

**CITY OF CONCORD PLANNING BOARD  
November 19, 2014 MEETING**

The regular monthly meeting of the City Planning Board was held on November 19, 2014, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 6:30 p.m.

Present at the meeting were Chair Drypolcher and Members Champlin, Dolcino, Foss, Hicks, Lavers, Regan, Rosenberger and Woodfin. City Planner Nancy Larson and Ms. Murray of the City's Planning Division were also present.

At 7:00 p.m., a quorum was present and the Chair called the meeting to order. Chair Drypolcher seated Alternate Member Dolcino for Member Smith-Meyer.

**PUBLIC HEARINGS**

**Architectural Design Review Applications**

1. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4 (f), Architectural Design Review, of the City of Concord's Code of Ordinances:

The Chair opened the public hearings for all the sign applications.

- a. **Application by SARP Realty, LLC, on behalf of K & G Restaurants, Inc. (The Red Blazer), requesting Architectural Design Review Approval for one (1) new 79.3 sq. ft. internally illuminated pylon sign (to replace existing) at 72 Manchester Street, within the Highway Commercial (CH) District. MBLU: 110D/3/7**

Ms. Larson stated the application was recommended for approval as submitted by ADRC. Glen Schadlick, NE Op Co Signs, was present to speak to the application. Mr. Schadlick stated that the proposed signs will replace the existing and they are updating the logo to match other logos used on trucks etc. The square footage will remain the same as the existing and landscape will remain the same. Ms. Larson noted that the LED sign was permitted separately and the electronic messaging portion was approved.

There were no other comments or discussions.

Mr. Hicks moved to grant Architectural Design Approval for one (1) new 79.3 sq. ft. internally illuminated pylon sign (to replace existing) at 72 Manchester Street as submitted by the applicant. Mr. Lavers seconded the motion. Motion carried unanimously.

- b. **Application by NH Six Realty Trust, on behalf of Citizen's Bank, requesting Architectural Design Review Approval for one (1) replacement 39 sq. ft. internally illuminated affixed wall sign with channel letters at 339 Village Street within the Central Business Performance (CBP) District. MBLU: 1412P/43**

Carol Bugbee, Philadelphia Signs Citizen bank, was present to speak to the application. Ms. Bugbee existing signs blend in with building since it was painted. The proposed signs will have the same size lettering and same illumination; just changing the color from white to green.

Mr. Lavers moved to grant Architectural Design Approval for one (1) replacement 39 sq. ft. internally illuminated affixed wall sign with channel letters at 339 Village Street as submitted by the applicant. Mr. Hicks seconded the motion. Motion carried unanimously.

- c. Application by Fairhaven Realty Assoc., LLC, on behalf of Cumberland Farms, Inc., requesting Architectural Design Review Approval for two (2) replacement 21 sq. ft. internally illuminated canopy signs on an existing structure, one (1) replacement 20 sq. ft. internally illuminated affixed wall sign, and a sign re-facing for two (2) existing 24 sq. ft. internally illuminated freestanding signs with manually removable pricing at 188 Pleasant Street , within the Neighborhood Commercial (CN) District. MBLU: 40/5/4**

Ms. Larson stated the application was recommended for conditional approval as submitted by ADRC.

There were no other comments or discussions.

M. Foss moved to grant Architectural Design Approval for two (2) replacement 21 sq. ft. internally illuminated canopy signs on an existing structure, one (1) replacement 20 sq. ft. internally illuminated affixed wall sign, and a sign re-facing for two (2) existing 24 sq. ft. internally illuminated freestanding signs with manually removable pricing at 188 Pleasant Street as submitted by the applicant with the understanding that the total height of the freestanding sign is 16 feet as indicated on the narrative portion of the application and also with the notation that lowering the height of the freestanding sign may vastly improve driver sight lines to see the sign. Mr. Hicks seconded the motion. Motion carried unanimously.

- d. Application by Granite State College, University System of NH, requesting non-binding Architectural Design Review comments under RSA 674:54 for one (1) replacement 28 sq. ft. non-illuminated affixed panel in an existing freestanding sign, one (1) sign re-face of a 180 sq. ft. internally illuminated plastic panel with flexible fabric face on an existing pylon structure, and one (1) new 57 sq. ft. internally illuminated affixed wall sign with channel letters at 25 Hall Street within the Gateway Performance (GWP) District. MBLU: 15/2/10**

Ms. Larson stated the application was recommended for approval as submitted by ADRC.

There were no other comments or discussions.

Ms. Foss moved to grant Architectural Design Approval for one (1) replacement 28 sq. ft. non-illuminated affixed panel in an existing freestanding sign, one (1) sign re-face of a 180 sq. ft. internally illuminated plastic panel with flexible fabric face on an existing pylon structure, and one (1) new 57 sq. ft. internally illuminated affixed wall sign with channel letters at 25 Hall Street as submitted by the applicant. Ms. Rosenberger seconded the motion. Motion carried unanimously.

- e. Application by Mason and Rich Realty, Inc., requesting Architectural Design Review Approval for one (1) replacement 7.5 sq. ft. non-illuminated hanging sign with bracket at 6 Bicentennial Square within the Central Business Performance (CBP) District. MBLU: 35/5/11**

Ms. Larson stated the application was recommended for approval as submitted by ADRC. Ms. Larson notified the Board that a colored rendition of the proposed sign was submitted and is enclosed in their packets.

There were no other comments or discussions.

Mr. Hicks moved to grant Architectural Design Approval for one (1) replacement 7.5 sq. ft. non-illuminated hanging sign with bracket at 6 Bicentennial Square as submitted by the applicant. Mr. Lavers seconded the motion. Motion carried unanimously.

### **Determination of Completeness:**

- 2. Request by TF Bernier, Inc., on behalf of Strategic Contracting Company, LLC to subdivide one (1) lot into nine (9) residential house lots. Five (5) lots will front on Sanborn Road and four (4) will front on Mountain Road, at 39 Sanborn Road in the RM (Medium Density Residential) District. Map/Block/Lot: 122/3/1 (2014-0055)**

#### **a. Determination of Completeness**

Ms. Larson recommended that the application be determined complete and the public hearing set for December 17, 2014.

Mr. Lavers moved to determine the application requesting Major Subdivision with CUP to subdivide one (1) lot into nine (9) residential house lots. Five (5) lots will front on Sanborn Road and four (4) will front on Mountain Road, at 39 Sanborn Road complete and to set the public hearing on December 17, 2014.

Mr. Hicks seconded the motion. Motion passed unanimously.

### **Continued Applications**

- 3. Request by Fournier Foods, LLC, on behalf of Jay W. Stewart Realty Holdings, LLC for a Major Site Plan Approval to construct a 5,524 SF poultry processing facility, a 1,558 SF garage/storage building, and a 1,225 SF covered outdoor storage area with parking, drainage, lighting and other associated site improvements at 52 Locke Road in the IN (Industrial), RO (Open Space Residential) Districts and the FH (Flood Hazard) Overlay District. Map/Block/Lot: 121-1-17 (2014-0041) (Continued from October 1, 2014)**

#### **a. Public Hearing**

#### **b. Deliberations and Action on the Application**

Chair Drypolcher stated the discussion tonight will be limited to the issues proposed at the October 1, 2014 meeting including the Board's decision to contract with an independent company to study the odor issues. He stated the discussion will also include the legal questions which came up that needed clarification.

Michael North, GZA GeoEnvironmental, Inc. was present to speak to the application. Mr. North summarized his report stating GZA was hired by the city to review and comment on the applicant's proposals for mitigating odor from the Fournier Foods facility. The findings are based on the facility as described by the applicant which includes that this facility is a slaughterhouse and would not include any rendering or cooking of poultry on site. He stated first they look at site setting and meteorology. National Weather Service and Concord Airport Data

were used. He said periods of low wind speed are the most concerning factor with respect to odors and atmospheric dispersion which typically occur at night with radiational cooling. Based on the nighttime and daytime wind roses from Concord Airport data are most frequently from northeast through southeast at night. Meaning the prevailing nighttime wind direction during periods of low wind speed, when poor dispersion is most likely, are from the nearest residential areas towards Fournier Foods. The prevailing wind direction considering all wind speeds is from the northwest both at night and during the day. Mr. North spoke about the exhaust stack design stating that the design of the proposed stack at Fournier Foods is an appropriate design and increasing the stack height will only have minor benefit at the property line but not at the distance of the residences. Mr. North spoke of the chemical usage at the proposed facility. He stated most of the chemicals have no potential for odors. He stated acetic acid and proxyacetic acid do have the potential to cause odor and an evaluation was performed. The mixtures are received in a concentrated form and are diluted for use and based on the diluted concentration for use in the scalding room, which is worst case scenario, no significant odors will be produced. Mr. North reported on the wastewater process. The applicant proposes to use a gravity grease interceptor and Mr. North stated it is beyond their scope to address this. He stated they do note that sometimes odors are associated with the interceptors if there is a long interval between clean outs and this is covered in GZA's recommendation. Mr. North spoke of waste storage, handling and disposal. He stated there were no specific concerns of odors from the proposed cleaning and sanitation procedures. GZA did recommend the following:

- a. The schedule for cleanout for the Fat, Oil, and Grease (FOG) Interceptor should consider not only grease and solids loading, but also the possibility of odor formation from anaerobic bacterial activity. Such a consideration may require shorter cleanout intervals that warranted by FOG loading alone.
- b. Waste offal bins should not be stored outside for long periods of time before or after offal pickups and a Fournier Foods employee should be present during pickups to ensure that any spills are cleaned up.
- c. The applicant should develop an Operations & Maintenance Manual for the FOG interceptor and provide it to the City for approval prior to the discharge of any wastewater.

In conclusion, Mr. North stated GZA found that the facility is designed appropriately.

Mr. Woodfin asked for the definition of offal. Mr. North replied that it is waste product such as organs or anything not being used as food.

Mr. Champlin asked if any consideration to a regenerative thermal oxidizer was given. Mr. North replied that this is generally used for air pollution control and would probably be overkill in this case and not an optimal solution if air pollution were a factor in this application.

Mr. Lavers asked if GZA had reviewed any other similar facilities. Mr. North replied that they had not.

Mr. Champlin asked if GZA modeled this assessment on any industry norms or similar site. Mr. North responded that GZA has reviewed rendering plants but air quality control reports are not customary for processing plants.

Ms. Larson noted that, as requested by the Board, the packets included the response by the City Solicitor's office regarding the zoning interpretation by the Zoning Administrator classifying

Fournier Foods as a food processing facility. Ms. Larson explained that we can't possibly list every single use that is possible in the zoning ordinance so in some cases we have to take the use and fit it into the most appropriate category. She stated the letter from Danielle Pacik, Deputy City Solicitor, explains the process in making that determination. It also addressed procedures of enforcement of any complaints. Ms. Larson stated the letter also addresses the question of whether Fournier Foods could be considered under the use of "raising of poultry". Ms. Larson stated that this use does not qualify for that category of raising or keeping of livestock.

Mr. Lavers stated he wanted a definition of "keeping" and he stated that he had no question regarding the applicant "raising" poultry but rather the "keeping" of poultry. He stated the zoning code does make a distinction between the two. He said the "keeping" of poultry, although, in the table of uses may appear that it only applies to livestock, when you read the particular section the zoning code clearly states that it considers "keeping" of poultry an agricultural use. He states the City Solicitor's office letter did not address that. Mr. Lavers noted the letter received from Atty. John Sokul that the Board received in their packets addressed the same concerns. He stated the City Solicitor's office and the Zoning Administrator's office did a nice job of explaining how a use determination is made. He stated in the Fournier Foods case it may have multiple principle uses as the birds are being delivered live could be "kept" but at the same time there is a processing element which is how it was categorized by the Zoning Administrator. His question is with the keeping of poultry and whether or not that brings in the agricultural use. He stated multiple principle uses can be allowed on one lot but all principle uses have to be authorized in order to be allowed. He stated that the agricultural component is not allowed but the processing component is. Mr. Lavers reiterated his original question had not been answered.

Councilor Champlin seconded Mr. Lavers' concerns.

Amy Manzelli, attorney for Fournier Foods, spoke. She stated there are two additional letters of support in the Board's packets. She referred the Board to the original application, supplemental materials and testimony from the October 1, 2014 meeting presented by the Fournier Foods team. She stated she reviewed copies of the November 12, 2014 memo from the Zoning Administrator and the City Solicitor's office and reviewed the report from GZA. She stated Fournier Foods concurs with the conclusions reached in those documents. With respect to the issue of raising and keeping, Atty. Manzelli stated that there is no legal distinction between what those terms mean. She stated for either keeping or raising to exist, feeding is required. She stated there will be no feeding of poultry at the Fournier Foods facility; therefore it is not keeping of poultry or raising of poultry. She said there is only one primary use at this facility which is processing. She stated everything else that happens at the facility from cleaning, trucks driving around, live chickens being delivered, and to processed birds being picked up are all uses that are ancillary to the primary use which is processing. Atty. Manzelli stated the conditions suggested in the GZA report are acceptable to the applicant and had already been planned for part of the operation. Atty. Manzelli stated that barrels of waste would not be stored outside since there is no storage outside; the employee would remove the barrel from the building for the direct purpose of unloading into the truck and once emptied would return it directly to the building. Atty. Manzelli concluded with hopes that the Board and residents are assured that Fournier Foods will be a very high quality operation.

Chair Drypolcher asked what the period of time between clean-outs was. Atty. Manzelli stated the initial plan was to clean out on a 30 day basis but would evaluate and adjust accordingly but it would not be longer than 90 days unless permission was given by the City. GZA recommends that clean-out be every 30 days if appropriate but no longer than 90 days.

Mr. Lavers stated the zoning code distinguishes between the two terms; keeping and raising. He said it appears in the language of the zoning code that they are not interchangeable terms. He stated there is no mention of a feeding requirement. Atty. Manzelli replied that she did not find that information in the City of Concord's Zoning Code but it was discussed at the previous meeting and comes from the code of Federal Regulations for governing the definition of animal operations which references feeding in relation to keeping or raising. Councilor Champlin stated it appears that NH Statute would define a food processing plant differently than Atty. Manzelli's interpretation. He is still trying to understand the difference between keeping and raising and the impact of having live animals on site for an indeterminate period of time. He stated there seems to be an argument, referring to Atty. Sokul's letter, that this site could be an agricultural use and not an industrial use based on NH statutes. Atty. Manzelli referred to NH RSA 21:34-a is where the state definition of farm, agriculture and farming is set forth. She stated the RSA separates processing and agriculture noting that the ancillary presence of a live bird at a slaughter facility does not therefore turn it into the raising or the keeping. She stated she believes that interpretation is consistent not only with the federal law but with state law. She understands that the Planning Board is seeking guidance on use but she also understands that it is the Zoning Administrator's job to make that determination of use and that determination was received this summer for Fournier Foods use. Mr. Lavers stated he understands that the applicant feels that their keeping of poultry or agricultural use is ancillary to the primary function but the zoning code distinguishes between keeping or raising and considers it an agricultural use and a principle use just as processing is a principle use. He also stated the zoning code does encompass the thought that two principle uses may be proposed for the same site but both principle uses have to be allowed or allowed with a special exception or permit. He stated in this case agricultural use is not allowed but processing/industrial use is allowed. He doesn't think it can be said that one is ancillary to the other but it certainly does need further explanation regarding the question of how the use was determined and that the term "keeping of poultry" has not been explained. Atty. Manzelli reiterated that there will be neither raising nor keeping occurring at this proposed facility. Ms. Rosenberger asked for a recap of the process when the chickens arrive at the plant, how long they are kept before processing and further explanation of the withholding of feed. Atty. Manzelli replied that it is not merely a recommendation of Fournier Foods that feed be withheld from the birds for 12 to 24 hours before their arrival at the plant but it is a requirement under the US Department of Agriculture Processing Regulations. She explained the process: upon arrival at the plant, the birds will be delivered to the outdoor storage area which is semi-enclosed walls and a roof. The birds are in humane crates and are kept in the crates until the crate is brought into the building. Then the live bird will be unloaded from the crate in the building. The live bird then goes through a process where it is dispatched, eviscerated and fully processed. The offal is put in storage bins and is put in a refrigerated area. The finished product is refrigerated until the owner comes back to pick it up. Mr. Craig Fournier explained the timing of those steps; when the farmer arrives at the drop off area he will manually remove the birds from the trailer into the staging area; from that point the birds are moved into the facility by Fournier employees who will move 4 crates at a time. For a full shift and a full batch of birds it would be about two hours maximum that the birds would be alive at the plant. Councilor Champlin asked how the federal government monitors and how Fournier Foods enforces the law that requires no feeding of the bird for 12 to 24 hours prior to delivery to the plant. Mr. Fournier stated they will be very specific with each farmer and will be able to tell upon examination of the birds that procedure was followed. He stated birds that have not been withheld feed will be sent back alive. Atty. Manzelli stated a USDA Inspector will be on site every minute of operation and will perform inspections of the birds upon arrival.

Mr. Woodfin asked how the offal was handled. Atty. Manzelli replied that the offal is collected in a special room which has an open container for the collection of offal. Once the container is

filled it will be wheeled into the refrigerated room and a clean, empty container will be wheeled back into the processing room.

Atty. Jim Steiner, 30 Oakmont Drive, spoke. He stated he appreciates the question Mr. Lavers raised about GZA reviewing similar plants. He believes had GZA gone to a similar plant the Board would have received a much better analysis. He urged the Board to seek volunteers to visit facilities before acting on this application. He stated the use of the term “reasonably confident” on page 4 of the application in reference to odor, concerns him because being reasonably confident does not provide a legal or objective standard. He believes the question of odor has not been answered. Concerning the zoning concerns he stated it has to kind as a like kind. He urged the Board to take the notion of misclassification needs to be corrected at this level and not passed on. Chair Drypolcher stated he considered processed chicken and the act of food processing is a category. Atty. Steiner stated Atty. Sokul, in his letter, did a good job analyzing this situation which involves the slaughtering of a live animal which could put it in an entirely different category. Councilor Champlin asked if Atty. Steiner felt the avenues for actions under the existing zoning ordinance for neighbors if the odor was a problem were sufficient. Atty. Steiner stated he could not answer that in a simple way due to the various legal grounds. Chair Drypolcher noted that he called two town offices with processing plants in their towns and he received good information and no reports of problems. He also stated the facility in Rhode Island also raises chickens and the town offices report no problems. Atty. Steiner suggested a more rural location would be better suited for Fournier Foods intentions.

Atty. John Sokul, 3 Foxcross Circle, spoke. He stated the Board is well within its rights and it makes sense for the Board to consider the zoning issue carefully. He stated if the Board approves this then slaughterhouses can be located in any industrial zoned area. He believes there is a better way to look at this than as a food processing plant. Food processing is not a defined term or separate use; it is part of a use category which has three things in it; food processing, wholesale bakery and the bottling of beverages. He stated it mentions nothing about animals. He stated the agricultural use lists special provisions for animals which leads him to believe that this application fits under agricultural use. He also said he did not see slaughterhouse as an allowed use. He stated this application needs a variance as proposed. He stated regulations at the state level, plants that do not involve meat and poultry are regulated by the Department of Health and Human Services, others that involve slaughtering are regulated by the Department of Agriculture. He urged the Board to table the application until a variance is sought and obtained. Ms. Rosenberger asked for clarification of Atty. Sokul’s opinion that slaughterhouse are not allowed anywhere in Concord. Mr. Sokul affirmed that it is his opinion that slaughterhouses are not allowed by right in the City of Concord. Ms. Larson asked Atty. Sokul if he had discussed his interpretation with Craig Walker, Zoning Administrator. She also spoke about the Zoning Board appeal process saying there is a 30 day window to appeal any decisions. Atty. Sokul expressed confusion over when the decision was made. Ms. Larson replied that it is not her call and the zoning determination is usually made at the beginning of the application process. Atty. Sokul stated he understood that if the Board approves the application he has a right to appeal the decision with the zoning board of adjustment. Ms. Larson stated that if the Planning Board approves the application he would have the right to appeal to Superior Court if the decision is not based on the Board’s interpretation of the zoning ordinance but if he feels the Board is basing its decision on their interpretation of the zoning ordinance then he could appeal to the Zoning Board.

Mr. Paul Stillwell, 288 Eastside Drive, spoke. Mr. Stillwell questioned the discussion about the keeping of poultry. He stated the chickens will have to wait for the two hour process of the first batch and some could be there up to 8 hours. He also questioned if the approval for the 5500 sq. ft. facility means the approval of the future expansion is automatically approved.

Mr. Joe Alexander, 32 Bainbridge Drive, spoke. He stated it was reiterated that an FDA inspector would be on site 24/7 but it was also mentioned at the last meeting that the FDA was not going to continue requiring inspectors on site. He asked if the Board got clarification on any law changes. Chair Drypolcher replied that he thought it was cleared up at the last meeting in that it pertained to larger facilities.

Atty. Manzelli replied to public comment. She stated the federal law change regarding FDA inspector presence at facilities is pending and if passed would only apply to facilities employing 500 or more employees. She stated Fournier Foods would not exceed 500 employees even with the possible future expansion; this facility will be and would remain an FDA inspected facility. She also expanded on the timing of the shifts stating that for a full capacity shift of 2000 birds, the last of the birds would be out for 2 hours. When looking at 3 shifts over a 24 hour period, cumulatively the longest live birds would be present is 6 hours. Atty. Manzelli also addressed the odor concerns. She stated they have presented uncontroverted, expert opinion that there is not going to be odor of a hazard nature or a nuisance nature. She also spoke about the use category using shrimp and lobster as examples of live creatures which would not be categorized as slaughterhouses i.e., Shaw's, Market Basket, restaurants. She stated animals being delivered in a live condition do not make the use distinct. She stated being a slaughterhouse does not make the facility not a food processing facility nor does the distinction that the Department of Agriculture is in charge of meat inspection make this not a processing facility. Ms. Foss asked for a clarification of the shift process. Atty. Manzelli replied that ideally a full shift of birds would be delivered at once, one 2000 bird delivery, in which case the last of the birds would be alive outside for two hours. She stated because of the state of the poultry industry that many birds will most likely not be delivered all at once.

Ms. Larson spoke about the landscape plan which Ms. Smith-Meyer marked up. Atty. Manzelli stated she has reviewed the mark up but has not prepared a revised landscape plan because she was hoping for input on the requirements and thought they had meet all landscape requirements with the original plan. She also stated they are agreeable to the bulk of the additional plantings and would welcome a condition to that effect allowing them to work out the final landscaping with the City on an administrative level. Atty. Manzelli noted one condition on the plan not related to landscaping which suggested that the offal removal be limited to certain hours. She stated that limitation would not be appropriate since it is dependent on the operating hours of the rendering companies.

Ms. Anne Bogart, 6 Mill Street, spoke. She raised concerns regarding odors and the maintenance and hygiene of the facility. She stated the facility will only be as hygienic as the people that are hired and Mr. Fournier will not be there 24 hours a day to oversee the hygiene. Chair Drypolcher stated that a FDA inspector will be present 24 hours a day. Ms. Bogart replied that she was not convinced that the facts were presented about the law change since a member of the audience who claimed to be a federal inspector clarified the change in law but she is not comfortable taking his word for it.

Mr. Richard Deres, 23 Shaker Road, spoke. He expressed concerns regarding the stack height stating that the plume at the Merrimack Station tower tends to rise then stay horizontal. He stated that there will be days when the plume at the proposed site will rise and drift towards East Concord and because East Concord is downwind and uphill there will be odor.

Mr. Christian Pannacker, 302 North State Street, spoke. He stated he was in favor of the proposed application.

Mr. Lavers reiterated his issue with the zoning classification because of the use with the application having an agricultural component which wouldn't be allowed in an industrial zone. He stated his question of whether or not the "keeping" of poultry is applicable for the proposed use was asked on October 1, 2014 with the hopes of moving this along but is not satisfied with the response to the question. He stated that he would be more comfortable voting on this after hearing from the City Solicitor as to whether or not or how it was determined that the agricultural component of this use is being ignored and being trumped by the processing use and whether or not the keeping of poultry is applicable in this situation and if not he expects an explanation. Councilor Champlin stated he has similar concerns.

Ms. Dolcino asked if the zoning component is the Planning Board's question or if it is the Zoning Board's question. Ms. Larson answered that the Planning Board is charged with requirements in the subdivision and site plan regulations. The Zoning Board is charged with administering the zoning ordinance. She stated if someone has an issue with how a use has been classified there are legal mechanisms for addressing that and the Planning Board is typically not one of them. It would be appealed to the Zoning Board of Adjustment. She explained that the date that the zoning classification was made is being discussed internally and she is not part of that conversation. She explained that the Zoning Administrator gave a verbal opinion at the beginning of the application process but the date that may be determined the formal decision date could be the date of the letter from the City Solicitor's office and the Code Administrator of November 12, 2014 which is currently being discussed internally. Ms. Rosenberger asked that if the 30 day appeal period clock started in the summer when the application first was classified as an industrial use, would there be a different appeal process. Ms. Larson stated the time limit to start the Zoning Board appeal process would have expired but a new 30 day appeal period for the Planning Board's decision would start once a decision is made.

There being no further comment, the Chair closed the public hearing.

Chair Drypolcher stated he was uncomfortable with the issue of the definition for the classification of an industrial use or an agricultural use and with the definition of keeping of livestock and whether there is a time threshold for the determination. Ms. Dolcino noted that may require amending the zoning ordinance. Mr. Lavers stated that perhaps the Zoning Administrator has a threshold that was used but he noted that the only mention of the keeping of livestock is in the agricultural use section of the zoning ordinance. He also stated he appreciates the efforts of the City Solicitors office but stated his question was not answered in their memo of November 12. He said he had no question about the raising of poultry, which he is sure would not happen at Fournier Foods, but only with the keeping of poultry and the definition of keeping and the distinction between raising and keeping. Mr. Lavers stated that the zoning ordinance mentions multiple principle uses on one site and the keeping of live animals on site for the purpose of processing them raises both principle uses but in order to have two principle uses on one site both need to be allowed. He said in this case the keeping of poultry is an agricultural use and is prohibited in an industrial zone. Discussion ensued about the possible definition or interpretation of raising and keeping. Ms. Dolcino reiterated her question about whether or not the Planning Board has the authority to question the Zoning Administrators decision.

Ms. Rosenberger moved to approve the application by Fournier Foods, LLC, on behalf of Jay W. Stewart Realty Holdings, LLC for a Major Site Plan Approval to construct a 5,524 SF poultry processing facility, a 1,558 SF garage/storage building, and a 1,225 SF covered outdoor storage area with parking, drainage, lighting and other associated site improvements at 52 Locke Road, as submitted with staff recommended conditions. Ms. Dolcino seconded the motion.

Discussion ensued regarding the appeal process and the 30 day time period.

Ms. Larson gave a summary of the staff recommended conditions. It was discovered that the meeting packet did not include the most recent staff report for the application.

Councilor Champlin moved to table the application by Fournier Foods, LLC, on behalf of Jay W. Stewart Realty Holdings, LLC for a Major Site Plan Approval to construct a 5,524 SF poultry processing facility, a 1,558 SF garage/storage building, and a 1,225 SF covered outdoor storage area with parking, drainage, lighting and other associated site improvements at 52 Locke Road, until the next Planning Board meeting scheduled for December 17, 2014 at 7:00pm in Council Chambers, 37 Green Street to have time to get information on the questions raised regarding the zoning classification and the definition of the keeping of poultry, to be assured that the packet contains the most recent information, and to put forth an invitation to the City Solicitor's office to be present at the December 17<sup>th</sup> meeting. Mr. Lavers seconded the motion.

Chair Drypolcher announced that the motion to table will take precedence over the previous motion to approve the application made by Ms. Rosenberger and the second to that motion.

Motion to table the application carried unanimously.

#### **Subdivision Applications**

4. **Request by Richard D. Bartlett & Associates, on behalf of NHADC, LLC and the Diann Sanel Trust 2007 for a lot line adjustment between 106 & 108 Airport Road, respectively, in the IN (Industrial) District. Map/Block/Lot: 110G/2/5 & 110G/2/6 (2014-0056)**
  - a. **Determination of Completeness**
  - b. **Public Hearing**
  - c. **Deliberations and Action on the Application**

Ms. Larson recommended that the application be determined complete and the public hearing opened.

Mr. Hicks moved to determine the application complete and to open the public. Mr. Woodfin seconded the motion. Motion passed unanimously.

The Chair opened the public hearing.

Mark Sargent, Richard D. Bartlett & Associates, was present to speak to the application. The applicants request a lot line adjustment between the two properties to correct an encroachment issue; a chain link fence and landscaped area on 108 Airport Road encroached onto 106 Airport Road. A total of 1,189 SF (0.03 acres) of land will be transferred from 106 Airport Road to 108 Airport Road. The front lot corner shared by both parcels will not be shifted as part of the lot line adjustment so the frontage for both parcels will remain as is.

The Chair asked if members of the public had any comments or questions on the application. There being no comments from the members of the public, the Chair closed the public hearing.

Mr. Lavers moved to grant a waiver to Section 12.08(4) of the Subdivision Regulations requiring soils mapping.

Councilor Champlin seconded the motion. Motion passed unanimously.

Ms. Foss moved to grant a waiver to Section 12.08(23) of the Subdivision Regulations requiring tabulations for proposed impervious surface coverage, useable area rectangles, etc.

Mr. Regan seconded the motion. Motion passed unanimously.

Ms. Foss moved to grant final approval to the lot line adjustment plan for the Diann Sanel Trust 2007 & NHADC, LLC with the following precedent conditions to be fulfilled within 2 years and prior to endorsement of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:

1. The Licensed Land Surveyor shall sign and seal final plans and mylar.
2. Applicant to 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.
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. An existing chain link fence along the shared side boundary line spans both properties as a result of the lot line adjustment. Staff recommends that the fence be located entirely on one of the lots and the plan be revised to reflect this intent. Alternatively, an easement for the fence, complete with a metes and bounds description, could be added to the plan. An easement document would be submitted to clearly describe ownership of and maintenance responsibilities for the fence. Note on plan to clarify ownership of fence and maintenance.

Ms. Foss seconded the motion. Motion passed unanimously.

5. **Request by Richard D. Bartlett & Associates, on behalf of the Martha J. Lapierre Estate to create two new lots, one encompassing the existing home and an additional single-family lot just over 40,000 square feet in area. The balance of the parcel (23.91 acres) will remain vacant at this time but may be further developed in the future. The parcel is located at 84 Bog Road in the RO (Open Space Residential) and the RM (Medium Density Residential) Districts. Map/Block/Lot: 103/3/5 (2014-0057)**
  - a. **Determination of Completeness**
  - b. **Public Hearing**
  - c. **Deliberations and Action on the Application**

Ms. Larson recommended that the application be determined complete and the public hearing opened.

Mr. Lavers moved to determine the application complete and to open the public. Councilor Champlin seconded the motion. Motion passed unanimously.

The Chair opened the public hearing.

Mark Sargent, Richard D. Bartlett & Associates, was present to speak to the application. The applicant requests final subdivision approval of one lot into three residential lots at 84 Bog Road. The parcel of land consists of 25.75 acres and has a total frontage of 916.46 ft. along Bog Road. The proposed subdivision creates two new standard size residential lots containing approximately

40,023 SF and 40,088 SF in area in accordance with the RM District for lots without municipal sewer. The remainder lot would contain 23.9 ac. acres, with 371.61 ft. of frontage along Bog Road and has the potential to be further subdivided in the future.

The Chair asked if members of the public had any comments or questions on the application. There being no comments from the members of the public, the Chair closed the public hearing.

Councilor Champlin moved to grant a waiver to Section 24.02 of the Subdivision Regulations, Municipal Water System.

Ms. Foss seconded the motion. Motion passed unanimously.

Councilor Champlin moved to grant a waiver to Section 25.02 of the Subdivision Regulations, Municipal Sanitary Sewers.

Mr. Lavers seconded the motion. Motion passed unanimously.

Mr. Lavers moved to grant final approval to the minor subdivision plan for Martha Lapierre with the following precedent conditions to be fulfilled within 2 years and prior to endorsement of the final plans by the Planning Board Chair and Clerk, unless otherwise specified:

1. The Licensed Land Surveyor shall sign and seal final plans and mylar.
2. Applicant to 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.
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. Revise the plan to show the Useable Area rectangle for the 23.91 acre remainder parcel outside of the "Mapped Line of Future Street" and in compliance with the definition of "Useable Land" within the Zoning Ordinance.
5. Address the Planning Staff Technical Comments (see attached)

Staff also recommends that the following general and subsequent condition be placed on the approval:

1. Prior to the issuance of a building permit for Lot 35-1 & 35-2, Traffic, Recreation and School Impact Fees shall be assessed for any construction within this approved subdivision. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees, based on the methodology in place at the time the fees are assessed; Table 1, School Facilities Impact Fee; and Table 2, Recreational Facilities Impact Fee; and Table 3, Transportation Facilities Impact Fee.
  - i. School Facilities – Single Family Residence.
  - ii. Recreational Facilities – Single Family Residence.
  - iii. Transportation Facilities – Single Family Residence.

Ms. Foss seconded the motion. Motion passed unanimously.

6. **Request by Holden Engineering, on behalf of Paul Morrissette to create two new two-acre lots leaving the balance of the parcel (25.83 acres) vacant at this time. The parcel is located at 283 Oak Hill Road in the RO (Open Space Residential) District. Map/Block/Lot: 120/1/36 (2014-0058)**

Postponement requested by Holden Engineering to December 17, 2014.

#### **Site Plan Applications**

7. **Request by Area 23, LLC for a change-of-use to convert 3,200 sq. ft. of previously approved retail space for Unit H into a nanobrewery and restaurant at 254 North State Street (Smokestack Center) in the IS (Institutional) District and the RO (Open Space Residential) District. Map/Block/Lot: 80/1/4 (2014-0060)**
- a. **Determination of Completeness**
  - b. **Public Hearing**
  - c. **Deliberations and Action on the Application**

Ms. Larson recommended that the application be determined complete and the public hearing opened.

Councilor Champlin moved to determine the application complete and to open the public. Ms. Foss seconded the motion. Motion passed unanimously.

The Chair opened the public hearing.

Kirk McNeil and Kevin Bloom were present to speak to the application. The proposal is to convert Unit H at the Smokestack Center into a combination nanobrewery and restaurant. Unit H measures approximately 3,200 SF. Because the primary use will be a restaurant, a Conditional Use Permit to operate a restaurant in the IS (Institutional) District is also required. Unit H and neighboring Unit J were most recently (2006) approved by the Planning Board as retail space. It appears that Unit H has been re-configured since 2006 to include a portion of Unit J. The building is serviced by municipal water and sanitary sewer. A one-way driveway connecting North State Street to the Smokestack Center was constructed in the 2008/2009 time frame. Vehicles Exiting the Smokestack Center use McGuire Street to access North State Street, via a driveway on the Unitil property. Ms. Larson reported a site visit by staff revealed that all but the 43 space future parking lot to the southeast of the building have been constructed. Based on the current mix of uses taking place in the building, adequate parking will be provided. If, however, parking does become a problem, the owner and applicant will be notified that the 43 space parking lot needs to be constructed.

The Chair asked if members of the public had any comments or questions on the application. There being no comments from the members of the public, the Chair closed the public hearing.

Councilor Champlin moved to grant a Conditional Use Permit request under Article 28-2-4(c) to operate a restaurant use in the IS (Institutional) District based on the applicant's submission materials.

Mr. Hicks seconded the motion. Motion passed unanimously.

Mr. Lavers moved to grant final approval to the change-of-use site plan for Smokestack Realty, LLC and Area 23, LLC with the following precedent conditions to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:

1. The site plan prepared in 2006 by G.R. Spaulding Design Consultants to be updated to note the current mix of tenants and identify which units each tenant occupies and the square footage. A note explaining the purpose of the change-of-use site plan as it relates to the restaurant/nanobrewery shall also be added to the updated plan and submitted to Planning.
  2. Any conditional use permit(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.
  3. Add a note to the plan stating that, should parking at the Smokestack Center be exceeded, the property owner shall construct the 43 space parking lot to the southeast of the building noted as "Phase 4" on the site plan prepared in 2006 by G.R. Spaulding Design Consultants.
- Ms. Foss seconded the motion. Motion passed unanimously.

#### Amendments to Previously Approved Plans

8. **Request by RJB Engineering, on behalf of NH Excavation, LLC, to amend the previously approved Major Site Plan to construct an 11,800 SF (80' x 125') building for office and shop/warehouse uses as well as construction of an attached 50' x 70' covered outside work/storage area and associated site improvements at 48-52 Chenell Drive in the IN (Industrial) District. The requested amendments include but are not limited to removal of the covered work/storage area along the southerly side of the proposed building (now shown as "future covered storage"), addition of an outside display area to the rear of the building as well as minor revisions to parking and landscaping. Map/Block/Lot: 111G/1/66 (2014-0037)**

Ms. Larson explained that the applicant received Major Site Plan approval for the construction of an 11,800 sq. ft. industrial/office/warehouse building at the corner of Henniker Street and Chenell Drive.

The Chair opened the public hearing.

Jeff Burd, RJB Engineering, was present to speak to the application. He stated the first concern is a note on the site plan regarding a screening requirement and outside storage of equipment and construction products. Subsequent to the conditional approval, the applicant expressed concerns over Note 2 on his conditionally approved site plan. It reads as follows: "Outdoor storage of construction equipment, inventory, materials, or unregistered vehicles is not permitted outside of the covered storage area shown on the plan...". The applicant was concerned that this restriction would prevent him from storing or parking his "equipment" associated with his day-to-day operations that may or may not be registered. Mr. Burd stated the covered storage will be removed but may be considered in the future.

Cheryl Tufts, 7 Henniker St, spoke. She has concerns over the control of the somewhat ambiguous term of truck fit up. She is concerned about what the site will look like without screening. She stated the neighborhood takes care of the neighborhood aesthetically and the proposed site concerns her. Conversation regarding the screening ensued. Ms. Tufts agreed that the side of the building will now be screened but the back will not and she is concerned of the truck fit up causing aesthetic problems.

Mr. Burd replied that any assembly will happen in the shop area then the truck will be on display once completed. He stated the ordinance, as he believes, does not allow the storage of parts outside. He also asked that precedent condition 2 be stricken (Unless otherwise modified by the Planning Board, the plan is to be revised to relocate the five (5) parking spaces presently proposed at the northwest corner of the existing parking lot in front of the building to the rear

parking lot in an area that does not violate any requirements of the Site Plan Regulations or the Zoning Ordinance, unless relief is granted by the Planning Board or Zoning Board of Adjustment.)

The Chair asked if other members of the public had any comments or questions on the application. There being no further comments from the members of the public, the Chair closed the public hearing.

Mr. Hicks moved to grant final approval to the revised site plan for NH Excavation with the following precedent condition to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:

1. All conditions of approval for the original site plan that are not impacted by the proposed plan revisions remain in full force and effect.

Other proposed plan revisions include:

- The re-location of five (5) parking spaces from the rear of the property to the north west corner of the parking lot in front of the building. The site plan satisfies the parking required for the proposed use. The relocated parking spaces conflict with a street tree proposed along Chenell Drive. Staff recommends that the parking spaces be moved.
- Elimination of the short section of sidewalk between Henniker Street and the front parking lot, alongside the shared access drive.
- The Proposed 3,500 SF Covered Storage area previously approved on the south side of the building is now shown as “Future”. A row of seven 6-7 ft. B&B Dark American Arborvitae as well as a 6 ft. high screening fence will be installed along the northerly side of the shared driveway to address visual concerns expressed by the owner of 3W design, Inc. during the previous public hearing for the conditional approval. The Arborvitae were originally shown to be installed behind the proposed detention basin, along the easterly boundary line.
- The applicant proposes to operate his second business which outfits semi-trucks such as Mack® and Peterbilt® for local dealerships, out of the adjacent unit. One of the plan revisions is to allow for allocation of an approximately 43’ x 98’ area to the rear of the building for display of these vehicles.

Ms. Foss seconded the motion. Motion passed unanimously.

### Conceptual Review

9. **Conceptual site plan by Bedford Design Consultants, on behalf of RJ Moreau Communities, LLC for a twenty-eight (28) unit multi-family townhouse development (a.k.a. The Vineyards Phase IV) with municipal sewer and water in the RH (High Density Residential) District. Also to be discussed is the existing mapped line of a future street intended to connect Kyle Road (via Sonoma Lane) to Bog Road, along the rear of the proposed Phase IV Vineyards. Map/Block/Lot: 103C/1/126 (2014-0059)**

Robert Baskerville and Katie Weiss, Bedford Design Consultants and Reggie Moreau were present. Pursuant to Section 14 of the Site Plan Regulations, the applicant requests a Preliminary Consultation (Conceptual) with the Planning Board to discuss the proposed layout for Phase IV of the Vineyards, a multi-family residential condominium Planned Unit Development (PUD) off of Bog Road in Penacook. According to the assessing database, the parcel of land consists of 8.75 acres and is located within the RM (Medium Density Residential) District. Phase IV proposes seven buildings, each containing four town-house style units. Access to Phase IV would be from

the existing phases of the Vineyards or from Sonoma Lane, via Kyle Road. Also proposed are a storage building and a pad for trash/recycling bins. As the conceptual Phase IV plan indicates, a “Mapped Line of Future Street” connecting Bog Road to Kyle Road runs across the applicant’s property in an easterly/westerly direction, just south of the district boundary between the RS and RM zoning districts, then southerly to Bog Road, across land of 84 Bog Road (see attached conceptual layout for the mapped line of future street). Former City Planner/Planning Board Clerk Doug Woodward’s report to the City Council dated December 26, 2008 is attached for the Board’s convenience. The conceptual design of Phase IV of the Vineyards does not account for the Mapped Line of Future Street. The applicant, Reggie Moreau of R.J. Moreau Communities, LLC contends that the connection between Bog Road and Kyle Road/Sonoma Lane is not feasible due to the presence of wetlands. As summarized in the Woodward report, the existing mapped line is intended to account for the large wetland complex associated with Great Bog to the north and west of Phase IV.

RSA 674:9, Mapping of Street Lines by Planning Board—this statute allows for the preservation of rights-of-way for potential new streets within a community. The mapping does not constitute the opening or establishment of any street or the taking of any land for street purposes. Mapping is effectively an encumbrance on private property. RSA 674:12 states that .....”no permit shall be issued for any building or structure, or part thereof, in the bed of or on any land located between the mapped lines of any street...”. Relief from this provision maybe granted by the Zoning Board of Adjustment pursuant to RSA 674:13 or the City Council may act to take the property, either through voluntary sale or by eminent domain.

Bill Kiernan, 4-2 Cabernet, spoke. He expressed concerns regarding a cul-de-sac or roundabout creating only one way in or out. This will cause extra traffic and havoc.

Ed Paul, 4-2 Cabernet, spoke. He stated this is a private access road. School buses do not access now. The street is narrow on purpose. Phase 3 is taking too long.

Joe Donnelly, 6-1 Cabernet, spoke. He expressed concerns about the wetlands and bog area.

#### **OTHER BUSINESS**

- 10. Liberty Utilities/Energy North – Request for a reclassification of the impact fees in the amount of \$19,105 for the recently approved 6,189 SF training facility.**

Request was withdrawn by Liberty Utilities/Energy North.

#### **REGULAR MEETING**

- 11. Approval of the minutes of the October 15, 2014 & October 29, 2014 Planning Board meetings.**  
-continued to December 17, 2014
- 12. The Board will hold a workshop to discuss a proposed zoning amendment to address the zoning of alternative treatment centers for therapeutic cannabis under RSA 126-X.**  
-continued to December 17, 2014
- 13. Any other business which may legally come before the Board.**

#### **INFORMATION**

- 14. Minutes of the November 10, 2014 Design Review Committee meeting.**

- Next regular monthly meeting on Wednesday, December 17, 2014.

There was no further business to come before the Planning Board and the Chair adjourned the meeting at 12:11 am.

A TRUE RECORD ATTEST:

Nancy Larson  
Clerk