

A recessed meeting of the City Planning Board was held on November 4, 2009, in the Second Floor Conference Room in City Hall at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Swope, Gross, Hicks, Meyer, Shurtleff (representing the City Council), Foss, and Dolcino. Mr. Woodward and Mr. Henninger of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:05 PM a quorum was present, and the Chair called the meeting to order.

APPLICATIONS

Major Subdivision

1. Application by **Parmenter Road Development, LLC on behalf of Judith & Emmanuel T. Brochu, Jr.** requesting a waiver to Section 7.03(5)(i)(iii) of the Subdivision Regulations to allow for a retroactive extension of the period of validity of a conditional final approval granted to a major subdivision located at **8 Parmenter Road. (#2008-01)**

Public Hearing

Mr. Woodward presented an overview of the request and a staff report to the Board, noting that the conditional approval of this subdivision application had expired on September 24, 2009. Mr. Woodward advised that the applicants had contacted the Planning Division on the 25th of September with the realization that the approval had expired. Mr. Woodward presented the waiver standards contained within the subdivision regulations and a new standard as adopted by the Legislature earlier this year. He indicated that he had conferred with the City Solicitor relative to any potential dichotomy between these standards. However, the Solicitor had concluded that the current regulatory standards for waivers were adopted under the earlier version of RSA 674:36 II(n), and that this language had been retained in the recent statutory revision which added an alternative standard for waivers. Therefore, it appears that the Board may evaluate the request under both Section 11.06 of the current Subdivision Regulations as well as the newly added subsection (2) of RSA 674:36 II(n).

Mr. Gross asked about the status of the project and if the applicant had addressed the conditions of approval, and what remained to be completed. Mr. Henninger advised that most of the conditions of approval had been addressed. The applicant had not yet submitted a bond but the bond estimate had been approved by the City Engineering Division. The easements and agreements had been approved but the executed documents have not yet been received. All required State permits have been obtained. The construction plans were revised to the satisfaction of the City staff but the mylar of the plat for recording purposes has not been submitted as yet. Mr. Henninger noted that utility construction had commenced in the existing section of Parmenter Road. Mr. Henninger advised the Board that he wanted to ask the applicant to approach the abutting owner one last time about allowing buffer landscaping to be planted on the owners property on the south side of the Parmenter Road extension, which was also a condition of approval.

Mr. Woodward noted that the applicant simply did not ask for an extension of the period of validity in a timely manner before the approval expired. Mr. Gross asked if the applicant had made such a request in a timely manner, would the Board have typically granted such a request, and Mr. Woodward responded that the Board had considered many such requests and usually granted them.

Attorney Richard Uchida spoke on behalf of the applicant and the new developer, the Concord Housing Authority. John Hoyt, Executive Director of the Housing Authority, and Tom Avallone, Chairman of the Authority's Board were also present, as well as Jim Fowler member of the Authority Board, and Craig Dunning, Clerk of the Works for the Authority. Mr. Uchida noted that the Concord Housing Authority would develop the property and retain 100 percent ownership. Mr. Uchida recapped for the Planning Board the steps involved in the approval of the project and noted that the original developer contacted the Housing Authority in late 2008, and on February 1st, 2009, a Purchase and Sales Agreement was signed by the Housing Authority for acquisition of the property and rights to the project. The Authority hired new architects and engineers and in May 2009 began addressing the conditions of approval of the Major Subdivision and Major Site Plan. On July 15, 2009, the applicants received approval for revised a Architectural Design Review from the Planning Board. Mr. Uchida discussed various hurdles and steps undertaken to secure financing for this project from April of 2009 to September of 2009. Northbranch Builders was hired as contractor for the project on August 25th. On September 24, 2009, financing was finalized and on September 25th, the Housing Authority became aware that the subdivision application had expired. Mr. Uchida also noted that the project had been delayed by a lawsuit by an abutter and this was finally resolved on July 22, 2009.

Mr. Hoyt then outlined the history and purpose of the Concord Housing Authority (CHA) and noted that this is the first new project for the Authority since 1983. He then provided a detailed timeline of the investments made and actions taken by the CHA as part of this application and fulfilling the conditions of approval. Mr. Hoyt indicated that allowing the subdivision approval lapse was inadvertent and unintentional.

Mr. Uchida then presented his request for a waiver and the bases for the Board to approve the same. He referred to his letter to the Board dated October 9, 2009 in which he requested the waiver and addressed the requirements of Section 11.06 of the Subdivision Regulations which set forth criteria for the granting of a waiver. In regard to the criteria relating to *extraordinary hardship or practical difficulties*, Mr. Uchida pointed out that the applicant had already spent over \$260,000 on the project prior to obtaining financing, and had spent \$36,000 in utility construction costs in Parmenter Road along with \$2,000 in City inspection fees. Mr. Uchida noted that this waiver would not result in any material changes to the project design and would create additional expense for the City as well as a burden on this Board to consider the application all over. The work on Parmenter was done at the request of the City to allow the utility service connections from North State Street to be completed prior to the City's contractor completing the Route 3 reconstruction. Mr. Uchida noted that the companion site plan approval, obtained in May of 2008 for the 25 unit townhouse project that this subdivision supports, remains in effect.

With regard to *an alternative proposal which better serves the purpose of the regulations*, Mr. Uchida indicated that the purpose of the regulations was to ensure a thorough review for compliance with the City's ordinances and regulations. He noted that during the year-long deliberation process on this application, many design alternatives were reviewed and evaluated. To return through the approval process once again would not result in any significant or even marginal change to the development proposal. Mr. Uchida noted the purpose of the one-year approval project was to ensure abandonment does not occur on a project or to allow the Board to address changing circumstances. Mr. Uchida noted in the previous timeline of events that Housing Authority had not abandoned the project and was actively proceeding to address the waivers and had started the necessary utility extensions to the site.

Mr. Uchida indicated that the waiver of the one-year recording requirement will have no impact on *the public health, safety, or welfare*. Months were spent investigating the best road layout and addressing engineering, traffic, and fire access concerns. The waiver will preserve this effort.

He then addressed the *unique conditions* related to this application including the continuing validity of the tandem Site Plan approval and the investment in the utilities for the site. He noted that Parmenter Road is now in a temporary condition due to the utility work and there is a need to complete this work. Mr. Uchida explained that the hardship would be less compelling if there had not been a significant investment in the utility work and the neighborhood had not already been altered.

He then discussed the new statutory option which allows for a waiver of the regulations if specific circumstances indicate that a waiver will properly carry out the spirit and intent of the regulations. He noted that if the waiver were to be granted, it would result in the development of a project which was carefully planned in accordance with the City's regulations.

Mr. Uchida concluded by indicating to the Board that his client regretted putting the Board in this position, but that the granting of the waiver would allow a worthy project to proceed.

Mr. Avallone then spoke in favor of the waiver. Mr. Avallone noted that this project is part of a new direction for the Housing Authority. Five years ago the Housing Authority was found to be non-performing by HUD. Under new management and a new board, the authority has a new mission and now is considered by HUD to be a "top level agency". Mr. Avallone noted this is the Authority's first new project in 25 years and they were trying to juggle "eight balls at once" in September and this was the one they dropped.

Mr. Avallone responded to a question from the Board and stated that this would still be a workforce housing project. Mr. Avallone apologized to the Board for forcing them to have to address themselves to this issue once again.

Andy Chapman of 9 Parmenter Road stated that the Board did not have the authority in the Subdivision Regulations to grant the waiver for an extension of approval. Chairman Drypolcher advised that the Board has approved extensions routinely. Mr. Chapman pointed out the standards for extensions are found in section related to preliminary plats and not in the section relative to final plats. Mr. Chapman noted that the Board should not approve the waiver because the hardship noted by the applicant was self-created and the condition creating

the waiver request was not unique to this property. He indicated that the waiver request violates Section 11.06 of the Subdivision Regulations.

Stephen Frost of 7 Parmenter Road questioned how work could begin on the project without the plat being recorded. Mr. Woodward advised that work is occurring within the existing City right-of-way and the applicant can begin construction under the provisions of the Subdivision Regulations once the application is conditionally approved even though the plat has not been recorded. However, if no bond or financial security is posted, the plat cannot be recorded and no building permits can be issued, so that all work done prior to the recording of the plat is at the developer's risk. Ms. Aibel pointed out that the work is being done now at the request of the City in order to coordinate with the City's work pursuant to the North State Street/Fisherville Road capital improvement project.

There was no further testimony and the Chair declared the hearing closed at 7:45 PM.

Deliberations and Action on the Waiver

Mr. Gross asked what would have occurred if the applicant had asked for an extension prior to the September 24, 2009 expiration date for the subdivision. Mr. Woodward noted that this is a common occurrence and the item would be placed on the agenda under New Business and acted on by the Board at the next meeting. This is common request and the Board routinely grants a one-year extension for subdivision applications.

Mr. Gross noted that the applicant is in fact asking for a waiver relative to a missed deadline, to be allowed to submit the request for the one-year extension after the expiration date of September 24, 2009. Mr. Gross indicated that the applicant had adequately documented the basis for the waiver in Mr. Uchida's letter to the Board of October 9, 2009, and in tonight's testimony by Mr. Uchida.

Mr. Gross observed that a Superior Court judge would allow an extension of a deadline if a delayed action is a result of a honest mistake or misfortune, but not as a result of inexcusable neglect by the party involved. Mr. Gross noted the applicant had admitted their inadvertent mistake and they clearly demonstrated that they were proceeding diligently to address the conditions of approval and record the plans. The Board is not considering a request for a material waiver.

Mr. Gross moved to grant a waiver to the Subdivision Regulations to extend the period of validity of the conditional approval of the Parmenter Road subdivision to December 15, 2009. Mr. Swope seconded the motion. The Board then discussed whether December 15th, allowed for an appropriate length of extension. The Clerk noted that the Board's regular meeting in December was on December 16, 2009. It was agreed if problems occurred the applicant could return to the December 16th meeting and request additional time if necessary. After discussion, the Mr. Gross modified his motion to extend the period of validity of the conditional subdivision approval until December 17, 2009. Mr. Swope accepted the amendment as part of his seconding of the motion.

The Chair called for a vote and the motion carried with seven members voting in the affirmative and Mr. Shurtleff voting against the motion.

New Business

2. Consideration of Tax Title Property at 45 Runnels Road.

Mr. Woodward presented the background information and recommendation as contained in the staff report. Mr. Henninger noted that this parcel had been taken for non-payment of taxes in the late 1980's and was considered surplus. It was noted that the City staff has not identified a public use for the property and that the Conservation Commission concluded that the size and location of the property made it unsuitable for retention for conservation purposes. Mr. Woodward indicated that the property as an independent parcel was too small to support a principal residential use together with the requisite septic system and well. Ms. Meyer made a motion to forward the following recommendation to the City Council along with the staff report: "The Planning Board recommends that the City Manager be authorized to offer to sell the parcel of tax title property at 45 Runnels Road to the immediate abutter, Mrs. Waunetta Cutting, subject to a requirement that it be merged with her property at 47 Runnels Road."

The motion was seconded by Mr. Shurtleff. The motion carried.

Old Business

3. Further consideration of a review of a Development of Regional Impact on North Pembroke Road in Pembroke across from the City's wellfield.

Mr. Woodward reported that the Planning Board, at its regular meeting on October 21, 2009, had authorized a further communication to the Pembroke Board clarifying the Concord Planning Board's previous comments to the Pembroke Board and reviewing the history of Concord-Pembroke interactions over developments of regional impact and mutual concern. Also, in response to a communication forwarded to Chairman Drypolcher by the agent for the Silver Hills Development, Timothy Bernier, of T.F. Bernier, Inc., the Board had agreed that he would be welcome to address the Board relative this project at this evening's recessed meeting. Subsequently, another communication was received by the Chairman from Mr. Bernier indicating that he could not attend this evening's meeting but could be available for the regular meeting on November 18, 2009. However, Mr. Bernier's letter indicated that he would not present the project as the agent for the applicant, and referred to his being a Concord citizen, and a member of EDAC. Members of the Board indicated that they were willing to have Mr. Bernier address the Board on November 18, 2009, but indicated that it would only be useful if he appeared as the agent for the applicant.

Mr. Woodward then reviewed for the Board the photo-reduced set of plans which were provided to the City in regard to this development. It was noted that the City did not receive a complete plan set. He also pointed out the location of the City's well field and the Town of Pembroke's wells, and the related wellhead protection areas as established by NHDES.

Mr. Gross noted that the Board has fully articulated its concerns to the Pembroke Board in several written communications. Mr. Swope indicated that it would be better for the Chair and members of the City staff to attend the Pembroke Planning Board meeting on November 24, 2009. He was of the opinion that a face to face discussion would be more effective and certainly more courteous.

Ms. Foss commented that concerns have been articulated but the Board had not been specific on what it was asking the Pembroke Board to do on the City's behalf. Ms. Foss indicated that she thought that the Board should request the Pembroke Board to require covenants and restrictions similar to those which the Concord Planning Board required of CRDC for the Antrim Street/Henniker Street subdivision in response to the Town of Pembroke's concerns for that subdivision which was in its wellhead protection area. She further noted that the City's well field should receive the same level of protection that Pembroke's wells receive in Concord. After discussion, Mr. Gross moved that a communication be sent to the Pembroke Planning Board requesting the Pembroke Board to require of the proposed subdivision a set of protective covenants, similar to those employed by Concord for the CRDC subdivision, or to impose the same protective measures for the Concord well field as Pembroke would impose if it were in the well head protection area for one of the Town's own well fields. Mr. Swope seconded. The Motion carried.

After further discussion, it was the consensus of the Board that the Chairman should attend the November 24, 2009, Pembroke Board together with a delegation of City staff to present the City's case to the Pembroke board. Mr. Woodward said he would ask members of the City staff including the City Engineer and a representative from the City's General Services Department to attend as part delegation from the City.

Architectural Design Review

4. Further consideration of the application of **Smokestack Center at 254 North State Street** for an affixed sign under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.

Mr. Henninger explained that the Planning Board had previously tabled this application at the regular meeting on October 21st because of concerns that the light from the proposed sign could have an adverse impact on residences located between the site and North State Street. The applicant provided a letter indicating that the sign would be backlit (internally illuminated) and set on a timer to operate from dusk to 10:00 PM. Mr. Hicks made a motion to grant conditional approval for the sign as submitted subject to the condition that the sign be turned off either when the facility closes, or by 10:00 PM, whichever occurs earlier. Ms. Meyer seconded the motion. The motion carried.

INFORMATION

Mr. Woodward advised the Board that another Development of Regional Impact notice had been received from the Pembroke Planning Board concerning an expansion of the excavation of the Concord Sand and Gravel Company just easterly of the Soucook River and adjacent to the

November 4, 2009

Page 7 of 7

City's well field. The excavation site obtains all of its access and egress via a private bridge over the Soucook River through the inactive gravel pit also owned by Concord Sand and Gravel Company on Route 106 in Concord. A report will be prepared for the Board's regular meeting on November 18, 2009, and the Pembroke Board will also be considering this on the evening of November 24, 2009.

Mr. Woodward reminded the Board that the next regular meeting was on Wednesday, November 18, 2009.

There was no further business to come before the Board and the meeting adjourned at 8:50 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

o