

A recessed meeting of the City Planning Board was held on February 1, 2006 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Swope (who as Vice-Chair presided), Dolcino, Foss (who arrived at 7:13 PM.), McClure, Merrill, Meyer, and Alternate Members Kenison and McGonagle. Messrs. Woodward, Henninger and Pollock, and Ms. Seifried and Ms. Osgood of the City Planning Division were also present, as were Mr. Roberge, the City Engineer, and Mr. McGinley, Fire Marshal.

At 7:05 PM a quorum was present and the Vice Chair called the meeting to order and seated alternate Members Kenison and McGonagle for Members Blanchette and Drypolcher, who were not expected.

## **APPLICATIONS**

### Minor Subdivisions

1. Application by **Concord Area Trust for Community Housing** for approval of a subdivision by virtue of conversion to condominium of property at **27 Fayette Street.** (#2006-05)

### Determination of Completeness

Mr. Pollock reported this application was complete and ready for public hearing.

Mr. Kenison moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

### Public Hearing

Mr. Pollock explained this proposal to convert an existing two-family dwelling to condominium ownership.

Mark Sargent from Richard D. Bartlett & Associates LLC was present to answer questions on behalf of the applicant.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 7:08 PM.

### Deliberations and Action on Application

Mr. Kenison approval subject to the following 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. The floor plans shall be stamped by a licensed architect and display the Planning Board's signature block.

Mr. Merrill seconded. Motion carried.

2. Application by **Kevin Guay** for approval of a revision to a previously recorded subdivision of property at **12 Villanova Drive**. (#2006-03)

(Ms. McClure recused herself and left the table.)

#### Determination of Completeness

Mr. Henninger reported this application was complete and ready for public hearing.

Mr. Kenison moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

(Ms. Foss arrived at 7:13 PM.)

#### Public Hearing

Mr. Henninger explained that an eight-lot subdivision plat for this site was approved in 1999 and included a driveway approximately 90 feet in length for 12 Villanova Drive directly off the section of Villanova Drive that runs westerly from Carter Hill Road. However, the driveway as approved as part of the subdivision plat would be at a grade of 30+% without significant cuts. As the land in this lot rises steeply from Villanova Drive and the majority of the usable land is on a ridge at the top of the hill, the applicant proposes to construct a 2,870 foot long driveway from Villanova Drive. From the intersection of Villanova Drive to Carter Hill Road is another 450feet. The house will be located a distance of about 3,320 feet or nearly 2/3rds of a mile from the nearest public road.

Previously the Board considered and rejected a waiver request to construct a drive at greater than 10% and the applicant has now submitted a driveway plan which has grades just below 10%. The drive has one 1900 foot long section of 9.8% slope with two switchback curves. After several different court cases in which the City and Planning Board prevailed, the applicant has submitted new plans showing the driveway for 12 Villanova Drive and the house at the top of the ridge. He reported that part of the proposed driveway crosses a parcel owned by John L. Zerbi and a separate parcel owned by Kevin M. and Lorraine A. Guay.

He reported that, pursuant to Section 9.03(3)(b)(v) of the City's Subdivision Regulations every lot shall comply with the following standard:

- v) "Safe and sufficient vehicular access exists from the public street to the building site(s). The private driveways shall:
  - 1) Have a slope of no greater than ten (10) percent;
  - 2) Have a landing area at the intersection of the private drive and the public or private abutting street with a minimum length of thirty (30) feet, a minimum width of (12) feet, and a slope not to exceed two (2) percent."

The proposed driveway does not have the required landing area as called for in the

Subdivision Regulations at the intersection of the driveway and Villanova Drive.

He also reported that, pursuant to Section 9.04(2)(a)(iii) of the City's Subdivision Regulations, "each lot shall have safe, independent and direct access from a public street, or from a private street where said private street is approved by the Planning Board." The Planning Board will have to find if safe and sufficient access has been provided to parcels 104/2/19 and 104/2/67.

He reported that the proposed amount of terrain alteration for the house, well, septic system and driveway is 257,000 square feet or 5.9 acres. The plan set submitted to the City has no measures included for revegetation of the large area of disturbed soils. Many of the areas disturbed have steep slopes, fill sections and bank cuts.

The proposed driveway is located outside the existing driveway easement for Villanova Drive across the abutting property owned by John L. Zerbi. The proposed driveway is also located easterly and northerly of the existing woods road noted in the deed from Kevin M. & Lorraine A. Guay to John L. Zerbi. The proposed driveway is not located according to easements of record on the parcel owned by Mr. Zerbi. Approval from Mr. Zerbi needs to be provided for the relocated driveway on his property.

Nathan Chamberlin from Meridian Land Services was present on behalf of the applicant and explained that the two biggest issues noted by staff are the landing and access over the abutting parcel. He reported that creating the landing will require disturbance of more earth but it can be done. He also discussed the issue of access over the abutting lot. He reported the driveway is off the original woods road by about 20 feet in order to get the 10% grade required under the City's regulations. They are in discussion with Mr. Zerbi, the abutter, but nothing has been determined at this time.

Mr. McGonagle asked the impact of this proposed drive on future development and the ability to access remaining lots. Mr. Chamberlin did not feel this would impact the remaining lots.

Mr. Swope asked if there is any landing area on this plan and Mr. Chamberlin responded that there is none now but the driveway can be designed to accommodate a landing.

Ms. Meyer asked staff for an explanation of the standards for common private drives as they relate to this plan. Mr. Henninger explained this is a drive serving a single residence and is proposed for a lot previously approved under former standards.

Attorney John Laboe was present on behalf of John Zerbi, abutter, and indicated that Mr. Zerbi is out of the area and they are communicating by email but, as the driveway is currently drawn, it is not acceptable to Mr. Zerbi. He reported that negotiations are continuing with the applicant.

James Raymond, whose family owns property to the south of the subject property, disagreed with the explanation by Mr. Henninger that this is a driveway being considered by the Planning Board. He felt this was a hearing regarding a revision to the recorded subdivision plat and all details of that plan were open for discussion. He reported that the Superior Court, in a decision relative to this property, had stated that it

is not improper for the Planning Board to consider the past history of code violations because it was reasonable to look at whether the petitioner could or would comply with regulations. He also noted the District Court action that noted that the applicant had completely disregarded the City's regulations. He reminded the Board that this property is directly across the street from the City's water supply which needed to be carefully protected. He felt the Board needed to be certain the proposed drainage structures will be maintained properly and reminded the Board of the history of use of this land. The Board needs to be aware of the consequences of disregarding wetlands and the City's regulations. The problem is not just with monitoring construction. Once this is done, the City does not have any need to go up there and monitor the risk to the water supply and the abutting properties. He did not see a practical way to insure maintenance. He felt the applicant can build a house at the bottom of the hill as originally approved. There is nothing in the record that should give the Planning Board any confidence. It is not just an issue of whether the driveway meets standards but whether the Board would approve this subdivision and not just the driveway.

Jane Raymond reported she has spent a lot of time looking at site plans and visiting sites in the field as a member of the Conservation Commission in Goffstown. She reported that there is nothing typical about this project. It started with a wetland violation and went on from there. Contour lines do not cover the whole plan and she could not see where the water will flow from this driveway on this steep hill. It is really not clear where the water is going to end up. If this plan were to fail, the next thing down from this property is a lot not owned by the applicant. This plan is designed for a ten-year storm, which is typical, but there have been at least three rain events in recent times that have been at the fifty-year storm level.

Robert Larocque, 73 Carter Hill Road, the owner of the apple orchard on which the City has an easement in cooperation with the Five Rivers Trust, reviewed the history of encroachment by Mr. Guay on the abutting property owned by the apple orchard and on which the conservation easement is granted. He reported that in 2004 there were violations by Mr. Guay and, as a result of the complaints filed with the State, Mr. Guay had agreed to seed the property he had bulldozed, replace trees and clear debris. He has done none of this to this date. He felt that no action should be taken until Five Rivers Trust indicates they are satisfied that the work has been completed satisfactorily. He indicated there have been three violations of agreements between the orchard and Mr. Guay.

Tracey Lesser, a citizen who lives in the neighborhood, explained that she drives by the property every day. Her concern is that developers can build wherever they want and violate regulations and then get permission afterward. She hoped the Board would not allow that to continue.

Mr. Chamberlin responded to the concerns expressed and explained that the house location shown on the original plan was not cast in stone but was shown to prove that a house could be constructed on the lot. There is no way a house could be placed where shown on the original plan because it was at a 30% slope. He reported that Mr. Guay could be putting a lot more houses on this lot but has chosen not to. Once everything is all stabilized, and before the City issues a Certificate of Occupancy, there will be no erosion. There should be no problem with drainage structures failing. He indicated they can show the topography requested. The drainage is all going downhill. The

driveway in its current state withstood a number of big storms last Fall. The structures are oversized. This is about going from a wooded lot to a lot with one house on it. He reminded the Board that Mr. Guay has a site specific permit that will need to be updated once there is a final plan that the City agrees on. He will need to present a vegetation plan before he can get his Certificate of Occupancy. This is a driveway design at a very gentle grade as far as driveways go. He indicated they are not increasing drainage flow off site.

Mr. McGonagle asked where the stripping of natural vegetation has occurred on the site. Mr. Chamberlin pointed out the areas on the top of the hill that will make a nice lawn area that Mr. Guay will have to loam and seed.

Mr. Raymond was again recognized and noted that when Mr. Chamberlin pointed out where water was draining, he pointed to the Raymond property and he is not entitled to create drainage onto another lot. Mr. Chamberlin clarified that it would actually be flowing onto an abutting parcel owned by the applicant and they would be sure that happened.

Mr. Swope asked for comments from the City Engineer. Mr. Roberge explained that they had been working with the applicant's engineer and felt that they could continue to work toward a design that would be acceptable.

Ms. Meyer asked for clarification of water flow onto the abutting property and Mr. Roberge indicated they had asked the design engineer to look at splitting up the drainage to try to minimize the drainage impact. The biggest concern is velocity control rather than volumes.

Mr. Merrill asked if the Engineering Division had concerns about ongoing maintenance of the drainage system. Mr. Roberge responded that notes had been added to the plan regarding ongoing maintenance. It is generally pretty stable out there but if constructed to the standards established, it should work well and they would encourage the applicant to maintain the system carefully.

At 8:05 PM there were no further comments and the Vice Chair recessed the hearing to February 15, 2006 and asked for further detail on drainage and a revegetation plan, and to address landing question at the bottom of the drive, and work out the easement with the abutter.

Mr. McGonagle also indicated he would like to see the slope gradients between the loops of the road in order to get a sense of exactly the direction of flow and velocity. He explained he was very interested in the City Engineer's suggestion to split the drainage flows.

Ms. Foss would also like to hear from the Fire Department their opinion regarding the geometry of the proposed drive.

3. Application by **John Grappone Leasing, Dilorenzo Concord Real Estate LLC, and the City of Concord** for approval of a subdivision of property at **4-8, 10 & 14 Hall Street.** (#2006-02)

#### Determination of Completeness

Mr. Pollock reported this application was complete and ready for public hearing.

Mr. McGonagle moved and Mr. Merrill seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

#### Public Hearing

Mr. Pollock explained this proposal to subdivide the existing City lot into two parcels and to convey one of the parcels to John Grappone Leasing, Inc., which owns the adjacent lot "A" where the Hawaiian Isle Restaurant is located, and convey the other parcel to Dilorenzo Concord Real Estate, LLC, which owns the adjacent lot "B". The applicant has requested a waiver of Section 8.04 (2)(a)(ii) of the Subdivision Regulations to allow the plat to be prepared at a scale of 1"=40'.

He reported that there are mapped lines of a future street which encumber the City parcel and a portion of Parcel "A" that the Board had previously recommended be abandoned. The annotation, approval, and recording of this plat will accomplish the same.

Attorney Bryan Pellerin was present on behalf of John Grappone Leasing to answer questions from the Board.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 8:13 PM.

#### Deliberations and Action on Application

Mr. Merrill moved that the Planning Board grant a waiver of Section 8.04 (2)(a)(ii) of the City's Subdivision Regulations to allow the plat to be prepared at a scale of 1"=40'. Ms. Meyer seconded. Motion carried.

Mr. Merrill approval subject to the following 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. McGonagle seconded. Motion carried.

4. Application by **Wayne and Ruth Ross** for approval of a subdivision of property on the **north** side of **District 5 Road.** (#2006-07)

(Ms. McClure recused herself and left the table.)

### Determination of Completeness

Ms. Seifried reported this application was complete and ready for public hearing.

Ms. Meyer moved and Mr. Kenison seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried with Ms. McClure abstaining from discussion and vote.

### Public Hearing

Ms. Seifried explained this proposal to merge four existing properties and to subdivide the resulting parcel into three separate lots. The largest lot (Lot 3) will be approximately 334.6 acres. An additional 282.6 acres will be placed under a Conservation Easement on Lot 3 and, except for Tract A (4.1 acres), the entire lot will be under conservation restriction. One proposed lot will include the existing house, the second proposed lot will be created for a new residence, and Tract A on Lot 3 is set aside for a new residence. Tract A will gain access to the site by utilizing the discontinued Davis Road as a driveway access.

She reported that Lot 2 will require a Conditional Use Permit for the disturbance to the wetland buffer for construction of a driveway. The Conservation Commission has recommended approval for the Conditional Use Permit for disturbance of the wetland buffer under Section 28-4-3(d)(2) of the Zoning Ordinance where the disturbance is necessary to allow for a driveway to access buildable land.

A waiver of the plat scale has been requested at a 1" = 60' scale. She explained the intent is to reduce the number of sheets to a manageable size given the large size of the property and the number of lots. In addition a second waiver has been requested to show the remainder of the property at a 1" = 300' scale for the same reason.

Chris Bofinger, surveyor of record, was present to answer questions on behalf of the applicant. He explained the lot configuration was determined by the need for the road frontage in order to make the value of the parcel reach what was necessary for the development rights to be conveyed. They need to justify the value as if it would be developed.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 8:26 PM.

### Deliberations and Action on Application

Mr. McGonagle thought this was an interesting conundrum. In order to convey an easement of a value agreed to, they have to affect the wetlands, something that goes against the purpose of the easement, that being preserving and protecting the environment.

Ms. Meyer felt that visually the plan as configured would be more inviting to the public as a recreational resource.

Greg Caparossi, from the Trust for Public Lands, indicated that moving the lot line over would impact the valuation. Ms. Dolcino asked if a driveway easement instead of a change to the lot line would affect the value. Mr. Caparossi responded that he was not certain but he felt that it would impact the valuation.

Mr. Merrill moved that the Planning Board grant a waiver for plans to be submitted showing a scale of 1"=60' for the subdivision plat and grant a Waiver for plans to be submitted showing a scale of 1"=300' for the remainder of the property on the subdivision plan. Ms. Foss seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

Mr. Merrill moved that the Planning Board grant a Conditional Use Permit pursuant to Section 28-4-3(d)(2) of the Zoning Ordinance for the disturbance to the wetland buffer for the construction of a driveway. Mr. Kenison seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

Mr. Kenison moved approval of the subdivision subject to the following conditions:

1. Prior to the issuance of a certificate of approval applicant shall revise the site plan drawings to address the minor corrections and omissions noted by City Planning and Engineering staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State permit shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Environmental Services subdivision approval for on-site septic systems.
3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, 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. Deed for new Conservation Easement
4. 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.
5. Prior to the start of construction the following local approvals and permits shall be obtained and copies provided to the Planning Division:
  - a. Driveway Permit from the Engineering Division
6. 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

Ms. Foss seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

5. Application by **Wayne and Ruth Ross** for approval of a subdivision of property on the **south** side of **District 5 Road**. (#2006-07)

(Ms. McClure recused herself and left the table.)

#### Determination of Completeness

Ms. Seifried reported this application was complete and ready for public hearing.

Ms. Foss moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried with Ms. McClure abstaining from discussion and vote.

#### Public Hearing

Ms. Seifried explained this proposal to subdivide a 2.02 acre lot from an existing 341.02 acre parcel. In addition, 263.8 acres of the remnant lot will be placed under a conservation easement. Lot 1 will require a Conditional Use Permit pursuant to Section 28-4-3(d)(2) of the Zoning Ordinance for the disturbance to the wetland buffer for the construction of a driveway. The Conservation Commission recommended approval for the Conditional Use Permit for disturbance of the wetland buffer where the disturbance is necessary to allow for construction of a driveway to access buildable land.

A waiver of the plat scale has been requested at a 1" = 300' scale. She reported the intent is to reduce the number of sheets to a manageable size given the large size of the property.

Chris Bofinger, surveyor of record, was present to answer questions on behalf of the applicant.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 8:36 PM.

Deliberations and Action on Application

Mr. Merrill moved that the Board grant a waiver for plans submitted showing a scale of 1"=300' for the remainder of the property on the subdivision plan. Mr. McGonagle seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

Ms. Dolcino moved that the Board grant a Conditional Use Permit pursuant to Section 28-4-3(d)(2) of the Zoning Ordinance for the disturbance to the wetland buffer for the construction of a driveway. Mr. Kenison seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

Mr. McGonagle moved approval subject to the following conditions:

1. Prior to the issuance of a certificate of approval applicant shall revise the site plan drawings to address the minor corrections and omissions noted by City Planning and Engineering staff.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State permit shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Environmental Services subdivision approval for on-site septic systems.
3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement document, 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. Deed for new Conservation Easement
4. 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.
5. Prior to the start of construction the following local approvals and permits shall be obtained and copies provided to the Planning Division:
  - a. Driveway Permit from the Engineering Division
6. 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

Mr. Kenison seconded. Motion carried with Ms. McClure abstaining from discussion and vote.

6. Application by **Susan Taylor** for approval of a subdivision of property on **Shaker Road**. (#2006-04)

#### Determination of Completeness

Mr. Pollock reported this application was complete and ready for public hearing.

Mr. Kenison moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

#### Public Hearing

Mr. Pollock explained this proposal to subdivide an existing parcel into two lots. Proposed Lot A will have an area of 6.78 acres and the remaining Lot B will have an area of 4.34 acres. A portion of the proposed driveway over Lot A will be a common private drive to serve proposed Lot B. The common private drive is required to be paved, 22 feet in width with a hammerhead turnaround, and have a grade not to exceed 10%. The minimum contiguous useable area rectangle for Lot A contains some 15% slope which is not acceptable pursuant to Section 9.03(3)(b)(i) of the Subdivision Regulations.

Mark Sargent from Richard D. Bartlett & Associates LLC was present to answer questions on behalf of the applicant.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 8:41 PM.

#### Deliberations and Action on Application

Mr. Merrill approval subject to the following 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, the following State permit shall be obtained and copies provided to the Planning Division:

- a. NH Department of Environmental Services, Water Division, subdivision approval for on-site septic systems.
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.
4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following legal document, 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. An agreement to convey an easement for the benefit of Lot B for the common driveway and a portion of the private driveway to pass over and through Lot A in order to provide access to Lot B.
5. Traffic, recreation and school impact fees shall be assessed for any construction on the new lot contained within this 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. Transportation Facilities - Single Family Residence

Ms. Dolcino seconded. Motion carried.

7. Application by **Vinewood Development Co. LLC** for approval of a subdivision of property at **28 Thayer Pond Road. (#2006-01)**

#### Determination of Completeness

Ms. Seifried reported this application was complete and ready for public hearing.

Mr. Merrill moved and Ms. Meyer seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

#### Public Hearing

Ms. Seifried explained this proposal to combine two existing parcels and create two lots from the resulting parcel with frontage for both on Thayer Pond Road. The existing house will be located on the larger lot. A waiver of the plat scale has been requested at a 1" = 20' scale. She explained that areas of 15% slope on Lot 2 were created by fill for the existing garage and driveway on Lot 1. The applicant is removing the steep slope with

the removal of the garage and a portion of the existing driveway. She reported steep slopes are proposed to be regraded to under 10% grade to make a more buildable lot.

Jacques Belanger, surveyor of record, was present on behalf of the applicant to answer questions from the Board.

Priscilla Kimball, abutter on the corner of Thayer Pond Road and Dwinell Drive, reported they would be most immediately, dramatically, and negatively impacted by this subdivision. She expressed concerns related to the proposed driveway and to drainage. The proposed driveway is very close to their property line. This is a steep hill and they are concerned that a driver attempting to turn into the driveway will slide onto her property or into the stone wall that is the property line between these two lots. The other issue is drainage. In the twenty years they have lived in the house, there have been no issues in terms of damage to the property or water in their basement but her concern is that trees and ground cover will need to be removed for the construction. They are concerned about what this will do for runoff and the impact to their property if drainage is not handled properly.

Mr. Belanger explained they have not prepared a drainage plan or grading plan because they did not realize this would be an issue but they would deal with runoff as best they could.

Mr. Swope asked how far the proposed driveway will be from the property line and Mr. Belanger reported it will be a little over twenty feet. It cannot be moved much because there is a utility pole in the way.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 8:51 PM.

#### Deliberations and Action on Application

Mr. McGonagle asked if the Planning Board could ask for a drainage plan and Mr. Woodward responded that it would be appropriate, given the testimony.

Mr. McGonagle moved to recess the hearing with the expectation that a drainage plan would be submitted for review by the City's Engineering Department. Mr. Merrill seconded. Motion carried.

8. Application by **Thomas R. Watson, Executor of the Estate of Mary H. Watson**, for approval of a subdivision of property at **178 North State Street and 6 Curtice Avenue.** (#2006-06)

#### Determination of Completeness

Mr. Pollock reported this application was complete and ready for public hearing.

Mr. Kenison moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

### Public Hearing

Mr. Pollock explained this proposal to reconfigure property located on the east side of North State Street and the south side of Curtice Avenue. It consists of two non-conforming lots with buildings located thereon that are also non-conforming with regard to yard setbacks. The applicant has received a variance from the Zoning Board of Adjustment that will allow for a reconfiguration of these non-conforming lots such that the property line which divides the two lots will not pass through a building.

Mark Sargent from Richard D. Bartlett & Associates LLC was present to answer questions on behalf of the applicant.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 9:00 PM.

### Deliberations and Action on Application

Mr. McGonagle moved approval subject to the following 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. Kenison seconded. Motion carried.

### Major Subdivision

9. Application by **Juniper Fells LLC** for preliminary approval of a cluster subdivision of property on **Snow Pond Road and Shaker Road.** (#2005-83)

### Public Hearing

Mr. Pollock explained this proposal to subdivide a 28.95 acre lot at the northwest corner of Snow Pond Road and Shaker Road into a 23.85 acre lot from which a five-lot cluster development is proposed on a new cul-de-sac. The cluster development will have 14.33 acres of open space. The balance of 5.09 acres is to be attached to Phase 3 to provide legal frontage until Phase 3 is ready to be recorded, at which time the lot will be transferred to the Conservation Commission for open space purposes. The proposed open space parcel cannot be linked to the conservation land previously conveyed to the City because the two are not contiguous. The lot lines need to be rearranged to create contiguity. The plans as submitted show that the sight distances will be adequate at the intersection of Shaker Road and the proposed cul-de-sac.

Joseph Wichert, surveyor of record, was present on behalf of the applicant to answer questions from the Board.

Ms. Meyer asked how the open space will be connected and Mr. Wichert responded that about 19 acres of open space will eventually be annexed to the conservation land created in Phase 1 of this project.

There was no one wishing to speak for or against this application and the Vice Chair declared the hearing closed at 9:20 PM.

#### Deliberations and Action on Application

Mr. Merrill moved to table action on this application to allow the City Engineering Division time to review the most recent revised plans and provide comments and Ms. McClure seconded. Motion carried.

#### Site Plan

10. Application by **Concord Hospital** for a site plan for property at **250 Pleasant Street**. (#2006-11)

#### Determination of Completeness

Mr. Henninger reported this application was complete and ready for public hearing.

Mr. Kenison moved and Mr. McGonagle seconded that the Planning Board determine this application to be complete and proceed to hold a public hearing. Motion carried.

#### Public Hearing

Mr. Henninger explained this proposal to construct two additional floors on the east wing of Concord Hospital now under construction. The two additional floors will add 50,630 square feet of building area to the campus. No modifications to the site are proposed. A Conditional Use Permit pursuant to Section 28-4-1 Dimensional Standards (f) Maximum Height of Buildings and Structures has been requested to allow for a rooftop mechanical penthouse structure. An 85-foot maximum height is being requested where 75 feet is allowed by right. The penthouse is designed to enclose and screen rooftop mechanical equipment.

He reported that the applicant has represented that there will be no increase in the number of hospital beds proposed. The new floors will include 40 new single patient rooms or 40 beds. The hospital is not proposing to increase the number of patient beds from the previously approved 228 beds by converting at least the same number of existing double rooms to single patient rooms in the hospital. The previously approved addition added 24 beds to reach the 228 total. The prior approval added an additional 115,700 square feet of new hospital space along with a free standing maintenance building in the service court to the north of the hospital containing 1,600 square feet. An additional 28,000 square feet of existing hospital space is being renovated simultaneously. Parking for the expanded facility is being accommodated by the new parking structure on Lot F which is now operational.

He reported that Planning staff has requested that the applicant submit details for the proposed signs shown for the ambulance entrance, emergency entrance and visitor entrance. These are replacement signs but may need Zoning Board action. Addressing the signs at this time would avoid another trip to the Planning Board for this addition.

He reported that the Architectural Design Review Committee had reviewed the site and building plans and recommended approval as submitted including the three signs shown on the elevations.

He reported that the applicant's petition meets the terms of Section 28-4-1 (f)(3) Dimensional Standards for appurtenant structures exceeding the district height limitations. The penthouse structures are integrated into the overall design of the building, are used to visually screen and control noise of the building's mechanical equipment, and are not designed for human occupancy. The penthouse structures on the east addition will further act to screen existing roof top equipment on the main building from the residential area to the east.

Mr. Merrill asked if every effort had been taken to do noise abatement. Mr. Henninger responded that a noise study has not been submitted. A study is requested if there is an issue that needs to be resolved. Also, the penthouse will actually screen the rooftop mechanicals and provide some noise mitigation. Mr. Merrill asked about light from this facility and Mr. Henninger responded that there will be no additional exterior lights for this plan.

Mr. Merrill also asked about the sanitary sewer system as it leaves the hospital and asked whether the flow rates were determined by the number of beds or the number of fixtures. Mr. Henninger responded that it was based on the number of beds and they are not adding to the current loads.

Raymond Gerbi and Michael Green were present from Concord Hospital. Mr. Green explained that if they had known a year ago what they know today, they would have included these two floors with their expansion proposal last year. They have since realized the disruption to the campus and the significant costs of constructing the additional two floors as a separate construction project. They have also learned of the need for more private rooms. It is not their intention to operate more beds than they have identified. They are licensed for 295 beds. The volume of activity is variable based on conditions beyond their control. If they have a need because of an epidemic, they will not have time to return to the Planning Board for permission to exceed 228 beds. He asked that they not be limited to that by the special condition as proposed by staff.

Mr. Gerbi suggested that if they see the need for an increase in beds in an emergency situation, they be given the ability to work with the Code Administrator to work it out, since there would be no site plan change or change to the exterior of the building.

Mr. Green emphasized that they are sensitive to their residential neighbors and understand that they need to minimize their impact on their neighbors. And they will continue to do whatever they can to mitigate those concerns.

Jan and Mark Carney spoke in favor of adding private rooms at the hospital. It is so critical to have privacy at the hospital. They also felt that current financing of this project makes more sense than waiting a few years. Now would be the time to make this a top rated facility in the community.

There was no one else wishing to speak for or against this application and the Vice Chair declared the hearing closed at 9:55 PM.

Deliberations and Action on Application

Ms. Meyer moved approval subject to the conditions recommended in the staff's report and asked City staff and the hospital to look at long-term traffic problems in the neighborhood and give the Planning Board some insight into the future.

Mr. McGonagle recommended that there be language in the approval that says the Planning Board has no problem going to the Code Administrator on an emergency basis for any beds over 228 but when the time comes that they want to increase the number of beds on a permanent basis over 228, the Board should be allowed to review that plan at that time.

Ms. Foss suggested determining the capacity of the current infrastructure and establishing a threshold over which the hospital would need to return for approval for expansion of services, not necessarily structures.

Mr. Henninger suggested asking the hospital to do a projection of growth and then evaluate circulation on Pleasant Street and the hospital campus after construction of Langley Parkway, and then evaluate what would need to be done to mitigate traffic. This would replace the proposed special condition.

Ms. Dolcino felt it would be irresponsible for the Planning Board to approve this without restricting the number of beds.

Mr. Kenison moved to amend the special condition as presently drafted and rather than focus on the number of beds, maintain a condition that the hospital will conduct a traffic study on the entire use of the campus premised on post Langley Parkway construction, after which the results will be reviewed by both the City and the hospital.

Mr. Roberge was recognized and mentioned that there is an item in the CIP to look at traffic two years from now to determine modifications necessary after the construction of Langley Parkway.

The amendment carried, 7-1, with Mr. McGonagle voting against.

Mr. Kenison moved and Ms. Meyer seconded that the Planning Board take the following actions:

Grant Architectural Design Review approval for the East wing 5<sup>th</sup> and 6<sup>th</sup> floor addition for Concord Hospital at 250 Pleasant Street as proposed by CRHCC. This approval does not include the proposed signs shown for the ambulance entrance, emergency entrance and visitor entrance.

Grant a Conditional Use Permit pursuant to Section 28-4-1(f)(3) Maximum Height of Buildings and Structures for the rooftop mechanical penthouse structures to reach a maximum height of 85 feet for the East wing 5<sup>th</sup> and 6<sup>th</sup> floor addition for Concord Hospital at 250 Pleasant Street as proposed by CRHCC.

Grant conditional Site Plan approval for the East wing 5<sup>th</sup> and 6<sup>th</sup> floor addition for Concord Hospital at 250 Pleasant Street as proposed by CRHCC subject to the following special condition:

1. Capitol Region Healthcare Corporation (CRHC) shall undertake a traffic study based on a ten year projection of growth and activity levels on the hospital campus along with projected background growth. The analysis shall be completed and submitted to the Planning Board for review and comment within one year of the date of approval. The study will assume Langley Parkway from Clinton Street will be complete and will address the projected traffic volumes on Langley Parkway from the northern hospital entrance to Clinton Street, as well as along Pleasant Street from Langley Parkway easterly to South Fruit Street including the intersection of Pleasant/Warren/South Fruit and North Fruit Streets. Said study shall identify any improvements needed to maintain acceptable levels of service on Langley Parkway, Pleasant Street, the intersection of Pleasant and Clinton Streets, the intersection of Pleasant/Warren/South Fruit and North Fruit Streets, the intersection of Clinton Street and Langley Parkway, and the entrances to the CRHCC campus from Langley Parkway and Pleasant Street.

Motion carried.

## REGULAR MEETING

### Minutes

Ms. McClure moved approval of the minutes of the meetings of December 21, 2005, January 4, 2006, and January 11, 2006 as submitted. Ms. Foss seconded. Motion carried.

## CITY COUNCIL REFERRALS

3. Consideration of a Request of Attorney William Hall on behalf of Krug Management LLC for a license to allow a **handicapped access ramp** within the right-of-way of **Hammond Street**.

Mr. Woodward explained that a request has been made by Attorney William Hall on behalf of Krug Management LLC for a license to allow a handicapped access ramp within the right-of-way of Hammond Street.

He explained that Krug Management owns the property at 24 Hammond Street on which a concrete handicapped access ramp has been constructed in the front yard leading from the front door to the street. The ramp has encroached into the right-of-way of Hammond Street to the extent of 11.3 feet, and they are now seeking a license to maintain the ramp within the right-of-way. The portion of the ramp within the right-of-way is located in the area normally devoted to a sidewalk, but there is no sidewalk on Hammond Street at the present time. A ramp can be accommodated on the premises and in fact would lead from the front of the building to the parking lot in the rear of the building.

The City Engineer has noted that the ramp can be constructed on-site which will better serve handicapped access to the parking on-site, and further recommends that the license be denied and the ramp be removed from the right-of-way.

In answer to a question by the Board, Mr. Woodward noted that the building is a residence in the process of being converted to an office use.

Mr. McGonagle moved to recommend that the City Council deny the request for the license for the handicapped ramp and order that the encroachment be removed from the right-of-way of Hammond Street. Ms. Meyer seconded. Motion carried.

### NEW BUSINESS

4. Consideration of a report of C. Hamilton Rice, Code Administrator, relative to a proposed amendment to the Zoning Ordinance concerning **Electronic Message Center Signs**.

Mr. Woodward explained an issue has emerged from case law relative to signs with electronically changeable messages. The City's ordinance has for many years limited such signs to those that indicate time and temperature which were seen as a public service unrelated to any commercial message about the business to which the sign is accessory. However, in pending litigation, this is seen as limiting the right to free speech, and the City has to either prohibit all electronic message signs including time and temperature signs or otherwise eliminate the restriction on the messages provided by such signs. Also, as indicated by the Code Administrator, if electronic message center signs are to be allowed, the focus of regulatory measures becomes the frequency with which such signs are allowed to change message. He noted that the restrictions vary from a change every few seconds to one change per day.

He explained that the Code Administrator has provided a draft amendment to the Zoning Ordinance to permit the so-called electronic message center (EMC) signs and has set forth language relative to where such signs would be allowed, what sizes of such signs would be permitted, and proposes a change of message of no more than once every hour. He also proposes that all applications for EMC signs be subject to Architectural Design Review.

A basic issue is whether these signs should be limited to messages comprised only of words or whether symbols and graphics should be allowed. Obviously, the traditional changeable copy signs have consisted of individually affixed letters to construct words and messages, but the electronic signs can portray logos and pictures, with the important feature being the frequency of change. A frequency of change of no more than one per hour will certainly eliminate the illusion of motion which the Ordinance has attempted to restrict; however, it raises the issue of enforceability. The fewer times per day that changes are allowed, the easier it will be to detect violations. The variance that was granted to the Capital Center for the Arts for its marquee was limited to four changes per day at specified intervals. This has seemed to work reasonably.

He reported that another issue that is important for the Board to consider is the location of such signs. These are most commonly employed by retail and commercial uses and it seems consistent to allow the same in commercial districts. However, the proposed

ordinance also permits the EMC signs in Urban Transitional (UT) Districts and the Opportunity Corridor Performance (OCP) District. The UT District is a mixed use district generally located between commercial districts and residential districts wherein limited, small commercial and service uses are allowed by Special Exception, along with high density residential uses. In recognition of this mixture of uses adjacent to residential districts, internally illuminated signs are prohibited in the UT District. Therefore, it seems appropriate not to allow EMC signs in UT Districts. The OCP District allows retail and commercial uses only in certain portions of the District including Penacook Village and easterly of Storrs Street between Loudon Road and Water Street. It seems appropriate that the EMC signs be limited to those portions of the OCP District wherein such commercial uses are permitted

A last comment relates to the wording of proposed Section 28-6-9(f)(3) which indicates that the EMC's "shall be static for a period of one (1) hour or longer". While the number of hours can be adjusted, the text could be more appropriately presented as, "shall be static for periods of at least \_\_ hours" or "shall not be changed any more often than once in any \_\_ hour period and no sooner than \_\_ hours from the previous change".

It is important for the City to adopt the proposed Ordinance or some variation thereof, or to otherwise ban all electronic message signs including those that portray time and temperature; otherwise, the City will likely not prevail in any litigation, and such has already been filed and scheduled for hearing. The proposed Ordinance does appear to be a reasonable approach to allow EMC signs in a controlled manner that allows commercial uses in the City to avail themselves of the technology while, by virtue of the restriction on the frequency of change, not rendering Concord's visual image and community character to be that of a potential Times Square.

The Board debated what would constitute an appropriate time interval including the option of once per day. A question was asked about how the interval would affect the time and temperature signs which obviously change with greater frequency, and it was thought that there could be a specific provision in the Ordinance addressing time and temperature signs.

Members expressed concerns regarding size and illumination.

The Board debated the idea of recommending a ban on all electronic message signs including those that portray time and temperature, or recommending the adoption of the proposed ordinance with the changes as recommended by the Clerk, or a modified version of the same. They concluded that the current regulations had served the City well for many years in a manner satisfactory to them, and they did not want to recommend changes to these regulations solely due to a predisposition as to the outcome of current litigation.

After lengthy discussion Ms. McClure moved to recommend to the City Council that the sign regulations as contained in the current Zoning Ordinance be retained and not otherwise be amended. Ms. Meyer seconded. Motion carried.

5. Annual Review of the Fee Schedule for the **Public Capital Facilities Impact Fee Ordinance**.

Mr. Woodward explained that the current Public Capital Facilities Impact Fee Ordinance was adopted in June 2001, and contains a requirement in Section 29.2-1-2(b)(10) that the impact fee tables "shall be reviewed periodically by the Planning Board and shall be revised by the City Council whenever appropriate." It requires a report by the Board's Clerk each year to the City Council "with respect to increases in the estimated costs to construct public capital facilities" including recommendations "for appropriate adjustments to the impact fee tables." Specific sources of cost data and information for updating the fees are cited in the ordinance.

He presented suggested new fee schedules for the School, Recreation, and Transportation Facilities Impact Fees. These schedules were developed using the data source noted in the ordinance and the indicated inflationary increase since the base year fees were adopted.

Ms. McClure moved that the Planning Board recommend to the City Council the amendment of the impact fee tables for Chapter 29.2, Public Capital Facilities Impact Fee Ordinance, to reflect an adjusted schedule of fees. Mr. McGonagle seconded. Motion carried.

Ms. McClure suggested that the City Council may find it useful to have a comparison of what the new rates would have meant to development activity in the past year.

#### OLD BUSINESS

6. Consideration of request by **Prompto** for a one-year **extension of approval** of a site plan of property at 131 South Main Street.

Mr. Henninger explained this request for a one-year extension of the Board's approval of a site plan for property at 131 South Main Street as a result of the length of time it has taken to complete engineering for the left turn into the site as requested by the Planning Board.

Mr. McGonagle moved approval of a one-year extension of the Board's approval of a Conditional Use Permit for the proposed Prompto Oil Change at 131 South Main Street to allow the proposed use (J.4. Automotive Repair Service and Towing, excluding body work) to be established pursuant to Section 28-2-4: Uses Permitted by Conditional Use Permit; of a Conditional Use Permit to allow disturbances to Buffers to Bluffs pursuant to Section 28-4-4(d) to allow for the construction of a parking lot, and the placement of a dumpster pad and above ground propane tank; of a conditional Site Plan Approval of an application by Exxon Mobil Corporation for the Prompto Oil Change Facility at 131 South Main Street; for the conditional approval of the proposed design of the site and building plans under terms of Section 28-9-4(f), Architectural Design Review, of the City of Concord Zoning Ordinance. Mr. Kenison seconded. Motion carried.

7. Progress report regarding discussions on behalf of the **Sandra E. Ellison Heirs** for a **sidewalk connection** between Pond Place Lane and the corridor for the Northwest Bypass.

Mr. Woodward explained that the applicants had been in negotiations with abutters in order to gain public pedestrian access between the end of Pond Place Lane and the Northwest Bypass as discussed with the Planning Board in its approval of the subdivision application. He reported they had discovered a number of objections to the location including the uncertain status of the Northwest Bypass for pedestrian use, the uncertain nature of safety and maintenance obligations, a demand to eliminate or modify the existing right-of-way between 4 Pond Place Lane and 6 Pond Place Lane, and a basic hesitation to convey land rights in favor of the City. Consequently, the developer intended to move forward with construction of a pedestrian sidewalk between Samuel Drive and Pond Place Lane.

No action was necessary at this time by the Planning Board.

8. Status Report on the **Master Planning** Process.

Mr. Woodward reported that Planning Decisions, Inc. is assisting the Planning Division in developing format and text for a draft Master Plan as well as an executive summary.

The most important effort that is now in process is the transportation analysis and recommendations that are being prepared based on the land use decisions. Pending the receipt and review of this by the Board, this may be the focus of another workshop or hearing by the Board prior to finalizing a draft plan for public circulation and hearings.

No action was necessary at this time by the Planning Board.

- Further consideration of proposed map for **rezoning** of properties at **42, 44, 46 and 52 Shawmut Street**

Mr. Woodward reported that City staff had prepared a revised map showing rezoning lines as discussed at the Board's hearing on January 11, 2006. Robert Nichols had reviewed the maps and had since submitted a request that the map not be presented for final action this evening. He reported Mr. Nichols believed the lines following the top of bluff are not accurate or what he felt the Board wanted. Mr. Nichols believed the line should actually follow the top of the bluff line which is south of the proposed entrance to his prospective development opposite Randolph Road and should then connect to the one other bluff line in the far rear of the property.. Mr. Nichols has offered to submit to the Board the exact survey point map his engineer had used to determine the bluff and which was used by the Code Administrator to determine the top of the bluffs.

Ms. McClure moved and Mr. Kenison seconded that the Planning Board delay review of the proposed rezoning map to allow Mr. Nichols the opportunity to submit more accurate information on which to base the proposed line. Motion carried.

**OTHER BUSINESS**

- Consideration of date and format for a **recessed meeting**

Mr. Swope suggesting directing staff to distribute the applications between two meetings that will be necessary again in February.

The Board agreed to return to its schedule of recessing to the Wednesday following the regular meeting, which in this case would be February 22, 2006.

There was no further business to come before the Board and the meeting adjourned at 11:08 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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