road intersection and 130 feet from the Burns Avenue/East Side Drive intersection. The applicant has agreed to extend the Loudon Road median so that both drives will be right turn in and out only.

He reported that the Zoning Board of Adjustment on November 5, 2008, granted a variance to Article 28-4-2(b)(1), Buffer Width Standards, to permit the required buffer to be placed along the property line inside a residential zoning district when such buffer is required to be placed along the district boundary at 151-155 Loudon Road.

He reported that the Design Review Committee had reviewed the site and building plans and recommended approval subject to the following comments:

Burger King - The Committee found the proposed elevations to be generally acceptable as submitted. The Committee noted that only three of the five signs proposed are permissible and suggested that two of the signs on the east side should be removed. These signs had limited utility and might be visible from the residential area to the north. The applicant agreed to these changes and noted that the stone façade over the entry would be continued up to the roof.

CVS - The Committee found the proposed elevations to be a significant improvement over the original submitted but noted that the CVS Pharmacy signs overpowered the elevation where they were placed and recommended that they be reduced in size. It was noted that the exterior block would be a solid block with 4" x 16" dimension which will appear more like brick. The Committee and the applicant agreed that the roof top units would be screened with horizontal "envisor²" rooftop screening, matching the peachy beige color on the façade, and with horizontal louvers. The applicant noted that the dumpster screen will now match the exterior block at CVS.

Lighting - The Committee expressed concern with the proposed 20 foot tall lighting along the rear property line. City staff noted the 20 foot light fixtures used at McDonald's on Loudon Road, even with extra shielding, resulted in an inappropriate amount of light shining on the abutters. It was suggested that 12 foot tall lights be installed with low wattages, and full cutoff fixtures, within 50 feet of the north property line.

Landscaping - The Committee generally found the landscaping acceptable but deferred to the City's landscape architect comments on details of the proposed plantings. It was noted on the site plan that the proposed six foot buffer fence is to be opaque but the details still show a fence with gaps between the vertical slats.

Free Standing Signs - No plans have yet been received for the two proposed free standing signs.

Mr. Henninger reported that the applicant will utilize a number of existing utility connections to service the site and limited cuts for utilities will be required in Loudon Road. Drainage has been designed so that the runoff for a 10 and 25 year storm will be retained on site. Provisions for storm water treatment are included in the plans.

He reported that City staff has been working with the applicant to add more landscaping along the residential district boundary along the north side of the parcel and additional shade trees around both the perimeter of the site and internal to the parking lot.

He reported that City staff is also concerned with the amount and effectiveness of the proposed residential district buffer on the north side of the site as well as lighting and

other impacts on abutting single family residences. The applicant has been working to address these concerns. The City's experience at Dick's Sporting Goods and now at McDonald's has shown that the current best practices of full cut-off fixtures does not adequately prevent spill over lighting onto adjacent residential properties. City staff noted the 20 foot high light fixtures used at McDonald's on Loudon Road, even with extra shielding, resulted in an inappropriate amount of light to fall on the abutters. It was suggested that 12 foot tall lights be installed with low wattages and full cutoff fixtures within 50 feet of the northerly property line. The applicant is taking this under advisement.

He reported that CVS has removed façade lighting from the north side of the building and reduced the amount of lighting on the building on the west side. The CVS affixed sign facing East Side Drive will be visible to a number of residences along East Side Drive to the north. It would be desirable to have this sign reduced in size and be provided with automatic shutoffs so the sign can be turned off after closing. If the applicant follows the recommendation of the Design Review Committee to remove two signs from the east side of the Burger King building, the affixed signs will only be partially visible from the abutting residential area. It would be desirable to provide the signs with automatic shutoffs so the signs can be turned off after closing.

Mr. Henninger reported that the site has access from both Loudon Road and East Side Drive. The applicants propose to close two right in/right out driveways and one full access drive on Loudon Road and replace the three drives with two right turn in/right out driveways. The East Side Drive entrance is proposed to be shifted 30 feet to the north further away from the intersection of East Side Drive and Loudon Road. Sidewalk access is recommended along the north side of the entrance drive from East Side Drive to the walkway in front of the building. City staff has requested the proposed median island on Loudon Road be extended westward to prevent illegal left turn movements. Also, the sidewalk along Loudon Road and East Side Drive is along a walk to school route and needs to be maintained throughout the construction process.

He reported that City staff has recommended that the Conditional Use Permit to construct fewer parking spaces be expanded to include not constructing at least three or more parking spaces at the corner of East Side Drive and Loudon Road.

He reported that City staff has advised that there needs to be a bypass lane for traffic to Burger King for the CVS drive-through. This travel lane behind CVS is the only access to Burger King from East Side Drive and for east bound traffic on Loudon Road. A vehicle queue at either of the drive in windows would block access to Burger King. The required vehicular stacking at Burger King wraps around three sides of the building and lies between the parking and both entrances to Burger King. The applicant has been advised that this was a serious concern at McDonald's and that the Planning Board required changes to that site plan to relocate the stacking lanes.

City staff is requesting that the applicant provide an additional five feet of right of way along the East Side Drive frontage of the residential lot at 42 Burns Avenue which is a part of this development. This right-of-way would allow for wider shoulders and a

longer turn lane north from East Side Drive when this section of road is reconstructed in the future.

He reported that left turn movements into and out of the existing driveway to Burger King and the brake service business on East Side Drive operate in a force flow condition. There are no gaps available in traffic during the peak hours and other high travel times along East Side Drive. Southbound queues along East Side Drive usually extend past both the existing and proposed entrance and commonly extend past Burns Avenue. Movement into and out of this driveway functions only by the courtesy of drivers waiting for the Loudon Road light to allow the turning drivers to slip through the queue. The amount of left turn traffic exiting the East Side Drive driveway traffic is expected to increase in the weekday PM peak hour and in the Saturday peak hour. The amount of left turning traffic entering the East Side Drive driveway traffic is also expected to increase in the weekday PM peak hour and in the Saturday peak hour.

Mr. Henninger reported that the City, when it last reconstructed the Loudon Road/East Side Drive intersection a little over ten years ago, created a double nested turn lane to allow the two existing businesses to retain access. The applicant's traffic engineer believes the increased traffic at this intersection can be satisfactorily handled in the same way turning movements are accommodated today. The City's traffic engineer is concerned that this may or may not occur. This intersection cannot be suitably evaluated with conventional capacity analysis methods due to the forced flow condition. City staff is formulating a fall back position which may include no left turns into the intersection or the construction of a median along East Side Drive to be implemented if the proposed operation of the driveway is not acceptable. A financial guarantee could be provided which would allow the City to implement changes on East Side Drive which may be deemed necessary. What these improvements may be, their impacts and cost have not been explored or evaluated.

In discussing traffic at the Loudon Road/East Side Drive intersection, Mr. Kenison noted that it did not seem that enough mitigation was being proposed to minimize the effects of this project on traffic at the intersection. More is being shoehorned into this intersection than it appears that it can handle. Mr. Henninger responded that all of the Loudon Road improvement plans leave this intersection intact. The traffic studies indicate this project will not increase volumes at this intersection. City staff is more concerned about left turns into the site on East Side Drive making traffic build up back to the intersection.

Mr. Shurtleff expressed concern about school children walking to and from Dame School and whether the increase in traffic will affect their safety. Mr. Henninger responded that there are fewer driveways on Loudon Road and they are narrower to minimize interaction between pedestrians and vehicles.

Attorney Richard Uchida from Orr & Reno and Steve Pernaw, traffic engineer, were present on behalf of the applicant as well as Wayne Morrill from Jones and Beach Engineers and Scott Mitchell from Tropic Star Development, LLC.

Mr. Pernaw explained the traffic study he completed for CVS and noted that he had also done the Walgreen traffic study across the street. He explained they started by looking at existing conditions and reported that there are four curb cuts on the site at this time, two full access driveways and two right in/right out driveways. He reported they have given up a full access driveway on Loudon Road which will mean more cars coming in and out of East Side Drive.

He reported that, by doing simultaneous actual studies and observations of all four current driveways, they determined that the primary access to the site was a right turn in from Loudon Road and the primary egress is a right turn out on Loudon Road for the existing Burger King. They also observed driver courtesy in allowing entering or existing traffic from East Side Drive access. He felt that was what made the driveway work today and that is what will make the new layout work. He reported that without new development traffic on East Side Drive would operate at a Level of Service D and with the new development, traffic will still be at Level of Service D. This project will generate some new trips but there are also opportunities for pass-by visits.

He explained his suggestions for mitigation included removing one driveway, moving the driveways further from the intersection, increasing storage for the East Side Drive northbound traffic to 5-6 passenger cars, redesigning the shared driveway approach at East Side Drive to narrow it to 36 feet and delineate two clear lanes, creating a painted island in East Side Drive north of the driveway to accommodate left turning traffic exiting the site, and lengthening the median island in Loudon Road.

Mr. Pernaw then discussed the observations made regarding the drive-through both at Walgreens across the street and the new CVS on Hall Street. He reported they found the maximum queue at Walgreens, which has only one window, was two vehicles. CVS proposes two windows at this site. The CVS site on Hall Street had 33 customers using the drive through throughout the entire day, with a maximum of two in the queue. 90% of the time there were no vehicles at the drive-through windows.

(Mr. Gross left the meeting at 10:00 PM.)

Ms. Foss asked if there was any pedestrian connection between the two buildings, and Mr. Uchida responded that they do not have any at this time but there was opportunity to add one.

Mr. Uchida then discussed site lighting and explained they are lowering some of the poles to 12 feet at the request of staff. The new buffer will also be fifteen feet and fully landscaped.

Mr. Foss asked about the hours of operation and Mr. Mitchell responded that they will probably start by being open 24 hours a day and then evaluate and probably cut back on their hours. They will probably end up being open the same hours as their neighboring competition.

Bob Hall, owner of American Brake Service and resident of the building, spoke about the entrance on East Side Drive. He explained that when the City reconstructed the intersection, he was not happy with the prospect, but he has realized over time that they do not have access problems now and he feels with the driveway moved 30 feet it will be much better. People driving in from East Side Drive to the Burger King drive-through seem to be confused so he feels this design is better. It has been his observation that only about one third of the parking lot at Walgreens is currently being used.

Robert Baker of Penacook Street in Concord felt pedestrian access and neighborhood children are an important consideration in this project. He thought it would make sense to suggest one or both buildings be moved closer to Loudon Road and one access closed. He believes people will be coming from the adjoining neighborhoods to these buildings on foot and suggested moving toward a more pedestrian centered philosophy and not so much oriented to the automobile.

There was no one else who wished to speak for or against this application and the Chair declared the hearing closed at 10:26 PM.

Deliberations and Action on Application
Deliberations and Action on Architectural Design Review

Mr. Swope moved that the Planning Board table action on the application to allow the applicant to fully address the issues and concerns raised by the City staff, and to address concerns related to traffic and pedestrian circulation as well as conflicts at driveways and on-site, as specifically identified during the public hearing and Planning Board deliberation process. Mr. Kenison seconded. Motion carried.

Architectural Design Review

7. 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.

- **Bistro Rustica** at 80 North Main Street (1 sign)
- **Concord Regional Solid Waste/Resource Recovery Cooperative** on Whitney Rd
- **Generations Dental Care** at 9 Triangle Park Drive
- **Jade Nails** at 89 Ft. Eddy Road (2 signs)
- **The Rooster** at 52 North Main Street (2 signs)
- **Walmart** at 344 Loudon Road (2 signs)
- **Eastern Analytical** at 25 Chenell Drive (1 sign)
- **Secure Care Products International** at 39 Chenell Drive (1 sign)

The Chair opened the hearings for all of the above sign applications.

- **Bistro Rustica** at 80 North Main Street (1 sign)

Mr. Henninger explained this proposal to remove the existing sign on the canopy and to install a new hanging sign on the existing hardware.

He reported that Design Review Committee members expressed concern regarding the bright orange background and asked to see a color sample. They felt it was a very handsome design but preferred a more complementary background color.

He reported that the Design Review Committee had found the placement and design of the proposed sign to be appropriate for the location and use, and recommended approval provided the background color is more subdued than shown.

A representative from Saymore Signs was present on behalf of the applicant and explained that the color could be toned down.

Mr. Swope moved approval provided the background color is more subdued than shown. Ms. Meyer seconded. Motion carried.

- **Concord Regional Solid Waste/Resource Recovery Cooperative** on Whitney Road

Mr. Henninger explained this proposal for a freestanding sign, an affixed sign as well as two directional signs, one of which is required by the State Department of Environmental Services to post what materials will be accepted by the facility.

He noted that the affixed sign does not appear to be in compliance with the Zoning Ordinance relative to area and is placed higher than 25 feet above grade on the building.

He reported that the Design Review Committee had found the placement and design of the proposed signage to be appropriate for the location and use, and recommended approval as submitted provided the affixed sign is revised to comply with the Zoning Ordinance.

There was no one present on behalf of the applicant.

Mr. Swope moved approval as submitted provided the affixed sign is revised to comply with the Zoning Ordinance. Ms. Meyer seconded. Motion carried.

- **Generations Dental Care** at 9 Triangle Park Drive

Mr. Henninger explained this proposal to add a tenant panel to the existing freestanding sign. He reported that the color scheme will be consistent with the existing signage on the property.

He reported that the Design Review Committee had found the placement and design of the proposed sign panel to be appropriate for the location and use, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Swope moved approval as submitted and Ms. Meyer seconded. Motion carried.

- **Jade Nails** at 89 Ft. Eddy Road (2 signs)

Mr. Henninger explained this proposal for a box sign similar to the other signs at the Merrimack Center as well as a replacement panel in an existing freestanding sign.

He reported that the Design Review Committee had found the placement and design of the proposed signage to be appropriate for the location and use, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Swope moved approval as submitted and Mr. Shurtleff seconded. Motion carried.

- **The Rooster** at 52 North Main Street (2 signs)

Mr. Henninger explained this proposal to install a new sign for a new business using the existing sign brackets and raceway. They plan to use the existing lights above the sign so the affixed sign will not be internally illuminated.

He reported that the Design Review Committee had found the placement and design of the proposed signage to be appropriate for the location and use, and recommended approval as submitted.

Ms. Meyer felt the individual letters on the former Sprint sign were intended to be used specifically on the curved bracket and this will not be an appropriate sign on this bracket. Mr. Henninger responded that the sign will be constructed of aluminum that will be mounted flush to the bracket.

A representative from Saymore Signs was present on behalf of the applicant and explained that they were re-using this bracket to minimize costs and additional damage to the brick façade.

Mr. Swope moved approval as submitted and Ms. Foss seconded. Motion carried, 7-1, with Ms. Meyer voting against.

- **Walmart** at 344 Loudon Road (2 signs)

Mr. Henninger explained this proposal for two replacement panels in freestanding signs. He reported that this is part of a renovation of the existing store and that decisions are still being made about the affixed signage which will be presented at a later date.

He reported that the Design Review Committee had found the placement and design of the proposed signage to be appropriate for the location and use, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Swope moved approval as submitted and Ms. Meyer seconded. Motion carried.

- **Eastern Analytical** at 25 Chenell Drive (1 sign)

Mr. Henninger explained this sign has been in place for many years without benefit of a permit and they are now seeking retroactive approval as a result of enforcement action by Code Administration. He reported the sign meets the requirements of the current Zoning Ordinance.

He reported that the Design Review Committee had found the placement and design of the sign to be appropriate for the location and use, and recommended approval as installed.

There was no one present on behalf of the applicant.

Ms. Meyer moved approval as installed and Ms. Foss seconded. Motion carried.

- **Secure Care Products International** at 39 Chenell Drive (1 sign)

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Mr. Henninger explained this sign has been in place for many years without benefit of a permit and they are now seeking retroactive approval as a result of enforcement action by Code Administration. He reported the sign meets the requirements of the current Zoning Ordinance.

He reported that the Design Review Committee had found the placement and design of the sign to be appropriate for the location and use, and recommended approval as installed.

There was no one present on behalf of the applicant.

Mr. Swope moved approval as installed and Ms. Meyer seconded. Motion carried.

8. Application by **Sam's Club** for approval of modifications to the previously approved exterior design of its retail facility at **304 Sheep Davis Road. (#2009-25)**

Public Hearing

Mr. Henninger explained that the applicant has submitted revised façade elevations to re-image both the main retail building and the fueling station canopy and accessory structures for the existing Sam's Club. New cart corrals will be placed in the parking lot and a small "Welcome" and "Exit" sign are to be added at the main entrance. The main

building will be repainted from its current mix of white, grey and blue colors to various shades of beiges and browns. The canopy of the fueling station will be a solid dark blue color, and the background of the new affixed sign on the building will be blue matching the fueling station canopy. The background of the replacement panels on the free standing sign will be beige in color matching the main building. No other changes are proposed to the site or building.

He reported that the Design Review Committee had reviewed the proposed modifications to the building and the new sign package and recommended approval as submitted.

Mr. Swope moved that the Planning Board grant Architectural Design Review approval for proposed façade renovations for Sam's Club at 304 Sheep Davis Road and for two new affixed signs and the refacing of the existing free standing sign. Mr. Shurtleff seconded. Motion carried.

REGULAR MEETING

9. Consideration of **minutes of Planning Board meetings.**

Mr. Swope moved approval of the minutes of the meetings of April 15, 2009 and April 30, 2009 as submitted. Mr. Hicks seconded. Motion carried.

City Council Referrals

10. Consideration of an **amendment to the Zoning Map to convert an Urban Commercial (CU) District to a Central Business Performance (CBP) District** for the block between South Main and Storrs Street from Hills Avenue to a point two lots southerly of Theatre Street, and the block between South Main Street and South State Street, from Thompson Street to Concord Street.

Mr. Woodward explained that the City Council had referred to the Planning Board a proposal for the rezoning of property located southerly of Hills Avenue. He explained that the Duprey Companies propose to redevelop the property it has under option from the Sanel Realty Company Inc. on the north side of Theatre Street between South Main and Storrs Street. They initially proposed to seek a number of variances to achieve a major redevelopment of the site. However, City staff recommended that a better approach would be to seek a rezoning to include the site in the CBP District which would match more closely the desired redevelopment scenario. The Council received a proposal at their May 11, 2009 meeting and set it for public hearing on June 8, 2009, while referring it to the Board for a report. At the same time, two applications remain pending before the Zoning Board of adjustment for June 10, 2009, the original set of variances based on the continuation of the site in a CU District, and a second application for two variances based on a rezoning to a CBP District on June 8th. The latter involves a height variance related to the height measurement on the sloping site, and a request to use the ground floor of a building facing Storrs Street for residential purposes. In the

CBP, residences are required to be on or above the second floor to ensure that the ground level is in commercial use.

He reported that the proposed rezoning includes the block immediately south of the CBP starting at Hills Avenue and incorporates other properties not owned by the Sanel Realty Company Inc. In addition to the block between Hills Avenue and Theatre Street, the rezoning proposal includes two properties south of Theatre Street and the block bounded by South Main Street, Concord Street, South State Street, and Thompson Street.

Mr. Woodward referred to sections of the Master Plan 2030 that related to the downtown and are relevant to the area in question, including excerpts from the Vision Section, Land Use Goals related to Downtown Concord, and Land Use, Housing, and Economic Development Policies related to Downtown Concord. Master Plan 2030 shows the area proposed for rezoning as included in a category entitled "Downtown Commercial" on the Future Land Use Map.

He reported that a key attribute of the CBP District is that the District is exempt from the parking requirements of the Zoning Ordinance and it is presumed that parking will be in metered on-street spaces or garages which have historically been provided by the City. During the rezoning effort that led to the current ordinance, the Citizen Zoning Advisory Committee which had been appointed by the Council to work with the consultant and City staff to draft the ordinance, had discussed expanding the CBP District southerly to include this area. The primary reason the boundary line was not redrawn at that time was the concern about the cost to the City of providing more parking, and the view expressed that other areas of the City are expected to provide their own parking on-site.

Beyond the parking issue, the area does have a number of significant older buildings with historic merit including the NH Bindery building, the Hills Court Condominiums, the State warehouse, the Capital Center for the Arts, the 46 South Main Street condominiums, the Beckett Glass Building, and the Bridge and Byron printing company offices. The JFK Apartments and the fly space at the Capital Center for the Arts are two of the tallest structures on the City skyline and the CBP District has the most liberal height limit at 80 feet. The CBP has no setback requirements or maximum lot coverage which recognizes some of the historic circumstances under which existing structures were built as well as allows for greater flexibility for infill development.

He reported that both Districts have a fairly broad and similar list of allowable mixed land uses, with the CU actually allowing a few more land uses albeit of the type that either don't fit or aren't necessarily wanted in the core of the downtown.

In terms of the impact to the City's economy, environment, municipal services, and municipal facilities, all factors to be evaluated in an amendment to the Zoning Ordinance, the following appear to be reasonable conclusions:

- The rezoning should yield an economic benefit if the redevelopment proceeds, and even if it does not, the CBP District more closely matches the current land use in the area, and leaves the opportunity for others to pursue redevelopment projects.
- There are no major environmental issues other than perhaps urban runoff, and for which there are new options such as green roofs to help address concerns.
- As a developed area, there should not be any particular new demand for municipal services. In fact, the redevelopment should provide code compliant structures that might reduce demand for some safety services.
- Similarly, as a developed area, there are municipal and non-municipal utilities throughout this area. Some will likely need updating, and the handling of stormwater may present some challenges, but again, there are new technologies now available such as the aforementioned green roofs that may help the situation.

Mr. Swope moved that the Planning Board recommend to the City Council the amendment of the Zoning Map to convert an Urban Commercial District to a Central Business Performance District for the land between Hills Avenue southerly to a point south of Theatre Street, between South Main Street and Storrs Street; as well as the block bounded by South Main Street, Concord Street, South State Street, and Thompson Street. Mr. Kenison seconded. Motion carried.

Old Business

12. Consideration of the adoption and certification of the **Mapped Lines of Future Streets from Bog Road to Kyle Road.**

Mr. Woodward explained that the Planning Board at its regular meeting on December 17, 2008, voted unanimously to forward the proposed revision of mapped lines of future streets to the City Council. The Board requested the City Council direct the Planning Board to certify the mapped line of a future street pursuant to Article 16-3-6 Mapping of Future Streets, City of Concord Code of Ordinances, and RSA 674:11 for the extension of Kyle Road westerly then southerly to Bog Road. On March 9, 2009, the City Council held a public hearing on the proposed Mapped Line of Future Street from Kyle Road to Bog Road. The City Council closed their hearing and voted to authorize the Planning Board to certify the proposed mapped line of future street.

Mr. Swope moved that the Planning Board authorize the Chair and the Clerk of the Board to certify the Mapped Line of Future Street from Kyle Road to Bog Road. Mr. Kenison seconded. Motion carried.

13. Further consideration of draft **Aquifer Protection Ordinance.**

Mr. Woodward explained that at the conclusion of its special meeting on April 30, 2009, the Planning Board asked that consideration of the draft aquifer protection ordinance be placed on the agenda for this evening. There are several actions that the Board can take

as a result of the preparation of the draft ordinance and the information conveyed by the consultants to the Board in the presentation on April 30th, as follows:

1. Direct the Planning Division to edit the draft ordinance into the City's proper zoning amendment format, so that the Board may consider making a formal recommendation to the City Council.
2. Consider whether the Board wishes to forward a recommendation to the City Council that the City pursue a groundwater reclassification for the City's wellfield located in Pembroke similar to the process that Pembroke engaged in to reclassify the groundwater for their two wellfields.
3. Consider whether the Board wishes to forward a recommendation to the City Council that the City pursue explorations and preliminary testing within some of the identified primary groundwater development zones in order to determine the viability of these sites to provide for the City's future water needs and to preempt others from gaining control over the groundwater rights to these areas.
4. Consider seeking further information and cost estimates related to requiring hydrologic assessment of proposed residential developments that are dependent on domestic wells for water supply. This could include guidelines and thresholds related to the size of developments that would require such studies, the geological conditions on the development site, and the proximity to existing neighboring wells.
5. Support a recommendation to the City Council for an application for additional grant funds, either from CTAP or another source, to support further work with the consultants to accomplish these tasks.

Mr. Woodward noted the lateness of the hour and asked for direction as to further tasks.

Mr. Swope moved that the Planning Board:

1. Direct the Planning Division to edit the draft ordinance into the City's proper zoning amendment format, so that the Board may consider making a formal recommendation thereon to the City Council, and
2. Support a recommendation to the City Council for an application for additional grant funds, either from CTAP or another source, to support further work with the consultants to accomplish these tasks.

Mr. Kenison seconded. Motion carried.

INFORMATION

Mr. Woodward reported that the Planning Board had received a communication from the Concord Housing Authority relative to its purchase of development rights by way of

a purchase and sale agreement with an option to purchase the Parmenter Road property and are now performing the due diligence necessary to ensure that the Parmenter Road community fulfills its promise to residents, abutters and the City. They hope the transaction will close on or about July 1, 2009.

No Planning Board action was necessary at this time on this communication.

There was no further business to come before the Board and the meeting adjourned at 11:06 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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