

**CITY OF CONCORD PLANNING BOARD  
July 15, 2015 MEETING**

The regular monthly meeting of the City Planning Board was held on July 15, 2015, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

Present at the meeting were Members Bouley, Kenison, Regan, Rosenberger, Smith-Meyer, and Woodfin. City Planner Larson, Ms. Shank, Ms. Fenstermacher and Ms. Murray of the City's Planning Division were also present. Alternate Member Kenison was seated for Member Regan.

Due to the absence of the Chair and Vice Chair the Board elected a Chair Pro-tem. Ms. Rosenberger motioned to elect Mr. Kenison Chair Pro-Tem. Ms. Smith-Meyer seconded the motion. The motion passed unanimously.

At 7:00 p.m., a quorum was present and the Chair Pro-tem, called the meeting to order.

**PUBLIC HEARINGS**

**Determination of Completeness**

1. **Application by Concord National Youth Softball on behalf of The City of Concord requesting Major Site Plan approval for construction of a softball field, and a Conditional Use Permit for alternative surfacing of a parking lot at the Russell F. Martin Athletic Fields on Iron Works Road in the Single-Family Residential (RS) District. Map/Block/Lot: 10/1/3 (2015-0024). Please note that the applicant requests a waiver to allow for the public hearing to take place this evening.**
  - a. **Determination of Completeness**
  - b. **Public Hearing**
  - c. **Deliberations and Action on the Application**

Ms. Shank recommended that the application be determined complete. Ms. Shank also noted the application has requested a waiver to allow for the public hearing to take place at the present meeting. She stated the applicant is proposing a resurfacing of the softball field, fencing, and irrigation and this is a continuation of a project initiated by a site plan application by Concord Little League that expired before work was completed.

Mr. Regan moved to determine the application complete. Ms. Smith-Meyer seconded the motion. Motion carried unanimously.

Ms. Smith-Meyer moved to grant a waiver to Section 11.05 of the Site Plan Regulations (SPR), which requires the public hearing for a Major Site Plan application to be held at a subsequent meeting to the Determination of Completeness. Mr. Regan seconded the motion. Motion passed unanimously.

The Chair Pro-tem opened the public hearing.

Mr. Jim Rosenberg, President Concord National Youth Softball and CAP-Area Youth Softball and Jeff Lewis, Northpoint Engineering, were present to speak to the application. Mr. Rosenberg gave an overview of the organization stating that the league houses 37 teams which puts a fair point of pressure on the fields. Concord National Youth Softball has long held a permit issued by the City to occupy and maintain the existing softball surface at Martin Field. Some years ago Concord Little League sought to build a baseball field next to the softball field. After receiving approval from the Planning Board they leveled a playing surface and established drainage and unfortunately the organization merged with an existing league at Grappone Park. Concord National Youth Softball completed a lease this spring for the partially developed field next to their existing field. The first phase of the development of the field is to skin the infield, establish a base path and install fencing. Subsequent phases will involve the construction of dugouts and a score room/snack shack.

Mr. Lewis gave a history of the project. He was part of the team that brought the application forward in 2010. He stated the only difference between the 2010 application and this application is a skin infield versus a turf infield. All grading, drainage, fill was provided in 2010. The parking lot was constructed to a gravel surface in 2010 as a first phase of the Little League application approval. He stated they have applied for a Conditional Use Permit to leave the parking lot gravel and not pave; the gravel is doing an adequate job; the parking lot is closed in winter and used for seasonal use only. It would be a major expense to raise funds for the paving of the lot. The applicant appeared before the Parks and Recreation Committee (RPAC) who supports the CUP. Mr. Rosenberg explained the existing drainage issues and how paving the lot would exasperate the conditions.

Mayor Bouley asked if the applicant had received a copy of the staff report. Mr. Rosenberg replied that he hadn't.

Ms. Smith-Meyer asked for an explanation of the proposed drip irrigation. Mr. Rosenberg replied it is to keep the grass green and the infield dust down. Mr. Lewis clarified that it is not a drip irrigation system but irrigation for the grass.

Chair Pro-tem Kenison asked for the timeline on the proposed construction phases. Mr. Rosenberg replied the plan is to have everything complete within a five year period.

The Chair Pro-tem asked if any members of the public had any comments or questions.

Ms. Pam Sinotte, 33 Iron Works Road, spoke. Ms. Sinotte asked for clarification that the proposed work would be done to existing fields and would not include a second field or night lighting. She expressed concerns for noise and would like to know if an increase in activity can be expected. Ms. Sinotte also stated she supports the parking lot not being paved.

Ms. Shank replied that the original site plan included construction of the two existing fields and that this application will finish one of the two existing fields. There will not be any additional fields constructed. She also stated the site plan does not include any lighting.

Mr. James Pratt, 52 Joffre Street, spoke. Mr. Pratt stated he has a vested interest in this project as a board member of Concord National Youth Softball and as a parent and is in support of it. He stated another finished field would be a nice addition to the softball league.

Mr. Ian West, 35 Iron Works Road, spoke. Mr. West expressed his support of the project. He stated he has concerns regarding traffic patterns. He stated currently Iron Works Road and Martin Park see traffic at irregular times and can be heavy at times. The traffic pattern is a one-way entrance but most people go in the correct way but exit the wrong way.

Mr. Rosenberg stated this issue could be averted with better signage and he is willing to speak to the City to introduce the issue and find a possible solution.

Mr. Daniel Dupuis, 10 Redwood Avenue, spoke. He supports the effort and has a vested interest in the softball league.

There being no further comments from the members of the public, the Chair Pro-tem closed the public hearing.

Mayor Bouley moved to grant a waiver to Section 15.03 Existing Conditions Plan – Provide documentation of test pits and the feasibility of proposed locations for the dugouts and building prior to issuance of building permits for those structures. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant a waiver to Section 16.02(12) Grading & Drainage Plan – Provide grading and drainage information relative to the dugouts and building for review as needed by Engineering prior to

issuance of building permits for those structures. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant a waiver to Section 16.02(13) Erosion Control Plan – Provide erosion control measures recommended by Engineering for land disturbance associated with the dugouts and building prior to issuance of building permits for those structures. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant a waiver to Section 16.02(14) Utility Plan – Show the location of existing utilities and any proposed utilities for subsequent phases on the plan. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant Conditional Use Permit approval to allow the parking lot to be maintained as a gravel surface, in accordance with Article 28-7-11(e) (ZO). Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant Architectural Design Review approval for the proposed site plan, with the condition that the applicant return to ADR prior to issuance of building permits for review of plans for the dugouts and 2-story building. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant Major Site Plan approval for all phased improvements to the athletic facilities proposed at Russell Martin Park, Iron Works Road, subject to the following conditions:

- (a) **Precedent Conditions** – to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:
  - (1) Provide required landscaping, details, and notes on the site plan.
  - (2) Provide plans and details for review as needed by Engineering prior to issuance of any permit(s) for Phases 2 and 3 of the project. Add a note to the plan stating as such.
  - (3) Applicant shall return to the Architectural Design Review Committee for plan review prior to issuance of building permits for the dugouts and 2-story building. Add a note to the plan stating as such.
  - (4) Address to the satisfaction of the City Engineer, the attached review comments from Laura Aibel, P.E., and Jeff Warner, P.E. dated July 2<sup>nd</sup>, 2015.
  - (5) Submit three (3) copies of final plans for signing by the Chair and Clerk of the Planning Board. Pick up one set of signed plans to make copies for the pre-construction meeting.
  - (6) Prior to issuance of any permit(s) for Phases 2 and 3 of the project, applicant to provide a financial guarantee for each phase. In order to calculate the amount of the financial guarantee, an engineer's cost estimate shall be submitted. The financial guarantee will be required two weeks in advance of the Pre-Construction Meeting.
  - (7) Any waiver(s) granted and conditions attached to waivers are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Subdivision Regulations. Should the Board vote to deny the waiver request(s), applicant shall comply with said submission requirement(s).
- (b) **Subsequent Conditions** – Staff also recommends that the following general and subsequent conditions be placed on the approval:
  - (1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.

- (2) A pre-construction meeting shall be required prior to the start of any construction activities onsite. Seven copies of the final approved plan set, signed by the Clerk and Chairman of the Planning Board, shall be provided by the applicant at the pre-construction meeting.
- (3) Prior to return of the financial surety for Phase 1, as-built drawings conforming to the City Engineering Division's As-Built Checklist shall be provided in a digital format for incorporation into the City of Concord GIS database and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88. The as-built drawings shall be surveyed on NH State Plane coordinates.
- (4) Prior to the issuance of a Certificate of Occupancy for the building, as-built drawings conforming to the City Engineering Division's As-Built Checklist shall be provided for all phases of site work in a digital format for incorporation into the City of Concord GIS database and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88. The as-built drawings shall be surveyed on NH State Plane coordinates.

Mr. Woodfin seconded the motion. The motion passed unanimously.

### **Architectural Design Review Applications**

The Chair Pro-tem opened the public hearings for all the Architectural Design Review applications.

2. **Consideration of requests for Architectural Design Review Approval by the following applicants, for signs, buildings and/or site plans at the noted locations, under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances:**
  - a. **Public Hearings**
  - b. **Deliberations and Action on the Applications**
    - a. **Application by Rouse Properties, on behalf of Spirit Halloween, requesting Architectural Design Review Approval for one (1) new 160 sq. ft. non-illuminated affixed wall sign and one (1) new 120 sq. ft. non-illuminated affixed wall sign, at 270 Loudon Road, within the Gateway Performance (GWP) District. Map/Block/Lot: 111D-1-5**

Ms. Larson stated the Architectural Design Review Committee recommended approval of the application as submitted. The applicant was not present.

The Chair Pro-tem asked if any members of the public had any comments or questions. There being no comments from the members of the public, the Chair Pro-tem closed the public hearing.

Ms. Smith-Meyer moved to grant Architectural Design Approval for one (1) new 160 sq. ft. non-illuminated affixed wall sign and one (1) new 120 sq. ft. non-illuminated affixed wall sign, at 270 Loudon Road, within the Gateway Performance (GWP) District, Map/Block/Lot: 111D-1-5, as submitted. Mr. Regan seconded the motion. The motion passed unanimously.

- b. **Application by Concord Housing Authority, requesting Architectural Design Review Approval to renovate the building entrance, to replace the sidewalk, and to add a decorative canopy at 40 South Main Street in the Central Business Performance (CBP) District. Map/Block/Lot: 34/2/3**

Ms. Shank stated the Architectural Design Review Committee recommendation did not pass 2:2 due to the proposed canopy. She also stated the applicant has removed the canopy from the application.

Mr. Craig Dunning and Mr. John Hoyt, Concord Housing Authority, were present to speak to the application. Mr. Hoyt stated in an effort to keep their building modern, sufficient and functioning, they propose to renovate the South Main Street entrance. Currently the doors are not ADA compliant. The sidewalk, which is uneven and cracking, will be replaced and will tie into the City sidewalk.

The Chair Pro-tem asked if members of the public had any comments or questions.

There being no comments from the members of the public, the Chair Pro-tem closed the public hearing.

Mayor Bouley moved to grant Architectural Design Review approval for the application by Concord Housing Authority, requesting Architectural Design Review Approval to renovate the building entrance, replace the sidewalk, and add a decorative canopy at 23 Green Street in the Civic Performance (CVP) District, Map/Block/Lot: 44/3/27, as submitted. Ms. Smith-Meyer seconded the motion. The motion passed unanimously.

### Site Plan Applications

3. **Application by RNL Properties requesting Major Site Plan approval for the construction of a townhouse style multifamily independent residential living facility with four 4-unit residential buildings and one clubhouse building for persons 55 years of age and older at 61 Borough Road (existing multi-family home known as "Four Winds" to remain), within the Medium Density Residential (RM) District. A Conditional Use Permit (CUP) is required for the proposed disturbance of 990 sf of wetland buffer for vegetation removal and grading for one of the proposed buildings as well as the installation of an overflow drainage pipe. Map/Block/Lot: 192P/38 (2015-0018) Application tabled from the June 17, 2015 Planning Board meeting.**

- a. **Public Hearing**
- b. **Deliberations and Action on the Application**

The Chair Pro-tem opened the public hearing. Ms. Smith-Meyer recused herself.

Mr. Ron Richter, RNL Properties, and Mr. Eric Palson, SMP Architecture, were present to speak to the application. Mr. Richter stated the proposed site plan includes the construction of multi-family independent living residences for individuals 55 years of age or older at 61 Borough Road, and a Conditional Use Permit for disturbance of a wetland buffer. In addition to the continued use of the existing three unit multi-family house, the applicant is proposing the construction of four, four unit single-story buildings and a clubhouse. Walking paths, a picnic area, and a community garden space are also proposed. Mr. Richter stated the clubhouse is required as a congregate area. Mr. Richter stated he is requesting a waiver for the paving of the sidewalk; he is proposing hardpack instead of asphalt.

The Chair Pro-tem asked if any members of the public had any comments or questions. There being no comments from the members of the public, the Chair Pro-tem closed the public hearing.

Mr. Woodfin moved to deny a waiver to Section 21.03 (SPR) which requires that a connection be provided from public sidewalk or public street to a multi-family development. Ms. Rosenberger seconded the motion. Motion carried 4:1 with Mayor Bouley opposing.

Mr. Regan moved to grant the proposed encroachment to the 30' buffer for the sewer line and tree removal. Mr. Woodfin seconded the motion. Motion carried unanimously.

Mayor Bouley moved to grant Conditional Use Permit approval with the proposed conditions from the Conservation Commission, under 28-4-3(d) ZO to allow approximately 990 square feet of disturbance to the wetland buffer to clear vegetation, install an overflow drainage pipe to allow for minimal grading from the buildable area, and grade for the construction on Building D Unit 19.

- (a) Following completion of site work, the impacted buffer be restored per the erosion control plan and allowed to naturalize, and be designated as a “no mow” zone.

Ms. Rosenberger seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant Architectural Design Review approval for the construction of a townhouse style multifamily independent residential living facility with four 4-unit residential buildings and one clubhouse building for persons 55 years of age and older at 61 Borough Road (existing multi-family home known as “Four Winds” to remain), within the Medium Density Residential (RM) District. Mr. Woodfin seconded the motion. The motion passed unanimously.

Mayor Bouley moved to grant Major Site Plan approval for 61 Borough Road multifamily elderly housing units subject to the following conditions:

- (a) Precedent Conditions – to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:
  - a. The Professional Engineer, Land Surveyor and Certified Wetland Scientist shall sign and seal final plans.
  - b. Address to the satisfaction of the Engineering Division review comments received in a Memo from Laura Aibel, PE and Jeffrey Warner, PE dated July 8, 2015 (see attached).
  - c. Address to the satisfaction of the Planning Division technical comments provided by Planning staff (see below).
  - d. Submit three (3) copies of final plans for signing by the Chair and Clerk of the Planning Board. Pick up one set of signed plans to make copies for the pre-construction meeting.
  - e. Any waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Subdivision Regulations. Should the Board vote to deny the waiver request(s), applicant shall comply with said submission requirement(s).
  - f. Applicant shall provide a copy of the Joint Use Agreement for the proposed improvements within the Eversource easement.
  - g. Applicant shall provide legal documentation pursuant to Section 28-4-5(1)(1) of the Zoning Ordinance (ZO) and RSA 354-A:15, Housing for Older Persons indicating that each unit will be occupied by at least one person 55 years of age or older.
  - h. Applicant shall provide draft easement language for dedication and widening of the easement for additional right- of-way for review and approval by the City Solicitor’s office.
  - i. Applicant shall provide a copy of the permit associated with the NPDES Notice of Intent and the NH DES Alteration of Terrain permit
- (b) Subsequent Conditions –Staff also recommends that the following general and subsequent condition(s) be placed on the approval:
  - (1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
  - (2) The applicant shall provide to the City Solicitor a financial guarantee for all improvements and a guarantee for the site stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

- (3) A pre-construction meeting shall be required prior to the start of any construction activities onsite. Seven copies of the final approved plan set, signed by the Clerk and Chairman of the Planning Board, shall be provided by the applicant at the pre-construction meeting.
- (4) Final approval of all proposed improvements shall not be given until substantially completed to the satisfaction of the City Engineer and City Planner.
- (5) Prior to the release of the financial guarantee, an as built plan shall be provided to the City Engineer in a form and content acceptable to the City Engineer.
- (6) The existing building is not required to be connected to the proposed municipal sewer, per RSA 147:18. However, upon failure of the existing septic system, applicant shall connect to the municipal sewer and apply for the applicable permits at that time.

#### E. PLANNING STAFF TECHNICAL COMMENTS

- (a) Please make the following edits to the S-1 Existing Conditions Plan sheet:
  - (1) Please add location of existing on-site septic system
  - (2) Please add dimensions for existing Eversource (f.k.a. PSNH) Easement
  - (3) Provide bearings and dimensions for all property lines
  - (4) Provide limit of soil types on plan
  - (5) Provide dimensions of existing curb cuts, driveways, and parking area
- (b) Please make the following edits to the Erosion Control sheets:
  - (1) On Sheet E-3 under “Construction Sequencing”, installation of erosion control measures (item 3) should occur prior to clearing on trees (item 2).
  - (2) Provide method(s) of tree preservation per Section 27.05 (SPR).
  - (3) Provide sequencing for removal of pavement associated with the existing drives and turnaround where replacement of paving is not proposed. Per Section 27.09(3) (SPR), “all disturbed land shall be recovered with loam to a minimum depth of six (6) inches... disturbed areas shall be seeded.”
- (c) Please make the following edits to the Site Plan sheets:
  - (1) Under Zoning Summary, change use to “Multi-family dwelling units for the Elderly”.
  - (2) Provide square footage for each unit.
  - (3) Delete label “Construct 4’ wide gravel path to Primrose Lane” on Sheet C-3
  - (4) Revise Sheet C-0 to show path as 5’ width, not 4’ width
  - (5) Add the permit number and expiration date associated with the NPDES Notice of Intent and the NH DES Alteration of Terrain permit number and expiration date.
- (d) Provide the proposed fencing material for the Dumpster Pad enclosure, per Section 20.06 (SPR).
- (e) Please make the following edits to the Lighting Plan:
  - (1) Relocate light fixture that is currently shown within Eversource (PSNH) Easement
  - (2) If any security lighting is proposed for the buildings, show locations on the lighting plan and provide specifications.
- (f) Confirm, in writing (email is acceptable), with Eversource that proposed Hawthorn plantings are acceptable within the utility easement.
- (g) Additional buffer plantings shall be provided along the perimeter of the clubhouse parking area to provide screening for adjacent residential properties, pursuant to Section 28-7-10 of the ZO.
- (h) Staff recommends reconfiguring the mailbox cluster by providing a pullover/bump-out along the southwest side of the main driveway so that residents can easily access mailboxes without backing out onto the driveway.
- (i) Staff recommends that the Landscape Architect reconsider the use of Wildflower seed mix in the proposed stormwater treatment areas and replace with appropriate seed mix for stormwater treatment areas.

Ms. Rosenberger seconded the motion. The motion passed unanimously.

4. **Application by Rumble Real Estate, LLC requesting Minor Site Plan approval to construct 4,800 sq. ft. of driveway (*previously proposed as 6,900 sq. ft.*) to provide access to two new overhead doors to be installed on the south wall (rear) of the building for a wholesale storage and distribution facility. Additional improvements include a dumpster enclosure, construction of a small parking area with four (4) passenger vehicle spaces (*previously proposed for 4 trailer spaces*) and stormwater infiltration improvements at 162 Pembroke Road, within the Industrial (IN) District. Map/Block/Lot: 111G/1/8 (2015-0021) Application tabled from the June 17, 2015 Planning Board meeting.**

- a. **Determination of Completeness**
- b. **Public Hearing**
- c. **Deliberations and Action on the Application**

Ms. Fenstermacher recommended that the application be determined complete and the public hearing opened.

Mr. Woodfin moved to determine the application complete and to open the public hearing. Mr. Regan seconded the motion. Motion passed unanimously.

The Chair Pro-tem opened the public hearing.

Mr. Peter Cook, Rumble Real Estate and Chris Nadeau, Nobis Engineering, were present to speak to the application. Rumble Real Estate, LLC requests Minor Site Plan Approval to construct a driveway to provide access to two new overhead doors that will be installed on the south wall of the building at 162 Pembroke Road in the IN (Industrial) District. Additional improvements include an enclosed dumpster, 4 vehicular parking spaces and stormwater infiltration features. Total impervious area will increase by 4,800 square feet. A portion of the existing office use is proposed to be converted to warehousing and wholesale storage and distribution facilities. The proposed uses are an allowed principal use in the IN District. The balance of the existing general business office use will remain.

The Chair Pro-tem asked if any members of the public had any comments or questions. There being no comments from the members of the public, the Chair Pro-tem closed the public hearing.

Ms. Rosenberger moved to grant a waiver to Section 15.03 Existing Conditions Plan, specifically the requirement that a full existing conditions plan be submitted. Mayor Bouley seconded the motion. The motion passed unanimously.

Ms. Smith-Meyer moved to Conditional Minor Site Plan Approval, subject to the following Precedent and Subsequent Conditions:

- (a) **Precedent Conditions** – to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:
  - (1) The Professional Engineer shall sign and seal final plans.
  - (2) Address to the satisfaction of the Engineering Division review comments received in a Memo from Laura Aibel, PE and Jeffrey Warner, PE dated July 9, 2015 (see attached).
  - (3) Any waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Site Plan Regulations.
  - (4) Submit three (3) copies of final plans for signing by the Chair and Clerk of the Planning Board. Pick up one set of signed plans to make copies for the pre-construction meeting.

(b) **Subsequent Conditions** – to be fulfilled as follows:

- (1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
- (2) The applicant shall provide to the City Solicitor a financial guarantee for all improvements and a guarantee for the site stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
- (3) A pre-construction meeting shall be required prior to the start of any construction activities onsite. Seven copies of the final approved plan set, signed by the Clerk and Chairman of the Planning Board, shall be provided by the applicant at the pre-construction meeting.
- (4) Final approval of all proposed improvements shall not be given until substantially completed to the satisfaction of the City Engineer and City Planner.
- (5) Prior to the release of the financial guarantee, an as built plan shall be provided to the City Engineer in a form and content acceptable to the City Engineer.

Ms. Rosenberger seconded the motion. Motion carried unanimously.

**5. Application by Granite State Credit Union requesting Minor Site Plan approval to add 12 parking spaces and extend the drive-up window queue for the existing Granite State Credit Union at 311 Sheep Davis Road, within the Gateway Performance (GWP) District. Map/Block/Lot: 111-1/4/22 (2015-0023)**

- a. Determination of Completeness**
- b. Public Hearing**
- c. Deliberations and Action on the Application**

Ms. Fenstermacher recommended that the application be determined complete and the public hearing opened.

Ms. Smith-Meyer moved to determine the application complete and to open the public hearing. Ms. Rosenberger seconded the motion. Motion passed unanimously.

The Chair Pro-tem opened the public hearing.

Mr. David Gross, GSCU, and Chris Nadeau, Nobis Engineering, were present to speak to the application. The applicant requests Minor Site Plan Approval to construct 12 additional parking spaces and extend the drive-up window queue for the existing bank. Mr. Nadeau stated the present location of the drive-thru creates a danger for customers walking into the bank from the parking lot.

The Chair Pro-tem asked if any members of the public had any comments or questions. There being no comments from the members of the public, the Chair Pro-tem closed the public hearing.

Mayor Bouley moved to grant Conditional Minor Site Plan Approval for the application by Granite State Credit Union requesting Minor Site Plan approval to add 12 parking spaces and extend the drive-up window queue for the existing Granite State Credit Union at 311 Sheep Davis Road, within the Gateway Performance (GWP) District, Map/Block/Lot: 111-1/4/22, subject to the following Precedent and Subsequent Conditions:

**a. Precedent Conditions** – to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:

1. The Professional Engineer shall sign and seal final plans. A Professional Landscape Architect shall sign and seal the landscape plan.

2. Address to the satisfaction of the Engineering Division review comments received in a Memo from Laura Aibel, PE and Jeffrey Warner, PE dated June 26, 2015 (see attached).
3. Address to the satisfaction of the Planning Division, the Technical Review Comments listed below.
4. Revise plans relocating crosswalk and access way to provide safe access through the parking lot.
5. Provide proposed methods for preservation for existing trees located adjacent to the proposed site work.
6. Provide a Location Plan at a minimum scale of 1" = 400' showing clearly the information as outlined in Section 12.04 of the Site Plan Regulations.
7. *Revise the Owner and deed information for the subject property on Sheet ES-1 to reflect current owner information.*
8. *Label the 50' wetland buffer on all sheets.*
9. *Label all abutters on all sheets.*
10. *Correct references to Map number to "111-I" (should be the letter I, instead of number 1)*
11. *On Sheet C-1, revise Note 1 to indicate 12 additional parking spaces instead of 13.*
12. *On Sheet C-1, revise so that the planting schedule and labels match (1 SS and 2 PS labelled, 2 SS and 1 PS in schedule).*

(b) Subsequent Conditions – to be fulfilled as follows:

1. Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.
2. The applicant shall provide to the City Solicitor a financial guarantee for all improvements and a guarantee for the site stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
3. A pre-construction meeting shall be required prior to the start of any construction activities onsite. Seven copies of the final approved plan set, signed by the Clerk and Chairman of the Planning Board, shall be provided by the applicant at the pre-construction meeting.
4. Prior to the release of the financial guarantee, an as built plan shall be provided to the City Engineer in a form and content acceptable to the City Engineer.
5. Prior to commencement of work related to the site plan approval, the wetland buffers shall be field located by the Licensed Land Surveyor and clearly and permanently marked with Planning Division issued signs indicating "Protected Wetland Buffer. Do Not Disturb." Erosion control measures protecting the buffer shall also be installed.

(c) Planning Staff Technical Comments

- a. Revise the Owner and deed information for the subject property on Sheet ES-1 to reflect current owner information.
- b. Label the 50' wetland buffer on all sheets.
- c. Label all abutters on all sheets.
- d. Correct references to Map number to "111-I" (should be the letter I, instead of number 1)

- e. On Sheet C-1, revise Note 1 to indicate 12 additional parking spaces instead of 13.
- f. On Sheet C-1, revise so that the planting schedule and labels match (1 SS and 2 PS labelled, 2 SS and 1 PS in schedule).

Ms. Rosenberger seconded the motion. The motion passed unanimously.

**Waiver Requests and Other Miscellaneous Public Hearing Requests:**

- 6. Application by Bedford Design on behalf of R.J. Moreau Communities LLC requesting a modification to Standard Condition #2 regarding submission of a financial guarantee for public improvements for previously approved Vintage Estates – Phase I, a 22-lot residential subdivision to be constructed off of Emily Way and Kyle Road, within the Single-Family Residential (RS), Open Space Residential (RO), and Medium Density Residential (RM) Districts. Map/Block/Lot: 193P/54 (2011-0007) Application tabled from the June 17, 2015 Planning Board meeting.**

The Chair Pro-tem reopened the public hearing.

Mr. John LaRiviere, RJ Moreau, and Mr. Bob Baskerville, Bedford Design, were present to speak to the application. The applicant indicates that due to current economic conditions, full scale construction is not anticipated to start soon. In addition, the Planning Board previously suggested that the applicant research into changing portions to some of the streets to one-way. The applicant further states that paying for and financing a full financial guarantee at this point for a road that may have significant design changes would be an undue burden on the project developer. At its regular meeting on April 20, 2011, the Planning Board granted conditional subdivision approval for the major subdivision application of R.J. Moreau Communities. Further, at its regular meeting on April 16, 2014, the Board granted a one year extension of the conditional approval originally granted to the above-referenced subdivision application. This extension was granted subject to the stipulation that all conditions of approval as set forth in the Planning Board's decision of April 20, 2011, shall remain in full force and effect. With this one year extension, all the original conditions of approval have to be fulfilled on or before April 20, 2015, or the approval granted to this subdivision application shall become null and void. Although the one year extension expired on April 20, 2015, the Applicant submitted a revised set of plans in December 2014, effectively "stopping the clock", and has been working with staff to address conditions of approval. Mr. Baskerville stated that in lieu of a full financial guarantee now the applicant will work with staff to come up with a maintenance bond. He said if there is any erosion, sedimentations, seeding, earth work needed a bond would be placed to cover expenses. Prior to requesting the first Certificate of Occupancy, they would place the full bond. Ms. Larson placed a condition on the approval stating that none of the lots could be sold until a full bond is received.

Ms. Larson asked for clarification of the term maintenance bond. Mr. Baskerville replied that the term is site stabilization guarantee.

The Chair Pro-tem asked if any members of the public had any comments or questions.

Mr. Ed Roberge, City Engineer, stated that Engineering does not support the waiver request due to a prior incident where the developer was not required to post a bond as a condition of approval. The developer either walked away from the project or filed for bankruptcy and the City was left on-the-hook to call the bond and complete the public improvements. Mr. Roberge stated he understands the plight that the developer has but expressed two concerns; with approval of the modification, this project has the potential to become a scattered development where lots with restrictions are not buildable but are salable or transferrable. He gave an example of Mountain Green where the developer was forced to sell portions of the subdivision as individual lots without a completed road. Hence, the road infrastructure is not what they expect or what they see with other subdivision and it takes a toll on the City's facilities for the upkeep of the road. Mr. Roberge stated if the Planning Board is inclined to grant the waiver, he asks that there are conditions including the lot restrictions as recommended by

Planning Staff but would also like to add a condition regarding fill material required for the subdivision. The applicant intends to use the stock pile of fill he has accumulated to fill in the future roadway. Mr. Roberge said in order for the City to accept that future roadway, a subgrade approval process needs to be conducted. He stated there are no avenues now, without any financial sureties or inspection fees in place, which would allow staff to make sure the fill is laid out correctly. He urged the Planning Board to consider having the developer place the sureties and inspector fees in bond for this limited amount of work.

Mr. LaRiviere replied that he understands Mr. Roberge's concerns and RJ Moreau would have no issue with placing the appropriate financial guarantees and establishing an Engineering inspection budget or account for that to be drawn upon for Engineering inspections. He stated they would like to place the stockpile of fill where it would go permanently but without this approval they cannot do that. He also further explained that without recording the plat the land remains one single parcel and will affect the financing for both The Vineyards Phase 4 and Vintage Estates. He also said they have no intention of selling individual lots so that restriction is fine.

Chair Pro-tem Kenison asked Mr. Roberge where the disagreement lies. Mr. Roberge replied that the disagreement lies where the precedent this approval will set. The financial guarantee is a standard condition, and also a requirement of the sub division regulations that the financial guarantee be in place for public improvements. Mr. Roberge stated it is a losing proposition for the City to have to take over a project and call upon bonds. He feels this is not a good precedence to set and that we should keep to our standards and have these projects financially viable at the beginning.

Chair Pro-tem Kenison stated that he is trying to understand where Engineering and Planning views don't meet an accommodation. Mr. Roberge stated what Mr. LaRiviere just spoke of is going in the right direction; the city will be protected and if it's truly only the movement of the materials to build subgrade roadway at this point, then securing that financially, assuring the City of that by paying inspection fees, will protect the public to the maximum extent possible.

Ms. Larson asked if this issue of moving the materials would be covered by the site stabilization condition. Mr. Roberge replied that the bond is a minimum requirement and that would be a separate assurance. He asks that a new condition be included that the applicant is to submit engineering inspection fees in amount approved by Engineering Division that is consistent with the scope of work agreed upon by developer and city.

Mr. Woodfin asked Mr. Roberge if he was comfortable with the added condition in that it would not set a precedence that would leave the City open in an undesirable way. Mr. Roberge responded that there is precedence and an added level of surety.

There being no further comments from the members of the public, the Chair Pro-tem closed the public hearing.

Mayor Bouley asked if the City Solicitor has reviewed the language of the recommended condition and if he was involved in these discussions. Ms. Larson stated it was not reviewed by the City Solicitor. Mayor Bouley stated he was curious why this issue could not have been settled in house. Ms. Larson stated she did not know what the Solicitors office would have for a legal opinion. Mayor Bouley asked if the request was approved, does Ms. Larson feel it will weaken the City's position for its financial security. Ms. Larson stated the Planning Division and the Engineering Division just have a difference of opinion on this matter which is very rare.

Ms. Rosenberger asked who would normally look at the liability to the City in situations like this. Ms. Larson stated the City Solicitor determines the final form and language of the bonding for subdivisions but in practicality it's usually the Engineering Division that has the typical language that they like to see. Mr. Roberge concurred. He reiterated that the City Solicitor would approve in content and form and Engineering works with he developer and Planning to come up with the surety numbers. Mr. Roberge added that Planning and Engineering do work quite well together and that this is just one that they have a difference of opinion on.

Ms. Smith-Meyer asked if Mr. Roberge thought this was a very unique situation because of the two separate developments. Mr. Roberge replied he understands the situation but it makes him nervous because he is ultimately responsible for seeking recommendation and approval from City Council for a future street. He wants to make sure it is done right and that it is done only once.

Ms. Rosenberger moved to grant the modification to Standard Condition #2 to allow the applicant to delay submittal of a financial guarantee for all public improvements on and off site until prior to issuance of the first building permit with the following conditions:

- (1) Prior to final plan endorsement for Vintage Estates by the Planning Board Chair and Clerk, the applicant shall place a deed restriction on each lot preventing its sale until the financial guarantee for all public improvements on and off site is submitted to the Engineering Division in a form and amount acceptable to the City Engineer and the City Solicitor's office. Deed Restriction language to be submitted to Planning for review and approval by the Engineering Division and the City Solicitor's office prior to recording at the Registry of Deeds.
- (2) Applicant shall supply a site stabilization guarantee prior to the final plan being signed by the Planning Board Chair and Clerk.
- (3) All other conditions of approval as set forth in the decisions of the Planning Board on April 20, 2011, shall remain in full force and effect.
- (4) Applicant to submit Engineering inspection fees relevant to the scope of work as agreed upon between the City Engineering Division and the applicant.
- (5) The Office of the City Solicitor to approve the language in condition #4.

Mayor Bouley seconded the motion. The motion passed unanimously.

**7. Application by Calamar Enterprises Inc. requesting a full waiver of School and Recreation Facilities Impact Fees and a partial waiver of Transportation Facilities Impact Fees for a recent Major Site Plan approval for the construction of a 140 unit elderly (over 62 years old) 3 story housing development proposed for 23 Triangle Park Drive within the GWP (Gateway Performance) and the OFP (Office Performance) Districts. Map/Block/Lot: 111H/4/21, 111H/4/22, & 111B/1/16 (2015-0001) Application tabled from the June 17, 2015 Planning Board meeting.**

The Chair Pro-tem opened the public hearing. Ms. Rosenberger recused herself.

Ms. Larson notified the Planning Board that the applicant has withdrawn the request for waivers for Recreation Impact Fees and she, as Planning Board Clerk, is addressing the waiver request for School Impact Fees. The application is currently for the request for partial waiver of the Transportation Facilities Impact Fees.

Ms. Larson stated the issue is not the impact fee payment calculation but rather the impact fee land use classification applied by the Planning Board Clerk for age restricted housing, in this particular instance, 62 years of age and older. "Senior Housing", "Age-Restricted Housing", "Elderly Housing" or the like is not listed as a land use in any of the impact fee tables of the impact fee ordinance. There is an "All other uses" category under the transportation impact fee table for uses that don't fit into any of the categories provided; however, the "All other uses" category is listed only under the heading of "Nonresidential Uses". The applicant is relying upon Chapter 29.2-1-2(b)(2) of the impact fee ordinance (that immediately follows Table 3) which states – "...If the Clerk determines that there is not a comparable type of land use in the transportation facilities impact fee table, then the Clerk shall assess the impact fees by multiplying the number of new trips expected to be generated by the new development by the impact fee per new trip for "All Other Uses" appearing in table 3. The Clerk shall

refer to the ITE Manual and may consult with the City Engineer...” Staff researched available impact fee worksheets, staff reports, and Planning Board minutes and listed as many age restricted developments as could be found in the records and noted what land use category was applied to calculate the impact fee. According to a recent conversation with recently retired Assistant City Planner Stephen Henninger who was employed by the City as a planner for 26 years, the City chose to adopt the “All other uses” category for nonresidential uses only. If the “All other uses” category was adopted for residential uses not listed (e.g., housing for 62 and older), planning staff would have to consult with the Institute of Traffic Engineers (ITE) Trip Generation Manual and the City’s Traffic Engineer to calculate the impact fee each time such a use came before the Planning Board. According to Mr. Henninger, in order to avoid having to perform individual calculations, the Multi-family/apartment fee calculation would be applied instead. With respect to Calamar, the Planning Board Clerk assessed a Transportation Facilities Impact Fee in the amount of \$1,449.88/unit applying the Multi-unit dwelling/apartment (other than townhouses or duplexes) land use category. The applicant suggests that applying the “All other uses” land use category in the Transportation Facilities Impact Fees is most appropriate for those uses which do not appear in the table. Applying this method results in an impact fee calculation based on the number of vehicle trips rather than the number of dwelling units. Applying the number of vehicle trips reduces the traffic impact fee to approximately \$708 per unit vs. \$1,449.88 per unit (applying the multi-unit dwelling/apartment residential use category).

Attorney Richard Uchida; Hinckley, Allen & Snyder, representing the applicant, Chris Trevisani, Calamar, and Jerry Coogan, Planning Consultant, were present to speak to the application. Attorney Uchida gave a background of the project. In April the Planning Board approved the Site Plan for the project which is a 140 unit development intended for occupancy by persons 62 years of age or older.

Atty. Uchida explained as calculated, the Transportation Facilities Impact Fee would be just over \$202,000.00. This request is to reduce that fee down to 99, 162.00. Atty. Uchida stated under the Transportation Facilities Impact Fee ordinance, the Planning Director needs to look at that ordinance and match up the proposed development with one of the uses in the table, which is normally easily defined. If the proposed use isn’t in the table, then the ordinance states that the Planning Director must access a fee using impact fees for use that’s nearly comparable to the uses in the table. Because there is no senior housing or elderly housing residential use in the impact fee tables, the City has historically used the multi-unit dwelling apartment complex use. The metrics used to calculate those figures for the transportation facilities impact fee is trip generation or vehicle trips so when those numbers were set years ago, they looked at the vehicle trips that a project would produce, looked at the impacts on capital facilities i.e., roadways, highways, bridges that need to get built. Atty. Uchida stated he urged the City to look differently at the ordinance differently in this case but was not successful. The Planning Board acts as the board of appeals in cases where the applicant and the Planning Staff can’t agree. Atty. Uchida said the \$202,000 impact fee, in the way it was calculated, doesn’t comply with State law on impact fees and is contrary, in his opinion, to how the ordinance asks the City to look at impact fees in the case of transportation facilities impact fees. The power to create impact fee ordinances and to impose impact fees is governed by state law. State law legislature has given towns and municipalities the authority to create impact fee ordinances and impose impact fees for offsite improvements related to particular developments. One section of the statute states that there has to be a rationale nexus between the impact fees charged to a project and the impacts that the project creates on the capital needs of a particular municipality. He stated the problem with using the multi-unit dwelling metric is that it violates the rational nexus test because it fails to take into account the fact that elderly housing projects produce about 50% less of the trips than an apartment complex. There is no rational nexus between the imposed fee and the project here. Because the fee and the use category that is being used bears no rational relationship to the trip generation that will be produced, which are numbers agreed upon by both Mr. Coogan and Rob Mack, City Traffic Engineer, it’s inappropriate to use the multi-unit use category for this senior housing project. He also stated that under the ordinance this isn’t necessarily the right way to classify this use; it is true that the ordinance says that the Planning Director needs to look at the most comparable use under the use table if there is no use that matches the specific project but it also provides additional guidance. The ordinance states the Clerk shall be guided in the classification of uses and in the selection of comparable types of land use by the City of Concord Master Plan, supporting documents of the

Master Plan, the City of Concord Zoning Ordinance, and the ITE Trip Manual; if the Clerk determines there is not a comparable land use in a Transportation Facilities Impact Fee table, then the Clerk shall access the impact fees by multiplying the number of new trips expected to be generated by the new development by the impact fee for “all other uses” category or the Clerk can look at the ITE manual and to the City’s Engineer and outside engineers to determine the appropriate metrics.

Atty. Uchida stated the 2030 Master Plan has as one of the key housing strategies the development of elderly housing because elderly/senior housing produces fewer impacts on the municipal infrastructure than regular housing. Inherent in that message is that this kind of housing produces fewer impacts and demands on the City. The Zoning Ordinance has a separate use classification solely for multifamily dwelling units for the elderly. That use category is allowed in 14 of the 18 zoning districts in the City. The ordinance states that dwellings within this category can develop in greater densities because of the fewer impact on land and the City’s infrastructure. Under the ITE Trip Manual there are differences in trip generation between multifamily housing projects and senior housing. Atty. Uchida stated since there is no comparable use in the table then the all other use category should have been used.

Atty. Uchida stated he understands that for the last ten years the City has used the multiunit dwelling metric on senior housing to calculate the transportation facilities impact fee but that doesn’t make it right and the extent to using that runs contrary to the rational nexus test required and to state law.

Atty. Uchida stated that the all other uses is located under the non-residential uses table but that is not what the ordinance says and Ms. Larson talked to VHB which is the entity that helped create the ordinance, and VHB stated the all other uses category was intended to be a catch-all for residential and non-residential.

In closing, Atty. Uchida believes the proper way to look at this is to apply the all other uses category and to partially waive the Transportation Facilities Impact Fee down to \$99,162.00. He also stated he needs a vote tonight since the closing is scheduled and a building permit is needed.

Conversation regarding the amount of trips taken by seniors ensued. Atty. Uchida reiterated the information gathered from VHB and ITE; the data indicates that the amount of trips taken by senior housing projects is 3.44 per day per unit compared to 6.65 trips per day per unit by multi-family projects.

Ms. Larson stated she had a conversation with the City Manager who served on the Impact Fee committee in 200/2001 that led to the adoption of the current ordinance and he remembers that the City made a conscience decision to not adopt a separate category for elderly housing because the sample size at the time was too small to be accurate. Ms. Larson also asked if the ITE took environments into consideration such as rural areas. Atty. Uchida replied that yes these factors are considered. He does recognize that ITE is nationwide.

Mr. Rob Mack, City Engineer, spoke. He stated he agrees with the findings that Atty. Uchida brought forward and supports the \$99,162 Transportation Facilities Impact Fee.

Discussion regarding the ordinance and the arrival at the fee ensued.

Mayor Bouley motioned to grant the request for a partial waiver of the Transportation Facilities Impact Fees for the recently conditionally approved 140-unit age restricted (62 yrs. of age and older) development to be located at 23 Triangle Park Drive (111B-1-16) with the following precedent conditions to be fulfilled prior to issuance of any building permits or the commencement of site construction, unless otherwise specified:

1. Applicant to submit payment to the Planning Division in the amount of \$99,162 for the Transportation Facilities Impact Fees as calculated by the applicant at a rate of \$708.30 per unit.

2. The balance of \$103,821.20 (\$202,983.20 – \$99,162) to be bonded in a form acceptable to the Engineering Division and the Office of the City Solicitor (\$202,983.20 = 140 dwelling units @ \$1,449.88 per unit).
3. Partial waiver granted is to be noted and fully described on the final site plan including date granted and applicable Section number(s) of the Impact Fee Regulations.
4. Eighteen Months after issuance of the Certificate of Occupancy permit for the building or when the building is, at a minimum, 80% occupied, the applicant shall prepare and submit to the Clerk, an independent fee calculation study (traffic study) for the new development that is proposed. Methodology of the study to be approved by the City Traffic Engineer and Planning Board Clerk prior to the study being performed.

Mr. Woodfin seconded the motion. The motion passed unanimously.

8. **Public Hearing on the results of Traffic Monitoring Study related to previous Major Site Plan approval to construct a new 2,598 sq. ft. Burger King restaurant and a new 13,225 sq. ft. CVS Pharmacy at 155 and 157 Loudon Road and outstanding off-site improvements to East Side Drive placed as a condition of the approval, within the General Commercial (CG) and the High Density Residential (RH) Districts. Map/Block/Lot: 114/3/10 (2009-04) Application tabled from the June 17, 2015 Planning Board meeting. Request to postpone until further notice. Request to postpone until further notice.**

- a. **Public Hearing**
- b. **Deliberations and Action on the Application**

Ms. Larson stated staff requests to postpone the public hearing until further notice.

Ms. Smith-Meyer moved to table the Public Hearing on the results of Traffic Monitoring Study related to previous Major Site Plan approval to construct a new 2,598 s.f. Burger King restaurant and a new 13,225 s.f. CVS Pharmacy at 155 and 157 Loudon Road and outstanding off-site improvements to East Side Drive placed as a condition of the approval, until further notice. Mr. Regan seconded the motion. Motion carried unanimously.

### REGULAR MEETING

9. **Approval of the minutes of the June 17, 2015 Planning Board Meeting.**

Mayor Bouley moved to approve the June 17, 2015 meeting minutes as written. Ms. Smith-Meyer seconded the motion. Motion carried unanimously.

10. **Any other business which may legally come before the Board.**

### INFORMATION

- Minutes of the July 7, 2015 Design Review Committee meeting
- Next regular monthly meeting on Wednesday, August 19, 2015

There was no further business to come before the Planning Board and the Chair adjourned the meeting at 10:21pm.

A TRUE RECORD ATTEST:

Nancy Larson  
City Planner