

The regular monthly meeting of the City Planning Board was held on November 17, 2010 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher, Swope, Foss, Gross, Hicks, Meyer, and Shurtleff (City Council representative). 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.

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

## APPLICATIONS

### Conditional Use Permit Applications

1. Application by **Jeffrey and Alyson Holt** for a Conditional Use Permit pursuant to Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance, at **87 Oak Hill Road. (#2010-43)**

#### Determination of Completeness

Mr. Henninger explained this proposal to disturb 2,721 square feet of a wetland buffer for the construction of a driveway to a new house on a 17.9 acre parcel north of Oak Hill Road.

He reported 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. Ms. Meyer seconded. Motion carried.

#### Public Hearing

Mr. Henninger explained this proposal to disturb 2,721 square feet of a wetland buffer for the construction of a driveway to a new house on a 17.9 acre parcel north of Oak Hill Road. The eastern 255 feet of this property is encumbered by a PSNH transmission line right-of-way where no building is allowed. The PSNH right-of-way encumbers the entire frontage of the property along Oak Hill Road. Three separate transmission and distribution lines are located in this existing corridor. The proposed driveway will follow an existing service road for the PSNH transmission line corridor through the wetlands and wetland buffer next to Oak Hill Road and then proceed westerly to the home site. The applicants have obtained from PSNH an Agreement and Consent to Joint Use for the proposed driveway.

He reported that a wetland permit application has been filed with the NH Department of Environmental Services for a disturbance of 50 square feet for the installation of a culvert at the existing drive at Oak Hill Road.

No wetland disturbance or wetland buffer disturbance is proposed for the house construction. The wetland buffer disturbance is the minimum necessary to allow the development of the buildable portion of this existing 17.9 acre parcel.

Jeff Holt was present as applicant to answer questions from the Board.

There was no one else present who wished to speak for or against this application and the Chair declared the hearing closed at 7:06 PM.

#### Deliberations and Action on the Application

Mr. Swope moved that the Planning Board grant a Conditional Use Permit for a 2,721 square foot disturbances to a wetland buffer for a driveway to access a proposed single family residence at 87 Oak Hill Road as set forth in Section 28-4-3(d), Conditional Uses for Certain Disturbances of Wetland Buffers, of the Concord Zoning Ordinance with 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 following State and Federal permits shall be obtained and copies provided to the Planning Division:
  - a. NH Wetlands Permit (wetland alterations)
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 following local approvals and permits shall be obtained and copies provided to the Planning Division:
  - a. Driveway Alteration Permit from the Engineering Division

Mr. Gross seconded. Motion carried.

2. Application by **St. Paul's School on behalf of Florida Tower Partners LLC** for a conditional use permit pursuant to Section 28-5-23, Wireless Telecommunications Equipment, of the Concord Zoning Ordinance, on **Silk Farm Road on the campus of St. Paul's School at 325 Pleasant Street. (#2010-42)**

#### Determination of Completeness

Mr. Woodward reported that the Planning Board had received a communication from the applicant's attorney requesting postponement of the determination of completeness in order for the applicant to submit revised plans and provide additional information requested by City staff. The request for postponement had been received after the staff report had been mailed out to the Board with a recommendation to the Board to determine this application incomplete.

Mr. Woodward explained that the Federal Communications Commission has issued an Order defining a reasonable time period that land use boards would need to act on an application for a new wireless tower, creating a “shot-clock” for applications. Boards need to act within 90 days for applications for new antennas (co-location) and within 150 days for the construction of a new tower. The Order also created a deadline for land use boards to request additional information. Any additional information necessary to make an application complete needs to be requested within 30 days of the receipt of the application.

He reported that the Florida Tower Partners application was submitted on October 18<sup>th</sup> and any additional information will need to be requested by November 17<sup>th</sup>. The Planning Board will need to act on this application within 150 days of the determination of completeness of the application. If the Board would like to request additional information beyond the 30 day deadline, it is recommended that the Board ask the applicant for an extension in writing.

He reported that, since the delegation of regulatory authority over cell towers to the Planning Board in the 2001 Zoning Ordinance, the Board has denied only one CUP application and that denial resulted in litigation in US District Court under the Telecommunications Act of 1996 (TCA). In June 2005, the Board denied a CUP on Donovan Street adjacent to I-93, and the appeal continued in the federal courts until it was dismissed earlier this year.

The City’s special counsel in that case has recommended that an independent Radio Frequency (RF) expert be retained by the Board in reviewing all applications for cell towers, particularly to review claims of significant gaps in service, which may influence the proposed location, height, and style of tower. The special counsel has recommended that such a requirement be added to the Board’s Site Plan Review Regulations for all cell tower applications with the caveat that the Board could waive the requirement where the Board has no doubt about the service area or its implications for the proposed tower. The staff will be including such a requirement in a draft update of the Site Plan Review Regulations which will be submitted to the Board in the near future. However, the Board currently has the authority under the statutes and its rules to require special investigative studies and reviews for any application.

In support of the Florida Towers application, AT&T provided a Radio Frequency Study to demonstrate the need for the tower and also to confirm that there are no other existing structures that would provide adequate AT&T coverage to the targeted service area. The study also reviewed five alternative locations for the construction of a new tower. These locations included possible sites for new tower installations as well as opportunities to co-locate on an existing tower or structure. The report concluded that there were no existing towers or structures that would be suitable to fill in the AT&T service gaps, and also concluded that the proposed tower height of 170 feet is necessary to provide in-building coverage at Concord Hospital.

Mr. Woodward reported that the Radio Frequency report includes a series of maps illustrating AT&T coverage under the various scenarios for service, including the

alternative locations and alternative heights of the tower at Silk Farm Road. The maps included in the report have been photocopied and are difficult to read in black and white, and the text refers to colored maps. The applicant has been requested to submit color versions of the exhibits (maps) included in the Radio Frequency Study.

He suggested that the Planning Board should consider hiring an independent expert to review the Radio Frequency Report. The cost of the review would be paid for by the applicant pursuant to RSA 676:4-b.

He reported that the applicants have indicated that they are willing to repeat the balloon test to demonstrate the tower's visibility during leaf-off conditions. The Visual Resource Evaluation Report describes the monopine as either being screened by existing trees or blending into the existing tree line. In order to truly evaluate the visual impact, an analysis should be completed during the leaf-off conditions.

Mr. Swope spoke in favor of requesting review of the Radio Frequency Report by an independent consultant. He felt the Planning Board should request that kind of review for all applications for telecommunications installations. He did not feel, however, the need to request another balloon test.

Mr. Gross did want the balloon test. He proposed that the Planning Board declare the application incomplete and specify to the applicants all of the information the Planning Board expects, including the list of items in the staff memo as well as review of the Radio Frequency Report and another balloon test in leaf-off conditions.

Mr. Swope moved to declare the application incomplete and to request that the applicants submit a complete application including the items outlined in the staff memo as well as an independent review of the Radio Frequency Report at the expense of the applicant and an updated balloon test.

Mr. Gross noted that the letter requesting postponement does not explicitly discuss a waiver of the 30-day period. Given the Board's recent history with litigation in regard to telecommunications applications, he was concerned that the Board could be limiting its ability to have all the necessary information available in order to make an informed decision if it did not request everything at this time.

Mr. Gross seconded the motion.

Ms. Foss explained she was having trouble understanding when the clock started ticking. It seemed to her it should start at the time of determination of completeness. She felt there needed to be a complete application before the clock started ticking. Mr. Gross responded that the federal provision was adopted in order to prevent local land use boards from delaying action on applications for telecommunications installations.

Mr. Drypolcher asked the Planning Division to provide information relative to any other installations in this part of the city. Mr. Woodward responded that the Planning staff

has a map and a list of installations that seems to be relatively accurate and he would provide that information for the next meeting.

Ms. Foss asked, given the applicant's request for postponement, the implications of the Planning Board finding the application incomplete. Mr. Gross responded that as long as the application has been filed, the Planning Board needs to protect its ability to receive all the necessary information in a timely manner. He reiterated that the applicant had not waived the 30-day limit on requests for additional information.

Motion carried.

Mr. Gross felt that addressing these installations in a piecemeal manner is not a good way to approach cell towers. He felt the Board needed to have a cohesive policy statement in its regulations. Mr. Woodward responded that the Planning Board needed a chapter on public utilities in its Master Plan which would include telecommunications. The Planning Division has been doing some preliminary compilation of information and will be working on the chapter in the near future.

### Major Site Plan Applications

3. Application by **Forget & Boucher, LLC, on behalf of Concord Nissan** for a site plan of property located at **175 Manchester Street. (#2010-44)**

### Determination of Completeness

Mr. Henninger explained this proposal to demolish three buildings containing a total of 18,391 square feet, and to construct a new car dealership containing a total of 27,295 square feet in a single building.

He reported the application is complete and ready to set for public hearing.

Mr. Gross moved that the Planning Board determine this application to be complete and to schedule it for public hearing on December 15, 2010. Mr. Swope seconded. Motion carried.

### Architectural Design Review

4. 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.

- **Agile Magnetics** for one new affixed sign at **24 Chenell Drive**
- **Bravo** for one hanging sign at **26 Warren Street**
- **League of NH Craftsman** for a new affixed sign at **36 North Main Street**
- **NH Association of Insurance Agents** for an addition to an existing freestanding sign at **125 Airport Road**
- **Supercuts** for one new affixed sign at **42 Fort Eddy Road (Fort Eddy Plaza)**

- **Wal-Mart Stores, Inc.** for one replacement freestanding sign at **Sam's Club** at **304 Sheep Davis Road**

The Chair opened the hearings on all of the above signs.

- **Agile Magnetics** for one new affixed sign at **24 Chenell Drive**

Mr. Henninger explained this proposal for a new affixed sign. He reported that the Design Review Committee had found the proposed 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.

- **Bravo** for one hanging sign at **26 Warren Street**

Mr. Henninger explained that the applicant had submitted two different designs for the hanging sign. It was the consensus of the Committee that the solid black design for the silhouettes was the most effective.

He reported that the Design Review Committee had found the proposed design to be appropriate for the location and use, and recommended approval as submitted with the solid black silhouettes.

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted with the solid black silhouettes. Ms. Foss seconded. Motion carried.

- **League of NH Craftsman** for a new affixed sign at **36 North Main Street**

Mr. Henninger explained that the Committee had noted that the sign would be more attractive and more in keeping with this historic storefront if the background color was a dark blue color rather than the teal color shown.

He reported that the Design Review Committee had recommended approval subject to the condition that the background be a dark blue color rather than the teal color shown.

He reported that the applicant had provided a color sample indicating that the background would actually be a darker blue than shown on the plan.

There was no one present on behalf of the applicant.

Mr. Swope moved approval and Ms. Meyer seconded. Motion carried.

Mr. Gross congratulated Mark Ciborowski for his continuing rehabilitation of his buildings on Main Street. He felt the City was lucky to have him as a downtown property owner. Planning Board members agreed.

- **NH Association of Insurance Agents** for an addition to an existing freestanding sign at **125 Airport Road**

Mr. Henninger explained that this sign would be an additional panel in an existing free standing sign on the premises.

He reported that the Design Review Committee found the proposed 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. Meyer seconded. Motion carried.

- **Supercuts** for one new affixed sign at **42 Fort Eddy Road** (Fort Eddy Plaza)

Mr. Henninger explained that the sign would consist of internally illuminated channel letters in keeping with the other signs on the facade.

He reported that the Design Review Committee had found the proposed design 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. Meyer seconded. Motion carried.

- **Wal-Mart Stores, Inc.** for one replacement freestanding sign at **Sam's Club** at **304 Sheep Davis Road**

Mr. Henninger explained that the proposed sign is a replacement for the sign destroyed in a windstorm in May of this year. The sign will be located closer to the main entrance than the previous sign. The Committee noted that the previous sign was being blocked by the landscaping on the site, and this relocation will avoid any need to cut down existing trees on site.

He reported that the Design Review Committee had found the proposed design and placement of the freestanding 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 Mr. Shurtleff seconded. Motion carried.

5. Application by the **Duprey Center LLC** for revisions to exterior elevations at **49 South Main Street. (#2009-34)**

#### Public Hearing

Mr. Henninger reported that the Design Review Committee had reviewed revised architectural elevations, together with samples of brick and wall panel materials, as well as a composite view of this project and the abutting CATCH project as it would be seen from the east from I-93. The changes included revisions to the front entrance, a change from grey to white for the window trim and mullions, and an asymmetrical pattern of concrete panels and brick for the facades.

He reported that the Design Review Committee had complimented the applicants on the quality of the design and the attention to detail on facades, and recommended approval of the modifications to the exterior facades as submitted by the applicant.

The Chair opened the hearing on this application.

There was no one present on behalf of the applicant.

There was no one else present who wished to speak for or against this application and the Chair declared the hearing closed.

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

6. Further consideration of an application by **Twelve North Main Street Realty LLC** for approval of renovations to the building façade for Siam Orchid at **12 North Main Street. (#2010-39)**

Mr. Henninger reported that the Design Review Committee had reviewed several revisions prepared by the applicant since its last meeting and had made a number of suggestions to the applicant. The Committee noted that more detail was needed for the storefront changes and recommended that the applicant return next month with more detail.

He reported that the Design Review Committee had advised the applicant that progress has been made, and that he could proceed to obtain a building permit for interior renovations if he wished.

The application remained tabled.

### **REGULAR MEETING**

#### Minutes

Mr. Gross moved approval of the minutes of the meeting of October 20, 2010 as submitted. Mr. Shurtleff seconded. Motion carried.

### New Business

The Chair indicated that he would take up Items #8 and #9 out of order as there were individuals in the audience who were waiting for the Board to act on Item #9, while there appeared to be no one present interested in Item #8.

9. Consideration of a request for a waiver of the Site Plan Review Regulations by **Richard Uchida on behalf of P&M Realty of Concord LLC and Concord Power and Steam, LLC**, for a one year extension of the period of validity of a conditionally approved Site Plan, together with **two Conditional Use Permits**, for property on **Langdon Avenue and South Main Street. (#2008-07)**

Mr. Woodward explained that the applicant's attorney has forwarded a request for an extension of the approval of the applications, seeking validity through December 17, 2011.

He reported that the Planning Board granted Major Site Plan Approval to P&M Realty of Concord LLC and Concord Power and Steam LLC on December 17, 2008, to construct a wood chip fueled power plant and steam generation facility on a 35.93-acre site on Langdon Avenue and South Main Street. In related actions, the Board also granted approval to two conditional use permits, one pursuant to Section 28-9-4(f)(3), Maximum Height of Buildings and Structures, and another pursuant to Section 28-7-2(e), Table of Off-street Parking Requirements, of the Concord Zoning ordinance. These approvals will expire on December 17, 2010 unless the Board grants the waiver for an extension.

Any extensions of a final 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, 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 site plan 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 means of learning of the existence of the application and the pending change in their neighborhood.

He reported that, in this case, the applicants indicate that the delay in exercising their conditional Site Plan and Conditional Use Permit approvals relates to difficulties in obtaining financing for the power plant. They believe that they can meet the conditions to obtain financing in the near future and then be in a position to proceed with the project.

He noted that in February 2010, the applicants had received a one-year extension from the Zoning Board of Adjustment for the period of validity of variances granted on February 6, 2008; and in May of 2010, an Alteration of Terrain Permit which had

previously been issued by NH Department of Environmental Services was granted an extension through June 9, 2015.

Ms. Foss moved and Mr. Shurtleff seconded that the Planning Board grant a waiver of the Site Plan Review Regulations for a one-year extension for these applications in order to allow the applicants to continue to pursue financing for the project. Motion carried.

### Amendments to the Subdivision Regulations

8. Consideration of **amendments to the Subdivision Regulations** which constitute a complete revision of the Regulations.

### Public Hearing

Mr. Woodward reported that copies of the draft updated Subdivision Regulations had been conveyed to the City Council with a communication describing the optional procedure for acceptance of streets. A notice had been published in the *Concord Monitor* and posted in three places notifying the public of the public hearing this evening, and the Board's agenda containing the public hearing item was placed on the City's web site. He had also asked the Deputy City Manager for Development if the Economic Development Advisory Committee would be providing comments, and Mr. Baia had indicated that he had reminded EDAC of the hearing.

He noted that one of the recommendations made to the Planning Board was that a common expiration period be adopted for subdivisions and site plans. Staff conducted a survey of a number of communities in New Hampshire and found that six months and one year were the most common periods of effectiveness prior to expiration. The proposed Subdivision Regulations contain a proposed expiration date for subdivision approvals of two years which is in concert with the expiration date for site plans.

Mr. Gross asked if the text before the Planning Board at this time recommended an expiration date of two years after approval. Mr. Woodward responded that this document changes the expiration date for subdivisions to two years from the date of approval. Subdivision approvals currently expire in one year and site plan approvals currently expire in two years. The proposed regulations create two years for both minor and major subdivisions and allow for two year extensions for major subdivisions.

Board members indicated that two years seemed reasonable but that an amendment could be entertained in the future if problems occurred.

There was no one present who wished to comment on the proposed updated Subdivision Regulations and the Chair declared the hearing closed at 8:00 PM.

### Deliberations and Action on the amendments

There was a discussion as to whether a motion was in order to adopt the Regulations effective January 1, 2011 and upon filing of the certified copy with the City Clerk.

Mr. Gross expressed concern about departing from the published time line. He suggested keeping the time line with the exception of the scheduled meeting on December 1, 2010, unless there is a flood of communications between now and then. He suggested that the Planning Board consider the adoption of these Regulations at the December 15, 2010 regular meeting.

Mr. Gross moved that, based on the experience at the public hearing this evening, the Planning Board amend its previously published schedule for adoption by omitting the December 1, 2010 meeting. Mr. Shurtleff seconded. Motion carried.

### INFORMATION

- Information on a Technical Assistance Grant to the City from EPA to facilitate Sustainable Redevelopment in Downtown Concord

Mr. Woodward reported that the EPA had chosen Concord as one of eight recipients nationwide to receive targeted technical assistance on growth and development issues. He reported that the project would provide approximately \$65,000 in consulting services in addition to direct assistance from EPA staff.

He explained that the EPA would support the City in its efforts to sustainably redevelop historic properties in its downtown core. Concord is considered to have the most diverse downtown in the entire state, with approximately 60 buildings that date back to the 1800s or early 1900s that house nearly 200 retail and restaurant businesses as well as over 30 law offices and dozens of nonprofits and government agencies. The same quality that makes the downtown a wonderful place to work or visit is also one of its most significant challenges, since the need for regular maintenance is exacerbated in buildings that are over 100 years old. Currently, the perception of local developers and investors that it is too costly and time-intensive to comply with new energy-efficient and green building standards while still conforming to state historic preservation codes is preventing redevelopment of these buildings and hindering achievement of larger community-wide goals for smart growth and sustainable development.

He reported this project will probably take place in the first part of 2011 but EPA and other participating agencies have started communications with the City's staff. There will likely be some public meetings in December regarding this effort to which the Board will be invited. Mr. Woodward indicated that he will keep the Board advised as more information becomes available on dates and times.

- Decision of the **Town of Pembroke ZBA** with regard to a request for a rehearing of a denial of an application by **Continental Paving** for a Special Exception for an asphalt plant on **North Pembroke Road in Pembroke** on the site of the former Concord Sand and Gravel and adjacent to the City's well field in Pembroke; together with an excerpt from the minutes of the Pembroke ZBA meeting of October 25, 2010.

Mr. Woodward reported that the Pembroke Zoning Board of Adjustment had denied the request by Continental Paving for a rehearing on a denial of an application for a Special Exception for an asphalt plant on North Pembroke Road in Pembroke. Their vote was based on the use being considered manufacturing which is not allowed in the R-3 Zoning District. There is an appeal period but it is not known yet whether the applicant will choose to litigate the matter or to file an application for a variance in compliance with Pembroke's ordinances. In taking this action, the ZBA did express the view that new information submitted to them seemed to mitigate their concern regarding the City's well head protection area.

Mr. Gross asked what would happen if Continental Paving decided to appeal the denial of their request to the Superior Court. The only reason indicated in the record for denial is the classification of use, so he was concerned that Concord might have no standing in a legal situation. He asked if the Planning Board should request a rehearing on the issue of its concerns in order to have those concerns become part of the record of denial of rehearing.

Mr. Woodward was not certain what would happen if the applicants litigated since the original decision included concern for the City's wellfield. By not having a new hearing, their original denial would still be the decision on the original application.

Mr. Henninger suggested requesting a legal opinion from the City Solicitor's office.

Mr. Gross suggested requesting that Pembroke revisit their ruling since it was taken without benefit of Concord Planning Board's comments.

Mr. Woodward indicated he would consult with the City Solicitor and, if the Solicitor feels it is necessary, he will work with the Legal Department to take the appropriate action.

There was no further business to come before the Board and the meeting adjourned at 8:20 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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