The regular monthly meeting of the City Planning Board was held on March 18, 2009 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher (who as Chair presided), Swope, Dolcino (who arrived at 7:03 PM), Gross, Harrington, Hicks, and Shurtleff. Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer, and Deputy Fire Chief McGinley.

At 7:00 PM a quorum was present and the Chair called the meeting to order.

APPLICATIONS

Minor Subdivisions

1. Application by **Lora Goss and Brian Smith** for reconsideration of a condition of a previously approved subdivision on **Sanborn Road.** (#2006-84)

Public Hearing

Ms. Hebert explained that Lora Goss and Brian Smith received approval of a subdivision on September 20, 2006, subject to a number of standard and special conditions. The subdivision was not recorded within the first two years following the subdivision approval, and the applicants on two separate occasions requested a one year extension of their Planning Board approval. On each occasion, the Planning Board granted the waiver request to the Subdivision Regulations to permit a one year extension of the conditional final approval granted and the applicants now have until September 20, 2009, to complete the subdivision.

She explained that Ms. Goss and Mr. Smith are now requesting that the Board reconsider the condition of the previously approved subdivision that requires a conservation easement be placed on the land along Hayward Brook and the steep slopes (bluff) associated with the brook. They would like to have the conservation easement include only the land within 75 feet of the brook.

(Ms. Dolcino arrived at 7:03 PM.)

Ms. Hebert explained the previously approved application to subdivide an existing lot with 619 feet of frontage along the west side of Sanborn Road into two building lots for single family residences. The property extends from Sanborn Road westerly to the centerline of Hayward Brook. This property is in a potential water service area but no service is planned to be extended to this area of the City in the foreseeable future. The property will be served by on-site wells and septic systems.

She explained that there is a bluff located east of Hayward Brook and a 50-foot buffer area to the east of the bluff. The useable land rectangle for Lot 2 is located in a fashion which will make it impossible to further subdivide this lot. The property is severely constrained by bluffs and steep slopes. The City's Master Plan recommends the provision of conservation easements on sensitive lands where development is proposed.

A conservation easement along Hayward Brook and the steep slope on Lots #1 and #2 was recommended as a condition of Planning Board approval. Conservation easements have been obtained along Hayward Brook immediately north of Hoit Road and adjacent to this site to the south along Hayward Brook in the last ten years, as a condition of subdivision approval.

She explained that there is very little buildable area on both proposed lot #1 and lot #2. The conservation easement currently includes the land within the bluff, the buffer to the Shoreland Protection District, and Hayward Brook. This land is already restricted from development by the Article 28-3-3, Shoreland Protection District and Article 28-4-4, Buffers to Bluffs, and not considered buildable land. The easement does not include the land within the buffer to bluff, which is also restricted from development and needs to be maintained in natural state, but can be altered under certain conditions, if the Planning Board approves a Conditional Use Permit.

Brian Smith and Lora Goss were present as applicants. Mr. Smith explained that one of the delays previously requested was because their surveyor died unexpectedly before the subdivision was completed and recorded. He reported they also did not agree with the conditions of approval. He felt it was a hardship to their ability to sell the lots if there were restrictions in the buffer to the bluff. It reduces the buildable area from six acres to just over two acres.

Ms. Goss explained that the easement as required would be cumbersome both to them as sellers of the property and to prospective buyers as too limiting in their use of their land. She reported they were agreeable to the 75-foot setback from Hayward Brook as shown on the plan as that line allowed for protection of the brook and its immediate area and gave the new owners freedom to enjoy the land. She reported that they were having a hard time selling this property with these restrictions. She did not see what was gained by further restricting the land in the buffer to the bluff.

Mr. Gross asked what they would be able to do if their request was granted that they cannot do now. Ms. Goss responded that they were under the impression until the staff presentation this evening that they would not be able to build in the buffer to the bluff. It would still be difficult to go through the process of application for a Conditional Use Permit in order to construct in the buffer. The point was to make each of the lots more developable and more saleable.

The Chair explained that the requirement to obtain a Conditional Use Permit for construction within the buffer to the bluff was set forth under the Zoning Ordinance and it was not within the Planning Board's authority to grant exceptions to that requirement.

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

Deliberations and Action on Application

Mr. Swope moved that the Planning Board reaffirm the original conditions of approval for the "Minor Subdivision Plat for H. Byers Smith and Marian B. Smith Trust – Tax Map 122-3-22" as follows:

- 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 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 Conservation Easement along Hayward Brook and the steep slopes associated with the brook on Lots #1 and #2.
- 3. Traffic, recreation and school impact fees shall be assessed for any construction on lots contained within this approved subdivision. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit.
 - a. School Facilities Single Family Residence
 - b. Recreational Facilities Single Family Residence
 - c. Table 3: Transportation Facilities Single Family Residence

Mr. Gross seconded. Motion carried.

2. Application by **Elizabeth and Chester Hoadley III** for approval of a subdivision of property at **74 West Parish Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-5-46, <u>Single-family Dwellings in a Standard (Noncluster) Subdivision</u>, of the Zoning Ordinance. **(#2009-13)**

Determination of Completeness

Ms. Hebert explained this proposal to subdivide an existing 2.25 acre parcel on which there is an existing residential dwelling to create one additional building lot.

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

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

Public Hearing

Ms. Hebert explained this proposal to subdivide an existing 2.25 acre parcel on which there is an existing residential dwelling to create one additional building lot. The new

parcel will be one acre and the existing house, barn, and garage will remain on a 1.25 acre parcel. She reported that the applicant has also applied for a Conditional Use Permit to allow for the development of a conventional subdivision in the Open Space Residential District. Article 28-5-46 permits the development of conventional subdivisions within the RO District with the condition that a comparable amount of open space be protected on the property by deed or easement as would otherwise be required by the Cluster Development standards. The Cluster Development standards would require that 1.35 acres be set aside as open space. The applicant is proposing to place 1.35 acres within a conservation easement.

She reported that the Zoning Board of Adjustment had granted variances to Article 28-4-1(h), Table of Dimensional Regulations, to permit the creation of two lots with one lot being 1.22 acres in area and the second lot being 0.95 acres in area in a district requiring a minimum lot size of two acres; and to Article 28-8-3(c)(2) to permit the construction of a single family residence on a lot that does not meet the conditions for development.

She reported that the proposed subdivision satisfies the City's requirements for buildable land area. However, a small portion of the usable area rectangle on the 1.25 acre parcel contains steep slopes. The applicant has requested a waiver to Section 9.03(3)(b)(i) of the Subdivision Regulations to permit a small inclusion of steep slopes within the buildable area rectangle. Staff believes this waiver request is reasonable considering the house, barn, garage, and driveway all exist on the property, and there is no new construction proposed on that lot. The applicant has also requested a waiver to allow a small inclusion of wetlands within the usable area of the proposed new lot. Staff also believes this is a reasonable request, given the small size of the wetland area (45 square feet) within the rectangle.

Ms. Hebert reported that the Conservation Commission had reviewed the layout of the subdivision and proposed open space at their meeting on March 11, 2009. The Commission and felt that the conservation easement would be difficult to enforce, given the proximity of the easement to the existing and proposed houses. They also recommended that the boundary of the conservation easement be clearly marked with the Commission's discs to identify the limits of the easement.

Tracey Sweeney from Richard D. Bartlett & Associates was present with Mrs. Hoadley to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:34 PM.

<u>Deliberations and Action on Application</u>

Mr. Swope moved that the Planning Board grant a waiver to Section 9.03(3)(b)(i) of the City's Subdivision Regulations to allow a small inclusion of land with slopes greater than 15% percent within the usable area rectangle on Lot 104/1/1 inasmuch as there is no new construction proposed, and the house, barn, garage and driveway are already developed; and to allow a small inclusion of wetlands (45 square feet) within the usable area rectangle on the proposed lot.

Mr. Shurtleff seconded. Motion carried.

Mr. Swope moved that the Planning Board grant a waiver to Section 8.04 (2)(a)(ii) of the City's Subdivision Regulations to allow the subdivision plat to be submitted at a scale of 1'' = 40' instead of 1'' = 50'.

Mr. Gross seconded. Motion carried.

Mr. Swope moved that the Planning Board approve the Conditional Use Permit pursuant to Article 28-5-46 of the Zoning Ordinance; Conditional Use Permit required for the approval of a conventional subdivision within the Open Space Residential District inasmuch as the applicant is proposing to preserve 60% of the original lot as open space (1.35 acres).

Mr. Gross seconded. Motion carried.

Mr. Swope moved that the Planning Board grant conditional final subdivision approval for the "Subdivision Plat of Elizabeth and Chester Hoadley" as submitted by Richard D. Bartlett & Associates, subject to the following standard and special 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 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. Conveyance of a conservation easement for the 1.35 acres of open space land identified on the subdivision plat.
- 3. 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, Subsurface Systems Bureau, Subdivision Approval
- 4. Traffic, recreation and school impact fees shall be assessed for any construction on the new 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
- 5. Prior to the final plat being signed by the Planning Board Chair and Clerk, bounds shall be set to identify the limits of the conservation easement, and the easement shall be marked with conservation discs.

Ms. Dolcino seconded. Motion carried.

Major Site Plans

3. The Concord Regional Solid Waste/Resource Recovery Cooperative for approval of a site plan for property on Whitney Road. Along with this application are requests for Conditional Use Permits pursuant to Section 28-2-4(j), Table of Principal Uses, L-4, Materials Recycling and Processing; Section 28-7-11(b), Construction of Fewer Parking Spaces; Section 28-3-3(f), Conditional Use Permit Required for Disturbance of Buffers in the SP District; and 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, and Section 28-4-4(d), Conditional Use Permits Required for Certain Disturbance of Bluffs and Buffers, of the Zoning Ordinance. (#2009-12)

Determination of Completeness

Ms. Hebert explained this proposal to construct a 60,810 square foot regional recycling facility off Whitney Road.

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

Mr. Gross moved that the Planning Board determine this application to be complete and set it for public hearing on April 15, 2009. Mr. Harrington seconded. Motion carried.

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

Public Hearing

Ms. Hebert explained this proposal to construct a 44,215 square foot office building off Break O' Day Drive in the Gateway Performance District. The interstate highway previously crossed through the property and the land was once owned by the State of New Hampshire, but the property is vacant. In addition to the building, which will include office space, cafeteria, racquetball court, fitness center, 126-seat auditorium, a laboratory and storage area, site improvements include the construction of 185 parking

spaces, a drop-off area in front of the building, an outdoor water feature, and the construction of an ornamental pond. The applicant also proposes to purchase the existing historical school house at the corner of Break O' Day Drive and Loudon Road and to relocate it to the site to be adapted for use as an ice skating house adjacent to the proposed manmade pond.

She explained that the applicant will file an application with the US Green Building Council for the Leadership in Energy and Environmental Design (LEED) platinum certification for new construction. She explained that this is the highest level awarded by the organization and, if successful, would be the first platinum building in New Hampshire. This is awarded to projects that demonstrate exceptional energy efficiency and sensitivity to the environment. Consideration has been given to the design of the site and building to achieve the highest levels of energy efficiency. The project includes a green roof, wind turbines, a clearstory third level for daylight, the relocation/preservation of the schoolhouse, use of pervious concrete pavement, low-flow fixtures and waterless urinals, operable windows, car pool only and low emissions vehicles parking spaces, outdoor patios, a rainwater collection system, an alternative septic system, geothermal heating and cooling, and wood pellet boilers. Bike racks have been located at the entrances to the office building.

She reported that the applicant has requested a waiver from the Site Plan Review Regulations to not extend and connect to municipal sewer and water utilities. It is a requirement of both the Site Plan Review Regulations and the Zoning Ordinance that new buildings connect to the municipal utilities. The Zoning Board of Adjustment granted a variance to allow the applicant to not connect to the municipal utilities with the condition that the applicant submit an application for the LEEDs platinum certification.

She reported that the Zoning Board of Adjustment had also granted an area variance to permit a ten-foot setback from the rear of the property line when a 25-foot setback is required.

Ms. Hebert reported that the City's Administration had expressed its support of the requested waivers based on a number of parameters. She reported that the Deputy City Manager for Development had provided a communication to the Planning Board in which he noted that the Master Plan acknowledges the need for greater energy efficient buildings that not only save their owners cost but also minimize the impact on local resources and the environment. The applicant has claimed that the new building will likely consume 25% of the amount of energy and water currently being used by their existing facility and will harvest 1.5-2 million gallons of rainwater for irrigation and to supply the facility's toilets. The project is also expected to utilize significant amounts of recycled materials. Another factor that weighed into the Administration's decision was that the property is located at the end of Break O' Day Drive and there are no additional water or sewer connections proposed to the north beyond this property that would be impacted by the applicant's property not being on municipal services. However, the City has required that the applicant provide a sleeve for municipal utilities across their property that could one day be utilized to extend the water and sewer northerly under I-393, if necessary.

The Deputy City Manager's communication also explained that the Fire Department had reviewed the plans and concurred that the habitable areas of the building will be protected by a fire sprinkler system fed from an on-site cistern which would provide up to twenty minutes of suppression capacity, a time frame that is acceptable to the Fire Department in terms of protecting life safety. The non-habitable areas such as the wood chip silo are not proposed to be sprinkler protected and could be lost in the event of a fire. The possible re-use of the skate house on the property did raise life safety concerns for the Fire Department as it would not have sprinkler protection as currently proposed and would be well beyond the normally acceptable distance for a hydrant. If that issue could be resolved, City Administration concluded that the uniqueness of this project could serve a greater good and merited consideration of the waivers requested.

Ms. Hebert explained that the applicant would receive points toward the LEEDs certification if 100% of the wastewater is treated on site. He believes that the installation of an on-site well will use less energy to bring water onto the property than the municipal water service. While there are points awarded for not connecting to the municipal sewer system and treating the effluent on site and recharging the aquifer, there are no points awarded to the project for the use of an on-site well as the primary water supply.

She explained that the water and sewer mains are located approximately 725 feet from the property and would need to be extended from a point at the entrance of Break O' Day Drive to the proposed office building. The property is the last parcel on a dead end road and the applicant believes that his desire to create a self-sustaining site will not be detrimental to adjacent property. However, the property is located within the Urban Growth Boundary, and the City reserved a utility easement under I-393 for the extension of water service to the north and had planned for the extension of the utilities along Break O' Day Drive in order to provide water service in the future to the properties off Josiah Bartlett Road. The applicant has agreed to install a sleeve and grant an easement to the City for the future extension of the utility line.

She reported that the applicant proposes to construct a sprinkler system for fire protection that will be supplied by large water cistern stored within the office building.

Ms. Hebert reported that the applicant has applied for a Conditional Use Permit to construct fewer parking spaces than would typically be required by the Zoning Ordinance. As identified by the Zoning Ordinance, the total number of parking spaces required for all of the on-site uses would be 219. The request is to defer the construction of the parking spaces for non-simultaneous uses. The laboratory, cafeteria, fitness center, school house, and racquetball court will all be used by employees who will also have office space within the building.

She reported that the applicant had also applied for a Conditional Use Permit to construct additional compact parking spaces. The City's regulations allow up to 25% of the parking spaces to be compact and the applicant has requested that 49% of the spaces

be compact. The Zoning Ordinance provides for the construction of up to 50% additional compact parking spaces through the Conditional Use Permit process.

She reported that the applicant has also applied for a Conditional Use Permit for impacts to the wetland buffers. A portion of the proposed ornamental pond, the grading for the drop-off area/entrance drive, and the proposed improvements to Break O' Day Drive encroach into the wetland buffer. The applicant proposes to replace the impacted area with a wildflower seed mix and native trees and shrubs.

She reported that the wetland buffer areas that will be impacted by the proposed construction need to be restored with additional native shrub and tree plantings. The existing buffer was previously disturbed and does not contain well established vegetated cover. Over time the new plantings should improve the quality of the wetland buffer.

Ms. Hebert reported that Break O' Day Drive is the only access to the site and provides the property with the required legal road frontage. The roadway is currently considered a substandard roadway with narrow pavement ending in a hammerhead turnaround. The City has asked the applicant to improve the roadway by widening the pavement width to 26 feet and resurfacing/repaying the road. In order to improve Break O' Day Drive to the current City standard for a public road in a non-residential district, the terminus of a roadway would need to be reconstructed to include a cul-de-sac with a diameter of 150 feet and an interior island. The Engineering Division has agreed to recommend that the applicant be allowed to construct a smaller cul-de-sac without an interior island at the end of Break O' Day Drive. The applicant does not want to build the smaller cul-de-sac and would like to construct a hammerhead turnaround at the end of the road. However, as designed it would be difficult for the City to safely maintain the road during the winter months because the driveway into the site is located directly off the end of the hammerhead. In order to keep the hammerhead at the terminus of the roadway, the applicant proposes to enter into a year-round road maintenance agreement with the City whereby the applicant will maintain Break O' Day Drive. The City has never entered into an agreement with a private party for the maintenance of a public roadway and does not currently have a standard for this type of arrangement. The City Solicitor has determined that the City could legally enter into a maintenance agreement with the Scott Lawson Group but the agreement would need to be approved by the City Council.

She reported that the parking lot and sidewalks will be constructed with pervious concrete pavement. Stormwater will infiltrate on site and there is not a need for a large detention pond or underground stormwater treatment structure. The drop-off area has been designed with pervious pavers.

She explained that the Architectural Design Review Committee had reviewed the proposed site and building plans and made a favorable recommendation for the design of the site, landscaping, and office building. However, the Committee felt that the proposed renovations to the school house should be reviewed as a separate item once the design is complete.

Mr. Gross explained that he was having difficulty adjusting his feelings regarding onsite sewage disposal and water. He asked why it was thought to be better environmentally to use on-site systems rather than municipal systems. Ms. Hebert deferred to the applicant to answer.

Mr. Woodward discussed the City's standards for granting waivers. The applicant is requesting a waiver from the Site Plan Regulations in relation to the requirements for connection to the municipal sewer and water utility systems. If the waiver is granted, the site development is intended to be served by a well and septic system to be utilized in conjunction with rainwater recycling, such that water usage and effluent generated would be minimized.

He reported that it is a requirement of both the Site Plan Review Regulations and the Zoning Ordinance that the proposed office building be connect to the municipal utilities. Both the municipal water and sewer mains are available within about 725 feet of the premises, both have adequate capacity to serve the proposed office building, and there are no physical impediments to the extension of these mains. In the case of physical impediments, the Board has granted waivers to similar requirements in the Subdivision Regulations where the site elevation was above the City's water system pressure limits or a sewer pump would be required to serve two or three house lots. The water and sewer systems in this area of the Heights were established as special service improvement areas based on resolutions of the City Council in 1989 which included the area between I-393 and Route 106, east of the Steeplegate Mall. The improvements were also designed with capacity for future expansion north of I-393 along Route 106 and Josiah Bartlett Road.

He explained that when I-393 bisected Old Loudon Road, resulting in the residual sections becoming Break O' Day Drive and Josiah Bartlett Road respectively, the City had reserved a utility easement beneath Interstate 393 for the extension of water service to the north. The City had planned for the extension of the utilities along Break O' Day Drive and to eventually provide water service to the properties off Josiah Bartlett Road by connecting through the I-393 easement. During the 1990's, the NH Department of Transportation changed the layout of I-393 in this area, and eventually created the subject parcel as a lot which was deemed surplus to the right-of-way, and sold it to a private entity in 2001. While the portion of the lot which was once a part of the Old Loudon Road right-of-way has reserved rights to the private utilities which existed there, there is a gap between the end of Break O' Day Drive and I-393 on the this parcel where the City does not now have a utility easement. The applicant has agreed to grant a utility easement to the City across the parcel to the I-393 right-of-way and to install a sleeve for a future water main.

Mr. Woodward also reported that the Zoning Board of Adjustment had granted a variance to allow the Scott Lawson Group to develop an office building on the Break O' Day site which would not be connected to the municipal utility systems, subject to a condition that the applicant submit an application to the US Green Building Council for a LEEDs Platinum certification pursuant to its Green Building Rating System.

He explained that the standards for waivers as contained in the Site Plan Review Regulations focus on the Board making findings of extraordinary hardships or practical difficulties. These standards are specifically authorized pursuant to 674:44 III (e), Site Plan Review Regulations, which indicates that the regulations "shall include provision for waiver of any portion of the regulations in such cases where, in the opinion of the planning board, strict conformity would pose an unnecessary hardship to the applicant and waiver would not be contrary to the spirit and intent of the regulations".

In 2007, the NH Supreme Court weighed in on the basis for waivers granted by Planning Boards in the case of <u>Philip Auger v. Town of Strafford</u>. In that case, the Court overturned a waiver granted by the Town's Planning Board noting that, "the board had no evidence before it that the [matter for which the waiver was requested] would cause any hardship to [the applicant] much less 'undue hardship'". The Court further noted that, "the record reveals that the sole reason that the board decided to waive the ...requirement was because it preferred [the alternative presented] and not because the [requirement] would cause 'undue hardship or injustice'".

He explained that the requirement in the Site Plan Review Regulations for municipal water service relates to the provision of potable water supply as well as the provision of fire protection and suppression capabilities. For new buildings within the Urban Growth Boundary, a fire hydrant with adequate fire flows is to be located within 300 feet of the premises, and for buildings of the scale and type of occupancy proposed, a sprinkler system must be provided which is usually connected into the municipal water system.

Mr. Woodward explained that the applicant proposes a basement cistern which will have a capacity similar to that of a 20-foot by 40-foot swimming pool to store water which will be pumped into the sprinkler system with a standard generator for back-up power. In this instance, where there is a municipal water system with a hydrant within about 710 feet of the sprinkler standpipe, the Fire Department would not be using tanker trucks to haul water as they would in a rural situation, but would connect hoses to that hydrant, using one hose to supplement the sprinkler system and one to suppress a fire to the extent necessary (sprinkler systems are very efficient and effective, generally minimizing the amount of water needed for suppression). The Fire Department has indicated that this approach can provide adequate fire protection and will comply with State Fire Codes.

He reported that a concern relative to the granting of a waiver to the requirement for connection to the municipal water supply is that it will set a precedent and likely result in other requests for not installing hydrants within the standard proximity to buildings or having sprinklers systems not directly connected to the municipal system.

He explained that the LEED certification program is currently undergoing changes. A new rating system will take effect this year which, among other things, embraces smart growth and concepts like connectivity, and seeks to reduce sprawl. In that light, the new system requires that a site be served by water and wastewater infrastructure or if it is in a legally adopted water and wastewater service area, it should be provided with water and wastewater infrastructure. However, the current application before the

Board is vested under the pre-existing LEED certification program and has been designed and engineered to meet those standards.

Mr. Harrington noted that the standard for a platinum LEED certification is extremely high and very difficult to accomplish, which is probably why there are very few platinum certified buildings in the country.

Erin Reardon from Nobis Engineering, Richard Uchida from Orr & Reno, and Scott Lawson president of The Scott Lawson Group were present as was Scott Vlasak from Bruce Hamilton Architects.

Mr. Vlasak explained the background of the design and reported that the team approached this project with top priorities being energy efficiency, environmental responsibility, and providing a healthy building for occupants. He explained the building does not really have a rear elevation. It is also very visible from I-393. The green vertical feature next to the main entrance would communicate something about how the building performs on a particular day in terms of energy efficiency.

He reported that they do not have firm design plans for the proposed skate house and will present those to the Design Review Committee and the Planning Board for review and action at a later date.

Mr. Lawson explained that the whole project is a philosophical issue. He explained they tried to design this building as a demonstration project to prove that a building can be environmentally friendly, green, with good air quality and still be a comfortable building in which to work. He wanted to prove it made very good business sense. He reported that the new building will be three times as big using half the energy that they are using in the current building. This is about doing the right thing because by doing that he can provide an attractive building for his employees. The platinum certification will draw people to see the building to see what works and what does not work. By teaching other people that this makes good business sense, he feels he can do a lot for the environment. He explained that one of the reasons they do not want to hook up to municipal water is to minimize waste. Also, the waste system is not a conventional system. This is more than just a building. It is a way to convince people that it is a smart way to build a building that looks to the future.

Ms. Reardon then discussed the site plan. She also discussed the rating system adopted in 2006 for LEEDs certification. She described the proposal to install an alternative sewer system. The goal of the project from the beginning has been to have as little impact on their surroundings as possible.

She explained they have had many conversations with the Deputy Fire Chief regarding their request to not hook up to municipal water. They have come to understand the Fire Department's need for a fire hydrant 300 feet from the property to provide for public safety and they have agreed to provide it.

Attorney Uchida discussed the proposed road maintenance agreement. He also discussed the waiver request to construct an office building in the Gateway Performance

District that does not connect to municipal water and sewer. He explained this waiver was requested in order to obtain some of the LEED points necessary to achieve the highest level of certification and to create a self-sustaining development by reducing reliance on municipal water and sewer systems. A goal of LEED is to reduce generation of wastewater and potable water demand while increasing groundwater recharge. The building has been designed to reduce the water demand by using low-flow fixtures, water efficient appliances and waterless urinals. Where possible, non-potable water uses have been incorporated. Rainwater from the roof will be collected for re-use flushing toilets and for irrigation. Potable water is proposed to be provided by an on-site well.

He explained an alternative septic system is proposed for the treatment of all of the wastewater on site. A LEED point is awarded for treating 50% of wastewater and infiltrating the water on site. An additional point is awarded for treating 100% of wastewater on site. Use of on-site water and septic eliminates the expenditure of energy producing materials, transporting materials to the site and installing 725 feet of sewer and water mains. Less energy and chemicals will be required to bring potable water to the building from an on-site well than from the municipal water plant.

He reported that the granting of the waivers will not be detrimental to the public safety, health or welfare, or injurious to other property. The applicant has worked with the Fire Department regarding providing fire protection for the building. The building will be fully equipped with sprinklers and the applicant has agreed to install a fire cistern to support the sprinkler system and a fire standpipe off the southwest corner of the building to allow a fire hose to supplement the sprinkler system.

He explained that this property is unique in that it is located at the end of a dead-end road which will not inhibit the extension of utilities to additional properties. The granting of this waiver will not interrupt plans for future utilities that would likely loop around the end of Loudon Road. The applicant has agreed to provide a sleeve for water service through the property to allow for future continuation of the water main.

He explained that the granting of this waiver will not be injurious to other property. The alternative septic system proposed is more environmentally friendly than traditional septic systems. In a conventional system the biological functions of treating wastewater take place in a leach field, but in the proposed system the biological function occurs in a series of two tanks. The discharge from the tanks will be treated to tertiary standards and is infiltrated to recharge groundwater.

Mr. Uchida discussed the hardship justifying the waiver of connection to municipal water and sewer and explained that the Site Plan Review Regulations and the Zoning Ordinance dictate high-end, forward-thinking, thoughtful development in the Gateway Performance District. However, when the regulations were developed it is unlikely that anyone was thinking about how green construction might affect the underlying assumptions of the district. It was expected that all properties would be fully served by municipal utilities. If this requirement were to be strictly applied to this project, it would deny the developer crucial points for LEED certification in a setting where such points are hard to come by. The site is ideal for such a development and is large enough

to support it. It is situated at the end of a dead-end street and a sleeve is being provided so as to not impede future expansion of municipal water. Also, the City does not lose investment fees or flows if the development does not connect because the land was created out of excess land from the construction of I-393 and was never expected to contribute flows or funds. The location of the site and the nature of the development create unique opportunities for the City to encourage sustainable development without any harm or injury to the public or private rights of others.

He reported that there is no burden on the City in terms of fire safety or treatment of wastewater on the site and none on neighboring properties if this waiver is granted. City departments with jurisdiction have expressed support of this waiver, with the offer of the applicant to provide a fire hydrant within 300 feet of the property. The intent of the requirements to tie in to sewer and water is to insure that there is orderly growth and that there is a mechanism for recovery by the City, insure that there is high quality water available, and fire safety. This property is unique because a majority of the property is not in the sewer and waster investment district. The City never expected that the infrastructure for water and sewer would grow out to this parcel. This parcel is mostly outside the water and sewer investment area. It is a dead end street with no extension of the system anticipated in the future. Even if they did connect, they would be at the end of the system, so the granting of a waiver would not disrupt the master plan for sewer and water extension. The site is perfectly suited to gather rainwater and well-sized for collection. To the extent that they are required to tie in to municipal utilities, it interferes with the goals and priorities the applicant has set for this site to not waste resources.

He also reminded the Planning Board that the Zoning Board of Adjustment granted a variance because they felt it was in the public interest to do so.

Mr. Gross had no doubt that this is an exemplary project and would be a credit to the City and he would be delighted to see this get built. However, he does not have the discretion to vote for approval of projects he likes and there are regulations to which Planning Board members must comply. Section 9.05 of the Site Plan Review Regulations will drive his decision on whether he can vote to grant the requested waiver. The Regulations refer to "extraordinary hardship" and "practical difficulty" as reason to grant a waiver. The Regulations further note that "the waiver shall not have the effect of nullifying the intent of the regulations". He had been listening to hear evidence that there was no extraordinary hardship or practical difficulty and asked how he could find extraordinary hardship or practical difficulty for this project without the waiver.

Mr. Uchida responded that "extraordinary hardship" and "practical difficulty" are terms of art in land use law. There is no clear definition for them. The intent of the State statute that gives the Planning Board the right to grant a waiver was founded on the theme of unnecessary hardship as defined by the Supreme Court in cases related to variances.

Mr. Swope shared the problem of finding extraordinary hardship. He might be able to justify a waiver of sewer in order to get LEED points but could not justify a waiver to water in any case. Mr. Uchida responded that the practical difficulty of installing water

was that a dual system would be needed and this was a site that was never intended to have water extended to it, which would be a burden in constructing a dual system. He noted that this waiver request has nothing to do with the cost of connecting to municipal water and sewer because the proposed system will cost a great deal more than connecting to the municipal systems.

Mr. Harrington asked if it would be practical for them to construct the alternative system if they are required to connect to the municipal system. Mr. Lawson indicated that is would be impractical because it would completely undermine the philosophy of what he is trying to encourage.

Ms. Dolcino was struggling with understanding "extraordinary hardship" and "practical difficulties" and then noted that Section 9.05(A) of the Site Plan Review Regulations also provides the opportunity to grant a waiver if "the purposes of this section may be served to a greater extent by an alternative proposal".

Mr. Gross followed up by asking how the public safety, health or welfare would be better served by their alternative proposal. Mr. Uchida responded and explained that the proposal to treat wastewater and to keep rainwater on site encourages preservation of water resources on site. They have a fire protection system proposed that will satisfy fire safety concerns, especially with the fire hydrant 300 feet from the property. They better conserve and utilize water through this proposal than by tying in to the municipal systems, particularly since they will be re-using water again and again on the site.

Mr. Lawson noted that in their current building they are using one million gallons of water a year. With the new building that will be three times the size of the current building, they expect to use thousands of gallons of water.

Mr. Uchida then discussed the proposed road maintenance agreement. He reported that there are currently three users of the road. There is no possibility that that road will be extended in the future, across I-393 for example. This road is on the lower end of the City's priorities for plowing and maintenance because there are so few users. He reported that his client was not happy with the design needed for the required cul-desac because it would require much more paving than he liked. It is not a design they are pleased with for the entrance to their property just to provide a place for turning around a snow plow. The road is also likely to be there for a finite period of time. If the abutting property is someday combined for development, it is likely that a different access will be provided and this road discontinued. They are not seeking to maintain the road themselves because of the cost of constructing the cul-de-sac. The maintenance agreement will cost much more in the long run. They have also discussed this agreement with the abutting property owner and she is in agreement as long as she is not expected to participate, and that has been clearly spelled out in the proposed agreement.

Mr. Gross had concerns about the durability of this arrangement, and what would happen if something happens to either the business or the business owner. Bankruptcy courts, for instance, can void whatever they want. Mr. Uchida responded that City staff had brought up that issue and requested financial security for the construction of the cul-de-sac in the case of an untoward event.

Mr. Shurtleff asked if the road would be maintained as a public way and Mr. Uchida responded that it will still be classified as a Class 5 road and he expected that the road would probably be discontinued at some time in the future when there is a new access to the site because of the development of the abutting property.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 9:53 PM.

Deliberations and Action on Applications

Mr. Swope moved to grant all the waivers requested based on Section 9.05(A) of the Site Plan Review Regulations which provides the opportunity to grant a waiver if "the purposes of this section may be served to a greater extent by an alternative proposal". Mr. Shurtleff seconded.

Mr. Gross suggested that the applicant be asked to supply the Planning Board with a written findings based on the record that satisfy the requirements of the Regulations for waivers as contained in Section 9.05, particularly as regards the purposes of this section being "served to a greater extent by an alternative proposal". The record will specifically include the applicant's testimony that the water main will be extended and a hydrant be provided within 300 feet of the property. Mr. Gross then moved to table action until the Planning Board can receive the requested findings and take action thereon. Mr. Shurtleff seconded.

Mr. Harrington felt that based on the discussion this evening there was enough information available to take action on the waivers at this time. Motion to table carried, 6-1, with Mr. Harrington voting against.

Mr. Swope moved and Mr. Shurtleff seconded that staff be directed to continue its review and discussions with the applicant and the City Solicitor regarding the road maintenance agreement in order to provide the Board with a document for its consideration.

Mr. Harrington noted that on Page 4, Section 5.21, of the proposed agreement, maintenance of the road only refers to ice and snow, and he suggested that debris or other obstacles should be included.

Motion carried.

5. Application by McCarthy Properties on behalf of Capital Regional Development Council for approval of a site plan of property at 12 Chenell Drive. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. (#2009-05)

Mr. Henninger explained this proposal to construct a 9,140 square foot industrial building on the east side of Chenell Drive just south of Regional Drive. The applicant proposes to construct accessory parking with loading areas at the rear of the site. He reported the applicant has also requested a Conditional Use Permit for driveway spacing to allow a single driveway with 26-foot spacing where 100-foot spacing from an abutting drive is required.

He reported that the applicant proposes a single point of access to Chenell Drive. The applicant cannot meet the minimum driveway spacing because development on the abutting lots to the north and south did not leave sufficient space for a driveway under our current standards. These lots were developed under earlier, less restrictive, driveway requirements. The property to the north has its driveway within five feet of the applicant's property. This spacing was created to maximize the abutting property's setback from the Regional Drive/Chenell Drive intersection. The property is located on a local, dead-end, non-residential street, serving primarily light industrial and office uses. The requested CUP for a reduction in driveway spacing appears to be reasonable.

He reported that at this time there are no defined tenants. The building has been designed to allow a single tenant or for the building to be split from front to back for two tenants.

He explained that additional trees need to be shown as preserved on the site plan to meet the City's landscaping requirements. Only nine trees being preserved are noted on the landscape plan. The City's landscape architect has recommended that two different shade tree species be substituted for the eight Star Magnolias proposed.

Mr. Henninger reported that the Architectural Design Review Committee had reviewed the proposed site and building plans and recommended approval of the building elevations subject the suggestion that the applicant consider doubling the size of the secondary canopy and further requested revised renderings providing more accurate color representations.

He reported that the building may need to be sprinkler protected depending on its use. The water connection shown on the plans has been designed to accommodate a sprinkler system if it proves to be necessary.

Erin Reardon from Nobis Engineering was present along with a representative from McCarthy Properties to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 10:16 PM.

<u>Deliberations and Action on Application</u> <u>Deliberations and Action on Architectural Design Review</u>

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Article 28-7-11 (f), Driveway Separation Alternatives, for a proposed industrial building

at 12 Chenell Drive. The Planning Board finds that the proposed development's single driveway obtains the maximum possible separation from drives on the abutting lots while still allowing for truck access to the rear of the building. Mr. Swope seconded. Motion carried.

Mr. Swope moved that the Planning Board grant Architectural Design Review approval for a proposed industrial building at 12 Chenell Drive subject to the following condition:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of the architectural elevations shall be obtained from the Planning Division. No construction activity may commence prior to the preconstruction conference.

Mr. Gross seconded. Motion carried.

Mr., Swope moved that the Planning Board grant conditional site plan approval for a proposed industrial building at 12 Chenell Drive subject to the following standard conditions:

- 1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
- 2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitil (Concord Electric) and Fairpoint (Verizon).
- 3. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
 - a. Transportation Facilities General Office
 - b. Transportation Facilities General Light Industrial

Mr. Gross seconded. Motion carried.

6. Application by Tropic Star on behalf of Burger King Corporation, the Hall 2001 Family Revocable Trust, Jean B. Chase, and Dale G. Fifield for approval of a site plan of property at 36 Burns Avenue, 9 East Side Drive, and 155 and 157 Loudon Road. Along with this application is a request for a Conditional Use Permit

pursuant to Section 28-7-11(b), <u>Construction of Fewer Parking Spaces</u>, of the Zoning Ordinance. (#2009-04)

The Chair announced that the applicant had requested that this public hearing be postponed to April 15, 2009.

Mr. Gross moved and Mr. Shurtleff seconded that the public hearing for this application be postponed to April 15, 2009 at the request of the applicant. Motion carried

Architectural Design Review

- 7. 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.
 - **Circle K /Irving** at 114 Fisherville Road (2 signs)
 - Circle K/Irving at 231 Loudon Road (2 signs)
 - **Circle K /Irving** at 163 North State Street (1 sign)
 - Circle K/Irving at 190 Pleasant Street (1 sign)
 - Susana's Sewing Studio at 30A Warren Street (1 sign)
 - T. D. Banknorth at 143 North Main Street (6 signs)
 - **True Brew Barista** at 4 Bicentennial Square (1 sign)
 - Wal-Mart at 344 Loudon Road (1 sign)

Public Hearings

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

• **Circle K /Irving** at 114 Fisherville Road (2 signs)

Mr. Henninger reported that the Design Review Committee had reviewed this application in February and found that there was no relationship between the yellow building and the proposed red and white sign. The pump canopy and the building needed to relate better to each other. He reported that the Committee had recommended tabling action to allow the applicant to redesign the signage for this site to better coordinate the colors, and to allow the applicant the opportunity to prepare a more clear presentation of the proposal and the Planning Board had adopted the Committee's recommendation.

He reported a revised design for the freestanding sign had been submitted and they now propose the Circle K sign on a taupe sign band, with the existing blue vertical elements remaining at the corner of the building, and the rest of the building painted a taupe color to match the sign band. The sign will not be internally illuminated.

He reported that the Design Review Committee found the new design to be less offensive and recommended approval as revised.

Rick Self from Circle K was present to answer questions from the Board.

Robert Baker was recognized and explained that he lives in an Urban Transitional area and wanted to make general comment. There has recently been a new sign installed for Boutwell's Bowling Center in his neighborhood and it is lighted 24/7. He has learned that the City has no ordinance limiting overnight lighting of signage abutting residences. He asked that the Planning Board keep in mind, when approving lighted signs adjacent to residential uses, that they are a blight on the community when left on overnight.

Mr. Gross moved approval of a revised freestanding sign for Circle K /Irving at 114 Fisherville Road as submitted, and approval of a revised affixed sign with the building being painted taupe except for the existing blue corner panels. Mr. Swope seconded. Motion carried.

• Circle K/Irving at 231 Loudon Road (2 signs)

Mr. Henninger reported that the Design Review Committee had reviewed this application in February and found that there was no relationship between the yellow building and the red and white proposed sign, and had suggested that they remove the red stripes and yellow band and find colors that work with both the Circle K emblem and the Irving colors. He reported that the Committee had recommended tabling action to allow the applicant to redesign the signage for this site to better coordinate the colors, and to allow the applicant the opportunity to prepare a more clear presentation of the proposal, and the Planning Board had adopted the Committee's recommendation.

He reported that a revised design had been submitted and they now propose the Circle K sign on a taupe sign band, with the remainder of the building painted taupe to match the sign band. The sign will not be internally illuminated.

He reported that the Design Review Committee found the new design to be less offensive but noted that they preferred the contrasting colors proposed on the Fisherville Road building. The Committee recommended approval for the design to match the proposed Fisherville Road building with the contrasting colors.

Rick Self from Circle K was present to answer questions from the Board.

Mr. Gross moved approval of a revised freestanding sign for Circle K /Irving at 231 Loudon Road as submitted, and approval of a revised affixed sign with the building being painted taupe while retaining the contrasting blue panels in the storefront windows. Ms. Dolcino seconded. Motion carried.

• **Circle K/Irving** at 163 North State Street (1 sign)

Mr. Henninger reported that the Design Review Committee had reviewed this application in February and had recommended approval of the affixed sign subject to the background color of the building behind the sign remaining taupe as shown, and the Planning Board had adopted the Committee's recommendation.

He reported a revised design showing a smaller Circle K on the freestanding sign had been submitted.

He reported that the Design Review Committee found the revised freestanding sign to be appropriate for the location and use, and recommended approval as revised.

Rick Self from Circle K was present to answer questions from the Board.

Mr. Swope moved approval of a revised freestanding sign and a new affixed sign with the taupe background option for Circle K / Irving at 163 North State Street as submitted. Mr. Gross seconded. Motion carried.

• **Circle K/Irving** at 190 Pleasant Street (1 sign)

Mr. Henninger reported that the Design Review Committee had reviewed this application in February and had recommended approval subject to the background color of the building behind the affixed sign remaining taupe as shown, provided the signage complied with the Zoning Ordinance, and the Planning Board had adopted the Committee's recommendation.

He reported that a revised design for the freestanding sign had been submitted showing a smaller Circle K on the blue background.

He reported that the Design Review Committee found the revised freestanding sign to be appropriate for the location and use, and recommended approval as revised. The Committee further recommended that the gable on the brick building remain white and not be painted taupe as proposed for the other locations reviewed.

Rick Self from Circle K was present to answer questions from the Board.

Mr. Gross moved approval of a revised freestanding sign and two new affixed signs for Circle K /Irving at 190 Pleasant Street as submitted and further recommended that the colors of the building be unchanged. Mr. Swope seconded. Motion carried.

• Susana's Sewing Studio at 30A Warren Street (1 sign)

Mr. Henninger reported that this is a replacement hanging sign for a new use in the existing commercial space.

He reported that the Design Review Committee found the design and placement of the proposed sign to be appropriate for the use and location, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Swope moved approval of a replacement hanging sign for Susana's Sewing Studio at 30A Warren Street as submitted. Mr. Gross seconded. Motion carried.

• TD Bank at 143 North Main Street (6 signs)

Mr. Henninger reported that they are re-branding and replacing existing signage with the new name and logo. The signs are either the same size as existing or slightly smaller.

He reported that the Design Review Committee found the design and placement of the proposed signage to be appropriate for the use and location, and recommended approval as submitted.

Jim Cranston from Bohler Engineering was present on behalf of the applicant to answer questions from the Board.

Mr. Gross moved approval of four replacement affixed signs and new faces for two existing freestanding signs for TD Bank at 143 North Main Street as submitted. Mr. Swope seconded. Motion carried.

• **True Brew Barista** at 4 Bicentennial Square (1 sign)

Mr. Henninger reported this is a replacement sign for a new business using the existing brackets.

He reported that the Design Review Committee found the design and placement of the proposed sign to be appropriate for the use and location, and recommended approval as submitted, and complimented the designer and applicant on the sign.

Stephanie Zinser was present as applicant to answer questions from the Board.

Mr. Gross moved approval of a hanging sign for True Brew Barista at 4 Bicentennial Square as submitted. Mr. Shurtleff seconded. Motion carried.

• Wal-Mart at 344 Loudon Road (1 sign)

Mr. Henninger reported this proposal for a replacement sign above the main entrance which is being replaced as part of façade improvements approved last year. This sign will replace all the existing affixed signs except for TD Bank, which will be submitted later for review and action.

He reported that the Design Review Committee found the design and placement of the proposed sign to be appropriate for the use and location, and recommended approval as submitted.

There was no one present on behalf of the applicant.

Mr. Gross moved approval of a replacement affixed sign for Wal-Mart at 344 Loudon Road as submitted to replace all signage except for TD Bank on the building façade. Mr. Swope seconded. Motion carried.

8. Applications by **Abbott Village** for approval of modifications to the previously approved exterior design of eight of the attached dwelling units at **382 North State Street**. (#2009-14)

Mr. Henninger explained that this 80-unit townhouse project was granted conditional site plan approval on March 2, 2005. A five-unit townhouse building has been completed and Certificates of Occupancy have been issued for three of the five units. A second five-unit building and an eight-unit building have been constructed but have yet to be fully finished on the interior. A foundation for another eight-unit building was completed in 2008, as well as the project's community building. The buildings were all three story structures with garages on the first floor. The units have no basements.

He reported that the applicant has submitted revised façade elevations for a single eightunit townhouse on the existing foundation. The applicant proposes to reduce the building from three stories to two stories in height. The colors and materials for this building are proposed to match those of the completed buildings. No other changes are proposed for the development. If the applicant is successful in marketing the smaller units, other buildings on the site may be modified.

He reported that the Architectural Design Review Committee reviewed the exterior elevations and found the changes to be consistent with the existing building design, and recommended approval as requested. The Committee noted that, for future modifications, the applicant would need to consider the design implications of the change in building height. A random approach to the building height could detract from the overall appearance of the development.

Mr. Swope moved that the Planning Board grant Architectural Design Review approval for proposed façade renovations at 33 Callaway Drive in Abbott Village on North State Street, subject to the following condition:

1. Prior to the issuance of any additional building permits for 33 Callaway Drive, the revised architectural elevations shall be signed by a registered architect or engineer and shall be provided with additional notes identifying the colors and building materials. Said revisions shall be acceptable to the City Planner.

Mr. Gross seconded. Motion carried.

REGULAR MEETING

Minutes

Mr. Gross moved approval of the minutes of the meeting of February 18, 2009, as submitted. Mr. Shurtleff seconded. Motion carried.

10. Further consideration of applications for approval of a development on which a public hearing has previously been held:

a. The **Penacook Assisted Living Facility, Inc.** revision to a condition related to the School Facilities Impact Fees for a previously approved Site Plan of property at **30 Borough Road**. (#2009-09)

Ms. Hebert explained that at its meeting on February 18, 2009, the Planning Board granted conditional minor site plan approval to allow for the conversion of approximately 2,500 square feet of existing office space within the Penacook Assisted Living Facility to four additional assisted care dwelling units. The conditional approval included a standard condition that requires the payment of School Impact Fees for the new residential dwelling units. The applicant has since submitted a covenant restricting the four new units to residents age 62 and older, which now qualifies the project for a waiver of the School Impact Fee.

She explained that the Penacook Assisted Living project was originally approved by the Planning Board in November of 1998 for a 50-unit assisted living facility, with 40 parking spaces. The building contained 46,250 square feet.

She explained that the Impact Fee Ordinance provides for a waiver of the school impact fees when a project is restricted solely to residents age 62 and older. The applicant has submitted a covenant that restricts the four new units to residents 62 and older.

Mr. Woodward noted that the Planning Board had received a letter from abutting land owners, Mr. and Mrs. Barchey, requesting a continuation of the stockade fence along their common boundary line in order to keep down the noise and various distractions that will come about with the new construction and occupation of the additional units. He noted that it appeared that the abutters did not understand that all of the work is interior renovation with no new additions or exterior changes. He suggested that the letter be forwarded to the applicant for its consideration since as the Board has already taken action on the site plan review application. Mr. Shurtleff asked that the staff communicate the Board's action to the abutters.

Mr. Swope moved that the Planning Board approve the request to waive the School Impact Fee for the four proposed units at the Penacook Assisted Living Facility, subject to the recording of the covenant at the Merrimack County Registry of Deeds. Ms. Dolcino seconded. Motion carried.

11. Request for an extension of the period of validity of a conditional approval of the Major Site Plan of **Abbott Village at 382 North State Street.** (#2004-59)

Mr. Woodward explained that Brown Engineering and Surveying has forwarded a request on behalf of its client, Abbott Village, for a two-year extension of the conditional site plan approval of Abbott Village to extend the period of validity through March of 2011.

He explained that the Planning Board, at a meeting on March 2, 2005, granted conditional final approval of the Site Plan application of Tanguay Homes LLC for a total of 80 units, including the existing house, in two phases. Phase 1, consisting of 62 units, was granted for a two year period from the date of approval. Phase 2, which consisted of the remaining 18 units, was granted for an additional two year period provided that

Phase 1 was substantially underway. The whole project had a maximum of four years from the date of final approval to be constructed.

Any extensions of a final site plan approval may be granted by the Board as a waiver of the Site Plan Review Regulations, and the Board has often granted one-year extensions. The Board has evaluated the request at that time to determine if conditions related to the site plan have changed or otherwise warrant an extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no recorded plat as a means of learning of the existence of the application and the pending change in their neighborhood.

He reported that, in this case, the applicant has indicated that economic conditions have slowed the marketing of the dwelling units. To date 18 units in Phase 1 have been constructed together with a foundation for an additional eight units, the community building, and the infrastructure for all of Phase 1. Given the scale of this development, the extent of work completed to date, and current market and economic conditions, a two-year extension appears reasonable to grant.

Mr. Gross moved that the Planning Board grant a waiver of the Site Plan Review Regulations for a two-year extension for this application, extending the period of validity through March 18, 2011, for the completion of Phases 1 and 2 of Abbott Village. Mr. Swope seconded. Motion carried.

12. Request for an extension of the period of validity of a conditional approval of the Whispering Heights Cluster Subdivision on Portsmouth Street and Curtisville Road. (#2005-10)

Mr. Woodward explained that the Meisner Brem Corporation has forwarded a request for an extension of the conditional subdivision approval of Whispering Heights seeking to extend the period of validity through April 16, 2010.

He reported that the Planning Board, at a meeting on April 16, 2008, granted conditional final approval of the major subdivision application of Links Realty Trust, Lucille P. Bollinger Trust, Robert & Lucille Bollinger Trustees, and Mark and Carolyn Blasko for final approval of an 87-lot cluster subdivision of property on Portsmouth Street and Curtisville Road. The original approval was valid for a period of one year or until April 16, 2009.

Any extensions of a final subdivision approval may be granted by the Board as a waiver of the Subdivision Regulations, and the Board has often granted one-year extensions, but has generally required that an applicant present requests for anything more than that at the end of the one year extension. The Board has evaluated the request at that time to determine if conditions related to the subdivision have changed or otherwise warrant another one-year extension. If conditions have changed, the Board has denied the waiver for a further extension, and after several extensions, the Board has also indicated to applicants that a requested extension will be the final one as the passage of time alone creates an issue in terms of new abutters having no recorded plat as a means

of learning of the existence of the application and the pending change in their neighborhood.

He reported that, in this case, the applicant has indicated that economic conditions have prevented them from initiating the construction of the improvements. Given the current market and economic conditions, a one-year extension appears to be reasonable for the Board to grant.

Mr. Swope moved that the Planning Board grant a waiver of the Subdivision Regulations for a one-year extension for this application, extending the period of validity through April 16, 2010. Mr. Gross seconded. Motion carried.

City Council Referrals

13. Consideration of a communication from Attorney Richard Uchida relative to a proposed amendment to Section 28-2-3(e), <u>Lots Transected by a District Boundary</u>, and Section 28-4-2(b), <u>Buffer Width Standards</u>, of the Zoning Ordinance

Mr. Woodward explained that, at its regular meeting on February 18, 2009, the Planning Board considered a report of the Zoning Administrator to the City Council together with a proposed amendment to Section 28-4-2, <u>Buffer Requirements for Residential District Boundaries</u>, of the Zoning Ordinance, with regard to the Buffer Width Standards in Section 28-4-2(b). The Council had voted to refer this matter to the Planning Board and the Board was provided with copies of the related minutes of that Council meeting of January 12, 2009. The Planning Board reviewed this matter together with a report from the Planning Division and voted to recommend that the Council adopt an ordinance amending Section 28-2-3(e), <u>Lots Transected by a District Boundary</u>, of the Zoning Ordinance so as to apply to only those lots that were transected by a zoning district boundary as of the effective date of the Ordinance; and further, amending Section 28-4-2(b), <u>Buffer Width Standards</u>, of the Zoning Ordinance, by adding a new subsection 28-4-2(b) relating to the location of the buffer in the case of a lot transected by a zoning district boundary.

He reported that Attorney Richard Uchida subsequently forwarded a letter to the City Council containing suggestions for changes to the proposed ordinance and expressing concern that the Board had not held a public hearing on the matter before forwarding the proposal. He further requested that the Council refer the matter back to the Planning Board and expressed hope that if it was referred back, the Board would offer him an opportunity to present his suggestions. At the City Council meeting, the Council voted to refer Attorney Uchida's letter to the Planning Board, and ask that the Board hold a public hearing, and report back to the City Council by the May 11, 2009 meeting for which the Council has set a public hearing on the zoning amendments as proposed by the Board.

He reported that setting a public hearing for the April 15, 2009 meeting of the Planning Board will allow adequate time to send a report back to the City Council for their May 11, 2009 agenda. The hearing would be set on the ordinance proposed by the Board and on which the Council has scheduled a hearing. Attorney Uchida will have an opportunity to present his recommendations as will others who may be interested in this

matter. The Planning Division will prepare a report with its recommendations relative to the changes proposed by Attorney Uchida, as well as any other proposed changes that are received prior to the April 15, 2009 meeting from interested parties.

Mr. Gross moved that the Planning Board set a public hearing for its April 15, 2009, meeting on the ordinance previously proposed by the Planning Board amending Section 28-2-3(e), Lots Transected by a District Boundary, of the Zoning Ordinance so as to apply to only those lots that were transected by a zoning district boundary as of the effective date of the Ordinance; and further, amending Section 28-4-2(b), <u>Buffer Width Standards</u>, of the Zoning Ordinance, by adding a new subsection 28-4-2(b)(4) relating to the location of the buffer in the case of a lot transected by a zoning district boundary. Mr. Swope seconded. Motion carried.

New Business

14. Consideration of a request by Attorney Richard Uchida on behalf of **Tropic Star Development LLC at 161 North State Street** for a preliminary design review of a site plan pursuant to RSA 676:4 II (b), <u>Design Review Phase</u>, together with consideration of the implications of a related amendment to RSA 676:12.

The Chair noted that the Planning Board does not have a procedure in place for preliminary design reviews and a question has arisen as to the lack of procedure. He suggested that staff be directed to develop procedures for the Planning Board review.

Mr. Woodward explained that a request for a preliminary review of a site plan pursuant to RSA 676:4 II (b), <u>Design Review Phase</u>, has been filed by Attorney Richard Uchida on behalf of his client, Tropic Star Development LLC, related to a site at 161 North State Street. The request was filed in a format similar to a Sketch Plan for a major subdivision, but using a site plan application form and included an abutters list, an application fee, an existing conditions plan, and a proposed site plan. RSA 676:4, <u>Board's Procedures on Plats</u>, allows planning boards to adopt procedures for two types of preliminary review of subdivisions and site plans: 1) a Preliminary Consultation, which is restricted in scope and for which no abutter notices are necessary; and 2) a Design Review, which is broader in scope and for which abutter notice must be provided. Neither is subject to a requirement for public hearing and any discussions are non-binding upon the Board if the matter continues on to become the focus of a formal subdivision or site plan review application.

He reported that the Board's Subdivision Regulations contain provisions for a Preliminary Consultation as well as a Sketch Plan, which is essentially a Design Review option. However, while the Board's Site Plan Review Regulations contain an option for a Preliminary Consultation, they do not contain an option for a Design Review. The statute clearly states that "a planning board may provide for preliminary review of applications and plats by specific regulations", and in the case of a design review option for site plan review, the Board has not done so.

He explained that, on two prior occasions, once in 2004 and once in 2006, the Board has been asked to conduct a design review for a site plan despite the lack of regulations providing for the same, and on those occasions the Board proceeded to conduct the

design review using the statutory requirements for notice and indicating they were acting pursuant to the statute. The Board did so because the preliminary reviews were non-binding upon the Board and there were no other legal implications for engaging in such. The second request for a design review occurred around the time that a related statutory change took effect, but the Planning Division was unaware of the change until after the Board conducted the review, so the Board proceeded to conduct the design review without knowledge of the statutory change.

The related change in the statutes was to the language of 676:12 VI, <u>Building Permits to be Withheld in Certain Cases</u>, to which was added a sentence which confers vesting against subsequent regulatory changes upon the issuance of a notice of a design review by the Board. This now places a substantial legal significance upon engaging in a design review. A further issue is that the requesting party in this case has indicated that it is his interpretation that the vesting comes with the act of submission of the design review request, not the provision of notice. This does not appear to be a commonly held view but there is no case law on the matter. In this instance, the overriding issue is that there are no provisions in the Board's regulations to allow for a design review, in which case, it would not seem that vesting can occur for submitting a request for a non-existent process.

He reported that the Board could decide to proceed to consider the request at a date to be specified and direct the Clerk to send notices accordingly. The effect of this action would be to confer the vesting in accordance with the statute. The Board could also decline to engage in the design review, or table the matter, pending a decision by the Board as to whether to engage in such. If the Board does want to engage in design reviews in general, then the Planning Division should be directed to prepare an amendment to the Site Plan Review Regulations to establish a process and standards for the same. After the Board considers this, if it wishes to adopt the amendment, then a legal hearing must be held prior to a vote. With a fully adopted regulation, then the Board would be in a position to entertain any and all requests for design reviews.

He reported that a letter has been sent to the applicant which indicates that the Board's Clerk will not issue any notices of a design review until the Board has been apprised of the statutory implications of the same and has discussed whether it is appropriate to engage in design reviews until proper regulations are prepared including standards for a determination of completeness for the same.

Mr. Gross felt that these sessions have been valuable both for the Board and the developer. He asked if the Board could continue to conduct design reviews but ask the applicants to waive their vesting rights. Mr. Woodward responded that he would pursue the question with the City Solicitor and suggested that the Board adopt a formal procedure for inclusion of design review in the Board's regulations.

Mr. Gross moved with regard to the current request for a design review, pursuant to RSA 676:4 II, that the Planning Board not consider this request or any other request for design reviews until it has had time to consider whether to adopt regulations providing for design reviews. Mr. Swope seconded. Motion carried.

The Board then directed the Planning Division to prepare draft regulations for design reviews together with an analysis of the benefits and concerns related to design reviews.

15. Consideration of **amendments to the Subdivision and Site Plan Review Regulations** related to Application Fees.

Mr. Woodward explained that the application fee schedules of the Subdivision and Site Plan Review Regulations were last amended in 2005. The Planning Division conducts an annual survey of several other New Hampshire cities as well as its largest town to compare where Concord's fees stand in relation to the others. The Division also evaluates the effort and expenses involved in the review and processing of applications. The data collected in the fee survey are analyzed through the use of four subdivision application scenarios and four site plan application scenarios.

He reported that prior to the last fee change, a survey was conducted which revealed that Dover was the city with fees at the closest levels to those charged by Concord, which were the highest at that time. The most recent survey revealed that Nashua and Salem have raised their fees substantially, such that Nashua's are 20% greater and Salem's are more than 50% greater. Dover's are comparable, while Keene, Manchester and Portsmouth are substantially lower than Concord's.

As noted in the survey, the other communities charge separately for postage and recording fees while Concord has generally charged a unified fee that is inclusive of these costs, in part to minimize the number of financial transactions with each application and thereby simplifying the process for both the applicant and the City. However, this past year the Legislature established the LCHIP surcharge fee for recording plans and documents which has required that the Planning Division obtain one or more checks from each applicant to cover the LCHIP surcharge for plan and document recordings. Given that separate fees are already being collected, it now appears reasonable and appropriate to collect all recording fees separately from application fees in the same manner that other large municipalities do. It is not proposed to lower the basic application fees, just to make clear that all recording fees are not included and are over and above the application fees. The current application fees exclusive of recording costs will place the City in a position more comparable to the other communities in the survey with the exception of postage costs, the approach to which is not proposed to change at this time.

He reported that one other new fee that is recommended is a separate fee for a sketch plan for a major subdivision. A fee of \$600 is proposed for a sketch plan application for a major subdivision. Currently, the sketch plan is treated as an optional phase of a major subdivision and the full major subdivision application fee is collected at the time of the filing of a sketch plan application. This procedure may inhibit applicants from using the sketch plan stage to explore ideas and options prior to formalizing an application for a major subdivision. The new fee is intended to separate the sketch plan from the actual formal major subdivision application which will require a separate application fee. The Board considered such a fee once before but set it aside to consider whether a sketch plan fee should be deducted from a subsequent application fee for a major subdivision that resulted from a sketch plan application. The staff

recommendation is to charge a separate fee for each action, given the amount of time and effort that goes into the review and report preparation for each type of application.

Mr. Gross moved that the Planning Board schedule a public hearing at the regular meeting on April 15, 2009 relative to the proposed amendments to the Subdivision and Site Plan Review Regulations in respect to application fees. Mr. Swope seconded. Motion carried.

OTHER BUSINESS

Reminder of upcoming meetings

• Special Meeting on <u>Traditional Neighborhood Development (TND)</u> on Wednesday, March 25, 2009 at 7:00 PM in the Council Chambers

Members were reminded of the public workshop on March 25, 2009 at 7:00 PM in the City Council Chambers relative to Traditional Neighborhood Development.

There was no further business to come before the Board and the meeting adjourned at 11:20 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward Clerk

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