

The regular monthly meeting of the City Planning Board was held on December 17, 2008 in the City Council Chambers in the City Hall Annex at 7:00 PM.

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

At 7:02 PM a quorum was present and the Chair called the meeting to order.

1. **Meeting with the Zoning Administrator** pursuant to further consideration of an ordinance amending the Code of Ordinances, Title IV, Zoning Code, Chapter 28, Zoning Ordinance, Article 28-6, Sign Regulations, **Section 28-6-9, Signs Permitted in Non-residential Districts.**

The Chair introduced Craig Walker, Zoning Administrator, who was present to answer questions concerning his proposal for amendments to the Zoning Ordinance relative to the sign regulations.

He explained that the first major change proposed is to increase the size of the allowable free standing signs in the Institutional District in the sign area table from a maximum of 40 square feet to 100 square feet. Most of the private properties impacted by this change are large facilities with large lots, and the proposed change is in keeping with the large scale nature of the properties in question. Smaller properties will not be able to obtain the required sign frontage for the maximum sign area.

The second major change is to allow additional free standing signs for complexes or campuses containing more than one building on a lot. The additional free standing signs will be limited to a size no greater than 40 square feet or one square foot per linear foot of building frontage as defined in the ordinance, or the maximum allowable sign in the district, whichever is less. This provision treats each free standing building as if it was on its own lot, including requiring a setback between signs equivalent to the required lot frontage in the district. This change to Section 28-6-9(c)(4) would apply to all non-residential campuses or lots with multiple building in all commercial, industrial, and mixed use districts. This change will result in the opportunity for additional free standing signs for multi-building properties by application to the Planning Board for a Conditional Use Permit.

He explained that additional minor changes proposed include increasing sign heights by two feet in the Civic Performance District, Institutional District, and Industrial District, as well as the Urban Transitional District. This is intended to make the signs more visible over parked cars. Also, additional free standing signs allowed in some commercial districts would now be required to be set back a minimum of 50 feet from a residential district boundary. Another minor change proposed establishes the area of allowable upper story window signs at no more than four square feet. This provision applies primarily to downtown businesses. A final proposal increases the allowable

area of directional signs on campuses from 20 to 24 square feet and increases the height of these signs from 6 to 12 feet, subject to a Conditional Use Permit by the Planning Board.

In answer the Board's questions from last month about the reason for these amendments, Mr. Walker explained that the amendments were mostly a result of interactions he has had with representatives from Concord Hospital who had proposed some modifications to the Zoning Ordinance that they hoped could be adopted, including an increase in building sign area and an increase in allowable height of freestanding signs in a campus. He also explained that since he was recommending these amendments to the sign ordinance, he had reviewed the entire ordinance and suggested a few minor modifications that resulted from his experience in applying the ordinance.

He explained that the recommendation for additional freestanding signs for complexes with more than one building on a lot was intended for Concord Hospital but there are other complexes in the city that would benefit from the amendment. The intent was to allow better identification for visitors coming into a campus.

He reported that in reviewing the proposal for this evening's meeting he had realized that there should also be an additional provision in the amendment that signs be placed at least fifty feet from a side or rear property line, which should be added as a new Section 28-6-9(c)(4)d.

Mr. Swope moved that the Planning Board forward to the City Council a positive recommendation for the adoption of the proposed revisions to Section 28-6-9, Signs Permitted in Non-Residential District, of the Zoning Ordinance with the addition of a new Section (c)(4)d relative to freestanding signs being placed at least fifty feet from a side or rear property line. Mr. Gross seconded. Motion carried.

## APPLICATIONS

### Minor Subdivisions

- Application by **2 Pillsbury St LLC** for approval of a subdivision by virtue of a conversion to condominium of an existing office building located at **30 Pillsbury Street** into Unit #7 in the 2 Pillsbury Street Condominium. (**#2008-63**)

### Determination of Completeness

Ms. Hebert explained this proposal to convert a portion of the existing convertible land contained within the 2 Pillsbury Street Condominium to a new unit. The unit will include a 15,000 square foot office building that was recently approved by the Planning Board during a major site plan review.

She reported that the application was complete and ready for public hearing.

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

### Public Hearing

Ms. Hebert explained this proposal to convert a portion of the existing convertible land contained within the 2 Pillsbury Street Condominium to a new unit. The unit will include a 15,000 square foot office building that was recently approved by the Planning Board during a major site plan review. The building will be occupied by the Visiting Nurse's Association. The applicant received approval for 20 condominium units within the building at 2 Pillsbury Street in 2005 and 2006, and in 2007 the applicant received approval for one additional unit in that building.

Attorney Richard Uchida was present on behalf of the applicant and had no comments.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:23 PM.

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

Mr. Swope moved that the Planning Board grant conditional final subdivision approval for 2 Pillsbury Street, LLC condominium conversion subject to the following standard condition:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.

Mr. Gross seconded. Motion carried.

### Major Site Plans

3. Application by **P & M Realty of Concord** for revisions to a previously approved site plan of property at **South Main Street and Langdon Avenue. (#2008-07)**

### Determination of Completeness

Mr. Henninger explained this request for modifications to a previously approved site plan necessitated by design changes associated with the plant's turbine and generator.

He reported that the application was complete and ready for public hearing.

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

### Public Hearing

Mr. Henninger explained that in April of 2008 the Planning Board granted conditional Site Plan and Architectural Design Review approval to construct a 22,980 square foot wood chip fueled power plant and steam generator on a 35.93 acre parcel near South Main Street and Langdon Avenue subject to ten standard and six special conditions. The Board also granted a Conditional Use Permit pursuant to Article 28-4-1(f)(3) Maximum Height of Buildings and Structures, of the Zoning Ordinance, to allow the construction of a 110-foot tall smokestack, a 90-foot tall smokestack, two 75-foot tall silos and associated conveyors, and a 65-foot tall mechanical pollution control device. The Board also granted a Conditional Use Permit pursuant to Article 28-7(2)(e), Table of Uses, of the Zoning Ordinance, for a determination of the required parking for an "Unmanned utility equipment structure".

He reported that the applicant has now requested approval of modifications to the previously approved site plan necessitated by design changes associated with the plant's turbine and generator. The applicant has proposed a smaller and higher building, a revised layout for the pollution control equipment, the addition of an outdoor switch yard, and some minor adjustments to the parking lot layout.

He reported that the applicant has obtained a variance to allow for an 82 foot tall building where 70 feet was originally granted. The building is actually being reduced in size from 22,980 square feet to 20,520 square feet.

He reported that the applicant has also requested approval of amendments to the Conditional Use Permit granted pursuant to Article 28-4-1(f)(3), Maximum Height of Buildings and Structures, of the Zoning Ordinance. The applicant has now requested a single 130 foot tall smokestack versus two smokestacks of 110 feet and 90 feet. The applicant has also requested approval for a 93-foot tall pollution control device versus a 65-foot mechanical equipment device. The applicant has not indicated any change to either of the two 75-foot tall silos and associated conveyors for which a CUP was granted earlier this year.

Mr. Henninger explained that the applicant proposes to demolish 66,625 square feet of industrial buildings on property located south of Langdon Avenue. The existing buildings to be demolished are largely derelict and abandoned. The applicant proposes to retain three historic industrial buildings containing a total of 37,963 square feet on the north side of the site for future reuse. The steam/power plant will be constructed on the southerly end of the site near the South End Marsh. Approximately 16 acres of the site are developable and the northerly two thirds of the developed area will remain for future redevelopment.

He reported that the use is classified as an Essential Public Utility and is allowed by right.

He reported that the Architectural Design Review Committee had reviewed the revised elevations and recommended that the revised elevations be approved subject to the

stack being a brick color that would be integrated with the building. It was agreed that the pollution control equipment (precipitator) be a dark grey color.

Mr. Gross asked if there was a possibility of using the stacks for telecommunications facilities and Mr. Henninger responded that it could be possible on the top of the parapet of the building.

Ms. Foss asked if the increased height would trigger any increased lighting requirements. Mr. Henninger responded that he did not believe so.

Peter Bloomfield from Concord Steam and Attorney Richard Uchida from Orr & Reno were present to answer questions from the Board.

Mr. Bloomfield responded to the question by Ms. Foss relative to lighting and explained that they will not be lighting the stack.

Mr. Uchida provided photo simulations of the proposed steam plant as viewed from several perspectives along I-93 and South Main Street. He explained that the building design did not change but a parapet was added to accommodate the equipment.

Mr. Bloomfield explained that if someone wanted to talk with him about locating telecommunications equipment on the building he would be happy to discuss it with them.

Mr. Bloomfield reported that they have started demolition and remediation of the site so it is a much cleaner site now.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:43 PM.

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

Mr. Gross moved that the Planning Board grant a revised Conditional Use Permit pursuant to Article 28-4-1(f)(3), Maximum Height of Buildings and Structures, of the Zoning Ordinance, to allow for the construction of a 130-foot tall smokestack, two 75 foot tall silos and associated conveyors, and a 93-foot tall mechanical pollution control device. The Planning Board noted that the CUP is consistent with the intent of the Section, the facilities are not designed for human occupancy and are essential to the proposed use. Mr. Swope seconded. Motion carried.

Mr. Swope moved that the Planning Board grant revised Conditional Site Plan approval for P&M Realty of Concord LLC for an electrical generation facility and co-located steam plant at Langdon Avenue and South Main Street subject to the following conditions which are unchanged except for removal of the former Condition #15:

**Standard Conditions**

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following State and federal permits shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Environmental Services Water Quality and Sewer Discharge Permits
  - b. NH Department of Environmental Services Alteration of Terrain Permit (RSA 485-A:17)
  - c. NH Department of Environmental Services Large Ground Water Withdrawal Permit, if required.
  - d. Enrollment in the NH Brownfield's Program and obtaining a covenant not to sue.
  
2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following local approvals and permits shall be obtained and copies provided to the Planning Division:
  - a. Driveway Alteration Permit from the Engineering Division
  - b. Street Excavation Permit for South Main Street and South State Street for the Steam Line extension. If this permit is not in hand at the time of first building permit, the applicant may provide a financial guarantee to address site restoration in the event that the project does not proceed. The guarantee shall be sufficient to complete the approved demolition on the site, removal of debris, and the stabilization of the site including the removal of any new construction. This approval recognizes that the actual route of the steam line may be altered during the design and permitting process.
  - c. Street Excavation Permit for Hall Street and Poplar Street for the cooling water supply line. This approval recognizes that the actual route of the water supply line may be altered during the design and permitting process.
  
3. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
  
4. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitil (Concord Electric), Fairpoint Communications (Verizon), and National Grid (Keyspan).
  
5. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit

- as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
- a. Transportation Facilities in the amount of \$16,208.
6. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
  7. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
    - a. Stormwater drainage easement across the site for the two existing stormwater lines across the site.
    - b. Conservation easement for the South End Marsh, including the wetland buffer area and trails at the far southeast corner of the site, and the bluffs, steep slopes and trailhead adjacent to South Main Street.
    - c. An agreement to provide a public right-of-way easement for Langdon Avenue.
  8. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals shall be obtained for the construction drawings and specifications for all public improvements from the Engineering Division. No construction activity may commence prior to the preconstruction conference.
  9. No certificate of occupancy for any building or use shall be issued until all public improvements have been substantially completed to the satisfaction of the City Engineer.
  10. Prior to the release of a financial guarantee for any public improvement, an as built plan shall be provided to the City Engineer in form and content acceptable to the City Engineer.

### **Special Conditions**

11. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approval shall be obtained from the City Council for a license to construct a cooling water

- supply line from the Hall Street treatment plant to the site by way of Hall Street and Poplar Avenue.
12. No certificate of occupancy for any building or use shall be issued until the site debris, foundations and buildings identified for demolition on the approved demolition plan are removed from the site and the ground restored and stabilized with vegetation.
  13. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall secure and make weather tight two of the three buildings at the north end of the site to be preserved. These buildings were referred to as the L shaped building and the small rectangular building. This condition is not intended to inhibit refurbishment of these buildings for interim uses allowable under the City's Zoning Regulations. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall complete an assessment of the third building which was partially destroyed by fire, referred to as the larger rectangular building, to determine if all or part of the building can be preserved.
  14. No certificate of occupancy for any building or use shall be issued until the trails shown on the trails plan are complete. The trails shall be inspected and approved by the City's Conservation Commission. As an alternative, the applicant may provide a financial guarantee to ensure that the trails are completed within one year of the issuance of a Certificate of Occupancy.
  15. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals pursuant to the Table of Principal Uses: K.11 - Essential public utilities and appurtenances, of the Zoning Ordinance, shall be obtained for the cooling water lines across private property from Hall Street to the site.

Mr. Gross seconded. Motion carried.

Mr. Swope moved approval under Architectural Design Review subject to the stipulation that the pollution control equipment be dark gray in color, and the proposed smokestack be a brick color to match the brick of the building. Mr. Gross seconded. Motion carried.

4. Application by **The LAT Holding Company** for approval of a site plan for property at **20 Break O' Day Drive**. Along with this application are requests for Conditional Use Permits pursuant to Section 28-4-3(d), Disturbance to a Wetland Buffer, Section 28-7-11(b), Construction of Fewer Parking Spaces, and Section 28-7-11(d), Additional Compact Spaces, of the Zoning Ordinance. (#2008-62)

Determination of Completeness

Ms. Hebert explained this proposal to construct a 44,215 square foot office building off of Break O' Day Drive.

She reported that the application was complete and ready for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and schedule the public hearing for the Board's regular meeting on January 21, 2009. Mr. Swope seconded. Motion carried.

### Architectural Design Review

5. Application by the following for approval of a sign at the following location under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.

- **Boutwell's Bowling Center at 152 North State Street (1 affixed sign)**

Mr. Henninger explained this proposal for a new affixed sign on the existing building. He reported that, after a brief discussion relative to the existence of signage currently on the building, the Design Review Committee found the proposed design and placement of the sign to be appropriate for the location and use, and recommended approval as submitted.

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

6. Building plans for revisions to the exterior building colors, as well as to the entrance doors, lighting, and miscellaneous site details related to an application by **Wal-Mart Real Estate Business Trust at 344 Loudon Road. (#2008-61)**

### Public Hearing

Mr. Henninger explained this proposal for exterior renovations to the existing building. He reported that the building is currently gray with red and blue trim. He reported that the company is re-branding and now proposes to change the color scheme to shades of light brown. They also propose a new entry gate to the garden center. Because this is in the Gateway District, they need approval for the change in appearance. There are no changes proposed to the site plan. He explained this proposal relates to the appearance of the building only and not the signage.

There was no one present on behalf of the applicant and the Chair declared the hearing closed at 7:52 PM.

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

### Official Map

7. Consideration of an **amendment to the Official Map** of the City of Concord so as to establish the mapped the lines of a future street **between Bog Road and Kyle Road**.

#### Public Hearing

Mr. Henninger explained that the Planning Board held a public hearing on October 15, 2008 on the proposed mapped line of a future street, and received testimony from representatives of The Vineyards Planned Unit Development.

During deliberations, the Board noted that the proposed mapped line bisected a part of the contiguous wetland known as the Great Bog and asked the Planning staff if the mapped line could be routed southerly of the wetland. The staff advised in the affirmative and the Board directed the staff to revise the route of the mapped line of a future street southerly of the wetland peninsula along the lot line between the Vineyards property and the property to the north. The Planning staff prepared a revised layout for the mapped line of a future street which the Board reviewed at its regular meeting on November 19, 2008, and set for public hearing this evening.

He explained that, during its extended deliberations of the Vineyards Planned Unit Development in 2003 and 2004, the Planning Board identified a need for neighborhood connectivity in the developing residential area west of Fisherville Road between Bog Road, Borough Road and the Great Bog to the west. The Board made a condition of approval of the Vineyards PUD that, prior to an issuance of Certificate of Occupancy in the third phase of the Vineyards, the applicant shall submit a plan suitable for adoption of a mapped line of a future street to be established between the end of Kyle Road in the Sandwood Crossing Development to Bog Road. The Planning Board has found neighborhood connectivity to be important enough to specifically establish a section in the recently adopted Master Plan 2030.

He explained that mapped lines of future streets are intended to implement the adopted master plan and provide for a coordinated street system when development is occurring incrementally and involves more than a single parcel. For nearly 50 years, the mapped line of future streets process has allowed the Planning Board to approve subdivisions in the community in an incremental manner that allows for a planned and interconnected street pattern. While development has not followed the exact street pattern envisioned 50 years ago, no properties have been landlocked by incremental development, and planned extension of streets has been allowed to occur on a lot by lot basis at the discretion of the property owners. The mapped line of future streets has been an effective planning tool for many years.

Pursuant to Article 16-3-6 of the Code of Ordinances, no action on amending the Official Map may be made without first holding a public hearing. The City Council will need to hold a public hearing on the proposed mapped line of a future street and subsequently authorize the Planning Board to certify the mapped lines of the future street.

He reported that the main limiting factor for development in the area of Bog Road is the Great Bog and other wetlands lying to the west of the existing residential areas along Fisherville Road. These wetlands set the western limit of urban development along Bog Road. The developer of The Vineyards commissioned a wetland study of his property and the abutting property to the north. The developer has also completed a wetland study on a portion of the abutting property to the east sufficient to identify a potential road corridor. While these properties do have significant wetlands, they also have sufficient upland to support additional residential development. While the proposed mapped line of a future street will have some wetland impacts, the corridor does appear to be feasible with appropriate mitigation when the properties are developed.

The extension of Kyle Road to Bog Road is intended to be a local street and is not designed to divert traffic from Fisherville Road, Borough or Bog Road but to allow traffic within the neighborhood to circulate without needing to access the collector and arterial road network in the area. With this in mind a roundabout is recommended along the extended section of Kyle Road as a traffic calming measure.

John Lariviere from RJ Moreau Company was present as the petitioner and explained that it is not necessarily their intention that this road be constructed as shown. This is in response to a condition of approval several years ago that they lay out a mapped line of a future street to show where connectivity could be accomplished in the future as development progresses in the area. Some of that property is not their property. It is owned by others and will be up to them to determine the exact road location at the time of development.

There was no one else who wished to speak for or against this proposal and the Chair declared the hearing closed at 8:03 PM.

#### Deliberations and Action

Mr. Gross moved that the Planning Board acknowledge that the applicant has submitted a proposal for a mapped line of a future street which is acceptable for consideration as of July 29, 2008. This submittal and acceptance by the Board satisfies condition #10 of the Planning Board's approval for the Vineyards PUD. Ms. Dolcino seconded. Motion carried.

Mr. Gross moved that the Planning Board request that the City Council direct the Planning Board to certify the mapped line of a future street pursuant to Article 16-3-6, Mapping of Future Streets, of the Code of Ordinances, for the extension of Kyle Road westerly then southerly to Bog Road. Prior to directing the Planning Board to certify the mapped street the City Council will need to hold its own public hearing, send notice by certified mail "to all land owners over whose lands the proposed streets will cross" and publish notice in the newspaper. Ms. Foss seconded. Motion carried.

### **REGULAR MEETING**

#### Minutes

Mr. Gross moved approval of the minutes of the meeting of November 19, 2008 as submitted. Ms. Meyer seconded. Motion carried.

### APPLICATIONS

9. Further consideration of an application for approval of a development on which a public hearing has previously been held:
  - a. Application by **Public Service Company of New Hampshire** for a Conditional Use Permit (CUP) pursuant to Section 28-4-3(d), Disturbance of a Wetland Buffer, of the Concord Zoning Ordinance, in conjunction with the replacement of an existing electrical distribution line between **Farmwood Road and the Loudon townline. (#2008-59)**

(Mr. Swope recused himself and left the table.)

Ms. Hebert explained that PSNH proposes to construct a new 34 kv electrical distribution line from the Oak Hill substation at the end of Farmwood Road to the Loudon substation in Loudon. The new line will be located within an existing 100-foot wide PSNH right-of-way. Once the new line has been installed, the older poles and wires, which were installed in the 1940s, will be removed. However, a small section of the existing line will remain with only minor modifications to the structures. The newer line will provide additional capacity and more reliable electrical service to the properties served by PSNH in this region.

The total length of the project is approximately four miles, of which 1.66 miles are located within Concord, and the remainder of the project is in Loudon. A total of 11 new utility poles will be installed within protective wetland buffers. The applicant has filed a Conditional Use Permit for approval of the permanent impacts caused by the installation of the new poles, and the temporary impacts for proposed access routes that cross into the wetland buffers.

She reported that, at its meeting on November 19, 2008, the Planning Board tabled action on this application and asked that the applicant return with information and diagrams of the attenuation patterns of the electromagnetic field (EMF) for the voltage of the proposed lines, as well as for higher voltage lines, and to have an expert in the field available at the meeting who will be able to provide the Board with information on the impact of this line on the abutting residents.

She reported that updated information had not yet been submitted by the applicant.

She reported that most of the structures will be accessed using existing roads, driveways and trails. However, some wetland and wetland buffer areas will need to be crossed in order to reach the new utility pole locations. The existing PSNH right-of-way is mowed to maintain low growing vegetation, but additional trees along the northern side of the right-of-way will need to be cleared to accommodate the new distribution line. PSNH

has identified 11 jurisdictional wetlands along the existing right-of-way in Concord. There are no permanent wetland impacts proposed as part of this project, but temporary impacts are required to access the existing and proposed pole locations. The crossing of wetlands will occur during frozen ground conditions. If the soil is saturated or not yet frozen, construction mats will be used to reduce impacts.

She reported that the Conservation Commission reviewed the proposal and did not have any objections to the Minimum Impact Expedited Permit or the Conditional Use Permit request.

David Still from PSNH and Christopher Nadeau from Nobis Engineering were present to answer questions from the Board.

Mr. Still reported that they had met with the concerned abutter who testified at the public hearing last month and had taken measurements. They intended to provide a report for the Planning Board but the recent ice storm had taken all of their manpower and made it impossible to generate the information for distribution. He asked that the Board leave this item on the table until they can return next month.

Mr. Still reported that they had taken measurements around the house, as well as at a point 25 feet away, and at the edge of the right-of-way. They also took measurements at the pole and about five feet off the ground. The measurements appeared to be in the normal range. Realistically, they don't expect any changes at the house. There will probably be some measurable differences at the edge of the right-of-way.

He reported that the current line uses 35-foot poles and the proposed line will have fifty-foot poles so that will increase the level of separation. He reported that they can also increase the height of the poles to sixty feet if necessary.

Ms. Meyer asked if a vegetative buffer would be helpful to the property owner and Mr. Still responded that it would make no difference.

Ms. Foss explained that she would find it helpful to see a diagram showing the attenuation with distances.

In discussion, it was noted that the matter before the Board related only to impacts to wetlands and wetland buffers, and that the upgrading of an existing power line was not subject to the Board's approval.

Mr. Hicks moved that the Planning Board approve the Conditional Use Permit to allow the installation of the PSNH 319 distribution line electrical utility poles within wetland buffers as presented in the application prepared by Nobis Engineering in accordance with Article 28-4-3(d) of the Zoning Ordinance subject to the following standard conditions:

1. Prior to the issuance of a Certificate of Approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the

applicant shall revise the drawings to address the minor corrections and omissions noted by City staff.

2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
3. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for the purpose of repairing damage that may occur to roadways during the construction process in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
4. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following State and federal permits shall be obtained and copies provided to the Planning Division:
  - a. NHDES Wetlands Bureau Minimum Impact Expedited Application
5. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following local approvals and permits shall be obtained and copies provided to the Planning Division:
  - a. License from the Poles and Wires Committee for the installation of the utility poles and wires that cross the City of Concord rights-of-way.

Mr. Gross seconded.

Monika Millette, 97 Snow Pond Road, was recognized and discussed her concern about what would happen if they moved the poles south. She has a pond in her yard and asked what the impact would be if the poles were moved in her direction. As currently proposed, she sees no impact to her property.

The Chair responded that at this time there is no plan to move the lines south.

The motion carried with Mr. Swope abstaining from discussion and vote.

#### CITY COUNCIL REFERRALS

10. Further consideration of a proposal by R.J. Moreau Communities, L.L.C. to **amend the Zoning Map** by changing the boundary between an existing Open Space

**Residential (RO) District and a Medium Density Residential (RM) District northerly of Bog Road and westerly of Kyle Road.**

Mr. Henninger explained the Planning Board had received a communication from Attorney Raymond D'Amante requesting the rezoning of land north of the Vineyard Planned Unit Development on Bog Road from Open Space Residential Development to Medium Density Residential Development. The property in question includes property presently owned by the R.J. Moreau Communities, LLC and property presently owned by SC@TP Real Estate Development. No development proposals for the land in question have been either submitted or approved for the two parcels.

He presented an alternative zoning map based on discussions by the Planning Board at its November 19, 2008 meeting.

The land use to the north and west abutting the area request is either wetlands or low density rural residential development along Blueberry Lane. A large undeveloped property with a single home is located directly west of the Vineyards.

He reported that the recently adopted Master Plan 2030 has identified this area as Medium Density Residential with the principal uses being single and multi-family development with a maximum residential density of six units per acre. The intent of the master plan is to set the Urban Growth Boundary at the edge of the wetlands associated with the Great Bog in West Concord and Penacook.

He explained that the petitioners, at the request of the Planning Division, have surveyed the wetlands on their properties and a portion of the abutting property to the southeast along Bog Road. The detailed wetland survey is more precise and accurate than that obtained by aerial photo interpretation. The survey in general conforms to the information provided in the citywide wetland mapping. Parcels to the west of the Vineyards development on the north side of Bog Road are almost entirely wetlands or at least 50% wetlands.

He explained that the petitioners have submitted a conceptual drainage plan, a conceptual water line extension plan, and a conceptual sanitary sewer extension plan. The City Engineering Division reported that the area to be rezoned could be served by sewer if service is brought by way of Kyle Road or by gravity systems through the Vineyards development. This does present problems for any properties developed to the west, especially the parcel immediately west of the Vineyards which has developable uplands. Pump stations and force mains may be required to provide sewer service to the future development on that parcel.

Mr. Henninger reported that the Engineering Division is of the opinion that storm water runoff from future development can be managed. The Division noted that future development should be subject to a restriction that no increase in the quantity of runoff shall leave the site. It is anticipated that any runoff from the development area will likely be directed to the Great Bog to the west.

He reported that the Vineyards property proposed for rezoning abuts a mobile home park, a multi-family condominium property, and vacant land. The parcel to the north of the Vineyards property is bordered by single family residential uses and vacant land. It was suggested by Board members during their discussion that a better development pattern would be to extend the Sandwood Development single family land use on the remnant parcel of that subdivision and continue the Vineyards townhouse development to the northern property line of that property. The Board members making this suggestion expressed the opinion that this development pattern would be more compatible with the existing land use in the area. The alternative zoning proposal would reduce the anticipated level of future development from around 100 units to around 75-80 units.

He reported that either rezoning proposal would be compatible with the adopted master plan. However, this should be contingent on the mapping of a future street system from Kyle Road to Bog Road.

Ms. Foss asked the implications of leaving the zoning boundaries as currently designated, and Mr. Henninger responded that a cluster development with 30,000 square foot lots could be constructed as currently zoned. The rezoning proposal relocates the expected density where it makes more sense.

In discussion, it was noted that the proposed change to the zoning map will better delineate the boundary between the Great Bog and the developable land to the east, and will result in a development pattern which will be more compatible with the existing residential land use in the area.

Mr. Swope moved that the Planning Board forward an amendment of the Zoning Map, as displayed on a map entitled Alternative 1 in the staff report, to the City Council with a positive recommendation for the adoption of the same. Mr. Kenison seconded. Motion carried.

11. Further consideration of a request from Councilors Bouchard and Shurtleff requesting the Planning Board **devise a method to issue building permits, using some of the provisions provided under RSA 674:41**, that could be incorporated under the city code of ordinances, for either an unaccepted street, or an individual lot on which there are pre-existing dwellings and which is located on an unaccepted street.

Mr. Woodward explained that the City Council had referred to the Planning Board a request from Councilors Bouchard and Shurtleff that the Planning Board devise a method, pursuant to RSA 674:41, for the issuance of building permits on unaccepted streets. Councilors Bouchard and Shurtleff have expressed concern about home owners who currently reside on unaccepted streets and thereby are not entitled to obtain a building permit for additions, or accessory buildings such as garages or sheds.

He reported that at the Board's meeting on November 19, 2008, members reviewed a memorandum on this matter from the Planning Division. During discussion, questions

were raised as to whether this proposed ordinance was intended to allow removal and replacement of a residential structure, or whether a change in use, such as to a non-residential use, would be permitted. After discussion, the Board tabled action on this item while requesting the Planning Division to further refine the draft ordinance to include a limitation so that no building permit can be issued that would allow for a change of land use, and to further research the issue of any potential impact from the allowance of a major home occupation as an accessory use to an existing residence on one of these lots.

He reported that the draft ordinance was amended to indicate that a building permit can be issued provided that there is no change in the principal use of the lot.

As regards the issue of major home occupations, pursuant to the Zoning Ordinance, they are only allowed as an accessory use to a principal single family detached dwelling, and, in the districts in which they are permitted, major home occupations are subject to the granting of a Special Exception in all but one district. There is one provision, however, which indicates that the lot on which the major home occupation is established shall conform to the minimum dimensional standards established in the Table of Dimensional Regulations. Inasmuch as none of these lots conform to the frontage requirements of the ordinance, none are eligible for a major home occupation except by variance, and there is no need for further amendment to the proposed ordinance to address this issue.

Mr. Gross moved that the Planning Board recommend to the City Council the adoption of an ordinance that will allow the issuance of building permits on certain lots upon which there is an existing year-round residence and which are located on unaccepted streets that have been designated as emergency ways. Ms. Foss seconded. Motion carried.

12. Consideration of a communication from Richard Uchida on behalf of Gerald P. McCarthy, Trustee for the Chenell Drive Trust, with a **proposal for rezoning of property located at 44 Chenell Drive.**

Mr. Woodward explained that the City Council referred to the Planning Board a communication from Attorney Richard Uchida, on behalf of Gerald P. McCarthy, Trustee for the Chenell Drive Trust, with a proposal for the rezoning of property located at 44 Chenell Drive in Concord.

He reported that the parcel was included with the 2002-2003 review of the so-called Development Zone 5 (DZ-5) which included land southerly of Chenell Drive to the top of the bluff over the Soucook River, from a point easterly of end of the Runway 12/30 to Route 106. This land had been released as part of the Airport Master Plan for economic development purposes. The Planning Board held a public hearing in December 2002 on an amendment to the Master Plan to re-designate this area from a Conservation Open Space land use category to an Industrial Park land use classification. Then in January 2003, the Board followed with a recommendation for a rezoning of the area to an Office Park Performance District. Amendments to the text of the ordinance were also

recommended by the Board to add new supplemental standards as Section 28-5-45, Manufacturing Uses in the Office Park Performance (OFFP) District. These zoning changes were subsequently adopted by the City Council.

In the summer of 2004, CRDC applied for approval of a major subdivision for an area which included the lot that is now 44 Chenell Drive as well as the new Henniker Street and Antrim Avenue. The subdivision was approved, streets were developed and accepted, and the lot at 44 Chenell Drive was sold on July 28, 2005 to the Chenell Drive Trust, Gerald P. McCarthy Trustee. The Chenell Drive Trust applied for approval of a site plan and received conditional approval from the Planning Board for a 21,000 square-foot office/manufacturing building designed for six tenants on April 19, 2006, and a building permit was issued on March 14, 2007.

He reported that, in November 2006, CRDC returned to the City with another rezoning proposal for some of the lots on Henniker Street and Antrim Avenue to be removed from the Office Park Performance District and included in the Industrial District. The Board reviewed this in November and December, before taking action to make recommendations in January 2007. Four lots on the west side of Henniker Street were proposed to be rezoned to Industrial with a set of covenants to be recorded by CRDC that would limit the area of outside storage and impose some standards related to chemical storage for protection of the underlying aquifer. The Council subsequently adopted this recommendation.

Mr. Woodward explained that at present the property at 44 Chenell Drive remains in the OFFP District. No Certificate of Occupancy has been issued but in early December of 2008 the Fire, Engineering, and Planning Divisions signed off that the property was deemed acceptable for occupancy. However, one of the tenant spaces had been occupied for a number of months with a wholesale/distribution use with accessory retail sales which are not permitted in the OFFP District. The owner applied for a variance from the Zoning Board of Adjustment in November of 2008, and the ZBA tabled the request while suggesting that the applicant seek a rezoning. The tabling of the variance stays enforcement action related to the illegal occupancy of the premises.

The new Master Plan 2030 shows this lot as remaining in the Office Park land use category on the Future Land Use Map.

He reported that it appears that the land area considered by the Board in 2002 and 2003 has not developed in a manner consistent with the vision for an office park. While the former City sand pit at the east end of Antrim Avenue remains to be developed, the surrounding uses are more industrial in character such that it appears appropriate to amend the Future Land Use Map to include this area in the Industrial Land Use category. This will require a public hearing by the Board, after which related changes to the zoning ordinance can be considered. A change to the zoning map would then be in order, but it would also be appropriate to amend the supplemental standards to incorporate the Master Plan recommendations by eliminating the current provisions as contained in Section 28-5-27, Offices in the Industrial (IN) District; and the addition supplemental standards establishing a maximum area for outside storage in relation to

the area of the ground floor of buildings on the same lot which house the principal use, in Section 28-5-36, Outside Display and Sales of Merchandise Accessory to a Principal Retail Use, and Section 28-5-37, Outside Storage of Materials and Inventory.

He reported that concerns about the aquifer will soon be addressed as the Planning Division is about to embark on a consultant-assisted effort to develop an aquifer ordinance.

Mr. Swope moved that the Planning Board set a public hearing for the regular January 2009 meeting relative to an amendment to the Master Plan to revise the Future Land Use Map so as to convert the Office Park land use classification to an Industrial land use classification in the area south of Chenell Drive and northerly of the Soucook River and that the Board requests that affected property owners be notified of this hearing. Mr. Kenison seconded. Motion carried.

### NEW BUSINESS

13. Communication from **Walter and Ellen Maziarz** residents of 515 North State Street relative to light from **headlights at the 10 Hutchins Street condominiums** impacting their property now that the leaves are down despite plantings added to the buffer.

Mr. Woodward explained that a communication dated December 4, 2008, was received from Walter and Ellen Maziarz residents of 515 North State Street and abutters to the 10 Hutchins Street condominiums. They forwarded a series of photographs concerning light from headlights at the condominiums which impacts their property now that the leaves are down and despite plantings added to the buffer.

He reported that they had expressed a concern about the buffer to the City staff in late August as the project was concluding, and inspections were made of the site and buffer, resulting in a letter dated September 25, 2008, from the staff to Mr. and Ms. Maziarz. The staff letter concluded that the developer, Ten Hutchins LLC, had completed the site improvements, including landscaping, in accordance with the requirements of the Zoning Ordinance. Photographs were taken to record the views of the buffer along the boundary line between 10 Hutchins Street and the abutting properties along North State Street. The Maziarz responded by letter dated September 29, 2008, requesting a further evaluation be made after the leaves had fallen. Additional visits were made by the staff and photographs were taken in November after leaf-off conditions.

He reported that it is the developer's position that he has completed the project in accordance with the Board's approvals. At this time, the project has been deemed complete by the City staff as all Certificates of Occupancy have been issued.

Mr. Woodward presented the photographs from the petitioners as well as the photographs taken by staff in September and again recently. He also provided photographs submitted at the time of the original application for the development in question.

Walter and Ellen Maziarz were present and recognized. Ms. Maziarz presented a photograph taken about four or five years ago that showed the buffer that provided screening before the development was begun. She explained that the recent photos which were previously presented were taken from her first floor kitchen. Headlights glare onto a picture she has on the wall in her kitchen and cast shadows on the wall.

Ms. Meyer felt that a developer can plant a buffer but the abutters are not likely to benefit from it for a number of years.

Ms. Maziarz felt the trees that were planted were not dense enough to provide a screen.

Mr. Maziarz explained that a fence would be fine with them. Their backyard solace has been taken away from them with this development. If the pine trees had remained as they had been, they would not be here because they would be properly screened. He did not think it would take much to satisfy their concerns, just a number of evergreen trees planted at the top of the embankment.

Ms. Hebert explained that the developer had a problem with an invasive species that he removed but, in the process of removing the bittersweet, he had to remove the lower branches of some of the existing trees. That removal makes for healthier vegetation in the long run but it did mean less of a buffer. The developer then planted a number of specimen evergreens to re-establish the screening. He is now not willing to spend any more money on a fence or further vegetation.

Mr. Maziarz felt the property owner could solve the problem just by planting a few yews or Norwegian pines, and that would fit the character of the neighborhood before the development was constructed.

Mr. Woodward explained that the property owner has essentially completed the project as approved and has received his Certificates of Occupancy. He has been asked if he would add further buffering and has declined. The Board does not have any further enforcement options but could ask for further buffering.

Mr. Swope felt that the reason the Planning Board discussed the plantings at the time of the approval of the development was to be certain to provide additional buffering for the abutters. In the future, he felt the Board should be careful to clarify a performance requirement relative to the landscape plan that it be a buffer and not just contain a particular number of plantings.

Ms. Meyer recalled that the original plan did not show the removal of vegetation and now the buffer is not working, so the developer should be asked to augment the vegetation to provide the needed buffer.

Mr. Maziarz did not feel they were asking for anything onerous on the part of the property owner. The planting of evergreens would provide an immediate vegetative buffer and would be helpful to him.

Mr. Swope suggested that the Planning Board send a strongly worded request that the property owner provide additional buffering.

Mr. Henninger explained that the buffer is not intended to be a protection of the view from the abutting property but it should provide protection from the headlights from the parking lot.

Mr. Swope suggested constructing a low fence along the edge of the parking lot. He felt the Planning Board would like the developer to ameliorate the problem of headlights. The Board is concerned about a performance standard.

Mr. Gross moved to request staff to write to the property owner on its behalf to express concern about the impact of headlights from his development on the abutting property and ask that he take effective steps to prevent intrusion of headlights on the abutting property. Mr. Swope seconded.

Ron Richter, owner of the development in question, arrived and was recognized. Mr. Richter explained the work he had done on the landscaping of the property. He asked that Planning Board members visit the property and see for themselves the landscaping he had done. If the Board did not agree that it is a lovely project, possibly the best landscaped in the city, he would do what the Board requests. He indicated he had tried to be a good neighbor and had worked very hard and spent a lot of additional money to do a good job for the neighborhood. He had done everything the City had asked of him at great additional expense.

The motion carried, 7-1, with Mr. Hicks voting against.

14. Nomination of a member of the Planning Board to the **Heritage Commission** to fill the seat vacated by the resignation of Mr. McGonagle.

The Chair announced that Mr. Blanchette had agreed to fill the vacant seat on the Heritage Commission.

Mr. Swope moved and Ms. Foss seconded that Mr. Blanchette be nominated to represent the Planning Board on the Heritage commission. Motion carried.

There was no further business to come before the Board and the meeting adjourned at 10:08 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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