

A recessed meeting of the City Planning Board was held on May 31, 2006 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, McClure, McGonagle, Merrill, and Swope. Messrs. Woodward, Henninger and Pollock, and Ms. Seifried and Ms. Osgood of the City Planning Division were also present, as were Ms. Aibel, Associate Engineer, and Mr. McGinley, Fire Marshal.

At 7:05 PM a quorum was present and the Chair called the meeting to order.

## APPLICATIONS

### Major Subdivision

1. Application by **Jeannette M. Cate, Lucille P. Bollinger Trust, Robert & Lucille Bollinger Trustees, and Mark and Carolyn Blasko** for preliminary approval of a cluster subdivision of property on **Portsmouth Street and Curtisville Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-4-3(d) of the Zoning Ordinance, Conditional Use Permit Required for Certain Disturbance of Wetland Buffers. (#2005-10)

### Recessed Public Hearing

Mr. Henninger explained that a court order required the public hearing to be opened on this project. The Planning Board opened the hearing on February 15, 2006 and continued the hearing until March 15, 2006. At the March 15, 2006 hearing the Planning Board noted that the Code Administrator had ruled the application did not have the required contiguous buildable open space as called for in Article 28-4-7(g)(1) of the Zoning Ordinance. The existing plan did not have a contiguous rectangle of proposed buildable open space with a minimum horizontal dimension of 1650 feet. The Planning Board continued the hearing until the applicants could either revise their plan or seek relief from either the Zoning Board of Adjustment or the City Council through an ordinance amendment. The project plans are now at a point where the application could have been determined complete.

He reported that the applicant received a variance from the Zoning Board of Adjustment, by a 3-2 vote, to Cluster Development Design Standards, Article 28-4-7(g), Open Space Standards, Section (1), Minimum Common Open Space, to waive the dimensional requirement that, "where such land (buildable, common open space) exceeds 1 acre in area, the minimum horizontal dimensions of such land shall be increased by 50 feet for each additional acre, or part thereof."

The ZBA did not waive any other requirement of Cluster Development Design Standards, Article 28-4-7(g), Open Space Standards, Section (1), Minimum Common Open Space, especially "A minimum of one-half ( 1/2) of the common open space that is comprised of buildable land, shall be contiguous." The applicant has shown a 33. 6 acre contiguous area of buildable open space. However, the buildable open space is

broken up by large areas of steep slope and wetlands and is only contiguous in about 15 locations with dimensions of between five feet and 20 feet in width. The largest contiguous rectangular block of buildable open space is approximately four acres.

He reported that the Code Administrator has ruled that the land under power line rights-of-way can be counted as part of the project's open space.

Mr. Henninger explained this proposal is to create a cluster subdivision of 87 lots in six phases on 271.52 acres in the Broken Ground area with access from both Curtisville Road and Portsmouth Street. Access will be from the east end of Curtisville Road and from Portsmouth Street just north of the I-393 underpass. The applicant is also reconfiguring an existing 3.99 acre parcel at the end of Curtisville Road to allow for access from Whispering Way. That new lot will contain 3.20 acres. They propose to construct approximately 12,475 feet of new public street and to set aside 165.17 acres (60.8%) of the property as open space.

He reported they are requesting a Conditional Use Permit for proposed wetland buffer impacts at 12 locations amounting to 99,719 square feet or 2.29 acres of disturbance for the construction of the main project road (Whispering Way). The plans at a number of locations do not correctly show the full extent of the disturbance. It is likely the corrections noted above will add to the amount of wetland buffer disturbance by 3,000 to 5,000 square feet.

Mr. Henninger reported that since the Board's hearing in March, City staff has been advised by Unitol that a transmission line easement of 2.7 acres has been conveyed to them over a portion of the property. This easement makes proposed lots 86 and 87 unbuildable. Lot 87 needs to be removed from the plan and added to Open Space Area A or F, and Lot 86 needs to be removed from the plan and added to Open Space Area B or E. This conveyance also reduces the allowable project density by one unit.

He reported that the Fire Marshal has requested the provision of residential sprinkler systems in this subdivision. The City Engineer has found the applicant's proposed drainage design unacceptable in regard to both the rate of off-site flow and the quantity of off-site flow.

He reported that the New Hampshire Division of Historical Resources has recommended the applicant contract with a qualified professional archaeologist to assess the archaeological sensitivity of the site. A Phase I-A Archaeological Survey was completed in February of 2006 and a copy provided to the City. Two historic stone foundations were encountered in the project area. A Phase I-B survey is recommended for the Eastman/Frost/Cate farmstead. The report does not indicate if the two sites are adversely impacted by the proposed development.

Mr. Henninger reported that many of the lots are well in excess of the required minimum lot size; the majority are over 40,000 square feet and some as large as 70,000 square feet. A number of the lots can be reduced in size so that all the wetlands located on the property and some of the wetland buffers can be incorporated into the abutting wetland parcels without reducing the developable portions of the lots. Two lots, lots 10

and 86, are partially within the perimeter buffer with the minimum useable area wedged between the front setback and the required perimeter buffer. The Board has discouraged individual lots from encroaching into the perimeter buffer. The applicant has proposed a no-disturb easement on the lots in question. Lot 86 is no longer a buildable lot due to the conveyance of the power line right-of-way.

He reported that a Fiscal Impact Study has been prepared for this project. As expected the project will have a negative fiscal impact on the Concord School District. The Fiscal Impact Study does not contain enough information to determine what the fiscal impact will be on City services. No additional information has been requested from the applicant due to the amount of City staff time that would be required to provide an accurate assessment of the impacts on Police, Fire and EMS, Library, Recreation, Street and Drainage Improvements, and General Government for this development.

The applicant has requested a waiver of the Board's Regulations for sidewalks along the streets within this development. 22 lots on the northerly end of the development lie within a one-mile walking distance from Broken Ground Elementary School if sidewalks were available. The rest of the development is within two miles of the proposed middle school site east of Broken Ground Elementary School. To provide walking access to the nearby elementary and future middle school, sidewalks would need to be provided at least along Whispering Way (the main project access road) and along Curtisville Road for students. The applicant has argued that the requirement for sidewalks has been incorrectly interpreted in regard to this application. The City Planner has advised that the requirement in Section 9.06 of the Subdivision Ordinance is based on density districts. Density districts are defined by minimum lot size within the Zoning Ordinance. Section 28-4-7(e)(2) establishes a minimum lot size of 30,000 square feet for a Cluster Subdivision in the RO District. This project would then be classified as being in a medium density district by Section 6.02 Definitions of the Subdivision Regulations. A sidewalk is required on one side of each local public street and may be required on cul-de-sacs. This has been the City's consistent interpretation. The Board has granted waivers for developments where sidewalk connections to the proposed development are not planned. The applicants have indicated that a trail system is proposed, but this is not suitable for all-weather use by pedestrians.

City staff is recommending that a sidewalk be constructed along one side of Whispering Way from Portsmouth Street to Curtisville Road, a distance of 6,487 feet. The Planning Division has been supportive of a waiver request to not require sidewalks on the cul-de-sacs and the main loop road, amounting to a distance of 5,988 feet. City staff is recommending the installation of sidewalks along Whispering Way and along gaps on Curtisville Road and Portsmouth Street northwest of the project entrance as partial mitigation for the project's impacts on traffic in the area. The applicant has indicated that the impact fee to be paid for the development addresses the requirement for sidewalks in the community. Impact Fees may only be assessed for improvements to arterial and collector roads which add capacity. Sidewalks added to arterial and collector roads in Concord have been consistently considered part of any major highway project and do provide greater trip making opportunities. Portsmouth Street is classified as an Urban Collector Street. Sidewalks constructed on Portsmouth Street would potentially be eligible for credit against the required Traffic Impact Fee for the

project. The applicant has advised that the sidewalk gaps are approximately 3,000 feet in length.

Mr. Henninger reported that the applicant has also requested a waiver to allow for a temporary dead end road in excess of 1000 feet for Whispering Way. The applicant has suggested a number of measures to ensure that the road is ultimately continued through to Curtisville Road and an emergency access is maintained through to Curtisville Road once the first units are occupied. Both the City Engineer and City Fire Marshal are recommending against this waiver.

He reported that the applicants have requested a waiver from the maximum block length standard contained in Section 9.04 (3)(g), Blocks, to have blocks in excess of 1,200 feet.

He reported that the project will increase traffic volumes on Curtisville Road, Portsmouth Street, Broken Ground Drive, and East Side Drive. The percentage range reflects the AM to PM peak hour differentials for the road way in question. The increase in Average Daily Trips is expected to be proportional.

He reported that a Wildlife Habitat Assessment Report was prepared for this development. The report characterizes the habitat losses to be associated with wetland habitats at the crossings and the general loss of forest habitat. The proposed mitigation amounts to the conveyance of conservation easements on the project open space, and the use of Best Management Practices during construction, the use of box culverts at wetland crossings for Whispering Way, and the minimization of tree clearing for lot development and road construction.

Mr. McGonagle asked if enough information had been provided to be certain that the private septic systems are appropriate, given the hydrology and the soil types in that area. Mr. Henninger responded that the applicants had provided the information but it had not been completely reviewed and NH Department of Environmental Services will also evaluate the information for their permits.

Mr. McGonagle asked about the City's experience with developments of this size and the number of septic systems proposed, and Mr. Henninger responded that Walker's Reserve had 25 lots and Bela Brook had 27 or so lots. This is a much larger project, maybe the largest ever in a rural area in the city.

Mr. Drypolcher had questions relative to the narrow strips of proposed open space and the size of those strips as well as the size of abutting proposed lots, and asked whether the lots could be reduced in size to increase open space.

Mr. Gross noted the staff report stated that the City Engineer has found the applicant's drainage plan to be unacceptable and asked if that was still true. Mr. Henninger responded that Engineering was still reviewing the drainage plan and providing comments to the applicant.

In answer to a question by Ms. McClure, Gail Page was recognized and provided colored maps showing slopes.

Ms. McClure felt the dimensional requirement in the Zoning Ordinance was put there for a reason, that being to preserve open space. The Zoning Board of Adjustment has granted a waiver on that dimension because it escalates too much as the property gets larger. It seemed to her that the Planning Board needed to consider that concept. She was not comfortable with just throwing out the dimension.

Mr. Henninger noted that the point was to have a large enough parcel of open space to allow it to be used as active open space.

Ms. Dolcino asked if staff had looked at what this project would look like if it had not been a cluster development and Mr. Woodward responded that it had been discussed with the applicants. The property would not necessarily be protected as open space if it was not a cluster. Mr. Henninger also responded that it would also probably mean a redesign of the road network that would have greater wetland impact. Home sites might also be spread out more but there would be fewer home sites. Mr. Woodward also pointed out that if this was approved as a standard subdivision, it would open up the possibility of further development of the Broken Ground.

Kurt Meisner and Jeffrey Brem were present on behalf of the applicants.

Mr. Brem reminded the Board that when they met with the Board in March of 2005, the Board had made recommendations relative to open space. He had spent a lot of time since then talking with the Conservation Commission, planning trails, and planning the open space component of the project. Trails are connecting some of the open space. A parking lot is being provided for members of the public to be able to access trails to the open space.

Mr. Meisner responded to the Board's questions regarding septic systems and explained Department of Environmental Services regulations. The State uses soils to determine suitability of the septic design. He explained they needed to juggle conflicting requirements.

Mr. Brem explained that the Unitil easement that Mr. Henninger referred to has been in process for a long time. The arrangement with Unitil is that this will be a temporary easement and once the plan gets recorded the lots will be deeded to Unitil. Unitil will then extinguish the easements in their entirety and deed easements to themselves more specifically for their needs, leaving more buildable area than shown on this plan. It is his understanding that they do not plan to develop those lots. The applicant is not planning to develop those lots, so effectively, Whispering Heights is 85 units plus the two lots to be conveyed to Unitil.

Mr. Brem indicated they will withdraw the request for a waiver to partially construct Whispering Way until Phase 2 and agreed to construct the entire road in Phase 1. He reported they are not asking for a waiver for the sidewalk along Whispering Way but will maintain the request for waiver for other streets in the development.

Mr. Brem also discussed off-site improvements and reported that they are working with staff on a resolution for Portsmouth Street. The Curtisville Road concept is fine but there are issues and they will continue to work with staff to resolve this off-site improvement design.

Kit Morgan, Chair of the Conservation Commission, discussed the wetland impacts of this project. He reported the Commission has taken two site walks but the proposed roads were not marked at the time of the visits. The Commission's concerns continue to be the areas of significant wetlands and buffers on the lots themselves. The experience the Commission has had with these subdivisions is that landowners, in spite of proper marking, tend to encroach on the wetland buffers. This has happened in several locations and that makes it a concern for this project. The Commission has not seen the Conditional Use Permit request for impact on the wetland buffer. The Commission also requested to intervene with Department of Environmental Services for the dredge and fill permit. They did meet with the applicant regarding open space land and felt it would make sense for the City to own the open space. The trail layout was also acceptable to the Commission.

Mr. Gross asked what Mr. Morgan expected maintenance responsibility would be for the trails and Mr. Morgan responded he expected it would be the City's responsibility. The public portion would be part of the City's trail system which is maintained by volunteers and he expected that would be the case in this instance.

Fran Philippe, East Side Drive resident, addressed the issue of contiguous buildable open space. She did not feel the development met the requirements of the Zoning Ordinance. This plan scatters open space widely. Most of the open space provided is not buildable, it is either wetland or steep slopes. There is hardly a parcel large enough to do anything with. She and her neighbors believe the Zoning Board of Adjustment made an error in granting relief from the open space dimension requirement. This does not look like a cluster development because the houses are not clustered together with a larger block of open space available.

She asked if this is the best plan for this property. One of the recommendations of the Conservation Commission was that the number of lots be significantly reduced to reduce the impact on wetlands now and in the future. She felt this development was a great threat to the environment and the Broken Ground, and she urged careful consideration of the development.

Gail Page explained the colored plan she had provided earlier in the meeting. She explained that she had learned that the Wetlands Bureau only regulates the impact on wetlands so it is important for the City to protect wetlands. She felt there were discrepancies in the wetlands and suggested that the applicant's wetland study be independently reviewed.

Steven Fox, Concord resident, felt this is a beautiful piece of undeveloped land. It fits in the City's Master Plan as a piece that should be preserved. He cited the community survey done for the Master Plan update in which it was noted that affordable housing is

needed in the city and he felt this proposal did not fit that need. The Broken Ground area should be preserved as undeveloped and completely as open space.

Mr. McGonagle asked Mr. Fox how the City should accomplish preservation of the Broken Ground. Mr. Fox suggested that the City could consider making an offer to purchase the land. He noted that in other instances recently the City has partnered with conservation interests and purchased those properties. The Broken Ground is just as important and should be acquired the same way. This particular parcel is the gateway to the rest of the Broken Ground.

Pat Black, Portsmouth Street resident, was not here to talk about open space. He felt this was a done deal. It was going to happen. It was obvious to him that the developers purchased this knowing that it did not comply with zoning regulations. He discussed the increased traffic over time in that area and the strain this will be to the school system.

Wendy Black, Portsmouth Street resident, discussed her life on Portsmouth Street. She reported she cannot pull out onto East Side Drive now. She was very concerned about water coming into her neighbor's basements. The new construction in that area will force all the water down to the existing neighborhoods. She mentioned all the wildlife she sees on the property that she fears will disappear. She does not think anybody has taken into account added traffic accidents and the change in quality of life in this neighborhood. This land does not compare to any other development. She feels this is not fair. She is particularly concerned about the additional traffic on Portsmouth Street.

Mr. McGonagle responded that the Planning Board understands the pressure that Portsmouth Street is under.

Claudia Ryan, Portsmouth Street resident, mentioned that ten years ago she was able to sit in her backyard in silence and that is not the case now. When she sees this plan she sees congestion. When she sees this plan, she sees Loudon Road. She would like to see the developers reduce the number of units.

Jen Evans, Mountain Road resident, has been following this because it is very important to her. She has lived in Concord for many years and has seen the growth that has taken place in the city and has seen the effect of developments on the community. Part of it is good but she has also seen the bad side. She has walked with children all through the Broken Ground. She is also very concerned that the city needs affordable housing and the houses in that area are not in the affordable housing price range. She would like to see the housing plans that the developer is proposing.

There was no one else wishing to speak and the Chair declared the hearing closed at 9:20 PM.

#### Deliberations and Action

Mr. McGonagle asked Mr. Henninger to explain the opinion presented by the Code Administrator regarding buildable area. Mr. Henninger responded that Mr. Rice had

determined that the property under the power lines could be used as part of the buildable area.

Mr. Drypolcher indicated that he would like to see the development less dense than proposed. He appreciated the testimony the Board had received but the City has not purchased this land and no rezoning was requested until this application.

Mr. McGonagle indicated he would like to see more detailed information regarding the traffic study and the City's review of their study, especially the total number of vehicles today versus the impacts on the various intersections.

Mr. Merrill discussed Portsmouth Street and indicated he also would like to see the impact of traffic on Portsmouth Street in particular. A lot of people now use Portsmouth Street to get to the mall from East Side Drive. He also was concerned about the density of this project as it relates to drainage. Drainage for this project will be key. The Board will need to be particularly concerned about protection of wetland buffers.

Ms. McClure asked if the City could develop a GIS map showing wetlands and steep slopes on this property. According to the map presented by the abutters, over a third of the property is encumbered by wetlands. Mr. Henninger responded that the City does not have wetland boundaries defined but he felt the Board could ask the developer to produce that type of map with the more precise information they already have at hand.

Mr. McClure did not see any effort to create a cluster that is commensurate with what is intended by the Zoning Ordinance. She sees a developer trying to maximize the number of lots they can get on their parcel. They are not complying with the intent of the Zoning Ordinance or the Master Plan. She encouraged staff to work more with the applicant to reduce density.

Ms. Dolcino asked that staff sketch out what a standard subdivision would look like on this parcel.

Mr. Brem was recognized and reported that they had worked on a plan for a standard subdivision and they could provide that for the Board. The road network would stay pretty much the same and the lots would take up more space. The houses would be spread out more with little or no open space. He feels the cluster plan is a better plan but he indicated he would provide the information for the Board's use.

Mr. Swope moved to table consideration of the application for subdivision approval and the request for a Conditional Use Permit to allow disturbances to wetland buffers to allow the applicants to address the following issues:

1. The applicant needs to satisfactorily address the significant number of staff comments on the application. The Planning Board expectation is that this issue will be satisfactorily resolved and staff review complete before this returns for action by the Board.

2. The submittal of a colored exhibit plan that clearly shows the proposed lots, roads, steep slopes, wetlands, powerlines and buildable open space.
3. The submittal of a conventional subdivision plan (sketch plan) utilizing the proposed street layout plan.
4. The Board expressed concern that the proposed subdivision did not concentrate the proposed development area as was the intent of the Cluster Subdivision section of the Zoning Ordinance. The Board was also concerned about the density of the development and the narrowness of the linkages between the larger open space areas.
5. The Board noted staff's comment that the lots are larger than the minimum and asked the applicant to consider reducing the development lots to remove the wetlands and wetland buffers from the proposed property wherever possible.
6. The Board received testimony from abutters expressing concern about traffic impacts on Portsmouth Street and the Board wishes to review traffic projections for that area.
7. The Board received testimony from the Chairman of the Conservation Commission that the proposed road crossings at wetlands need to be marked in the field for the Commission to evaluate the impacts.

Mr. McGonagle seconded. Motion carried.

The Planning Board noted that significant changes to the plans may result in the Board setting a new hearing to allow for additional public comment.

Board members acknowledged the applicant's acceptance of staff's recommendation for the proposed sidewalks along one side of Whispering Way, and one side of Portsmouth Street from Whispering Way to the current terminus of the sidewalk at the entrance to Cranmore Ridge. Members also acknowledged the applicant's intent to work with the City staff to include a sidewalk along one side of Curtisville Road with the proposed improvements from Whispering Way to Broken Ground School. The Board acknowledged to applicant's offer to improve the existing substandard section of Portsmouth Street from Whispering Way to Broken Ground school at a 22 foot wide cross section built to City specifications.

The Board acknowledged the applicant's partial withdrawal of the waiver request not to provide sidewalks (one side) along the internal project streets for Whispering Way. The waiver request still remains in effect for the other subdivision streets. The Board also acknowledged the applicant's withdrawal of a waiver requesting a temporary dead end road greater than 1000 feet in length.

### Minor Subdivision

2. Application by **James & Susan Sebold and Shawmut Holdings LLC** for approval of a resubdivision and subdivision of property at **263 & 265 South Street and 10 Heather Lane.** (#2006-23)

### Determination of Completeness

Mr. Pollock explained this proposal to reconfigure two existing lots. He reported this application was complete and ready to set for public hearing.

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

### Public Hearing

Mr. Woodward explained that the Board had granted conditional final approval in October of 2005 to a subdivision application by Douglas and Bonnie McNutt and Susan and James Sebold involving three existing lots. That subdivision created four new lots and two smaller lots for existing homes with frontages on South Street for a total of six lots.

He explained that the current application proposes to further reduce the lot size for the house at 265 South Street and to expand the lot area of one of the new lots at 10 Heather Lane such that the new lot will have frontage on both South Street and Heather Lane. Double frontage lots are prohibited under the Subdivision Regulations unless an easement is provided to prevent access through one of the frontages. The applicant has offered to provide the easement to prevent permanent access from South Street to the double frontage lot.

He reported that the applicant has been unsuccessful in exchanging property with an abutter on Goldenrod Lane in an attempt to gain frontage on Goldenrod Lane for an additional lot. The proposed lot configuration is designed to leave open future opportunities to secure the frontage on Goldenrod Lane to allow for another lot.

Greg Marceau was present as applicant and explained that one of the biggest issues with the lot is the topography. He has a buyer for the existing South Street home but he needs to retain access as a staging area for the construction of the new portion of Heather Lane. This subdivision application is driven by the construction of the new portion of Heather Lane.

There was no one else wishing to speak and the Chair declared the hearing closed at 10:26 PM.

Deliberations and Action

Mr. Gross moved 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 including the display of existing and proposed utility connections to both parcels.
2. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
  - a) A Deed of Easement prohibiting access to or egress from South Street to the proposed double-frontage lot (10 Heather Lane).
3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the plat for the McNutt/Sebold Subdivision (#2005-37) shall be recorded at the Merrimack County Registry of Deeds.

Mr. McGonagle seconded. Motion carried, 6-1, with Ms. McClure voting against.

Architectural Design Review

3. 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.
  - **Kaleidoscope** at 8 South Main Street
  - **Capital Kitchen & Bath Inc.** at 58 Hall Street
  - **Comcast** at 54 Regional Street
  - **Contours Express** at 341 Loudon Road (2 signs)
  - **CMV Home Loans** at 87 South Main Street
  - **Prudential Verani Realty** at 87 South Main Street (2 signs)
  - **Dan's Floor Store** at 22 Pleasant Street (2 signs)
  - **L. L. Bean Outlet** at 55 Fort Eddy Road (4 signs)
  - **Lotions N Potions** at 25 North Main Street
  - **New Hampshire Hospital Association** at 125 Airport Road
  - **New Hampshire Retirement** at 52-56 Regional Drive (2 signs)
  - **Pleasant View Retirement** at 227 Pleasant Street (2 signs)

Public Hearings

The Chair opened the hearings on all of the signs.

There was no one present to speak on any of the signs and the Chair declared the hearings closed at 10:29 PM.

#### Deliberations and Action

Mr. Gross moved approval of all the signs with the exception of Pleasant View Retirement subject to the conditions of the Design Review Committee. Mr. Merrill seconded. Motion carried.

4. Site and building plans related to an application by **Krug Management LLC** at **24 Hammond Street**.

#### Public Hearing

Ms. Seifried explained this proposal to convert an existing residential building to general office space and to construct a 12-space parking lot. She reported that the Planning Board granted conditional site plan approval at the April 19, 2006 meeting but tabled action on Architectural Design Review to allow the applicant to submit landscaping plans and a design for the new handicap ramp. She reported that the applicant has removed the concrete pad and handicap ramp that encroaches into the City's right-of-way at the front of the building.

She reported that the Design Review Committee found the building and landscape plans to be acceptable as submitted with exception of adding additional landscaping around the new accessible walkway. The Committee further recommended that the ramp be constructed on grade and be curved away from the building

Attorney William Hall and Richard Askins from Krug Management were present to answer questions from the Board.

There was no one else wishing to speak and the Chair declared the hearing closed at 10:31 PM.

#### Deliberations and Action

Mr. Swope moved approval under Architectural Design Review subject to the following conditions:

1. Landscaping shall be added between the handicapped ramp and the driveway.
2. The handicapped ramp shall curve away from the building.
3. A lawn shall be re-established in the gravel area in the front yard setback.

Mr. Gross seconded. Motion carried.

## REGULAR MEETING

### Annual Organizational Meeting

- A. Appointment of representative to the Central New Hampshire Regional Planning Commission

Mr. Swope moved and Mr. McGonagle seconded that Stephen Merrill be appointed the Board's representative to the Central New Hampshire Regional Planning Commission. Motion carried.

- B. Appointment of Design Review Committee member:

- James Doherty III

Ms. McClure moved and Mr. McGonagle seconded that James Doherty III be appointed to a three-year term as a new member of the Architectural Design Review Committee. Motion carried.

## NEW BUSINESS

### Item #8. Consideration of a Petition to Layout **Langley Parkway**

Mr. Woodward explained that the City Council had scheduled a hearing on a petition for layout of the Parkway as submitted by the City Engineer. He explained that Langley Parkway has been under study for many years and the Planning Board has previously reviewed plans for this section of the Parkway. The current location varies slightly from the prior plans and the City Engineer has requested that the Planning Board approve the current proposed location before the City Council hears the layout petition. Mr. Woodward reported that the Planning Board and the City Council share jurisdiction over the location of proposed City streets. Although the City Council as the legislative body retains final decision on acceptance or layout of streets, the Planning Board reviews the proposed street location in the exercise of its planning function.

Mr. Swope moved that the Planning Board conclude that the layout is appropriate as presented and approve the petition for layout, and to advise the City Council of this action. Mr. McGonagle seconded. Motion carried.

## REGULAR MEETING

- 2.f Request by **Philip D. Budrose and Scott Bussiere** for a waiver of the Board's Subdivision Regulations allowing a retroactive extension of approval of a subdivision on **Graham Road**.

Mr. Woodward explained this request for a one-year extension of subdivision approval retroactive from August 18, 2005. He explained that the applicants had received correspondence from staff that led them to believe their subdivision approval was valid

for two years from the date of approval, expiring in August of 2006. He reported that there have been no changes to the zoning ordinance to make this approval non-conforming and all approvals and permits from applicable State agencies are current. The delay in constructing the project has been due to addressing the conditions of approvals and preparing final documents for recording at the Merrimack County Registry of Deeds.

Ms. McClure moved that the Planning Board grant a waiver of the Subdivision Regulations for a retroactive one-year extension of the conditional final approval originally granted on August 18, 2004. All conditions of approval set forth in the decision of the Planning Board on August 18, 2004, shall remain in full force and effect. The conditions of approval must be fulfilled and the plat must be filed at the Merrimack County Registry of Deeds on or before August 18, 2006, or the approval granted to this subdivision shall become null and void. Mr. McGonagle seconded. Motion carried.

### NEW BUSINESS

Item #7. Request for a **release of a drainage easement at the Village at Thirty Pines on Borough Road.**

Mr. Woodward explained this request to release a portion of the easement originally provided for the detention pond at Sandwood Crossing. He explained that the detention pond had been revised in shape due to a shift in location of the outlet for the storm sewer system, and the northeast corner of the area under easement was no longer used or needed for the detention pond. While the revisions to the drainage system had been brought back before the Board for approvals, the easement remained in its original configuration and was not revised. The portion requested for release is the northeast corner of the easement which encumbers some of the premises of the Village at Thirty Pines condominiums, and would impinge on an area where one of the carports for the condominiums is proposed to be constructed.

Mr. Swope moved that the Planning Board recommend to the City Council that the request for the release of the portion of the easement be granted, subject to the receipt of a revised detention pond maintenance agreement, and a revised detention pond easement deed. Mr. Merrill seconded. Motion carried.

### CITY COUNCIL REFERRALS

Item #5. Consideration of communication from Holden Engineering & Surveying, Inc. on behalf of **Veterinary Properties LLC** requesting extension of municipal water and sewer service along **Fort Eddy Road.**

Mr. Woodward explained this request for the extension of approximately 1100 feet of municipal sanitary sewer and water main along Fort Eddy Road from the existing terminus near the Valley Stream Estates Mobile Home Park to the access road to the Fort Eddy Road stump dump. He explained that developers are proposing to extend the municipal utilities to the I-393 eastbound ramps to service two development lots, including the Concord Veterinary Clinic proposed to be located at the intersection of the

dump access road and Fort Eddy Road. Engineers for the Concord Veterinary Clinic have been working with City staff as well as the design team for the Lowe's Center which is beginning construction on Fort Eddy Road, to coordinate the improvements, and the Engineering Services Division is satisfied that the extension of municipal services is appropriate. The proposed utility extension will allow for other parcels along Fort Eddy Road to be serviced by municipal utilities instead of requiring on-site wells and septic systems.

Mr. Gross asked about potential uses of the lots which are included in the Gateway Performance District, and the ownership of land on the opposite side of Fort Eddy Road from the mobile home park. It was reported that the parcel opposite the mobile home park was owned by the State of New Hampshire.

Mr. Gross moved that the Planning Board conclude that the requested extensions were logical expansions of the municipal systems which would facilitate private investment in the development of these two lots, and recommend to the City Council that the request for extension of the City water and sanitary sewer systems be granted. Mr. Swope seconded. Motion carried.

#### REGULAR MEETING

2.a Application by **Ten Hutchins LLC** for approval of a site plan of property at **10 Hutchins Street.** (#2006-28)

Ms. Seifried explained this proposal to construct a new eight-unit residential building behind an existing two-unit structure. She reported that the Engineering Division has requested that the applicant ensure that the rate and volume of flow of the outfall pipe from the detention pond is no greater than current conditions of drainage from the property to the north. The applicant is working with the Engineering to assure that the drainage plan is acceptable.

She reported that the Planning Board had previously commented that the sidewalk in the parking area should either be extended to the street or eliminated.

She reported that the Design Review Committee had reviewed the site and building plans and found them to be acceptable as submitted.

Ms. Seifried reported that the Board had received a number of communications from abutters and they were in the Board's packages for review.

Mr. Woodward responded to a letter received from Andrew Chapman and explained that this application was being reviewed as a major site plan and not as a subdivision. Mr. Chapman had noted a number of concerns related to compliance with the City's Subdivision Regulations but he should have looked at the Site Plan Review Regulations.

Mr. Woodward also discussed drainage for this proposal. He explained that, in general, drainage system design has changed considerably since the Regulations were written. He indicated that up until this time the City has adhered to the policy that you cannot

produce any runoff off-site over and above what has historically gone off site. In answer to a concern expressed by Mr. Chapman, Mr. Woodward indicated that the existing storm drain in Hutchins Street is lower than the site.

Mr. McGonagle indicated he wanted to know specifically what the applicant and the City's Engineering Division have agreed to for drainage.

Mr. Drypolcher would like to see how the applicant proposes to handle snow removal.

Mr. Gross commented that a more intense development of this property would create a greater impact on the neighboring property.

Mr. McGonagle moved to table action pending the completion of the review of the drainage study and plans by the Engineering Division, the identification of a site for snow storage and examination of the impacts of the snow storage on the proposed drainage system, a review of traffic conditions on Hutchins Street including queuing at North State Street intersection, and an examination of the driveway location and its impact on the abutter across Hutchins Street. Ms. Dolcino seconded.

Mr. Merrill also expressed concerned about the alignment of the access with the driveway across Hutchins Street. He felt this was fundamentally not a great design. It may have been thirty years ago but not today.

Motion carried.

2.b Application by **The Roman Catholic Bishop of Manchester** for approval of a site plan of property at **25 Columbus Avenue.** (#2006-41)

Mr. Pollock explained this proposal for a 76,032 square foot expansion of the existing high school. He reported the Zoning Board of Adjustment had granted variances for parking lot landscaping and dimensional layout of the parking lot. The Planning Board had granted a Conditional Use Permit to allow for non-simultaneous occupancy of the existing 217 parking spaces. The Planning Board had also granted approval under Architectural Design Review subject to recommendations of the Design Review Committee that the brick on the existing entrance be replaced with the same brick as the new additions, the roof on the front entrance be extended two to three feet, more detail be provided relative to the proposed iron gate, visual and acoustic screening be provided for rooftop mechanical equipment, and that the rooftop screening and the landscape plan be subject to the review and approval of the Design Review Committee. Action on the site plan application was tabled to allow for completion of review of the new drainage study and plans by the Engineering Division.

He reported that the Engineering Division feels the drainage system can be resolved on the site without impact to any of the neighbors.

Ms. Aibel explained they had been dealing with the applicant's engineers since the last meeting and now have a lot more clarification of their intent and they feel comfortable that their strategy will resolve the drainage situation.

Mr. Gross moved approval of the site plan subject to the following conditions:

1. Prior to the Certificate of Approval being signed by the Planning Board Chair and Clerk, the applicant shall revise the plans to address the corrections and omissions noted by City staff.
2. Prior to the Certificate of Approval being signed by the Planning Board Chair and Clerk, the plans for the stormwater drainage system shall be revised to the satisfaction of the City Engineer.
3. Traffic impact fees shall be assessed for any increase in the capacity of the high school deriving from the proposed construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.

Mr. Swope seconded. Motion carried.

- 2.d Application by **2 Pillsbury Street LLC** for approval of revisions to a previously approved site plan of property at **2 Pillsbury Street**, including consideration of plans for traffic improvements as required by the Board as part of the conditional approval granted on September 4, 2003. (#2006-36)

Mr. Henninger explained this proposal for revisions to the previously approved site plan. The applicant is converting 1,800 square feet of loading area inside the existing single-story wing on the north side of the building facing Allison Street. The applicants propose revisions to the north elevation of the same single-story wing to facilitate the conversion to office use and propose to revise the entrance canopy facing Pillsbury Street. The applicant is also proposing to replace all the site lighting.

He reported that the six-story structure at 2 Pillsbury Street contains 138,578 square feet of floor area including approximately 20,000 square feet in the basement. Another building on the premises, located at 30 Pillsbury Street, is single-story and contains approximately 1,800 square feet of floor area. The balance of the block surrounded by Pillsbury, Dakin, Allison, and South Main Streets contains ancillary parking lots, as do the two parcels westerly of Dakin Street on the corners of Pillsbury and Allison Streets, respectively. The City Council exempted this project from Traffic Impact Fees.

The project is nearing completion and the applicant has advised that Certificates of Occupancy will be requested for the first tenants around the first of June.

He reported that the Architectural Design Review Committee reviewed the proposed revisions to the site and building and recommended approval subject to installing two

full size windows (one new and one replacement on the single story wing) on the north side of the building and encasing the proposed columns for the revised awnings in brick to match the exterior of the building.

Mr. Henninger also presented plans for traffic improvements for Allison, Pillsbury, South State, and South Main Streets as prepared by Stephen G. Pernaw & Company, including a long term improvement plan, a plan for short term action, and an implementation schedule showing a traffic signal at Allison Street, and elimination of parking along that section of South Main Street to address traffic generated by this project as required by the Planning Board in its earlier approval of the project. The City's traffic consultant has suggested some alternatives to this plan. He reported that as presented this is a very significant traffic corridor plan. This plan is fulfilling the condition of approval by the Board in its approval of September 4, 2003. These would be items that the City could need to place in its CIP for construction when it is needed.

Mr. McGonagle wanted to be sure that impact fees for off-site improvements were the only fees that were waived by City Council but that all the on-site improvements will still be required.

Mr. Gross moved approval under Architectural Design Review subject to the following conditions:

1. The installation of two full size windows on the northeast side of the single story facing Allison Street instead of the half windows shown on the plan.
2. The encasement of the proposed columns for the revised Pillsbury Street canopy in brick to match the brick of the existing building.

Mr. Swope seconded. Motion carried.

Mr. Gross moved approval of the revised site plan and Mr. McGonagle seconded. Motion carried.

Mr. Gross moved that plans for traffic improvements for Allison, Pillsbury, South State, and South Main Streets as prepared by Stephen G. Pernaw & Company, including a long term improvement plan, a plan for short term action, and an implementation schedule, as presented, are deemed to satisfy the condition of site plan approval as established by the Board on September 4, 2003. Mr. Swope seconded. Motion carried.

- 2.e Application by **The Edward J. Sullivan Family Trust** for final approval of a cluster subdivision of property at **105 Manor Road**. (#2005-67)

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

Mr. Henninger explained this proposal to create a 63-unit, no-lot cluster subdivision on an 87.47 acre parcel north of Manor Road and east of Abbott Road on top of the bluff above the Lower Oxbow Pond of the Merrimack River. The majority of the open space

is located on the bluff and on a low plain below the bluff. The site has approximately 1,250 feet of frontage on the Lower Oxbow Pond. 54.06 acres of the site are to be set aside in protected open space, in addition to the open space around the units and two recreation sites internal to the development area. All internal roads, drainage and sidewalks will be private. Access will be by way of two common private drives, one west of the Manor Road/Abbott Road intersection and one opposite Willard Street.

He reported that offsite improvements include the construction of a roundabout at the intersection of Abbott Road and Manor Road, the construction of a sidewalk and curbing along the south side of Manor Road from Willard Street to Abbott Road, and the realignment to a conventional "T" intersection of the intersection of Manor Road and Sewalls Falls Road. A hearing was held on the proposed roundabout for the Manor Road/Abbott Road intersection on March 15, 2006.

He reported that the Planning Board had previously granted a waiver to Section 9.04(3)(p) Common Private Drive of the Board's Subdivision Regulations for the width of the common private drive and the size of the turnaround required for driveways to units 48 & 49, units 46 & 47, units 18 & 19, units 20 & 21, and units 24 & 25.

Mr. Gross moved final approval subject to the following conditions:

#### **Standard Conditions**

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following State and federal permits shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Environmental Services Site Specific Permit (RSA 485-A:17)
  - b. NH Department of Environmental Services Water Quality and Sewer Discharge Permits
  - c. NH Wetlands Bureau (wetland alterations) permit.
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.
3. 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.
4. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

5. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
  - a. An open space agreement for the project open space including the perimeter buffers adjacent to the homes along Manor and Abbott Road.
  - b. A Conservation Deed for parcel 76B/1/49.
  - c. A Conservation Easement for the Merrimack River bluffs and buffers to bluffs at the top of the bluff.
6. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall obtain approval of private utility plans from Unitil (Concord Electric) and Verizon.
7. Prior to the release of a financial guarantee for any public improvement, an as built plan shall be provided to the City Engineer in form and content acceptable to the City Engineer.
8. 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. Transportation Facilities - Single Family Residence

### **Special Conditions**

9. Prior to the issuance of a Certificate of Occupancy for the 1<sup>st</sup> unit, a sidewalk shall be constructed along Manor Road from Willard Street west to the Abbott Road intersection.
10. Prior to the issuance of a Certificate of Occupancy for the 1<sup>st</sup> unit, the intersection of Sewalls Falls Road and Manor Road shall be realigned to a conventional T intersection without the west bound slip ramp configuration.
11. Prior to the issuance of a Certificate of Occupancy for the 26<sup>th</sup> unit in the development, a roundabout shall be designed and constructed at the intersection of Manor Road and Abbott Road, including sidewalks within the intersection.

12. Prior to the issuance of a Certificate of Occupancy for the 45<sup>th</sup> unit, the common recreation areas shall be complete.
13. If the following improvement is added to the City Capital Improvement Program (CIP), it shall be deemed to be eligible for credits against the assessed traffic impact fees. The procedures for determining the eligibility and the calculation of the credit 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.
  - a. The roundabout at the intersection of Abbott & Manor Road.
14. One home will be demolished for the westernmost entrance at 95 Manor Road on lot 76C-1-7. The applicants are proposing to replace this unit with a new single family residence on a lot to be created east of this drive. Once the unit is demolished the new single family residence on the new lot will receive credit against the Transportation Facilities Impact Fee (100%), Recreation Facilities Impact Fee (612 square feet at \$0.39 per square foot), and School Facilities Impact Fee (612 square feet at \$0.84 per square foot).
15. Prior to the final plat being signed by the Planning Board Chair and Clerk, the condominium documents shall be approved by the City Planner and the City Solicitor.
16. Phase 1 approval, consisting of no more than 26 units, shall be valid for a two (2) year period commencing from the date of Planning Board action. Phase 2 approval, consisting of another 19 units, shall be valid for a four (4) year period commencing from the date of Planning Board action provided Phase 1 has commenced within two (2) years of Planning Board approval. Phase 3 approval for the remaining units shall be valid for an additional two (2) year period provided that Phase 1 & Phase 2 site improvements have been completed.

Mr. Swope seconded. Motion carried with Mr. Merrill abstaining from discussion and vote.

(Mr. McGonagle left the meeting at 11:35 PM.)

#### **Non-Agenda Item**

Consideration of proposed amendments to Section 28-6, Sign Regulations, of the Zoning Ordinance concerning **Electronic Message Center Signs**

Mr. Woodward explained that, inasmuch as the Planning Board will not meet again until after the City Council meets on June 12, 2006, the Board received copies of a draft report of the Code Administrator to the Council concerning electronic message center

signs, together with copies of the minutes and background information of an Ad Hoc Committee convened to discuss these signs.

Mr. Woodward explained that during the past year City staff has reviewed the City's Zoning Ordinance as it applies to signs, specifically electronic message center signs. Currently, the ordinance allows only electronic messages related to time, date and temperature. Draft ordinances were presented to the Planning Board for review, at which time the Board initially recommended no change to the City's Zoning Ordinance. After additional discussions with staff, the Board concurred that an ordinance change deserved further review. Staff drafted an ordinance amendment to prohibit any type of electronic message sign as an interim step to allow City staff the time to bring forward additional discussion and to reintroduce the earlier draft ordinance amendments or to develop one or more new draft amendments.

He reported that the Board had previously supported the total prohibition of such signs as a means of maintaining the status quo until the City was ready to consider an appropriate set of regulations governing electronic message center signs that would allow their use within a context that would consider and respect the overall appearance of the City.

He explained that the City Council directed staff to form a committee to solicit input from Concord's business community, including the Chamber of Commerce and merchants on Main Street. Some members of the committee supported electronic message center signs but most seemed disinterested or opposed. There was a general consensus that if these signs were to be allowed, there should be limitations to text only, messages to be changed between one and four times a day with static time intervals of at least four hours between changes, and only functioning while a business is open. Also noted during the discussion with the Committee was the question of the City's ability to enforce an ordinance regulating electronic messages, especially as the number of message changes and the manner of allowed changes increased.

Mr. Swope observed that the big issue with these signs is movement since the City already allows changeable message signs.

Ms. McClure felt another concern with these signs is the lighting of these signs. This is a very different look than the City has now. A lot of lights is distracting to motorists.

Mr. Gross could not believe a New Hampshire court would find that a City is without authority to enforce its regulations, and that a judge could not tell the difference between a simple time and temperature sign and a full commercial message. Commercial speech is entitled to be regulated. A decent electronic sign properly regulated should not be a major problem.

Mr. Swope felt the signage permitted for the Capital Center for the Arts is much more attractive than the old theater marquee sign was.

Ms. McClure felt this was creating enforcement issues that will become even more complicated.

Mr. Woodward reported that this is a major issue nationally.

Mr. Swope moved to recommend that the City Council adopt an amendment to Section 28-6, Sign Regulations, of the Zoning Ordinance similar to that prepared by the City staff that will permit Electronic Message Center Signs, provided that electronic messages other than time and temperature cannot be changed more often than once each day. Mr. Gross seconded. Motion carried, 4-2, with Ms. Dolcino and Ms. McClure voting against.

There was no further business to come before the Board and the meeting adjourned at 11:55 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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