

The regular monthly meeting of the City Planning Board was held on July 15, 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), Foss, Gross, Harrington, Hicks, Shurtleff (representing the City Council). Mr. Woodward, Mr. Henninger and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

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

## **APPLICATIONS**

### **Minor Subdivisions**

1. Application by **Joseph J. Fitzgerald & Raina J. Eckhardt** for approval of a subdivision of property located at **89 Appleton Street**. Along with this application are requests for a Conditional Use Permits pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision, and Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance. (#2008-41)

### **Minor Site Plans and Conditional Use Permit Applications**

2. Application by **26 Centre Street LLC** for a site plan of property located at **26 & 26 ½ Centre Street** in the Civic Performance (CVP) District. (#2009-18)

The Chair announced that the public hearings on the applications by Joseph J. Fitzgerald & Raina J. Eckhardt and by 26 Centre Street LLC had been postponed until August 19, 2009 at the request of the applicants.

### **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.
  - **Capital City Realty** at 70 Pembroke Road (freestanding sign)
  - **Bark Now** at 237 South Main Street (freestanding sign)
  - **Red Book DVD Rentals** at Walgreens at 142 Loudon Road (kiosk with signs)
  - **Sam's Club** at 304 Sheep Davis Road (affixed sign)
  - **GES Solar Store** at 22 Pleasant Street (hanging sign)

The Chair opened the public hearings for all of the above sign applications.

- **Capital City Realty** at 70 Pembroke Road (freestanding sign)

Mr. Henninger explained this proposal for a replacement freestanding sign. He reported that this has been a single tenant building and is now a multi-tenant building. The new freestanding sign is intended to provide panels for each of the tenants. The sign will have a white background with maroon text and gold accents. The pole cover will be black as will the top and bottom panels.

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

Richard Messier from Capital City Realty was present as applicant to answer questions from the Board.

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

- **Bark Now** at 237 South Main Street (freestanding sign)

Mr. Henninger reported that the Design Review Committee had found the design and placement of the sign to be appropriate for the location and use, and recommended approval as submitted provided it is placed five feet back from the property line.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted provided it is placed five feet back from the property line. Ms. Foss seconded. Motion carried.

- **Red Book DVD Rentals** at Walgreens at 142 Loudon Road (kiosk with signs)

Mr. Henninger explained this proposal to construct an outdoor kiosk attached to the existing Walgreens building. He reported that lighting is shown under the canopy.

He reported that the Design Review Committee had found the design and placement of the sign to be appropriate for the location and use, and recommended approval as submitted provided the lighting is shielded to prevent glare.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted provided the lighting is shielded to prevent glare. Ms. Foss seconded. Motion carried.

- **Sam's Club** at 304 Sheep Davis Road (affixed sign)

Mr. Henninger explained that the applicant had recently received approval for two of the three signs allowed under the Zoning Ordinance. This proposed sign is the third allowed. It consists of white letters for "Tire Installation" on a brown background and will be mostly visible only on site.

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

There was no one present on behalf of the applicant.

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

- **GES Solar Store** at 22 Pleasant Street (hanging sign)

Mr. Henninger reported that all the signage in the window from the previous tenant would be removed and a hanging sign installed using the existing bracket.

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

There was no one present on behalf of the applicant.

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

4. Application by **Concord Housing Authority on behalf of Judith & Emmanuel T. Brochu, Jr** for approval of modifications to the previously approved elevations and footprints of dwelling units, and modifications to the previously approved landscape plan at **8 Parmenter Road. (#2006-86)**

#### Public Hearing

Mr. Henninger explained that the Planning Board on May 21, 2008, granted conditional Architectural Design Review approval for a 25 unit Planned Unit Development to be constructed on an extension of Parmenter Road subject to the following conditions:

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the landscaping plan shall be revised to substitute five shade trees for ornamental trees in the parking lot islands near units 4 & 5, and units 23 & 24.
2. Additional evergreen plantings, acceptable to the City Planner, shall be installed at the northeast corner of parcel 73A/1/1 if allowed by the property owner.

He reported that the applicant subsequently submitted revised architectural elevations and a revised landscape plan. The Concord Housing Authority has an option to purchase the property and intends to begin construction in late summer or early fall. The number, location and arrangement of the units have not changed. The footprint of the units has been reduced slightly, and small single story bump-outs have been provided for boiler (utility) rooms on one end of each of the buildings. In addition to a boiler room, a site office/laundry room has been added on the east side of unit 25. The

color scheme and elevations are very similar to the originally approved design.

He reported that the landscape plan has been revised to fully address the first condition of approval, and a six-foot security fence has been added along the northerly property line at the request of the abutting owner. The new owner has not yet addressed the second condition of approval in regard to off-site buffer plantings for the immediate abutter at the southeast corner of the site.

He reported that the Architectural Design Review Committee had reviewed the revised plans at their July 7, 2009, meeting and recommended approval of the revised landscaping plan and building elevations.

Mr. Gross asked for clarification as to whether these would be condominium ownership or rental units. Mr. Henninger responded that the original developer had planned these units to be either rental or condominium, but the prospective owner now plans for these to be rental units.

Jeff Merritt from Keach Nordstrom Associates was present on behalf of the applicant to answer questions from the Board. He explained the scope of the project is the same as previously approved. The density is the same. This is simply a plan to add boiler rooms, a management office and laundry facilities to the property.

Mr. Shurtleff recalled that the developers planned to construct workforce housing and he asked if the plan now was to provide low-income housing. John Hoyt from Concord Housing Authority responded that this is a tax credit property aimed at persons with an income of 80% or less of median income.

Steven Burnell from Burnell Johnson Architects explained the changes in the footprints of the individual buildings.

There was no one present who wished to speak for or against this application and the Chair declared the hearing closed at 7:18 PM.

#### Deliberations and Action on the Application

Ms. Foss moved that the Planning Board grant Architectural Design Review approval for the revised building elevations and landscape plan for the proposed Parmenter Place Planned Unit Development subject to the following condition:

1. Additional evergreen plantings, acceptable to the City Planner, shall be installed at the northeast corner of parcel 73A/1/1 if allowed by the property owner.

Mr. Gross seconded. Motion carried.

#### Special Public Hearing

5. Public hearing on a communication from **Chester and Elizabeth Hoadley** requesting the Planning Board to recommend release of a conservation easement on the property at **74 West Parish Road**, for which a Conditional Use Permit pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision of the Zoning Ordinance, was granted and a subdivision plat and conservation easement were approved and recorded in April 2009.

#### Public Hearing

Mr. Woodward reported that the Planning Board had received a communication from Elizabeth and Chester Hoadley requesting that the Planning Board recommend the release of a conservation easement on the property at 74 West Parish Road, for which a Conditional Use Permit pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision of the Zoning Ordinance, was granted by the Board and for which a subdivision plat and conservation easement were approved and recorded in April 2009.

He explained that in February of 2009, the Hoadleys applied for a subdivision of their parcel at 74 West Parish Road so as to create a new lot of one acre in size, leaving the existing dwelling on a lot of 1.25 acres. The tract is in a Residential Open Space (RO) District wherein the minimum lot size is two acres, and subdivision may only occur through the Cluster Development regulations in Section 28-4-7 of the Zoning Ordinance, or pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision of the Zoning Ordinance, which requires a Conditional Use Permit to be granted in order to establish a non-cluster subdivision subject to providing a comparable amount of open space as a cluster development would require. The Hoadleys had applied for and were granted a variance in April of 2006 to allow for the creation of two lots with substandard lot sizes.

He reported that a Conditional Use Permit application was submitted by the Hoadleys and a conservation easement was proposed in conformance with the requirements of the Ordinance. The Conditional Use Permit and subdivision were conditionally approved and the plat and easement were recorded in early April.

Subsequently, the Hoadleys applied for variances to waive the requirement for provision of common open space and these were granted by the Zoning Board of Adjustment on June 3, 2009. The stated purpose was to allow the applicants to pursue removal of the common open space restrictions placed on the lots created by the subdivision recorded in April.

The Hoadleys' arguments for their position relate to the 1996 subdivision of the Sunnycrest Farm on Carter Hill and West Parish Roads, which lies south and uphill across the street from the Hoadley property. The Hoadleys consider that drainage problems stemming from a heavy rain in March of 2000 have delayed their action on proceeding with a planned subdivision of their land and the delays ensnared them in the city-wide rezoning of 2001, which raised the minimum lot size in the RO District, and in the zoning amendment enacted by the City Council in March of 2007 in which the

mandatory cluster and the open space requirements for non-cluster subdivisions in the RO District were adopted.

At its meeting on June 17, 2009, the Planning Board voted to hold a public hearing on this request, and to have the abutters notified, the matter publicized in the newspaper, and the Conservation Commission apprised of the hearing.

Mr. Woodward explained that the subdivision of six new lots from the Sunnycrest Orchard property at the corner of Carter Hill Road and West Parish Road was granted conditional approval by the Planning Board on September 18, 1996 subject to six conditions including one which stated that approvals shall be obtained for drawings and specifications for all public improvements (i.e. drainage facilities) from the Engineering Department prior to the commencement of any of the public improvements. The drainage solution as shown on the plans included the use of an existing 12-inch culvert under West Parish Road, the outflow from which continues downhill through the Hoadley property. A 1996 plan detail shows the 12-inch culvert outflow channel over the Hoadley land with a note at the northerly end indicating "3-foot wide wash out". A new 18-inch culvert was to be added at the intersection of Carter Hill Road and West Parish Road with the outflow following the ditch line on the west side of Carter Hill Road. The Sunnycrest Orchard plat was recorded on July 10, 1997.

According to notes in the application file, the City Engineer and the developer's engineer met in 1999 and agreed to change the 18-inch culvert to a pair of 12-inch culverts on West Parish Road about mid-way between the old 12-inch culvert that discharged onto the Hoadley land and the intersection with Carter Hill Road, and to block up the old culvert. The new pair of 12-inch culverts was installed, followed by a heavy rain storm which occurred in March of 2000 that washed out part of Carter Hill Road. The General Services Department opened the old 12-inch culvert to help to relieve the situation, which returned the stormwater to the historical channel over the Hoadley land.

In June 2002 the City administration added a capital improvement project to the Capital Budget to address the storm drainage problems exposed by the March of 2000 storm. This work did not actually get funded by the City Council until June of 2006 and the work was done in the fall of 2007 with the final inspection in January 2008. The actual system which was installed focused on Carter Hill Road but did return the 12-inch culvert on West Parish Road to a plugged and inactive status.

The City Engineer also advised that sometime in the early 2000's, the owner of the orchard also did some re-grading to divert runoff from the orchard away from watershed of the 12-inch culvert, thereby assisting in lowering the potential amount of runoff to be accommodated by the culvert.

Mr. Woodward explained that, while no specific installation date has been discovered, the 12-inch culvert has been located under West Parish Road for many years. One City survey record noted it as a pre-existing landmark in a 1952 log. Clearly, stormwater ran down the side of Carter Hill toward the Contoocook River prior to West Parish Road

being built, and the culvert was placed as an accommodation of that runoff. While there is no evidence of any formal easement document for runoff across the Hoadley parcel, the longevity of the culvert and the related flows established a prescriptive right to have the stormwater which passed through this culvert, up to its capacity at 12 inches in diameter, flow downhill over the Hoadley land as it had for many years at the time they purchased it.

While the plans that the Planning Board reviewed did not include a closing of this 12-inch culvert, the City Engineer of that time agreed to do so, and the General Services Department re-opened it. The latest plan which was executed by the City was to close the culvert. However, the City Council has never renounced the City's flowage rights from this culvert, and in the future the City government could elect to re-open this culvert as the City's flowage rights remain in place.

Mr. Woodward reported that a review of the goals, policies, and recommendations of Master Plan 2030 reveals that the proposal for mandatory cluster is part of the overall plan for the City's land area outside of the Urban Growth Boundary. Master Plan 2030 notes that the City should, "*foster the use of cluster development ...in rural residential areas to promote the preservation of open space and to reduce the economic and environmental costs associated with sprawl*", and that the benefits of cluster development "*...are the potential linkages between individual cluster subdivisions and the City's open space system with its pedestrian and bicycle trails, and connections among cluster developments both in terms of the developed portions as well as the open space.*"

He explained that the roots of the zoning amendment of March 2007 lie in a discussion of a special minimum four acre zoning district to encompass Broken Ground that was proposed to the City Council in late 2005 by neighborhood residents in response to the application for the Whispering Heights subdivision. The Planning Board held a public hearing in early 2006 during which concepts from the then draft Master Plan were advanced for a minimum four-acre district as well as mandatory cluster in the four-acre district as well as the RO District, which was then in effect as a minimum two-acre district.

The City Council included the consideration of minimum four-acre district and a mandatory cluster ordinance in its 2006 priority setting session. In late 2006, the Council requested that the City Manager have such an ordinance prepared and the Manager requested the Planning Division to undertake this effort. The Planning Division shared its work with the Board and the Board forwarded its comments on the draft ordinance to the Council. The Council decided to drop its consideration of a minimum four-acre district, but set down for hearing the ordinance establishing mandatory cluster inclusive of open space requirements for conventional subdivisions in the RO District. The proposed ordinance changed cluster development in the RO District from an optional form of development applicable to major subdivisions to a mandatory form of development applicable to all subdivisions, inclusive of minor subdivisions to establish one new lot.

The proposed ordinance also established a new use category to be added to the Table of Uses that reads, "single family dwellings in a standard (non-cluster) subdivision" and is allowed by right in other districts but only by Conditional Use Permit in the RO District subject to new supplemental standards. The new supplemental standards for a standard (non-cluster) subdivision in the RO District require that a conventional subdivision have the same amount of open space that would otherwise be required under the Cluster Development section of the Ordinance, either on the property to be subdivided, or on another parcel in the RO District.

He reported that the City Council unanimously adopted the ordinance on March 12, 2007 after a public hearing.

Mr. Woodward explained that the City Council made very clear choices when it adopted the 2007 Zoning amendment and, except for the variance granted to create substandard lots, the subdivision and conservation easement are consistent with that intent. To the extent that the variances were granted to allow for creation of one acre lots, this does not render the open space impractical or nonfunctional. There are other adjacent and nearby properties which will be developed in the future pursuant to these same regulations, and the resultant required open space will be linked into a network. Also, there are other zoning districts wherein the minimum lot size is one acre or less within which cluster subdivisions are allowed and have been developed, and the requisite open space has been provided.

Mr. Woodward reported that the Conservation Commission had recommended that the Board not endorse a release of the conservation easement. The Commission felt there was no reason to exempt this property from the requirements of the Zoning Ordinance and felt that a release of this easement would establish a precedent that could lead to other similar requests, thereby undermining the intent of the ordinance. Further, they felt a release of the easement would contradict the land use and open space policies intended to be implemented by the City's Ordinance which provide for the rural area of the city to remain as a landscape of open space interspersed with a limited number of residences.

Mr. Gross noted that both the City staff and the Conservation Commission refer to the danger of creating a precedent if this request to relinquish the easement is granted. He asked how that could set a precedent. He also noted that the petitioners have indicated these lots are so small that they would not create any effect on the City's open space. Mr. Woodward responded that this would encourage applicants to go to the Zoning Board of Adjustment to seek relief to not have to provide open space.

Mr. Harrington asked if there was any requirement or goal in the Master Plan that connectivity of open space needed to consider abutting uses or to abut other open space. Mr. Woodward responded that the Conservation Commission advises the Planning Board relative to where the open space land should be created, especially in the case of the initial subdivision in an area. The Conservation Commission could also purchase property to provide linkage between open space parcels that are preserved through the subdivision of land.

Mr. Harrington asked about the difficulty of stewardship of open space. Mr. Woodward explained that the Conservation Commission has had discussions about stewardship of small isolated pieces of open space and has created guidelines and standards for the design and layout of open space to be dedicated to the City. The Conservation Commission does not charge stewardship fees for its work at this time, but they will need to develop a funding source to monitor these parcels at some point.

Elizabeth Hoadley was present as the petitioner and explained that there was a situation that has occurred for many years which was what she described as water trespass by the City onto the Hoadley property. What she considered to be an illegal culvert which was placed on their property broke down and undermined Carter Hill Road, and their land was inundated for a period of 18 months. The subdivision of Sunnycrest Farm provided a plan for dealing with drainage from that property, however, changes she considered as being illegal were made to the construction, and, as a result of that construction, they had what she referred to as water trespass until January of 2008.

In answer to a question raised by Mr. Gross regarding signing the conservation easement, she indicated they needed to sign the easement in order to get their subdivision plat recorded. She felt that no other subdivision application would happen like the situation that occurred with their property. She explained they went to the Zoning Board of Adjustment last month as a result of a process outlined by Carlos Baia, the Deputy City Manager.

She indicated they have lived in their house since 1966. The lot will not be developed until they have moved out or moved on. They have submitted a petition in favor of this request signed by 21 people in their neighborhood. Everyone they approached signed for them and agreed with them.

She reported that in January of 2006 they thought the City Council would adopt a capital improvement project to fix the water problem. She believed that when the open space regulations were adopted they were rushed and not fully debated and some details not considered. A couple of things were totally overlooked, including whether there were subdivisions in the pipeline or whether there were any small subdivisions that would be affected by these new regulations. She felt that was what the Zoning Board of Adjustment was thinking when they granted the requested variance. It was not until the drainage issue was resolved that they felt comfortable going to a surveyor to start the subdivision process.

She had huge concerns about the fact that only 30% of a lot could be used for development. She thought open space should be considered for lots that are 20, 30 40 acres in size. What is the benefit of 60% of one acre against the monitoring that will have to take place? Most of the activities typically prohibited in a conservation easement would not be feasible on a one acre lot.

Ms. Hoadley noted that they have already lost the wildlife in their backyard as a result of the subdivision of the abutting orchard and other neighboring subdivisions. This

open space will not improve that situation. That habitat is already gone forever.

She explained that what she considered as illegal water trespass has been a barrier to every step in their proposal to subdivide. These two proposed lots don't need to have a conservation easement on them. In her view this is just not logical or sensible. She felt open space is a "feel good" thing. You just don't speak against something like open space. The water situation never should have been there. It interfered with their subdivision. They just want their land subdivided. There are wetlands on the property that she believes were created by the water problem which meant they had to work with the New Hampshire Department of Environmental Services for their approval of the subdivision as well.

She explained that they have not been looking for favors for the last fourteen years. This effort is just to try to keep their land the way it was in 1995 before Sunnycrest subdivided and created the problem with the surface drainage system that did not work and took away the wildlife they had grown accustomed to seeing. The constant flow of water over their land prevented them from having enough land available to subdivide and she believes it created a wetland on her land.

Ms. Hoadley reiterated that she signed the conservation easement in order to get the subdivision plat recorded because she was told there was a process that would allow her to request relief from the submittal of the easement, and that process was outlined in a memo to her from the Deputy City Manager.

There was no one else who wished to speak for or against this request and the Chair declared the hearing closed at 8:55 PM.

#### Deliberations and Action on Request

Mr. Gross explained that the last thing he wanted to do was to weaken the protections the Planning Board has now against sprawl. He felt that is one of the most important major policy decisions that has been made. On the other hand, he had not heard anything from anyone about how granting this request would make any major dent in the policy because of the character and history of the situation. His bias is in favor of preserving open space but, in listening to the petitioner's testimony, he heard about the guidance she had received from City officials. She followed the advice she was given. He then discussed whether the request should be denied because the petitioner waited too long to seek relief, and he is now understanding of how long it took her to pursue the process. The existing flowage occurred because of the City's failure to protect her property. So if it is not going to do any substantial harm to the City's policy regarding open space and in the face of the problems she has been confronted with in dealing with the City on this situation, he felt the City Council should consider relieving her of the burden of the conservation easement she signed as a condition of approval.

Mr. Shurtleff felt that they followed the process they were told to follow.

Mr. Drypolcher had trouble understanding the chronology in asking for the variances to release the conservation easement.

Mr. Harrington thought the policy the City had established was crucial to its future. He did not think it was the function of the Planning Board to advise on process. As a result of the adoption of the Zoning Ordinance amendment, there is the requirement to set aside open space and she applied for the subdivision and signed the easement knowing of the requirement. He feels this would set a precedent and it would open the door for more requests of the same kind. Protecting open space is one of those circumstances where it is very hard to create an exception to the rule. He also agreed with the Conservation Commission's recommendation because they spend a lot of time looking at these things and knows more than he does about this. He does feel that the City should revisit the policy about the small open space parcels and their connectivity.

Ms. Foss explained that the reason she has supported the open space regulations is to provide connectivity and she was looking at this purely from a wildlife perspective. Because this parcel is at an intersection, its value for connectivity is pretty minimal. If this were to provide a major travel route for wildlife or if it were a part of the city that it provided real connectivity, she would feel differently. From a purely functional perspective, she does not have an issue with granting the petitioner's request.

Mr. Hicks looked at this from the perspective of scope. Just to put a home on this corner he did not see how this would impact open space very much. He did appreciate the goal of conserving open space as much as possible but did not think the regulation was intended for a parcel like this one.

Mr. Drypolcher felt this is not a lot in the middle of a development. It is a lot bordered by undeveloped property that could provide further open space if and when it is developed. There is connectivity potential here.

Mr. Gross moved to recommend to the City Council that they grant the request that the City release its right to the open space easement that it previously acquired in connection with the subdivision, the basis for this being that doing so for this case only would cause no appreciable harm to the City's open space policies which the Planning Board continues to enthusiastically endorse. He further moved to advise the Council that this recommendation implies no approval of the practice of acquiring post facto approval of variances.

He noted that he did not want the Planning Board action to be interpreted by the City Council, or the Zoning Board of Adjustment, or anyone else, that anybody could go to the Zoning Board of Adjustment and get approvals after the fact.

Mr. Shurtleff seconded.

Mr. Harrington indicated that this would not be before the Planning Board if the variance had not been approved. He felt the hardship was created when the Zoning Board of Adjustment granted the variance that created the small lots.

Motion carried, 4-2, with Messrs. Drypolcher and Harrington voting against.

## REGULAR MEETING

### Minutes

Mr. Shurtleff moved approval of the minutes of the meeting of June 17, 2009 as submitted. Mr. Gross seconded. Motion carried.

7. Further consideration of applications for approval of developments on which public hearings have previously been held:
  - a. 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), Construction of Fewer Parking Spaces, and Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. (#2009-04)

Mr. Henninger reported that the Planning Board, at its regular meeting on June 17, 2009, extensively discussed this application and subsequently tabled action to allow the applicant to revise the plans to address the Board's concerns about traffic circulation on site and traffic circulation offsite, in particular the project's entrance on East Side Drive, and the impacts the additional turning movements may have at an already congested, high accident location. Suggestions for traffic reduction or improvement included a reduction of the total square footage of the uses proposed for the site or the consolidation of the proposed uses in a single building. The Board also asked the applicant to consider reducing the number of parking spaces to initially be paved on site by five additional spaces, and to address lighting issues associated with the building and signage, as it may impact the immediately abutting neighborhood. The Board asked the applicant to consider placing the signs on timers so that they would shut off at a certain time in the evening.

He reminded the Board that the proposal is to demolish an existing auto service building at 155 Loudon Road and an existing Burger King Restaurant at 157 Loudon Road and to construct a new 13,225-square foot CVS Pharmacy and a new 2,598-square foot Burger King. A drive-up window is proposed for both the Burger King and the CVS. A companion subdivision was approved in February of 2009, by the Planning Board which consolidates both commercial lots and a portion of 36 and 42 Burns Avenue to create a 2.10 acre site for redevelopment.

An application for a Conditional Use Permit has been revised to increase the number of parking spaces to be deferred from seven spaces to twelve parking spaces as requested by the Board.

He reported that a number of new site circulation schemes have been discussed with City staff and have been reviewed by the perspective tenants. The focus of the discussions has been almost exclusively on traffic circulation. The applicant, appropriately, does not want to revise the grading, drainage, lighting and landscaping plans until the site circulation is found acceptable.

He reported that an application for a Conditional Use Permit has been submitted to allow two driveways on Loudon Road where one is allowed and with spacing between driveways of 150 feet and 40 feet where 200 feet is required. The revised proposal reduces the driveways to one entering drive and one exiting drive.

He reported that City staff has advised that the movement most likely to adversely impact the intersection of East Side Drive and Loudon Road is left turning traffic out of the site onto East Side Drive, which can block the south bound lanes on East Side Drive. There is room for up to six vehicles to wait to enter the site from East Side Drive in the dedicated left turn lane without adversely impacting the intersection capacity. There is no space for exiting traffic to queue to wait for the north bound traffic to clear on East Side Drive. The existing queues routinely extend beyond Burns Avenue to the north and routinely during peak hours extend northerly beyond Eastern Avenue and Christian Avenue to the vicinity of Hazen Drive.

He noted that on Loudon Road, the applicant has agreed to extend the median to avoid any illegal left turns into or out of the site.

Consistent with the Board's policy to encourage interconnected parking lots along Loudon Road as part of an overall access management program, an agreement to allow for the interconnection of the Tropic Star Development parking lot with the abutters to the west has been requested. The agreement needs the flexibility to locate the interconnection where all parties can agree, including the owners, tenants, and the City Planning Board. The new internal circulation plan suggests that the best location for the interconnection would be at the end of the two way circulation aisle running parallel to Loudon Road.

Attorney Richard Uchida from Orr & Reno was present on behalf of the applicant and explained that the new plan for traffic shows two-way traffic across the Loudon Road frontage of the site. It provides for a very logical spot on the westerly boundary to connect to the abutting parcel for future development. It eliminates the C-turn after the CVS drive-up window and improves that exit movement. It eliminates the left turn out at East Side Drive. It also creates a raised area for the loading area to discourage through traffic from travelling between the two buildings to the back of the property. The loading area can accommodate trucks coming from either Loudon Road or East Side Drive. They have also provided a continuous sidewalk across the front of the Burger King building and increased the number of parking spaces not to be built and that has helped them with access across the site.

Steve Pernaw, traffic engineer, was also present to answer questions related to traffic.

Ms. Foss felt this was a major improvement but had questions about deliveries for both CVS and Burger King. Mr. Uchida described the loading area and noted they would time deliveries for those periods when the buildings are closed.

Mr. Gross felt circulation looked much simpler now.

Ms. Foss still felt there is still a lot proposed for this site. However, circulation for both pedestrians and vehicles is much improved over the last plan.

The Board indicated progress appears to have been made.

Mr. Harrington felt that a lot is proposed to be squeezed into that area. He expressed concern about that.

Mr. Woodward noted that there is an addendum to the staff report relative to this project. He explained that the City has taken the position that where existing zoning district boundaries fall on current property lines, any assemblage of adjacent parcels to create a lot transected by a zoning district boundary would require a voluntary merger of the parcels into one tract, thereby establishing a transected lot entitled to the 40-foot extension of the predominate zoning district. This type of self-creation of transected parcels has been eliminated by an amendment to the Zoning Ordinance in May of 2009. This application is grandfathered against the new zoning amendment and does involve the self creation of a transected parcel.

He explained that the applicant received a variance from the Zoning Board of Adjustment to allow the location of the buffer to be placed along what is a proposed property line approximately forty feet into the abutting residential parcels. The applicant also received approval of a minor subdivision and resubdivision of those properties which reflected a forty-foot extension of the zoning district boundary. However, the conditions of approval did not require a voluntary merger of the lots to establish the basis for entitlement to the forty-foot extension.

He reported that the City Solicitor had advised that the Board should add a condition to any site plan approval to require an initial lot merger which then would establish the basis for the resubdivision along a forty-foot extension of the zoning district boundary. However, a problem could occur if the subdivision plat was not then recorded. This would leave the existing commercial and residential uses on one large parcel in violation of other provisions of the Zoning Ordinance. This outcome seems rather improbable as the condition requiring the lot merger would be precedent to effectuating the site plan which has been the stated purpose of the applicant for the subdivision application.

Mr. Uchida acknowledged the report and indicated they are aware of the need for the voluntary merger.

There was no further discussion and it was noted that the application remained tabled for consideration at the regular meeting in August.

- b. Application by **Wheelabrator Concord Company, L.P.** for a site plan of property located at **11 Whitney Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Zoning Ordinance. (**#2009-24**)

Mr. Woodward explained that in 1986, the Planning Board granted site plan approval for the construction of the waste-to-energy plant on Whitney Road. Once the plant was built and in operation, it required scheduled maintenance activities and occasional repairs to the boilers and turbines. The maintenance and repairs have been conducted by outside contractors who arrive at the site in personal vehicles numbering about 30. The parking for these contractor vehicles has been accommodated off-site on the adjacent property of the Whitney family who has granted permission for this use until recently.

He reported that the applicant now wishes to construct a gravel, thirty-space parking lot adjacent to the west side of the plant and had originally proposed to cut a new driveway through to the right-of-way of Whitney Road. The applicant had also applied for a Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Zoning Ordinance, to allow for the lot and driveway to be gravel and not be paved in recognition of its use for a total of 30 days over the course of a year.

At the meeting of June 17, 2009, based on supporting information provided by the applicant, the Planning Board voted to grant a Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Zoning Ordinance, to allow for the lot and driveway to be gravel and not be paved. The Board then voted to table action on the Site Plan application to allow the applicant to consider a revised plan for the access to the parking lot including the option of entering the parking lot off Wheelabrator's existing main driveway to the plant.

Mr. Woodward reported that the applicant has revised the plans to reflect the access to the proposed parking lot coming off the main entry drive just west of the scale in lieu of the original proposal for a new driveway off the future extension of Whitney Drive. A removable barricade is proposed to be placed in front of the scale house with a sign noting "all maintenance vehicles =>". The proposed access to the new parking lot off the existing main driveway will cause the removal on the Wheelabrator property of 48 trees of a variety of species with trunk diameters in excess of four inches in size, as compared to a total of 43 trees of a similar size which would have been removed under the original plan with a direct access to Whitney Road. The removal of these trees for construction of the access will impact a very effective forested buffer between Whitney Road and the power plant, which had originally been required by the Board as part of the original 1986 Site Plan approval. However, the opening in the buffer is adjacent to the main driveway, and the expanded view of the plant will be from the north which will be obscured much of the time by the queue line of trucks waiting to access the scale.

John Lariviere, general manager of Wheelabrator, and Christopher Nadeau, from Nobis Engineering, were present to answer questions from the Board.

Mr. Drypolcher asked if the applicant would consider adding trees to help replenish the buffer that will be reduced by this construction. Mr. Lariviere responded that they would look at that.

Mr. Gross moved that the Planning Board grant conditional minor Site Plan approval subject to the following conditions:

1. Prior to the issuance of a Certificate of Approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall address minor corrections and omissions noted by City staff.
2. Additional trees shall be shown on the plan and planted on the site southerly of the existing main driveway, westerly of the proposed new driveway, in order to provide some screening of views of the plant that will result from the removal trees to construct the new driveway.

Mr. Shurtleff seconded. Motion carried.

### **New Business**

#### **8. Consideration of an amendment to the Zoning Ordinance to address Small Wind Energy Systems** pursuant to recent statutory changes.

Mr. Henninger explained that in 2008, the NH Legislature modified RSA 674:62-66 to revise how local municipalities may regulate small wind energy systems. Small wind energy systems are defined in the statute to be freestanding towers with wind turbines with a rated capacity of 100 kilowatts or less. Small wind energy systems are systems where power generation will be used primarily for on-site consumption. Effective July 11, 2009, the State of New Hampshire granted the authority to regulate and permit small wind energy systems to municipal building officials.

He reported Planning staff had prepared a draft ordinance in cooperation with the City Solicitor's office for consideration and adoption.

He explained that the Code Administrator would be responsible for administering the ordinance including notifying abutters, and issuing permits for small wind energy systems. Standards are established for setbacks, colors, noise, signage, shadow flicker, and height of above tree canopy.

Roof top wind energy systems, such as was recently approved at the new office building at the end of Break of Day Drive, will still be treated as appurtenant building features similar to chimneys, telecommunication equipment, and steeples. Large wind energy systems, defined as over 100 kilowatt capacity, are classified as essential public utilities and will be regulated like any other utility facility.

He explained that many of the performances standards adopted for small wind structures will also now be applied to all wind systems, most notably those associated

with noise, visual impact, color, signage and shadow flicker. Setbacks, clearing, height limits and access restrictions are not formally established for either roof top units or large commercial wind systems and are proposed to be addressed on a case by case basis.

Ms. Foss asked if there were any concerns with this scale of a facility relative to 'ice throw'. Mr. Henninger responded that would not seem to be a problem with a facility of this size, but the setbacks are such that any 'ice throw' probably would not be a problem.

Ms. Foss also asked about noise that might be heard at the greater distances away from the site. Mr. Henninger responded that the recommendation is that noise not exceed 60 decibels. He suggested changing the wording to protect those properties farther away than the property line.

Mr. Henninger indicated he would look into the question of noise within the line of sight and create standards for that in the regulations to provide to the Board for further review.

There was no further business to come before the Board and the meeting adjourned at 10:50 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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