

A special meeting of the City Planning Board was held on Wednesday, June 22, 2011, in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher, Swope (who arrived at 7:38 and was seated), Foss, Gross, Hicks, Shurtleff (representative from the City Council), and Alternate Members Kenison (who was seated for absent Member Meyer) and Dolcino (who was seated in one of the vacant seats). 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, and seated Alternate Member Kenison for absent Member Meyer who was not expected, and Alternate Member Dolcino in one of the vacant seats.

Amendments to the Zoning Ordinance

1. Consideration of proposed amendments to Article 28-2, Zoning Districts and Allowable Uses, and Article 28-4, Development Design Standards, of the Zoning Ordinance, which include a conversion of an Urban Commercial (CU) District to a Central Business Performance (CBP) District on South Main Street, and a conversion of a General Commercial (CG) District to a new Highway Commercial (CH) District on Manchester Street.

Public Hearing

Mr. Woodward reminded the Board that at prior meetings on March 30, May 4, and May 18, 2011, they had considered 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. The report had been prepared in response to the facilitated public review of the Zoning Ordinance sponsored by Concord 2020, as well as a review of the Ordinance conducted by EDAC. The report contained 11 proposals for amendments to the Zoning Ordinance including two related to the Zoning maps, and nine related to the text of the Ordinance. As part of its review, the Board had set the two map changes for hearing this evening.

The Chair indicated that the Board would first consider the amendment establishing a Highway Commercial (CH) District in conjunction with revisions to the General Commercial (CG) District.

The Clerk reminded the Board that the current Zoning Ordinance has one defined CG District in the text which is non-residential in terms of uses allowed, and does embrace the automotive related uses among those commercial uses permitted therein. The CG District is mapped in three locations: Loudon Road, Fisherville Road, and Manchester Street. The proposal to establish a new CH District 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 a redefined CG District which would become mixed use in nature with the introduction of residential uses.

The Clerk noted that this proposed change in Zoning Ordinance was based on a recommendation from Master Plan 2030. The Land Use Section in the Master Plan 2030 establishes future land use categories which include a mixed use General Commercial category that incorporates general retail sales and services, professional and business offices, restaurants, and personal service establishments, as well as multi-family residential uses. This category is graphically displayed on the Future Land Use and is noted in the text of the Plan as being located along Loudon Road between Airport Road and Branch Turnpike and Old Loudon Road, as well as in several nodes along Fisherville Road.

The Land Use Section in the Master Plan 2030 also includes a non-residential Highway Commercial future land use category which incorporates general retail sales and services, professional and business offices, restaurants, and personal service establishments, as well as motor vehicle sales and repair uses. This category is graphically displayed on the Future Land Use and is noted in the text of the Plan as being located along Manchester Street.

The Clerk continued on to describe to the Board the current Zoning structure which includes a General Commercial (CG) District but it is non-residential in character, having been revised during the 2001 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. Appearance from the street, and buffering and screening for adjacent neighborhoods are of concern for development in this District."

The proposed changes would modify the CG purposes statement to delete the reference to "motor vehicle sales and service", and to add a reference to multifamily residential uses. A new purpose statement is proposed for the new CH District which is essentially identical to the current CG purpose statement.

The Zoning Map is proposed to be amended to change the existing CG District on Manchester Street to a CH District, and the table of uses is proposed to be adjusted by incorporating the current CG District uses in the new CH District, while adding multi-family residential and deleting motor vehicle sales and service from the CG District.

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

Ms. Foss again 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.

There was no one present who wished to speak for or against this proposed amendment.

The Chair then indicated that the Clerk should proceed to consider the amendment extending the Central Business Performance (CBP) District southerly from Theatre Street on the easterly side of South Main Street to the intersection of Storrs Street.

The Clerk explained that the requested rezoning is for the southerly expansion of the Central Business Performance (CBP) District to supplant an existing Urban Commercial (CU) District.

The Clerk reminded the Board that in 2009, with the favorable recommendation of the Planning Board, the City Council amended the Zoning Ordinance to expand the Central Business Performance (CBP) District southerly from Hills Avenue to Theatre Street. At that time, the Planning Board found the rezoning proposal to be "consistent with the vision, goals, and policies of Master Plan 2030, and the Future Land Use Plan therein... that the proposal would establish a logical zoning district for the land proposed to be involved, and would have beneficial effects or no noteworthy negative impacts on the City's economy, environment, municipal services, and municipal facilities".

The area now requested to be considered for rezoning lies southerly of the 2009 rezoning, and includes the portion of the Urban Commercial (CU) 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.

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 for the same. 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 Clerk reviewed the Master Plan 2030 as related to this proposed change. The Master Plan 2030 defines 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.*”

The Master Plan contains a Future Land Use Plan which portrays the areas classified as Downtown Commercial, and the accompanying text in the Land Use Section provides more detail to guide the preparation of land use regulations:

“North and South Main Streets have traditionally been the focal point of Downtown Concord which encompasses land from Storrs Street on the east to North State, South State, and Green Streets on the west, and from I-393 on the north to Kelley Square on the South. 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.”

The Clerk than noted that the current 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.”*

The table of uses in the current Ordinance reveals that the existing gas station and automotive repair businesses would become non-conforming through a change from a CU District to the CBP District as would the commercial parking lot, 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.

Mr. Gross asked how staff felt about the proposed amendment and Mr. Woodward responded that this would be inconsistent with the Master Plan. Compliance with the adopted Master Plan is considered in case law. Consistency with the Master Plan is a much more appropriate and legally defensible position for the Board to take.

Mr. Gross noted that this proposed amendment would create substantial non-conforming uses and could cause parking problems as the CBP District does not have a requirement for off-street parking.

Mr. Gross asked who had requested this zoning change and where that property was located. Mr. Woodward responded the petitioner was the owner of a restaurant in this portion of South Main Street.

There was no one present who wished to speak for or against this proposed zoning amendment and the Chair declared the hearing closed at 7:20 PM.

Mr. Gross moved that the Planning Board recommend that the City Council adopt proposed amendments to Article 28-2, Zoning Districts and Allowable Uses, and Article 28-4, Development Design Standards, of the Zoning Ordinance. These amendments include a conversion of a General Commercial (CG) District to a new Highway Commercial (CH) District on Manchester Street, and an adjustment to the table of uses so as to incorporate the current CG District uses in the new CH District, while adding multi-family residential to, and deleting motor vehicle sales and service from, the list of uses allowed in the CG District. Mr. Shurtleff seconded. Motion carried.

Mr. Drypolcher explained he had mixed feelings about the requested South Main Street zoning amendment. He felt the City might not gain much by changing the zoning designation at this time, and wondered if it would be better to wait until there is a prospective development with specific requirements to consider.

Mr. Kenison was more troubled by the inconsistency with the Master Plan. He did not see the logic in not complying with the Master Plan.

Mr. Gross asked if notice had been given to affected property owners. Mr. Woodward responded that two commercial advertisements had been published in the newspaper, and that the Deputy City Manager for Development had placed a telephone call to the petitioner to advise him of this hearing, and had also made EDAC aware of the hearing. A representative from the owner of one of the affected non-conforming uses had visited the office and had expressed displeasure with the proposal. Mr. Woodward reported that he had expected that that person would be present this evening to voice his concerns.

Mr. Gross moved that the Planning Board recommend to the City Council that they not adopt the proposed the amendment to Article 28-2, Zoning Districts and Allowable Uses, of the Zoning Ordinance, for a conversion of an Urban Commercial (CU) District to a Central Business Performance (CBP) District on South Main Street, inasmuch as it

would be inconsistent with the recommendations of Master Plan 2030, and would create uncertain impacts on non-conforming uses, and uncertain impacts on parking and traffic. Mr. Kenison seconded. Motion carried.

APPLICATION

Major Site Plan Application

2. Application of **St. Paul's School** for a Major Site Plan of property located on **Silk Farm Road** at **Dunbarton Road**. Along with this application are requests for Conditional Use Permits pursuant to Section 28-3-3(f), Disturbance to a Wetland Buffer, and Section 28-7-11(b), Construction of Fewer Parking Spaces, of the Zoning Ordinance. (#2011-24)

Recessed Public Hearing

Mr. Henninger explained that the Planning Board tabled action on this application until this evening for submittal and staff review of proposed revisions to the playing field. The synthetic turf field is in the same general area but redesigned to avoid disturbing any wetlands. The number of parking spaces was reduced by a single space.

He explained this proposal to construct a 420' x 380' lighted, synthetic turf field with one and a half playing surfaces near the intersection of Dunbarton Road and Silk Farm Road. The application includes a 42-space parking lot, a new pedestrian sidewalk along Dunbarton Road and through the site to the field, as well as storm drainage, utility extensions (private), a restroom/maintenance building, two sets of bleachers, fencing, and 70-foot tall light poles.

He reported that the applicant had requested a Conditional Use Permit to defer the construction of 91 parking spaces which would be required based on the seating capacity of the proposed bleachers. The applicant has shown a location in an existing field to the west of the proposed parking where up to an additional 152 spaces could be constructed. City staff is recommending granting this CUP because the existing recreation facilities on campus have not generated the need for this amount of parking. St. Paul's School has provided comparable amount of seating at other campus recreational facilities for an enrollment of just under 540 resident students.

He reported that a Conditional Use Permit had also been requested to disturb wetland buffers at two locations for the construction of outfall swales from the drainage system to the wetlands on site and for disturbances to wetland buffers adjacent to the west side of the field. The total area of wetland buffer disturbance is 16,198 square feet. The applicant originally proposed reducing the wetland to the west of the field to below 3,000 square feet, thereby eliminating the regulatory buffer around this wetland. The existing buffer area of this wetland area was to be disturbed to a far greater extent. The new plan substantially reduces the amount of wetland buffer impacts when compared to the plan originally submitted.

Mr. Henninger explained revisions to the plan include a minor revision to the proposed parking lot. The utility and drainage plans remain unchanged except for the relocation of under drains for the field and the relocation of the irrigation facilities around the field. The proposed building has been shifted slightly north, but otherwise remains unchanged. The improvements to Dunbarton Road, including curbing and sidewalk, will also remain unchanged. Pedestrian areas around the field have been redesigned and one of the metal bleachers will be relocated. The field lighting plan has been altered to lower the poles from 90 feet to 70 feet and the number of poles reduced from six to four. All lighting will be provided with shields to better focus the lighting onto the field.

He reported that the applicant also proposes to construct a 1200 square foot support building containing restrooms, storage for equipment, and a small training room with two covered porches.

He reported that the Architectural Design Review Committee reviewed the site and building plans and recommended approval as submitted.

Mr. Henninger reported that the Conservation Commission considered the Dredge and Fill Application and the wetland buffer disturbance in relation to the original proposal, and, after representatives of the applicant made a presentation, the Commission voted to convey to both the NH Department of Environmental Services and the Planning Board that the applicant should explore alternatives to the proposed placement of the new fields in order to reduce wetland impacts. While St. Paul's expressed concern about visibility and security if they shifted the fields further to the south to reduce or avoid wetland impacts, the Commission found that with the substantial amount of land available to the School, the security concerns did not outweigh the environmental concerns, and there appear to be other options available to the School with less impact than the one proposed. The revised plan was submitted in response to the Conservation Commission's comments.

He reported that the synthetic turf field is designed to be pervious and is provided with an under drain system. The amount of infiltration on the site is limited due to a high water table, usually around three feet below existing grade outside the existing wetlands. He reported that the applicant had provided a sample of the turf as well as copies of studies done in California relative to air quality and in Connecticut and New York relative to ground water impact.

(Mr. Swope arrived at 7:38 and was seated.)

Dick Webb, landscape architect from CHA Sports, was present and answered questions from Ms. Foss regarding the construction of the turf field as well as the composition of the material.

There was no one else present who wished to speak for or against this application and the Chair declared the hearing closed at 7:45 PM.

Deliberations and Action on Applications

Deliberations and Action on Architectural Design Review

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Article 28-7-11 (b), Construction of Fewer Parking Spaces, to provide parking for 42 vehicles where 132 parking spaces are required. The facility serves a campus where students and faculty will walk to the new recreational field, and sufficient parking is available on site for any major event which might be held at the facility. Ms. Foss seconded.

Ms. Dolcino expressed concern about the need for more parking. If this field should be opened up to use by other teams in Concord as St. Paul's School has done in the past, the synthetic field would be a draw and may need more parking than the school would normally require. Mr. Henninger felt 42 spaces would be adequate for the field size and explained that the requirement was actually based on bleacher space.

Motion carried.

Mr. Gross moved that, in light of the reduction of the wetland and wetland buffer impacts which appears to have addressed the Conservation Commission's concerns, the Planning Board grant a Conditional Use Permit pursuant to Section 28-3-3(f), Disturbance to a Wetland Buffer, to disturb wetland buffers for the drainage improvements and for disturbances to wetland buffers adjacent to the west side of the field. Mr. Kenison seconded. Motion carried.

Ms. Foss moved that the Planning Board grant Architectural Design Review approval of the site and building as submitted, and grant conditional major site plan approval for a synthetic turf field and associated improvements for St. Paul's School at the intersection of Dunbarton Road and Silk Farm Road subject to the following 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 on-site improvements shall be obtained from the Engineering and Planning Divisions. 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 following State and Federal permits shall be obtained and copies provided to the Planning Division:
 - a. NH Department of Environmental Services Water Quality and Sewer Discharge Permits, and
 - b. NH Department of Environmental Services Alteration of Terrain Permit (RSA 485-A:17).

3. Prior to the issuance of a Certificate of occupancy for the proposed use and building, an as-built plan shall be provided to the City Engineer, in form and content acceptable to the City Engineer.

Mr. Shurtleff seconded. Motion carried.

Old Business

3. Continuation of the review of the draft **Site Plan Regulations with a focus on Chapter 5**, in general, and Sections 34-36, in particular, as well as a communication from the Heritage Commission with regard to the draft Regulations.

The Board continued its review of the draft Site Plan Regulations with a focus on Chapter 5.

Section 34 Conditional Use Permits

There were no comments relative to Sections 34.01 through 34.04.

Under Section 34.05(6), Ms. Dolcino asked if there could be any requirements for determination of completeness by the Planning Board that would only become apparent after the public hearing. If so, she asked where that was defined. Mr. Woodward suggested that, in fairness to an applicant, the opportunity for asking for additional information should not be included in the list of requirements for determination of completeness.

Mr. Gross suggested adding "...by ordinance or regulation or" before "the Board" at the end of the single sentence that comprises this Section. Board members concurred.

Under Section 34.06, Mr. Gross suggested changing the title of the section to "Conditions of Approval" instead of "Stipulations of Approval". Board members agreed.

There were no comments relative to Sections 34.07 and 34.08.

Under Section 34.09, in the first sentence it was agreed to strike the word "for" in the second line.

Ms. Foss suggested that it should be indicated by whom the special investigative study should be completed. Mr. Gross suggested adding "an independent" before special investigative study. Board members concurred.

Section 35 Technical Review Committee

There were no comments relative to Sections 35.01 through 35.03.

Mr. Hicks also asked if an abutter had the right to appeal a decision of the Technical Review Committee, and Mr. Henninger responded that they do have that right provided

they have a basis for the appeal.

Under Section 35.04(2), Ms. Dolcino suggested adding “in accordance with the notice” after “that the TRC transfer”. Board members concurred.

Under Section 35.05, Mr. Gross asked why the appeal period was 20 days when everything else had a 30-day appeal period. Mr. Woodward responded that the appeal period was specified in the statute.

There were no comments relative to Section 35.06.

Section 36 Administration and Enforcement

There were no comments relative to Sections 36.01 through 36.05.

Under Section 36.06, staff was directed to explore other options for wording for “all controversy” in the fourth line. It was suggested that it might be changed to “any controversies”.

There were no comments relative to Section 36.07.

Under Section 36.08, Mr. Gross noted the phrase “extraordinary hardship or practical difficulties” and asked if this was the standard of proof the Planning Board needed to consider when deliberating on a waiver request. Mr. Henninger responded that it was often difficult to get applicants to submit a waiver request that was well documented.

Mr. Woodward cited the statute and indicated staff would check the phrasing of the sentence.

There were no comments relative to Section 36.09.

Under Section 36.10, Mr. Gross suggested that staff use this section to gain compliance by the applicant for the documentation of a waiver request.

Under Section 36.11, Ms. Foss questioned costs being borne “entirely or in part” by the applicant. Mr. Henninger explained that the fees charged do not cover the full cost of staff review of an application.

Mr. Gross suggested the first sentence of that section should read “Fees for processing and reviewing site plan applications shall be borne entirely by the applicant.” Board members concurred.

Under Section 36.12, Mr. Gross noted that the Planning Board is mentioned twice in the first sentence of the introductory paragraph and suggested eliminating the second reference.

Ms. Foss also suggested taking out “to be followed” from the second sentence of the same paragraph.

Under 36.12(4), Ms. Dolcino asked if this section meant that someone testifying before the Board needed to prove that his property would be directly affected by the application before he could not testify before the Planning Board.

Mr. Woodward explained that the Planning Board had a general policy of allowing anyone to speak.

Mr. Swope felt this would be useful to leave in even if it is not regularly enforced in the event it is needed at some point.

Mr. Gross suggested substituting the statutory language defining the term abutter for the purposes of receiving testimony.

There were no comments relative to Sections 36.13 and 36.14.

Under Section 36.15, Mr. Gross suggested that the word “contradiction” in the second line should be changed to “violation”. Board members agreed.

There were no comments relative to Sections 36.16 through 36.19.

Under Section 36.20, Ms. Foss asked if it was clear that the City should recover any out-of-pocket expenses. Mr. Woodward responded that it was a paraphrase of the statute and suggested that the City Solicitor be asked to review the language.

Under Section 36.21, in the eighth line from the bottom, it should read “approved site plan” to eliminate the redundancy.

Under Section 36.22, Ms. Dolcino noted that the introductory paragraph refers to premature development. Everywhere else in that section it is referred to as “scattered or premature”. It should be made consistent by adding “scattered” to the first reference.

There were no comments relative to Sections 36.23 through 36.24.

Under Section 36.25, Mr. Henninger suggested adding a sentence requiring as-built plans in a digital format.

Mr. Kenison also suggested deleting “the” in the second line and “and” in the fourth line.

There were no comments relative to Section 36.26.

Under Section 36.27, “has” should be “have” ascertained.

Mr. Henninger suggested adding Section 36.28 relative to Wetland Buffer Marking. He explained that one of the standard conditions of approval is the marking of wetland buffers in order to make wetland buffer areas apparent to property owners.

Mr. Henninger indicated he would like to prepare a document ready for public hearing for the Planning Board to review in August and to schedule a public hearing in September.

Mr. Woodward reported that the Planning Board had received a communication from the Heritage Commission as well as comments from the Deputy City Manager for Development relative to the recommendations made by the Heritage Commission. He had also provided a compilation of references to historic preservation matters contained in the current draft. The Board requested that these communications be placed on the July agenda for further consideration.

At 9:10 PM Mr. Gross moved that the Planning Board enter into a non-public session pursuant to RSA 91-A:3 II (a) & (c) to discuss a personnel matter. Ms. Foss seconded.

The Chair called for a roll call vote to be taken by the Clerk.

Stephen Shurtleff	Yes
Frank Kenison	Yes
Matthew Hicks	Yes
Chiara Dolcino	Yes
Carol Foss	Yes
Martin Gross	Yes
John Swope	Yes
Gerard Drypolcher	Yes

The motion passed unanimously.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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