

City of Concord Planning Board
March 20, 2019
Minutes

The regular monthly meeting of the City Planning Board was held on February 20, 2019, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

1. Call to Order

Chairman Woodfin called the meeting to order at 7:00 pm.

2. Roll Call

Attendees: 8 – Chairman Richard Woodfin, Vice-Chair Carol Foss, Councilor Byron Champlin, Teresa Rosenberger (Ex-Officio for City Manager), Members Matthew Hicks, Erle Pierce, John Regan, and Alternate Frank Kenison.

Absent: 3 – Susanne Smith-Meyer, David Fox, and Alternate Chiara Dolcino

Staff: Heather Shank (City Planner), Beth Fenstermacher (Assistant City Planner), Sam Durfee (Senior Planner), Lisa Fellows-Weaver (Administrative Specialist), and Bryant Anderson (Associate Engineer).

3. Approval of February 20, 2019 Planning Board Meeting Minutes

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to approve the minutes for February 20, 2019, as written.

4. Planning Board Chair Overview

Chairman Woodfin announced that the applicants for Items 7A and 8D requested continuances to April 17, 2019 meeting.

5. Determination of Completeness Items by Consent

TF Moran, Inc., on behalf of Merrimack County Savings Bank, requests Major Site Plan approval for the construction of 2 new buildings for the purpose of a pizza restaurant and a coffee shop and a Condition Use Permit for the construction of a driveway within 200 feet of an adjacent driveway and intersection at 212 Fisherville Road in the General Commercial (CG) District.

On a motion made by Mr. Kenison, and seconded by Ms. Rosenberger, the Board voted unanimously to determine the application complete and set the public hearing for April 17, 2019.

6. Design Review Applications by Consent

The Board voted unanimously to approve the sign applications for Items 6A-6G by consent, subject to the recommendations of the Architectural Design Review Committee (ADR) as noted below.

6A. Encompass Health, on behalf of Capital Region Health Care Corp., requests ADR approval to install a replacement panel on an existing monument sign at 254 Pleasant Street in the Institutional (IS) District.

On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent.

6B. Splendid Sushi, on behalf of State Pleasant Street, LLC, requests ADR approval to install a new awning sign at 26 Pleasant Street in the Central Business Performance (CBP) District.

On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent.

6C. Osborne's Properties requests ADR approval to install a new internally illuminated wall sign and a replacement panel in an existing internally illuminated freestanding sign box at 258 Sheep Davis Road in the Gateway Performance (GWP) District.

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On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent.

- 6D. VCA Russell Animal Hospital on behalf of Painefully Sweet Enterprises LLC, requests ADR approval to install a new wall sign and a new externally illuminated sign on existing granite posts at 286 B Pleasant Street in the Institutional (IS) District.

On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent.

- 6E. Siena Investments requests ADR approval to install a new internally illuminated wall sign at 273 Loudon Road in the Gateway Performance (GWP) District.

On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent with the ADR conditions that the sign be dropped so that it is centered between the score lines, above and below, and the sign remain centered over the entry way.

- 6F. TD Bank, on behalf of Silver Holding LLC, requests ADR approval to install a replacement wall sign at 277 Sheep Davis Road in the Gateway Performance (GWP) District.

On a motion made by Mr. Pierce, and seconded by Mr. Kenison, the Board voted unanimously to approve the design as submitted by consent with the ADR condition that if the sign is smaller than what currently exists, the area around the sign be painted.

Public Hearings

7. Design Review Applications

- 7A. Ron King, on behalf of Ciborowski Jacob S. Family Trust, requests ADR approval for a new storage structure at 90 Low Ave in the Central Business Performance (CBP) District.

This application was continued to the April 17, 2019 meeting.

- 7B. Dartmouth Hitchcock requests ADR approval as part of a Conditional Use Permit approval to install a new externally illuminated wall mounted sign above the first floor at 253 Pleasant Street in the Institutional (IS) District.

On a motion made by Councilor Champlin, and seconded by Mr. Regan, the Board voted unanimously to determine the application complete and open the public hearing.

Craig Moore of Barlo Signs represented the application.

Mr. Moore explained the proposal is to install two signs consisting of channel letters along the top edge of the building. There are two entrances into the site and the signs are placed on both the front and rear entrances.

Mr. Pierce asked about the height of the deck. Mr. Moore replied 25'10".

There being no further comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to **grant the Conditional Use Permit** for the two sign designs, as submitted.

- 7C. Request to reconsider ADR denial for installation of a roof sign at 137 Storrs Street for Concord Antiques.

Attorney Perter Imse of Sulloway & Hollis and Tom Balon represented the application.

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Attorney Imse stated that they have filed an appeal with the ZBA as the denial of the sign for Concord Antiques was a wrong decision. They believe the Planning Board exceeded its lawful authority under the current zoning ordinance and while exercising Architectural Design Review by preventing the applicant from installing a sign in a location and a size which is permitted under the zoning ordinance and by the variance granted by the ZBA. He explained that the ZBA could overturn the Planning Board's decision; however, they would like to take advantage of this opportunity and meet with the Board to request reconsideration.

Attorney Imse stated that the variance granted was for a sign of 60 feet where 100 feet is permitted and shown on brackets. He mentioned that the only guidelines that he could locate were adopted by ADR in 1991. He added that the guidelines must be applied in a manner in which is consistent. He stated that the proposed sign does not overpower the building. With respect to the color of the sign proposed, white, this is the same color that was recently approved and installed at the Concord Hotel. A large part of the discussion in February was relative to the visibility of the sign being from 93 and if a policy should be created. He understands that this is a valid concern and can be changed in the regulations or through zoning; however, it is not to be done on an ad-hoc basis.

Three new renderings were provided showing details of the sign with the building. Mr. Balon noted that the sign is less than 1% of the building. He noted that the new rendering shows the revised lettering. "Concord" letters are the same with "Antiques" reduced to 37.5 square feet, smaller than other areas. Another option showed the lettering with a grid behind the original design.

Mr. Pierce asked the height of the building. Mr. Balon replied that it is 38 feet to the roof line.

Councilor Champlin stated that he was the dissenting vote of the original rendering. He stated that he is still comfortable with the sign as proposed. Mr. Hicks commented that he prefers the original sign over the revised sign.

There being no further comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Ms. Rosenberger, and seconded by Mr. Pierce, the Board voted unanimously to reconsider the application and refer the applicant back to ADR with the three design alternatives discussed.

8. Site Plan, Subdivision, and Conditional use permit Applications

8A. Wilcox & Barton, on behalf of NH Distributors, requests a two year extension for a Major Site Plan approval received on March 15, 2017 for a building addition and site improvement at 65 Regional Drive in the industrial (IN) District.

On a motion made by Mr. Hicks, and seconded by Mr. Kenison, the Board voted unanimously to determine the application complete and open the public hearing.

The request is for a two year extension for a building addition and site improvements. Construction is anticipated to begin in the spring of 2020.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Mr. Hicks, and seconded by Mr. Kenison, the Board voted unanimously to **grant a two year extension** for the previously approved Major Site Plan for NH Distributer at 54 Regional Drive. The extended approval period will expire on March 17, 2021.

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- 8B. Steve Duprey, on behalf of Capital Hotel Company VI, LLC, requests an amendment to the conditions of a Major Site Plan approval for construction of a hotel at 406 S. Main Street in the General Commercial (CG) District.

Mr. Durfee explained that the applicant has requested to remove a precedent condition from the approved Major Site Plan which was granted on January 16, 2019. The applicant has stated that the lease agreement did not make it to Governor and Council for approval in February, which has delayed the issuance of a building permit to pour a foundation. The request is to remove the condition that the easement or other recordable legal instrument for the use of the 9,782 sf of I-93 right of way shall be recorded at the Merrimack County Registry of Deeds. Staff recommended that the conditions of approval be rewritten to allow the pouring of a foundation without the lease agreement; however, all permits for construction of the building may be issued only upon submittal of the signed lease agreement.

Laura Hartz of Orr & Reno represented the application. She provided an overview of the project explained that the lease is for 37 parking spaces. The documentation has been signed by NHDOT; it is awaiting Governor and Executive Council review and approval. She added that if the amendment is denied there will be a substantial hardship as it would cause some delay in the project. There is no harm to the public if the condition is amended. She added that the funding from the lease goes to the State coffers.

Discussion ensued regarding the term of the lease. Ms. Hartz stated that the term of the lease is for five years with an option to renew after five years. She noted that there may be a sale of the property from the State to Mr. Duprey at the end of the second 5 year period. She stated that the minutes from the committee indicate that the lease has been approved by the State's Long Range Capital Planning and Utilization Committee. Ms. Foss stated that the key is that there is proof of approval from NHDOT. Mr. Kenison asked if the amendment occurs and the foundation is poured the applicant will bare all risks. Ms. Hartz replied yes.

It was noted that the City's ordinance requires an easement or a lease that matches the expected life of the use. Ms. Shank stated that a five year lease does not meet the requirements of the ordinance.

Ms. Shank stated that an easement was specified in the original approval. The language has been changed to allow a lease to accommodate the deal with the State. However, she noted that the lease would need to be long enough to cover the life of the building. A lease of 100 years would be acceptable, a lease of 5 years or less would not give the City sufficient assurance that the parking requirement would be met for the life of the use. She encouraged the applicant to seek a longer term if 5 years is what was specified; otherwise, they may have challenges in getting building permits. She noted that the lease will need to be reviewed by the City Solicitor's office to ensure that it meets the requirement.

There being no further comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Mr. Regan, and seconded by Mr. Hicks, the Board voted unanimously to **grant the Major Site Plan**. Mr. Regan rescinded his motion and Mr. Hicks rescinded the second.

On a motion made by Mr. Regan, and seconded by Mr. Hicks, **amended the conditions of approval** for the previously approved proposed 4-story, 82 room hotel and associated site improvements at 406 South Main Street to read as follows:

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- (a) Precedent Conditions – to be fulfilled within one (1) year and prior to sign off by the Clerk and Chair of the Planning Board and issuance of any building **foundation** permit, or the commencement of site construction, unless otherwise specified:
- (1) Address Technical Review comments to the satisfaction of the Planning Division.
 - (2) Address Engineering review comments to the satisfaction of the Engineering Division.
 - (3) The minor subdivision shall be recorded at the Merrimack County Registry of Deeds.
 - (4) Waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Site Plan Regulations. Should the Board vote to deny the waiver(s), applicant shall comply with said submission requirement(s).
 - (5) Submit three (3) copies of fully revised plans for sign off by the Clerk and Chair of the Planning Board.
- (b) Subsequent Conditions – to be fulfilled as specified:
- (1) **Prior to issuance of any permit for construction of a building, a fully executed easement or lease agreement documenting permission for the use of the I-93 right of way to meet parking requirements in accordance with the zoning ordinance shall be submitted and reviewed by the City Solicitor’s office for acceptance.**
 - (2) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
 - (3) A pre-construction meeting shall be required prior to the start of any construction activities onsite. The applicant shall pick up one (1) set of signed plans at the Planning Office to make copies for the pre-construction meeting. A total of five (5) copies of the signed plan set shall be provided by the applicant at the pre-construction meeting.
 - (4) Prior to a Certificate of Occupancy or final construction sign-off, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.
 - (5) Prior to the issuance of a Certificate of Occupancy or final construction sign-off, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88.

The motion passed; 7/0/1. *Councilor Champlin was out of the room.*

8C. Jeffrey L. Greene Land Surveying Services, on behalf of John J. & Marlyn Curtin Family Trust of 2013, requests Minor Subdivision approval for a lot line adjustment at 19 and 21 Fox Run in the Medium Density Residential (RM) District.

On a motion made by Mr. Hicks, and seconded by Mr. Pierce, the Board voted unanimously to determine the application complete and open the public hearing.

Ms. Fenstermacher stated that the applicant is proposing to annex 6,087 sf of land from 21 Fox Run to 19 Fox Run so that the garage at 19 Fox Run that is currently encroaching onto 21 Fox Run will be located entirely within 19 Fox Run and within the required setbacks.

The ZBA granted the following variances their February 6, 2019 meeting:

- A variance to Article 28-4-1(h), the Table of Dimensional Regulations, to allow for a lot line adjustment resulting in a non-compliant lot size of ±34,251 sf where the minimum lot size required is 40,000 sf of lot area, and

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- A variance to Article 28-4, Development Design Standards, to allow the use or development of a non-compliant property that does not meeting the minimum lot size for the base district.

The applicant has requested waivers to Sections 12.08(3) & 15.03(4) of the Subdivision Regulations (SDR) to not provide topography for the two parcels based on the nature of the application as a lot line adjustment for existing lots already built upon, exceeding minimum requirements, and no further development is intended.

Jeffrey Green represented the application. He stated that the garage was given a permit yet was built over the property line and this process will correct that matter. Both lots are the same owners and both lots are complete buildable areas.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Mr. Pierce, the Board voted unanimously to **grant the waivers** to Sections 12.08(3) and 15.03(4), Topography, of the Subdivision Regulations, based on the nature of the application as a lot line adjustment for existing lots already built upon, exceeding minimum requirements, and no further development is intended, utilizing the criteria from RSA 674:36(II)(N)(2): Specific circumstances relative to the subdivision, or conditions of the land in such subdivision, indicate that the waiver will properly carry out the spirit and intent of the regulations.

On a motion made by Ms. Foss, and seconded by Mr. Hicks, Pierce, the Board voted unanimously to **grant Minor Subdivision approval** for the lot line adjustment at 19 and 21 Fox Run, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

1. Address Technical Review Comments, noted in the staff report dated March 20, 2019, to the satisfaction of the Planning Division.
2. Address Engineering Division comments in the memo from Bryant Anderson dated March 8, 2019.
3. Any waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Subdivision Regulations. Should the Board vote to deny the waiver request(s), applicant shall comply with said submission requirement(s).
4. Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
5. Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of \$25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.
6. The Applicant shall deliver to Planning, one plan set and mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.

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- 8D. Richard D. Bartlett & Associates Inc., on behalf of the City of Concord, requests Minor Subdivision approvals for a 2-lot subdivision and a 2-unit land condominium conversion at 11-35 Canal Street in the Opportunity Corridor Performance (OCP) District.

This application was continued to April 17, 2019

- 8E. Greg Steverson, on behalf of Ledyard Financial Group, requests Minor Site Plan approval for a change of use, associated building renovations and site improvements at 74 South Main Street in the Urban Commercial (CU) District.

Ms. Rosenberger recused herself and left the table.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to determine the application complete and open the public hearing.

Mr. Durfee stated that the applicant is requesting Minor Site Plan approval to reconstruct the existing parking lot in conjunction with the renovations to the existing building. The applicant is also requesting a Conditional Use Permit to allow the driveways to be closer than 200 feet to the intersection of Perley and South Main Street. He added that the ZBA did grant three variances for the project.

Greg Steverson of Ledyard Financial Group, represented the application along with Randy Mudge of Randall T. Mudge & Associates, and Mark Sargent of Richard Bartlett & Associates.

Mr. Steverson gave an explanation of the proposal and the area. He stated that there is a purchase and sales agreement for the property. The building will retain its existing footprint though the drive-up window will be moved slightly to the south on the building. Green space will be added where none exists now on the Perley and South Main Street frontages.

Landscaping was reviewed. Ms. Foss commented that there is a need for street trees along Main Street for height and shade. It was noted that there will be rhododendrons placed along Main Street, 4 feet above grade which will provide screening from the parked cars from Main Street. Ms. Foss requested that the applicant confer with staff for additional shade trees.

The traffic pattern was reviewed and Mr. Steverson explained the three entrances. Ms. Shank commented that the original concept was only two access points. Mr. Steverson stated that there is a need for the three entrances due to the fact that they need to allow for the required five stacking spaces. He added that this has been reviewed by the City Traffic Engineer who is satisfied with the layout given the site constraints. The applicant believes that this is an improvement as to what exists. Additional discussion was held regarding the turn out of the site onto Perley Street and trying to access the left lane to turn left onto Main Street.

Abutters had submitted letters prior to the hearing and were made available for review.

Rob Kirsch, of Runnells Road, read and submitted a letter with his comments and concerns. He expressed much concern with the increase in traffic that the project will create as it will be a stark change in use from the currently existing specialized pharmacy. Mr. Kirsch stated that proposal is a beautiful design but it is too tight for this proposal. He stated that he did do some of his own traffic counts and suggested that there be more data collected on the traffic in the area. He asked for the location for snow storage. Mr. Kirsch noted that there is a right of passage between the property shared by himself, another abutter, and the applicant. He respectfully requested the Board to deny the site plan based on the fact that the increased intensity is not in keeping with the spirit and intent of the property rights as laid out in the deed.

A discussion was held regarding the right of passage or easement between the properties. Mr. Durfee read the verbiage within the deed.

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Mr. Pierce asked if there was a traffic study completed. Mr. Durfee stated that the project does not meet the threshold for a traffic study. He noted that the City Traffic Engineer did use the Institute of Transportation Engineers Trip Generation Manual for national trip generation averages, and determined there would not be a significant increase.

Councilor Champlin asked about the right of passage noted. Mr. Anderson stated that the easement is within the deed and he has asked for information to be provided for assurance that what is proposed is within the right of passage. Mr. Sargent stated that this area is an 18 foot wide easement that was meant to be used in common. The applicant had offered to improve the access easement and stated that the foundation of a former building on the abutter's property encroaches into the access easement. Staff required that the applicant make room on their site to accommodate an additional 6 feet of space next to the easement to guarantee the required 24 feet for a two-way drive aisle.

Mr. Woodfin asked about the three curb cuts. He stated that he understands the need for three but it seems excessive. He is okay with two but not three. He asked if there were any other configurations of the site. Councilor Champlin expressed concern as well and added that he is not sure of a solution with the size of the lot and the proposed use.

Mr. Steverson explained that they have looked into other alternatives. He explained that there is no traffic study required. The applicant stated that this is a new type of branch where the normal activity levels will be less than what is typical of similar bank sites. Teller transactions are down by 5% and these types of transactions will continue to decline. He noted that the activity at the Pillsbury Street location has declined by 30%. Councilor Champlin asked how long this site will be relevant with the decline in the banking needs. Mr. Steverson stated that this location is necessary to support the Pillsbury site.

Mr. Woodfin stated that this is not a unique business. He asked about the single lane drive thru and how often five cars could be backed up. He added that he is struggling with the proposed traffic pattern. Mr. Steverson stated that they have talked to the traffic engineer for other options. Ms. Shank stated that there may be no good solution and this may not be the right site for this use or something that has a lot of traffic but that it is a permitted use and is considered an improvement of the site by the City's Traffic Engineer.

Mr. Steverson offered an option of eliminating the ATM outside and have it be inside. There would then be no drive-up, and this may allow for the elimination of one curb cut. The traffic pattern would change and there would still be a tight turn onto Perley Street. Mr. Anderson stated that any change to the traffic should be presented to the traffic engineer.

Abutter Mr. Kirsch stated that he would also like to have the opportunity to comment on the interpretation of the deed, as well as review and address layout changes.

Mr. Woodfin closed the hearing.

On a motion made by Ms. Foss, and seconded by Mr. Regan, the Board voted unanimously to table the application to the April 17, 2019 meeting pending the receipt of the following information:

- A legal opinion clarifying the applicant's rights relative to the access way between the properties to be reviewed by the City Solicitor
- A revised layout plan that eliminates a curb cut
- A sign package or concepts for signs

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- A lighting package or concept for lighting if lighting is anticipated

Ms. Rosenberger returned to the Board.

- 8F. TF Moran, on behalf of Harold J. Lassonde III, requesting Major Site Plan approval to construct a new 6,296 sf structure and associated site improvements for a wedding venue, and two Conditional Use Permits for impacts to wetlands buffer and for the proposed cupola to exceed the maximum height, at 63 Bog Road in the Residential Open Space (RO) and Medium Density (RM) Districts.

Mr. Pierce recused himself for this application and left the table.

Ms. Fenstermacher provided an overview of the project noting that several variances were recently granted by the ZBA. The applicant met with the ADR and met with the Conservation Commission twice for the proposed CUP application for the proposed disturbance to wetland buffers. The Commission recognized that 76,599 sf of the buffer impacts are existing impacts from the driveway, and only 27,993 new impacts are proposed. She referenced the waivers requested, all supported by staff.

Nick Golon, of TF Moran represented that application along with Justin and Eric Stephens, of Stephens Brothers, LLC.

Mr. Golon stated that a purchase and sales agreement is pending approval from the Planning Board. He explained that the proposal is to construct a 6,296 sf indoor event venue, rebuild an existing gravel road, and construct a patio, parking lot, and drainage improvements at 63 Bog Road in the Medium Density Residential (RM) and Residential Open Space (RO) Districts. The site is 34 acres. A variance was received on August 1, 2018, to allow the proposed use in this district. He referenced the wetland areas on either side of the driveway and explained that the proposal is to rebuild the existing gravel road. He noted that the road is proposed to be four feet smaller than is required by zoning. In addition, they are proposing a gravel road as it is less of an impact and is better than pavement for water quality reasons. Mr. Golon stated that the Applicant has received variances to construct a 20' width road where 24' is required, and to not pave the access road. Mr. Golon continued to explain the site improvements and reviewed the waiver requests.

Ms. Foss expressed concern regarding amphibians crossing the gravel driveway on a rainy night in April. She suggested that there be some type of temporary silt fence to direct the wildlife. Mr. Golon stated that they are already working with the NH Department of Fish and Game.

Ms. Foss asked about the lighting in the parking area. Mr. Jason Stephens replied that the lights are on only during the events.

The parking spaces were discussed as to the number of guests. Mr. Golon stated that the owners believe the parking provided is sufficient for the events. There are 69 spaces proposed and the variance limits the use to 180 occupants per event. There is no parking on the side of the road. Ms. Fenstermacher added that parking for an indoor recreation facility is calculated by gross square footage, whereas other public assembly spaces are calculated per fixed seat. She stated that if the applicant was to use the fixed seat calculation, the parking is sufficient based on the number of people permitted for the venue. However, given that the seats are not fixed, the calculation is based on square footage, therefore, a variance was required.

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Mr. Stephens stated that with regard to music, there will be no outdoor speakers and the venue doors will remain closed. Mr. Stephens added that they are mindful of the area. They did do informal noise studies and since the site is fully forested noise pollution should not be an issue.

Raymond Mercier, 81 Bog Rd, stated that he is in full support of the project. He stated that the lot is a challenging piece of property. There has been much communication throughout the process which has been appreciated.

Mr. Woodfin asked about the arched window and ADR's comment to change it. Mr. Stephens stated that they proposed the arch window as they wanted as much natural light to enter the building as possible. Planning Board members commented that they did not see an issue with the design of the arched window.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant ADR approval** for the site plan and the building, as submitted.

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant approval of the following Conditional Use Permits**, utilizing the criteria from Section 28-9-4(b) (ZO):

- a. Section 28-4-3(d) to disturb approximately 104,592 sf (2.4 ac) of Wetland Buffer
- b. Section 28-4-1(f)(3) for the cupola to exceed height requirements, allowing a height of 35' 9-9/16" where a maximum height of 35' is allowed in the RO District.

On a motion made by The Board Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant the following waivers to the Site Plan Regulations** using the criteria of RSA 674:44 III(e)(1) as guidance, indicating that strict conformity would pose an unnecessary hardship to the applicant since the applicant is proposing changes to a small portion of the site, and waivers would not be contrary to the spirit and intent of the regulations, and the site plan can be satisfactorily reviewed with the information provided.

- a. 12.03(6) Soils, to utilize NRCS data instead of having a soil scientist prepare and sign a soil plan.
- b. 15.03(1) Property Lines, to not survey the entire parcel given the extent of development concentrated in a 3.5 acre portion of the 33.7 acre parcel.
- c. 15.03(3) Topography, to not show existing topography for the entire parcel.
- d. 15.03(5) Natural Features, to not show natural features on the entire parcel.
- e. 16.03(11) Signs, to provide signage package at a later date.
- f. 21.03 Connection to Public Sidewalks, to not provide a sidewalk connecting the site to the existing sidewalk on Bog Road.
- g. 22.07(2) Stormwater Recharge, to maintain 3-foot separation where 4 feet is required between the bottom of the infiltration system and the groundwater

On a motion made by Councilor Champlin, and seconded by Ms. Foss, the Board voted unanimously to **grant Major Site Plan** approval for the proposed development of a commercial indoor recreational facility (wedding venue) and associated site improvements at 63 Bog Road, subject to the following precedent and subsequent conditions noted below:

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- (a) Precedent Conditions – to be fulfilled within one (1) year and prior to sign off by the Clerk and Chair of the Planning Board and issuance of any building permits, or the commencement of site construction, unless otherwise specified:
- (1) Address Planning Review comments in the staff report dated March 20, 2019, to the satisfaction of the Planning Division.
 - (2) Address Engineering review comments in the memo from Bryant Anderson dated March 14, 2019, to the satisfaction of the Engineering Division.
 - (3) Address the conditions of the ZBA approval.
 - (4) Waivers and Condition Use Permit(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Zoning Ordinance and Site Plan Regulations. Should the Board vote to deny the Waivers or Conditional Use Permit(s), applicant shall comply with said submission requirement(s).
 - (5) Submit three (3) copies of fully revised plans for sign off by the Clerk and Chair of the Planning Board.
- (b) Subsequent Conditions – to be fulfilled as specified:
- (1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
 - (2) A pre-construction meeting shall be required prior to the start of any construction activities onsite. The applicant shall pick up one (1) set of signed plans at the Planning Office to make copies for the pre-construction meeting. A total of five (5) copies of the signed plan set shall be provided by the applicant at the pre-construction meeting.
 - (3) Prior to a Certificate of Occupancy or final construction sign-off, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.
 - (4) Prior to the issuance of a Certificate of Occupancy or final construction sign-off, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88.

Mr. Pierce returned to the Board.

- 8G. Jason Garland, on behalf of Abbott Farm, LLC, requests an amendment to a previously approved subdivision plan to remove the condition that the Abbott House be restored prior to the commencement of Phase 5 construction, for property at 382 N. State Street in the Neighborhood Residential (RN) District.

Ms. Fenstermacher explained that there will be two separate applications for the Abbott Village development. The phasing of the project requires that the Abbott House be restored prior to the commencement of Phase 5. This meeting is to address the removal of this condition to allow the applicant to continue with the construction of Phase 5 to take advantage of the housing market. The status of the Abbott House will be addressed at a future meeting under separate application.

Jason Garland, represented the Abbott Farm, LLC.

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Councilor Champlin stated that the original approval in 2005 was a conditional approval requiring the Abbott House be restored prior to any construction of Phase 5. It is now being characterized as uninhabitable. He asked what the plans are for restoration.

Mr. Garland explained that his company purchased the project out of bankruptcy in November 2011. A structural engineer was hired in 2016 to assess the condition of the house and provided recommendations; it was the engineer's opinion that the house is almost beyond salvageable and should be demolished. While the original approval required that the house be restored prior to issuance of building permits for Phase 5, the owner would like to pursue construction of the next building immediately while the market is good.

Councilor Champlin asked if at the time of the inspection any measures were taken to prevent further damage. Mr. Garland replied that at that time the damage had already been done and it has gotten worse. He stated that they will be proposing to demolish the house as part of a separate application before the Board next month.

Mr. Pierce asked if they were aware that there was a need for restoration at the time of purchase and that they would need to restore the house. Mr. Garland stated that they were aware of the condition and the conditional approvals at the time of purchase. Mr. Pierce asked if anything was done during that time in 2011 to address damages or done to further mitigate the damages to the house. Mr. Garland replied no, and that they purchased the property "as is" with minimal inspection since it was in bankruptcy.

Mr. Woodfin stated that the application tonight is a request to allow the applicant to continue with the construction of Phase 5; it does not have anything to do with the Abbott House. That application is forthcoming.

Ms. Rosenberger noted that the applicant met with the Heritage Commission (HC) recently and they motioned to approve the issuance of building permits for Phase 5 with a condition that no Certificates of Occupancy would be issued until the Abbott House is restored.

Councilor Champlin stated that he understands that the applicant wants to move forward and housing in the City is important as there is a lack of available housing; however, once construction starts the Abbott House will continue to deteriorate. The project was purchased in bankruptcy and action should have been taken immediately to preserve the house. The City should have followed through on the conditions. This is characterized as demolition by neglect. The owners took no action to repair the roof or protect it. This is a historic building in the City and a public treasure that is now in private hands. He suggested a second opinion be obtained regarding the structure of the house and asked what leverage the City will have in the end.

Mr. Garland explained that they are proposing to place a monument on the site of the house. He added that he has met with two members of the Abbott family who asked for that monument as well as a seating area be placed there to commemorate the history of the Abbott family.

Mr. Pierce asked how far along the construction process is. Mr. Garland replied that they would like to begin the site work for the new building on Monday. It will be a financial hardship caused to the applicant if there is a delay with the project.

Dick Sheppard, member of the Abbott Village board, stated that the board supports the proposed project to demolish the house and replace with a green space and memorial. He stated that a decision needs to be made as the project needs to move beyond the continuous construction phase. Placing a hold on Certificates of Occupancy will not allow the project to move forward. The area is a construction zone and is hazardous. He does not believe that the house can be saved and it is not safe. He added that it is important to take action tonight.

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Christine Tatro, resident, stated that adding additional units increases the revenue for the association through additional fees collected and will allow for improvements to the area.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

Mr. Woodfin stated that the developer is responsible for the resolution with the Abbott house. The leverage is limited, in theory there is no leverage.

Ms. Rosenberger asked if the Board should approve the request tonight what will be affected, with regards to the future of the development. Mr. Garland stated that they need to get through the project and they will have no choice but to comply with the conditions of approval.

Councilor Champlin suggested a second opinion regarding the integrity of the Abbott house be obtained and provided to the Board prior to the next meeting. It was suggested that the applicant work with City staff to find a suitable structural engineer, and for staff to review and approve the scope of the survey. Mr. Garland replied that he would make his best effort to comply with the request.

On a motion made by Councilor Champlin, and seconded by Mr. Woodfin, the Board voted unanimously **to grant approval** to the amendment for the previously approved subdivision plan to allow for the issuance of building permits for Phase 5 construction prior to the completion of Phase 4, with the condition that no Certificates of Occupancy (CO) be issued until the Planning Board reviews and votes on the Applicant's future request to alter the original condition that the Abbott House be restored, and that a second opinion on the structural integrity of the Abbott House be obtained.

9. Amendments

9A. Zoning ordinance amendments to address solar collection systems: Title IV, Zoning Code; Chapter 28, Zoning Ordinance, Section 28-2-4(j) Table of Principle Use; Section 28-2-4(k) Table of Accessory Use; Section 28-4-1(e) Dimensional Standards, Maximum Lot Coverage; Section 28-4-5, Development of Attached and Multi-Family Dwellings; Section 28-4-6, Manufactured Housing Parks and Subdivisions; Section 28-4-7, Cluster Development; Section 28-5-32, Accessory Buildings and Facilities; adding Section 28-5-53, Solar Collection Systems; and Glossary. (Continued from February 13, 2019)

Mr. Woodfin stated that the public hearing was closed at the February 13, 2019 Planning Board meeting.

Ms. Fenstermacher stated that as a result of the February public hearing staff was asked to provide additional information on co-location of solar collection systems and agriculture, and whether to increase the proposed 25 acre maximum solar development size. She stated that the amendment proposes that no development shall exceed 25 acres of solar land coverage, with the exception of developments in the Industrial (IN) District. Public testimony indicated that the proposal of 25 acres would be too restrictive. The Energy and Environment Advisory Committee recommends that the size be increased to 50 acres; the Conservation Commission was comfortable with the 25 acre cap. Staff recommends the cap remain as proposed.

In addition, staff researched dual-use systems, which are solar systems and active agricultural operations. Massachusetts has recently established financial incentives for dual-use systems, but require annual reporting and enforcement. Concord does not have the staff support necessary for a similar program. Staff recommends continuing observing the program in Massachusetts and see

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how new projects in Concord work. The current proposal requires that developments keep the site suitable for co-location of agriculture, and that the proposal should move ahead as is.

Ms. Fenstermacher stated that she spoke with the Planner in the Town of Hopkinton who recently adopted a solar ordinance; the Planner stated that she used the Model Ordinance, and also looked at the Town of Durham ordinance. The Planner stated there should be no comparison between Hopkinton and Concord as they are two very different communities. Hopkinton does not have the staff to do extensive research and they would look to the City of Concord as an example and for guidance.

Ms. Foss stated that Hopkinton is a town, a rural community, not a City.

Mr. Pierce commented that the proposal is flexible and it is great to have something that can be changed. He asked if there is a regulation pertaining to the height of panels. Ms. Fenstermacher replied that the height for the panels is not regulated. The only mention height is under accessory uses and if a panel is less than 9 ft. in height, there are allowances for encroaching into the setback.

On a motion made by Mr. Pierce, and seconded by Ms. Foss, the Board voted unanimously to recommend approval of the ordinance amendments to City Council.

10. Other Items

10A. Request for the permanent discontinuance of Osgood Street, referred from City Council.

Ms. Shank stated that a petition has been submitted by Joseph Alosa, Sr. requesting the permanent discontinuance of Osgood Street, which is a City right of way off of Basin Street. Osgood Street is a short dead end street; it provides no vehicle circulation or any contribution to the City's transportation, or provide any public access to the river. The owner has been utilizing and maintaining the street for his business for years, including providing snow removal in the winter. Staff supports the discontinuance subject to the following conditions being met prior to granting of the discontinuance:

- Recording of any easement or agreement required by the State regarding access to the stormwater pipe;
- Conveyance of the City parcel to the petitioner;
- Successful merging of all lots in question such that nonconformities pertaining to frontage are eliminated.

On a motion made by Mr. Hicks, and seconded by Councilor Champlin, the Board voted unanimously **to grant approval** to discontinue Osgood Street and forward to City Council.

Adjournment

At the request of Chair Woodfin, Councilor Champlin made a motion to adjourn at 11:06 p.m., seconded by Ms. Foss. Motion carried unanimously.

A TRUE RECORD ATTEST:

Lisa Fellows-Weaver,
Administrative Specialist