

The regular monthly meeting of the City Planning Board was held on November 14, 2007 in the City Council Chambers at the City Hall Annex at 7:00 PM.

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

At 7:05 PM a quorum was present and the Chair called the meeting to order and seated Alternate Member Kenison for Ms. Foss who was not expected.

APPLICATIONS

Minor Subdivisions

1. Application by **David J. & Jennifer L. Albert and Boston & Maine Corporation** for approval of a resubdivision and subdivision of property at **288 North State Street**. (#2007-88)
2. Application by **David J. & Jennifer L. Albert and Boston & Maine Corporation** for approval of a resubdivision and subdivision of property at **290-292 North State Street**. (#2007-89)
4. Application by **Mark Dinorsce and Boston & Maine Corporation** for approval of a resubdivision and subdivision of property at **302-304 North State Street**. (#2007-91)

Determination of Completeness

Mr. Woodward reported he was going to address his comments to all three applications involving the Boston & Main Corporation. He explained City staff had concern about the requirements for submitting proof of ownership. He indicated a considerable amount of time had been spent going over this with the City's surveyor. In each case, there is property abutting the railroad which is proposing to acquire the entire abutting property from b & M. the chief question is whether this applications valid as to ownership. Application requirements require that there is proof of ownership. Most people submit a deed that defines the parcel. the history of railroads is that in the 1840s the State acquired easements and then leased the easement area to the railroad. In the 1990s the Legislature declared that the State had ownership and that resulted in litigation. There is another act of the Legislature in the 1800s that indicated that if the railroad stopped, the land would revert to the ownership in which case the chain of title would flow to the property owners who succeeded in the chain of title. The Concord-Claremont Railroad line was abandoned north of McGuire Street but was active until recently. Property along this line toward Hopkinton was sold off years ago and in some cases the City has acquired the land.

The Planning Board has had a couple of other applications earlier this year. What attracted the staff in this case was that one of the Albert applications was seen by the Planning Board a number of years ago at which time it was asserted that they owned the property.

Staff has asked B & M to provide proof of ownership for which they submitted the State's lack of their right of first refusal. The Bureau Director indicated they did not choose to exercise their right because they did not feel the railroad had reason to offer the property. The whole issue is still being sorted out.

He reported that he had discussed the situation with the City Solicitor who had concluded that the proper path would be to declare these applications to be incomplete because of lack of proof that one of the applicants, the railroad, had not submitted proof of ownership.

Mr. Woodward indicated he is also concerned about the two prior owners who have gone through the process before the City realized this problem existed.

After much research, the recommendation is to find this to be incomplete because of lack of substantiation of ownership as part of the application.

Mr. Gross mentioned that there have on occasion been situations before the Planning Board where someone has asserted that the applicants do not own the property they are proposing to subdivide and the Board says it is up to the parties to resolve the issue. In this situation the City feels there is a lack of clarity about the ownership of the railroad property. He wondered how this could be resolved. Where is the public interest here? Is there a problem with these subdivisions from a planning point of view that is would be some public land use problem down the road. Or is this just a matter of lack of clarity of title? If there is a land use problem that justifies our concerns on behalf of the public, then the Board should declare the applications incomplete but he does not see why the Board would not proceed with these applications and leave this up in the air.

Mr. Drypolcher indicated that in the other situations Mr. Gross noted both applicants had come before the Board with documents that showed ownership. In this case, there is no proof of ownership. In the other instances, it was a boundary dispute.

Mr. Woodward reported that one option is to petition the court to quiet title or to declare title. The question here is not so much land use issue but the rights of property owners. Another option is for a full title search to be done. There are different parties on both sides of the track and in this case only one party is proceeding.

Mr. Gross asked if the tax department shows these as owned by the railroad. Mr. Woodward responded that there appears to be no tax bill issued for those parcels. It shows the railroad right-of-way as though the railroad is still the railroad.

Mr. Gross also asked if the Planning Board acted favorably on these whether that would create more confusion about these parcels.

Mr. Swope felt that where there is another house partially on the property of at least one affected parcel, it would be wise to get clarification of ownership.

Mr. Woodward explained that in the 1890s there were so-called valuation plans created that shows the right-of-way and adjacent property as they existed at that time.

Mr. McGonagle felt that if the Planning Board acted on this it would further muddy the waters down the road. Any action would throw another layer of uncertainty on the parcels.

Mr. McGonagle moved to declare these three applications as incomplete based on the fact that there is no evidence of clear title on the properties being proposed for subdivision.

Mr. Gross suggested that "sufficient proprietary interest" be substituted for "clear title" in the motion and Mr. McGonagle agreed to the revision.

Mr. Swope seconded. Motion carried.

3. Application by **Peter B. and Olivia H. Delfausse** for approval of a subdivision of property at **224 Little Pond Road**, along with an application for a Conditional Use Permit pursuant to Section 28-5-46, Single Family Dwelling in a Standard (Non-Cluster) Subdivision, of the City's Zoning Ordinance. (#2007-90)

Determination of Completeness

Mr. Henninger explained this proposal to subdivide an existing parcel of land off of Little Pond Road, on which there is an existing single family residence, to create one additional residential building lot. The property is located in the Open Space Residential District (RO) and Penacook Lake Watershed Protection Overlay District.

He reported this application was complete and ready for the Board to open a public hearing.

Mr. Swope moved and Mr. Kenison seconded that the Planning Board declare this application to be complete and open a public hearing on the matter. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to subdivide an existing parcel of land off of Little Pond Road, on which there is an existing single family residence, to create one additional residential building lot. The property is located in the Open Space Residential District (RO) and Penacook Lake Watershed Protection Overlay District. The subdivision has been designed to satisfy the recent revisions to the Zoning Ordinance that mandate the Cluster Subdivision standards for proposed subdivisions within the RO District.

The applicant has requested a Conditional Use Permit to allow for the development of a conventional or standard subdivision in the Open Space Residential District. Article 28-5-46 permits the development of conventional subdivisions within the RO District with the condition that a comparable amount of open space be protected on the property by deed or easement as would otherwise be required by the Cluster Development standards. The property is 14.32 acres; the Cluster Development standards would require that 60% of the lot area (8.6 acres) be set aside as open space. The applicant is proposing to place 8.6 acres, located partially on lot "A" and partially on lot "B" under a conservation easement. The proposed open space is adjacent to an exiting parcel of City owned conservation land.

- The applicant has requested a waiver to Section 8.04 (2)(a)(ii) of the Subdivision Regulations to allow the plat to be drawn at a scale of 1" = 60' instead of 1" = 50'.

Tim Bernier from TF Bernier, Inc. was present on behalf of the applicant to answer questions from the Board.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 7:39 PM.

Deliberations and Action on Applications

Mr. Swope moved **Grant a Waiver** to Section 8.04 (2)(a)(ii) of the City of Concord Subdivision Regulations to allow the subdivision plat to be submitted at a scale of 1" = 60' instead of 1" = 50'. Mr. Kenison seconded. Motion carried.

Mr. Swope moved Approve the **Conditional Use Permit** pursuant to Article 28-5-46 of the Zoning Ordinance; Conditional Use Permit required for the approval of a conventional subdivision within the Open Space Residential District. Mr. Gross seconded. Motion carried.

Mr. Swope moved **Grant conditional final subdivision approval** for the "Subdivision Plat of the land of Peter B. & Olivia H. Delfausse at 224 Little Pond Road" subject to the following standard conditions:

Standard Conditions:

1. Traffic, recreation and school impact fees shall be assessed for any construction on the new lot contained 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, and 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 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - a. School Facilities - Single Family Residence
 - b. Recreational Facilities - Single Family Residence

- c. Transportation Facilities - Single Family Residence
2. 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 including but not limited to the following:
 - a. The overhead utilities need to be illustrated on the plans.
 - b. The soil test data needs to be included on the plan as required by the NH Department of Environmental Services where municipal sewers are not present.
 - c. The City of Concord's Planning Board approval block needs to be included on Sheet 2 of 2; both sheet 1 and 2 need to be recorded at the Merrimack County Registry of Deeds.
 3. The wetland buffers shall be clearly and permanently marked before, during, and after construction of the sites. Building permits will not be issued until the buffers are marked.
 6. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any permits for construction activity on the site), the following easement documents, in a form acceptable to the City Solicitor, Planning Division, and Conservation Commission, and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
 - a) Conveyance of a conservation easement for the 8.6 acres of open space land identified on the subdivision plat.

Mr. McGonagle seconded. Motion carried.

5. Application by **Hoit Road Development** for approval of revisions to a previously approved subdivision by virtue of conversion to condominium of property at **29 & 34 Victorian Lane. (#2007-92)**

Determination of Completeness

Mr. Henninger explained this proposal to revise a previously approved subdivision known as Acres of Wildlife.

He reported this application was complete and ready for the Board to open a public hearing.

Mr. Gross moved and Mr. Swope seconded that the Planning Board declare this application to be complete and open a public hearing on the matter. Motion carried.

Public Hearing

Mr. Henninger explained The applicant received conditional final subdivision approval for a seven unit cluster subdivision on June 16, 2004 on property located south of Hoit Road between Graham Road and Sanborn Road. The applicant after a number of

extensions was able to finally address the conditions of approval and the plan was recorded on June 22, 2007. The seven units are to be accessed by a common private drive now under construction. One of the proposed units of the condominium is an existing home. This home and an abutter (existing house) will use the common drive as their sole means of access.

The applicant in the construction of the onsite detention basin found ledge where the basin was to be constructed and has redesigned the basin. The applicant is also proposing to relocate one lot from the west of the site access road to the east access road due to site conditions.

The applicant is also requesting to change the name of the proposed private road.

The applicant also received a Conditional Use Permit (CUP) to alter wetland buffers for a storm drainage system outfall from the on-site detention basin. The redesign of the basin results in a relocated swale and the applicants are requesting a revision of their previously approved CUP.

- No change is proposed to either the off-site drainage north of Hoit Road which is substantially complete or design of Victorian Lane which is now under construction.
- The applicant has requested that proposed lighting along Victoria Drive be eliminated from the plan leading into the site at the request of the abutters and the plans have been amended accordingly. This request appears reasonable and no lighting is required in the subdivision regulations along a common private drive in a rural area. A street light will be required at the intersection of Victorian Drive with Hoit Road.
- The proposed modification to the location of one of the condominium units results in a more compact development area and an increase in the amount of Open Space proposed.
- The revised outfall swale design does not increase the area of wetland buffer disturbance and reduces the amount of perimeter buffer disturbance on the west side of the property.
- The applicant has requested a name change for Victorian Lane. The applicant's proposed name has been rejected by the E-911 system and the applicant has been invited to nominate several alternate names.
- A storm drainage line was approved by the Board in the 100' perimeter buffer on the north side of the site southerly of an existing house at 130 Hoit Road. City staff had the applicant to mark the extent of the buffer on the north side of the site next to both 130 and 134 Hoit Road and has reviewed the extent of the clearing on site. Several trees have been cut down recently in the buffer and timber harvesting has occurred in the buffer in the last 5-10 years. Planning staff inspected the buffer area and has requested a planting plan be prepared using native species in the buffer areas which have been previously disturbed and for the area disturbed for the storm drain line extension.

- The clearing is not complete within the buffer area and the applicant submitted a planting plan intended to fill in the gaps over time. A planting plan was received on November 13, 2007 from the applicant's engineer. The plan consists of eight (8) 2 ½" to 3" diameter white oak and white pine trees and a number of seedlings. The plantings would be at two locations where most of the disturbance took place in the perimeter buffer. Planning staff is recommending that the number of seedlings be substantially increased given the expected mortality of the plantings.

Michael Todd from Joseph M. Wichert, Inc. and John Rokeh from Rokeh Consulting LLC were present to answer question from the Board on behalf of the applicant.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 7:50 PM.

Deliberations and Action on Applications

Mr. Swope moved **Grant a Conditional Use Permit (CUP)** for the "Acres of Wildlife a Condominium" subdivision for a disturbance to a Wetland Buffer pursuant to Article 28-4-3(d) for the construction of an drainage outfall swale.

Mr. Gross seconded. Motion carried.

Mr. Swope moved **Grant conditional final subdivision approval** for revisions to the "Acres of Wildlife a Condominium" subject to the following standard and special conditions:

Standard Conditions

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.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions.
3. Traffic, recreation and school impact fees shall be assessed for any construction on lots contained 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; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - a. School Facilities - Single Family Residence

- b. Recreational Facilities – Single Family Residence
- c. Table 3: Transportation Facilities - Single Family Residence

Special Conditions

- 4. Prior to the final plat being signed by the Planning Board Chair and Clerk, a replanting plan shall be submitted acceptable to the City Planner for restoration of disturbed areas in the 100' perimeter buffer area next to 130 and 134 Hoit Road. The plan shall also include native trees and shrubs to infill the previously cleared areas within the buffer and those areas disturbed for the construction of the storm drainage pipe.
- 5. Approval of a new street name by appropriate agencies.

Mr. Kenison seconded. Motion carried.

- 6. Application by **Jason P. Longval and Billy Cate** for approval of a resubdivision and subdivision of property at **45-47 River Road. (#2007-68)**

Re-Hearing

Mr. Henninger explained The applicant is proposing to adjust the lot lines between the properties at 45 & 47 River Road. The property known as 45 River Road is comprised of two smaller camp lots that will be consolidated as part of the application, 47 River Road is also made up of two smaller camp lots that will also be consolidated. The proposal involves annexing 1,203 sq. ft from 47 River Road to 45 River Road and annexing 1,697 sq. ft. from 45 River Road to 47 River Road. There is an existing house on each parcel and no new construction is proposed as part of the resubdivision & consolidation plan.

The applicant has also requested a waiver of Section 8.04 (2)(a)(ii) of the City of Concord Subdivision Regulations to allow the subdivision plat to be submitted at a scale of 1"=40' instead of 1"=50'.

The Planning Board granted conditional final subdivision approval on August 1, 2007 for this subdivision with the conditions contained in a report prepared by staff. A waiver was also granted as part of this action to submit a plat drawing at a scale of 1"= 40' instead of the 1"= 50' required within the subdivision regulations.

One of the applicants, Mr. Longval, and his agent Timothy Bernier, approached the Board with a concern that the conditions were not acted on by the Planning Board during their motion to approve, and that the conditions are unwarranted. The approval conditions were included in the staff reports to the Board and were also noted in the approval letter sent to the applicant dated August 3, 2007. The Planning Board, after listening to the applicant, agreed at their October 11, 2007 meeting to schedule another hearing on this application. Please see the attached minutes of the October 11th meeting. A notice for this hearing was subsequently prepared and mailed to abutters and appropriately noticed.

- The properties are served by municipal water and onsite site septic systems. The approximate location of the on-site septic systems have been shown but the water

service connections have not been shown on the plans. One of the conditions of the August 1, 2007 Planning Board approval was to show the location of the existing water service connections to both parcels.

- The applicant's surveyor has stated that he does not think it necessary to note the location of the water service connections. However, subsequent to this statement the City's service connection records were accessed by staff and provided to the applicant. Please see the attached letter from Becky Hebert. The water service connection to the Longval property is through the front of the Cate property. No existing easement or recorded right for this water service has been found. City staff has provided sample language to add to the deeds to protect the Longval's property rights, to continue to use, repair, and replace this water service connection. Please see the attached map "Longval & Cate Water Service Connections". The water main and service connections are shown in blue.
- Section 8.04(2) Minor Subdivision of the City of Concord Subdivision Regulations requires that all water and sewer and private utilities be shown on a minor subdivision plan and Section 9.08 Water Supply establishes design standards for the installation of both municipal and private on site (wells) water supply.
- It was noted that the existing municipal water line in River Road was located at the edge of the existing 25' wide right of way. Section 9.04(1) Streets states that "All subdivisions shall make provisions for a safe and suitable access to an existing public street or shall make provision to for the construction and dedication of a public street to provide safe and suitable access to the subdivision. Where an adjacent existing street where access is gained is deemed to be substandard, the upgrading of said street shall be provided for." The Planning Board since the adoption of the subdivision regulations at a minimum has required the conveyance of sufficient right-of-way to bring said substandard streets to a minimum 50' right-of-way, with property owners on each side of the street contributing 1/2 of the required right-of-way. When reviewing this subdivision, City staff's opinion is that physical improvements were not warranted since no new access was being constructed and the City has recently resurfaced this roadway. It was also deemed unlikely that additional right-of-way will be obtained along the rest of River Road.
- It was noted during the review of the subdivision that the existing municipal water line in River Road was located at the edge of the existing 25' wide right of way. The City requires new utilities to be centered in a 25' wide utility right of way and a minimum of 12.5' from the edge of an existing or proposed right-of-way. See Section 9.08(3) of the Subdivision Regulations. The City Planning Board has consistently obtained easements on private property for existing municipal, and in some cases private utilities, to provide the equivalent of a 25' wide utility easement for existing utilities as part of both subdivision and site plan applications. Please be advised that major work on the existing water main in River Road could not be completed at this location without encroaching on private property.

- In this instance the City Engineering Division took the additional step to prepare a 10' wide utility easement for both property owners along the River Road frontage as part of our response to this property owners concerns about costs associated with the preparation of the easements.
- *The City Engineer has specifically reviewed the location of the water line which was constructed in 1954 and is recommending that in this instance an easement not be obtained. Please see the attached memorandum from Ed Roberge dated November 13, 2007.*
- The existing parcels are nonconforming to the City's subdivision regulations with respect to lot size, building setbacks, and road frontage. The proposed resubdivision and consolidation plan increases the conformity of the both parcels.

Mr. Swope asked if the applicant's agent was aware of the staff report and Mr. Henninger responded that he had been provided a copy of the report.

Tim Bernier from TF Bernier, Inc. was present on behalf of the applicant to answer questions from the Board.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 7:59 PM.

Deliberations and Action on Application

Mr. Swope moved **Revoke the conditional final subdivision approval as granted on August 1, 2007** for the "Resubdivision & Consolidation Plan of Jason P. Longval and Billy Cate" as prepared by T.F. Bernier, Inc. Mr. Gross seconded. Motion carried.

Mr. Swope moved a waiver of Section 8.04 (2)(a)(ii) of the City of Concord Subdivision Regulations to allow the subdivision plat to be submitted at a scale of 1"=40' instead of 1"=50'. Mr. McGonagle seconded. Motion carried.

Mr. Swope moved to **Grant conditional final subdivision approval granted on August 1, 2007** for the "Resubdivision & Consolidation Plan of Jason P. Longval and Billy Cate" as prepared by T.F. Bernier, Inc. subject to the following standard and special conditions:

Standard Conditions:

4. 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 including but not limited to:
 - a. The existing water lines servicing 45 & 47 River Road need to be shown on the plan.

Mr. Gross seconded. Motion carried.

Minor Site Plan

7. Application by **Merrimack County Savings Bank** for approval of a site plan for property at **190 North Main Street**. (#2007-86)

Determination of Completeness

Mr. Henninger explained this proposal to add seven additional parking spaces to the rear of the property located on the east side of North Main Street.

He reported this application was complete and ready for the Board to open a public hearing.

Mr. Gross moved and Mr. McGonagle seconded that the Planning Board declare this application to be complete and open a public hearing on the matter. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to add seven (7) additional parking spaces to the rear of the property located on the east side of North Main Street.

The property was previously the Bow Mills Bank. This year Merrimack County Savings Bank acquired Bow Mills Bank and has requested approval to add additional parking on the site. No increase in floor area is proposed and no change is proposed to the three (3) lane drive up teller/ATM facility at the rear of the site.

- The applicant is intending to fill at the rear of the site and place stone rip-rap on a portion of an existing steep slope approximately 14' tall at a 2:1 slope and extend the existing parking approximately 10 to 20 feet to the east. The improvements to the rear of the site allow three (3) existing parallel spaces to be converted to 6 regular and 4 compact parking spaces.
- The applicant requested and received a variance from the ZBA to have a parking aisle only 18' wide where 24' is required for 90° parking on September 5, 2007. This applies to four compact parking spaces directly behind the ATM drive up lane.
- A waiver to Section 9:05(3)(e)(iv) of the City of Concord Site Plan Review Regulations has been requested to have a parking aisle of 18' where 24' is required for 90° parking.
- The applicant has advised that 17 trees are required for 16,495 sf of parking and access aisles and that more than 17 trees are located on site.
- Drainage at the rear of the site running off the existing pavement has created erosion problems on the bank at several locations. The proposed rip-rap is intended to address this problem. However, it was noted that one area of erosion at the far southeast corner of the site has not been addressed in this application.

- The Engineering Division recommends that the proposed curbing on the east side of the parking lot be eliminated to better disperse the runoff over the bank. With the proposed guardrail, curbing is not required.
- Planning Staff has noticed that a dumpster located at the southeast corner of the parking lot. This dumpster needs to be screened and placed on a proper pad in order to conform to City Regulations.
- It was noted that Bow Mills Bank removed a street tree a number of years ago in North Main Street when the bank constructed the current parking lot. A street tree should be replaced along this frontage.

Ms. Meyer felt that at the very minimum the Planning Board should ask for landscaping at the end of the parcel that relates to the parking area and not to the building, since they are going to do some clearing for the new construction.

Ted Kupper from Provan& Lorber was present on behalf of the applicant to answer questions from the Board as was Terry Clarkson, senior vice president from the Merrimack County Savings Bank.

In answer to a question by Ms. Meyer relative to the need for rip rap, Mr. Kupper explained that the slope is going to be regraded for the parking area and there is no way to protect the slope from erosion without using rip rap. Almost any other design would have been very expensive and would have meant constructing a retaining wall.

Regarding the addition of trees, Mr. Kupper explained that there are places where they could add trees. He also suggested that some of this planting could be in place of the street tree suggested by Mr. Henninger since the street tree would block visibility of their sign.

Ms. Meyer indicated the City encourages street trees and since one was taken down one should be put back and it does not make much difference where it is placed. She felt the City's landscape architect could help find an appropriate location.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 8:27 PM.

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

Mr. Swope moved **Grant a waiver to Section** to Section 9:05(3)(e)(iv) of the City of Concord Site Plan Review Regulations to allow four parking spaces to have a parking aisle of 18' where 24' is required for 90° parking. Mr. Kenison seconded. Motion carried.

Mr. Gross moved **Grant conditional Site Plan** approval for the Merrimack County Savings Bank at 190 North Main Street subject to the following condition:

1. Prior to the start of construction approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions including but not limited to the addition of a street tree along North Main Street, the addition of a dumpster pad and screen for the existing dumpster on site, and addressing the drainage concerns of the City Engineering Division.
2. The applicant shall consult with City staff to provide additional landscaping, including at least two shade trees to the north and the south ends of the easterly parking area as well as a street tree, if possible.

Ms. Dolcino seconded. Motion carried.

Architectural Design Review

8. 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 Code of Ordinances.
 - **Eames Insurance Real Estate** at 78 Airport Road
 - **The Masiello Group Real Estate** at 4 Park Street (2 signs)
 - **Puckhaber Law Offices PLLC** at 81 North State Street
 - **Valvoline Instant Oil Change** at 234 Loudon Road (revisions)
 - **Zoe & Co. Professional Bra Fitters** at 92 North Main Street

The Chair opened the hearings on all of the sign applications.

- **The Masiello Group Real Estate** at 4 Park Street (2 signs)

Mr. Henninger explained that these were replacement signs. The awning sign involved the replacement of the canopy on the existing frame. He explained that there will be a change in logo for the company and they are changing all of their signs.

He reported that The Design Review Committee found the design and placement of the proposed signage to be appropriate for the location and use, and recommended approval as submitted. The Committee suggested that the applicant should consider deleting the web address from the sign as it would be a cleaner design.

Bill McNamara from Classic Signs was present on behalf of the applicant to answer questions from the Board.

Mr. Swope moved approval as submitted with the suggestion that the applicant should consider deleting the web address from the sign as it would be a cleaner design. Mr. Kenison seconded. Motion carried.

- **Puckhaber Law Offices PLLC** at 81 North State Street

Mr. Henninger reported that The Design Review Committee found the design and placement of the proposed sign to be appropriate for the location and use, and recommended approval as submitted but suggested that the sign be placed perpendicular to the street instead of parallel as shown.

Mr. Gross moved approval as submitted but suggested that the sign be placed perpendicular to the street instead of parallel as shown. Mr. McGonagle seconded. Motion carried.

- **Valvoline Instant Oil Change** at 234 Loudon Road (revisions)

Mr. Henninger explained that Valvoline has changed their sign graphics since the Committee reviewed and the Planning Board approved the project two years ago. Now that they are ready to install the signage, they cannot get it.

The Design Review Committee found the design and placement of the revised signage to be appropriate for the location and use, and recommended approval as submitted.

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

- **Zoe & Co. Professional Bra Fitters** at 92 North Main Street

Mr. Henninger reported The Design Review Committee found the design and placement of the signage to be appropriate for the location and use, and recommended approval as submitted.

Jonathan Halle from Warrenstreet Architects was present to answer questions from the Board on behalf of the applicant.

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

9. Building plans related to an application by **Charter Trust Company** at **92 North Main Street**.

Public Hearing

Mr. Henninger explained they are trying to mimic the storefront of the recently renovated space now occupied by Baby Bungalow. He explained they want to set back the door and window system by six feet. The window system would be black metal similar to that installed at the Baby Bungalow further down the street. Mr. Halle noted the sidewalls would be the existing historic brick walls. the granite sign band is original and they will also add a gray granite base and granite walkway in the six-foot setback.

He reported The Design Review Committee recommended approval of the renovations to the building façade as submitted subject to submittal of construction details.

Jonathan Halle from Warrenstreet Architects was present to answer questions from the Board on behalf of the applicant and explained that since the Design Review Committee meeting and recommendation, the applicant has noticed the mahogany doors used by other retailers downtown and would like to use something similar.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 8:39 PM.

Deliberations and Action on Application

Mr. Gross moved approval of the renovations to the building façade as submitted with the substitution of mahogany doors. Mr. Kenison seconded. Motion carried.

10. Revised building and signage plans related to a previously approved application by **Land & Sea DYNomite Dynamometer at 25 Henniker Street.**

Public Hearing

Mr. Henninger explained that they were nearly done construction of their new building and now propose changes to the color scheme and signage on the building. He explained that the approved plan showed a red band along the top of the building with black lettering. They now propose a narrow red band at the top of the building with a black sign band and red lettering.

The Design Review Committee recommended approval as submitted.

Bob Bergeron was present as applicant and explained that the changes were being proposed to better coordinate with the other buildings in the area.

There were no questions or comments for or against the application and the Chair declared the hearing closed at 8:41 PM.

Deliberations and Action on Application

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

REGULAR MEETING

Minutes

The Clerk discussed the minutes of the meeting of October 11, 2007 at which the matter of the conditions of approval of the application of Jason Longval and Billy Cate had been discussed. He explained that the surveyor for the applicants had made assertions relative to conversations he had had with both the Planner and the City Engineer. He reported that the City Engineer had chosen not to respond to the assertions but that Ms. Hebert had clarified the inaccurate statements made by the surveyor that she had

informed him that she had “no idea where the conditions came from and would look into it”.

He reported that Ms. Hebert had explained that the surveyor had called to inquire about the conditions of approval and whether or not it was necessary for this client to comply. She explained to him that the conditions were included in the staff report, referenced in the Planning Board approval motion, and included in the approval letter. She told him that she thought he would need to satisfy the conditions of approval and offered to refer his question to the Board’s Clerk and return to him with a definite answer.

Mr. Gross moved that the communication from Rebecca Hebert, Planner, regarding the minutes of the meeting of October 11, 2007, be accepted and made part of the minutes of that meeting. He further moved that the minutes of October 11, 2007, with the attachment, be accepted as submitted. Mr. Swope seconded. Motion carried.

Mr. Gross moved approval of the minutes of the meetings of September 19, 2007, September 26, 2007, and October 17, 2007 as submitted. Mr. Swope seconded. Motion carried.

2. Further consideration of an application for approval of a development on which a public hearing has previously been held:
 - a. Application by **Levi Ladd** for approval of a Conditional Use Permit pursuant to Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance for property at **320 Sheep Davis Road. (#2007-37)**

Ms. Hebert explained The applicant is requesting approval of a Conditional Use Permit (CUP) for the disturbance to a wetland buffer. The site is located at 320 Sheep Davis Road (Route 106) and is known as the Concord Sand & Gravel pit. The proposal involves cutting all of the trees and shrubs, greater than four feet in height, within the wetland and wetland buffer adjacent to Route 106 to increase the visibility of the property. The applicant believes that they will be better able to market the site for retail development in the future if the land is more visible from the roadway. To compensate for the removal of the vegetation within the buffer, the applicant is proposing an extensive planting and restoration plan to reestablish lower growing shrubs within the cleared areas along Route 106. The restoration plan also includes the replanting of trees and shrubs within previously disturbed areas along the Soucook River.

The Planning Board determined the application complete on August 15, 2007, and opened the public hearing. The hearing was tabled to allow the applicant time to address the following issues and concerns:

1. The applicant needs to provide written certification from the New Hampshire Department of Environmental Services stating that the previous legal concerns have been mitigated and the proposed work does not require a state permit. *The Planning Division has received an email from the NHDES confirming that the proposed*

project, to remove vegetation from the jurisdictional wetland areas, does not require a permit.

2. The applicant should provide photographic simulations showing examples of potential retail buildings to illustrate the degree to which the vegetation would obscure a proposed development on the site. *The applicant has submitted a series of images that demonstrate the visibility of the site as seen from a vehicle driving along Route 106. The images do not illustrate how visible a large retail building would be from the road with and without the existing vegetation along Route 106.*
3. The applicant needs to provide a plan that more specifically illustrates the vegetation that is to be removed and areas that may be left as islands of existing vegetation. *The applicant has provided a plan that clearly illustrates the areas of vegetation that are to be removed. All of the tall vegetation within the wetland and wetland buffer will be cut. The applicant is not proposing to leave islands of taller vegetation within the wetland or wetland buffer.*
4. The applicant needs to consider providing a physical barrier between the proposed restoration area and the existing building & parking area, in order to protect the plantings from damage. *The applicant is proposing to install a three strand wire fence with signs located intermittently, that identify the wetland buffer area.*
5. The application satisfies the Conditional Use Permit standards #3, 4, &5; the Planning Board needs to determine whether or not the proposed disturbance to the buffer meets the first two standards listed above. The property is located in the Gateway Commercial District which has been identified in the Zoning Ordinance as areas where large scale, well designed, commercial uses could be established along arterial roadways. The applicant has stated that the vegetation along Route 106 blocks the views to the site making the property less marketable. Interested buyers are turned away from the property because the site is not clearly visible from Route 106.
6. The Conditional Use Permit application includes a set of construction drawings prepared by Holden Engineering and a Habitat Modification & Mitigation Plan prepared by Schauer Environmental Consultants, LLC. The report describes the existing environmental conditions and the proposed alterations to the wetland and buffer areas. The construction plan identifies the areas of wetland & buffer impacts along with the location of the proposed restoration plantings.
7. The Habitat Modification & Mitigation Report contains a proposed construction sequence, maintenance, and monitoring schedule.
8. The construction sequence should be modified to specify that the cutting of vegetation within the jurisdictional wetland & buffer areas will occur only during frozen ground conditions and that the restoration plantings will be installed during the early growing season (May 1st thru June 15th).
9. The property is approximately 53 acres and the monitoring plan sets an 80% survival rate as the benchmark for success for the entire parcel. The report

should be modified to specify that an 80% survival rate will be achieved for plantings installed within the buffer area to the wetland as well as an 80% survival rate for the additional plantings installed along the Soucook River.

10. The proposal includes the planting of trees within the right-of-way of Route 106; the project will require a license from the DOT for the work proposed within the right-of-way.
11. The Conservation Commission has reviewed the Conditional Use Permit application and recommended that the applicant consider the conveyance of a conservation easement for the land within the shoreland setback of the Soucook River.

Ms. Meyer felt that there were opportunities along the perimeter of the wetland that would not impact the visibility of the site. She also asked if they had explored the idea of placing large boulders along the perimeter instead of the wire fencing proposed.

Peter Holden from Holden Engineering & Surveying, Inc. was recognized on behalf of the applicant and presented photographs from a report by the wetland scientist. He explained they will be removing all the vegetation four feet tall or more and replacing it with over 750 low-growing shrubs to provide places for birds to rest and feed. The removal will be done by hand. They will go back and inventory this for three years and if less than 75% of the vegetation survives, they will replant. They also propose to plant another 750 trees and shrubs along the Soucook River to fix it up as part of the wetland enhancement. Any building will be 800 feet from the road.

Ms. Meyer reminded Mr. Holden that any development will have to provide shade trees in the parking lot so she did not see why they could not keep some of the large oak trees already on the site.

Mr. Drypolcher was concerned that if the vegetation is cleared so it can be more visible until it is sold because he did not think the sand and gravel operation was particularly attractive to be viewed until it is properly developed.

Members suggested that Mr. Holden and City staff work out a cutting and revegetation plan for the front and an agreement that no work will be done until the property comes back for a site plan approval for development if the work is done there would be a need for a financial guarantee and the conservation easement.

Mr. Gross moved to table for the above. Mr. Swope seconded. Motion carried.

CITY COUNCIL REFERRALS

3. Consideration of a communication relative to an **amendment to Article 28-4-5 and Article 28-4-8** of the City's Zoning Ordinance.

Mr. Woodward explained A request was submitted to the City Council by several neighbors of the Parmenter Road PUD application seeking the preparation of an

amendment to the Zoning Ordinance that would add to Section 28-4-8, Planned Unit Development (PUD), of the Zoning Ordinance a new subsection mirroring the existing provisions of Section 28-4-5(m), Access, as found in Section 28-4-5, Development of Attached and Multi-family Dwellings. The request also seeks to establish a means of defining neighborhood density to be used in interpreting the provisions related to access, as follows:

28-4-5(m) (1) Neighborhood Density. Neighborhood density to be determined by dividing the sum of all dwelling units by the sum of the total land area for all properties accessing the local access street used for access to the to the proposed development.

The City Council referred this mater to the Board for a report and recommendation. The existing Section 28-4-5(m) reads as follows:

(m) Access. No subdivision or site plan shall be approved for attached or multi-family dwellings where access must be provided by an existing accepted local access street through a neighborhood having a lesser residential density.

This section was added to the Zoning Ordinance in its draft form after the first public hearing by the City Council in October 2001, precedent to the final adoption of the Ordinance after public hearing on the evening of November 29, 2001. During 2001, there had been two lawsuits resulting from the approval of multi-family dwellings that required access through existing neighborhoods off of Cherry Street and off of Woodcrest Heights Road that gave rise to this provision. However, a similar section was not attached to Section 28-4-8 relating to PUD's, whether by oversight or intent. It is a simple matter to now amend Section 28-4-8 to add a similar access provision to pertain to PUD's.

The measurement of the residential density of a neighborhood is more problematic. The proposal by the neighbors is based on a gross density and includes all land whether used for residential purposes or not, whether developed or not, and whether developable or not. A more conservative approach would be to limit the density calculation to only those lots used for residential purposes and to restrict the land area to "buildable" land, as well as to discount undeveloped but buildable land. This would be more comparable to the approach in the Ordinance wherein the densities for attached and multi-family dwellings as well as PUD's are set forth in terms of dwelling units per buildable acre. The discounting of undeveloped land recognizes that there will be other "infill" development in the neighborhood unrelated to the proposed development, whether such infill might be single family homes on individual lots or other proposals for attached and multi-family dwellings, or PUD's.

Section 28-4-5 (m) could be expanded to include the following language, "The residential density of a neighborhood shall be the average number of dwelling units per buildable acre as calculated from the total number of dwelling units on all lots on which residential uses are located and which gain access from the same existing accepted street or streets which would provide access to the site of a proposed development of attached and multi-family dwellings. Where a lot contains more buildable land than is necessary to support the residential use on that lot, the area counted toward the density

calculation shall be equal to the minimum area that meets the minimum standards as required by this Ordinance to support the residential use located on that lot.”

Similar language can be added to the parallel section proposed to address access in Section 28-4-8 related to PUD’s.

Mr. Swope indicated he would be in favor of extending the current rule. He would be concerned that there be sole access to a development through a lesser zoning district.

He felt the relevant information is the theoretical density that the land could be developed to and “not get into the rest of this”.

He felt what is proposed by the neighborhood is completely unacceptable because that would prevent infill.

Mr. McGonagle suggested a compromise position. One of the whole issues was to protect the existing neighborhoods, the developed neighborhood. He felt that the existing density should be used for developed parcels but for undeveloped parcels density should be calculated by what could be developed there under the zoning ordinance.

Mr. Gross had a problem with the whole exercise. The existing section adopted in 2001 seems to be nearly impossible to regulate. But if we continue this process, we will be flying in the face of the new direction the proposed Master Plan should take regarding infill in existing neighborhoods. There are problems with enforcement. If we endorse expansion of this onto other things such as PUDs, then we will regret it because the first time a good developer comes in with a good plan to protect sprawl, it might not be able to be done.

Mr. Gross felt that if we went to control sprawl and balance development, we need to consider density as a good thing.

Mr. Swope felt that some of the most attractive neighborhoods in the city have a very high density.

Need to re-work this so that it is much more tightly focused.

Mr. Gross felt the Board should not fall for the premise that increasing density next to areas of lower density is bad.

Mr. Swope felt (m) is too broad because it does not really prevent traffic. This all came out of the issue of sole access.

Ms. Dolcino suggested tying this to “demonstration that there will not be an adverse impact on traffic”.

MASTER PLAN

4. Establishment of public hearing dates for the Master Plan.

Mr. Woodward reported that the Board had previously indicated that it wishes to hold two hearings in January 2008. The regular monthly meeting is January 16th so it looks like the Master Plan hearings could be held during the two weeks following that with one during the week of January 21st and a second hearing during the following week of January 28th. Both hearings would be held in the City Council Chambers at 7:00 PM. The City Council Chambers is available on Wednesday and Thursday nights, January 23 and 24, and Monday through Thursday nights, January 28 through 31st.

Mr. Gross indicated he will be away the week of January 28 through February 3, 2008.

Mr. Gross suggested that hearings be held on two consecutive evenings. Mr. Swope was willing to do this providing there is a defined end for the hearings.

Mr. Woodward then discussed the distribution of the plans to various City staff and boards and commissions. The consultant is also working on an executive summary for distribution as well.

Mr. McGonagle asked if the Monitor had expressed any interest in providing an article about the Master Plan to help generate interest. Mr. Woodward responded that he planned to discuss it with the reporter or editor but had not done that yet until the copies were available.

INFORMATION

- Letter from Allan Herschlag relative to the October 17, 2007 public hearing by the Board on the Parmenter Road PUD application.

Mr. Swope felt that the remedy being requested by the correspondent was being provided by the Board.

Mr. Gross mentioned the decision by the New Hampshire Supreme Court in the case of Carlson's Chrysler versus the City of Concord and commented that the City Solicitor, the Code Administrator and the City Planner for making it possible for the Court to uphold the long-standing policy in the city of not having moving or flashing signs.

There was no further business to come before the board and the meeting adjourned at 10:00 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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