

The regular monthly meeting of the City Planning Board was held on April 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), Swope, Gross, Harrington, Meyer, Shurtleff, and Alternate Member Kenison (who was seated for absent Member Foss). Mr. Woodward, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer. Ms. McClure, Alternate City Council Member, arrived at 8:30 PM and took part in discussions but did not participate in any vote.

At 7:00 PM a quorum was present and the Chair called the meeting to order and seated Alternate Member Kenison for Ms. Foss, who was not expected.

## **APPLICATIONS**

### **Minor Site Plans**

1. Application by **26 Centre Street LLC** for a site plan of property located at **26 & 26 1/2 Centre Street. (#2009-18)**

#### **Determination of Completeness**

Ms. Hebert explained this proposal to renovate the existing mixed use building at 26 Centre Street to professional office space.

She reported this application was complete and ready for public hearing.

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

#### **Public Hearing**

Ms. Hebert explained this proposal to renovate the existing mixed use building at 26 Centre Street to professional office space. There is an existing residential structure and garage on the property that would be removed to facilitate the construction of a 20-space parking area. She explained that the applicant proposes one-way circulation through the property with an entrance drive off Centre Street, and an exit from the parking lot onto Cedar Court, which is a private way. The applicant proposes to improve Cedar Court with a pavement overlay. A landscape plan has been provided that complies with the City's requirements for parking lot landscaping. The plan includes eight new trees around the perimeter of the parking area, along with four existing trees that will be saved. A privacy fence will be installed around the perimeter of the parking area.

She reported that the applicant proposes to use pervious pavement throughout the parking lot to control stormwater runoff.

She reported that the exterior renovation of the building will include replacing the roof with asphalt shingles, the replacement of the windows and doors, and the painting of the existing exterior siding. The applicant proposes to convert the second story of the existing building which had once been used as an apartment to professional office use.

She reported that the owner of the abutting property at 28 Centre Street was not correctly notified of the public hearing and the site plan application. The notice was sent to the wrong address and she did not learn of the hearing until this week. It is the applicant's responsibility to provide an accurate list of abutters for the certified mailings. She has submitted correspondence to the Board outlining her concerns regarding the proposed parking lot, and has also requested that she be allowed to speak at a hearing next month. She is out of the country at this time and unable to attend tonight's meeting.

Jed Callen, 3 Maple Street owner and tenant was present and reported he was also authorized to speak on behalf of Robert and Diane Puckhaber, owners and users of the building at the corner of North State Street and Maple Street.

Mr. Harrington asked if the abutters to the north of Cedar Court had been notified, given that there are improvements proposed to that private way. Ms. Hebert reported that only those who qualified as abutters had been notified, but that others non-abutters who had not been notified could be if the Board so requested.

Tim Golde was recognized on behalf of the applicant and explained the address of the abutter was the one she had suggested be used. He reported on the efforts made to contact the abutter. Also, abutters across Cedar Court had not been notified as part of the Planning Board application but the applicant had made attempts to contact them personally.

Mr. Gross indicated that he did not want the Board to create an opportunity for litigation by going forward this evening with the public hearing, and suggested that the defect in notice be cured immediately.

Mr. Gross moved to recess the hearing to allow the abutter at 28 Centre Street the opportunity to review the proposed site plan application and to provide comments to the Board at the next regular meeting on May 20, 2009; and to provide notice to all other owners of property which includes the right to use Cedar Court. Mr. Harrington seconded. Motion carried.

2. Application by **Rick Langis, on behalf of Home Depot USA, Inc.**, for a site plan of property located at **42 D'Amante Drive. (#2009-17)**

#### Determination of Completeness

Mr. Woodward explained this proposal to obtain approval for an existing freestanding concession stand located in front of the Home Depot Store on D'Amante Drive.

He reported this application was complete and ready for public hearing.

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

### Public Hearing

Mr. Woodward explained this proposal to obtain approval for an existing freestanding concession stand located in front of the Home Depot Store on D'Amante Drive. In the multi-year effort to bring Home Depot into compliance with zoning ordinance, the concession stand was not part of the successful enforcement action at Merrimack County Superior Court. He explained that the concession stand was originally established without benefit of permit by a prior owner. The application before the Board will bring the concession stand into compliance with the City's regulations. The concession stand was recently removed from a landscape island in order to properly connect to the site's electrical system, to provide an area for queuing in front of the stand outside the vehicular circulation area, and to remove the use from the landscape island. The use is considered accessory to the Home Depot retail use.

He explained that the former location for the concession stand was on top of a landscape island. The tree in the island was cut down to make way for the concession stand, and temporary power was run to the prior site. The new site will remove four existing parking spaces, including two handicapped spaces. Home Depot is proposing to restripe three existing parking spaces to create two replacement handicapped spaces nearby. One standard parking space will be lost to create the new handicapped spaces. The applicant will meet and slightly exceed the parking requirements for the entire site.

Mr. Gross asked the status of Home Depot's compliance with City ordinances. Mr. Woodward responded that it was his belief that issues were gradually being resolved.

Rick Langis, owner of the concession stand, was present to answer questions from the Board.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:26 PM.

### Deliberations and Action on Application

Mr. Harrington noted that the handicapped parking spaces are near the construction entrance. He expressed a concern about moving the spaces closer to the construction entrance. He felt the spaces should be behind the snack facility because that is closer to the main entrance and seemed safer and more convenient.

Mr. Swope moved that the Planning Board grant conditional site plan approval for the concession stand at Home Depot on D'Amante Drive subject to the following conditions:

1. Within 60 days of Planning Board approval the applicant shall replace the two lost handicapped spaces as shown on the approved plans.
2. Within 60 days of Planning Board approval the applicant shall install a replacement shade tree in the landscape island where the concession stand was previously located.

Mr. Gross seconded and suggested that an additional condition be added that Home Depot shall demonstrate that they are in full compliance with the City's Zoning Ordinance and its land use regulations.

Motion as amended carried, 6-1, with Mr. Harrington voting against the motion.

3. Application by **Riverbend Community Mental Health, Inc.**, for a site plan of property located at **278 Pleasant Street**. Along with this application is a request for a Conditional Use Permit (CUP) pursuant to Section 28-7-11(f), Driveway Separation Alternatives, of the Concord Zoning Ordinance. (#2009-19)

#### Determination of Completeness

Ms. Hebert explained this proposal to eliminate the residential facilities at the Riverbend Community Mental Health, Inc. building at 278 Pleasant Street and expand the administrative and clinical office use.

She reported this application was complete and ready for public hearing.

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

#### Public Hearing

Ms. Hebert explained this proposal to eliminate the residential facilities at the Riverbend Community Mental Health, Inc. building at 278 Pleasant Street and to expand the administrative and clinical office use. The plan includes the reconstruction of the existing parking area to add thirteen new parking spaces. The site is narrow and the parking lot expansion will be located in the front yard. Currently, cars are parking informally in the front yard area and additional parking is needed. The plan will reorganize the parking layout and improve the stormwater management system. There are no changes proposed to the existing building, with the exception of the construction of a handicap accessible ramp in front of the existing building, and the installation of two accessible parking spaces. The landscape plan includes the construction of ornamental walls along each side of the main entrance drive, and extensive landscaping along the Pleasant Street road frontage.

She reported that the applicant has also applied for a Conditional Use Permit to allow less than the required distance between the proposed driveway location and the driveways on the adjacent parcels. The Zoning Ordinance requires that driveways along Pleasant Street be separated by at least 200 feet. The existing driveway is approximately

80 feet to the west of the Unitarian Church's exit drive. The new parking lot shifts the driveway 40 feet closer to the Church's exit drive. Moving the driveway to the east has allowed the applicant to improve the configuration of the parking area. The applicant also feels that there will be little conflict with the Church's driveway, given that their peak use occurs on the weekends when the Riverbend offices are closed. The Unitarian Church has provided a letter stating that they have no objections to the site plan application.

She reported that the Zoning Board of Adjustment had granted variances to permit the change in use of an existing mixed use commercial building from clinical offices and residential services to administrative and clinical offices without complying with all requirements of Article 28-7, to provide 32 parking spaces when 40 spaces are required, and to permit a portion of the required parking within the 30-foot front yard setback.

Ms. Hebert reported that the parking lot has been designed to include portions with pervious pavement to control the stormwater runoff.

Mr. Gross noted that the Planning Board had received a number of applications in recent months in which pervious pavement has been proposed. He asked if the City had any mechanism in place for assuring that maintenance of the pervious surface parking lots takes place. Ms. Hebert responded that the maintenance requirements are expected to be noted on the approved site plan.

Attorney Dan Luker was present on behalf of Riverbend to answer questions from the Board, along with Jim Spaulding from The Turner Group.

Mr. Swope asked how the water would drain if the pervious surface became blocked and Mr. Spaulding responded that it would flow to the catch basin on Pleasant Street. He noted that blockage would not be likely as the pervious pavement does not plug up easily.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:43 PM.

Deliberations and Action on Application  
Deliberations and Action on Architectural Design Review

Mr. Drypolcher asked whether the Design Review Committee had reviewed this plan and Mr. Woodward responded that they had not.

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for the site plan and landscape plan for the Riverbend Community Mental Health, Inc. facility at 278 Pleasant Street as submitted by the H.L. Turner Group subject to Design Review Committee approval. Ms. Meyer seconded. Motion carried.

Mr. Gross moved that the Planning Board grant a Conditional Use Permit to allow the driveway separation as presented in the site plan application submitted by the H.L.

Turner Group pursuant to Section Article 28-7-11(f) of the Zoning Ordinance. Ms. Meyer seconded. Motion carried.

Ms. Meyer moved that the Planning Board grant conditional site plan approval for the site plan application of Riverbend Community Mental Health, Inc. as submitted by the H.L. Turner Group 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 revise the drawings to address the minor corrections and omissions noted by City Staff.
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), approvals of construction drawings for all private and public improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
3. No Certificate of Occupancy for any building or use shall be issued until all improvements have been substantially completed to the satisfaction of the City Engineer.
4. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
  - a. Transportation Facilities - 4,244 square feet (single tenant office space)

Mr. Shurtleff seconded. Motion carried.

#### **Major Site Plans**

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

### Public Hearing

Ms. Hebert explained this proposal to construct a 60,810 square foot regional recycling facility off Whitney Road. The Cooperative will receive and process recyclable materials from the surrounding communities. This facility will accept recyclable materials as a single stream where the glass, plastic, and paper materials are mixed together and collected in one container.

She reported that the property contains 42.43 acres, but the proposed construction lies entirely within the Industrial District. The area within the RO District includes the land within 150 feet of the reference line of the Merrimack River and will not be disturbed as part of this project. The site has been designed with a 53,200 square foot recycling facility and a 7,610 square foot office space. The site improvements also include an employee parking area, loading docks, trailer parking and storage, and a scale facility to weigh the recyclable material.

She explained that the construction of the proposed facility also requires the extension of Whitney Road by 1600 linear feet to access the buildable portions of the property. The City's Master Plan calls for the extension of Whitney Road southerly to Sewalls Falls Road. The road will generally follow the old road alignment of Hannah Dustin Drive, which was discontinued to allow for the construction of Interstate 93, and will include the repair of an existing 96-inch culvert which facilitates the road crossing over Burnham Brook. There is an existing waterline that also follows the future roadway; the proposed construction includes the extension of municipal sewer, overhead utilities, and a closed drainage system. The roadway extension will require the approval of Conditional Use Permits for disturbances to the buffers to bluffs, buffers to wetlands, and buffer to the Shoreland Protection District.

The roadway has been designed with a reduced roadway width to avoid unnecessary disturbances to the buffers. The City's standards would require the road to be constructed with 40 feet of pavement, consisting of two 12-foot travel lanes, 8-foot shoulders, two 8-foot landscaped panels, and 5-foot sidewalks on each side of the street. The Engineering and Planning Divisions have recommended an alternate design for Whitney Road, consisting of 34 feet of pavement, including two 12-foot travel lanes and 5-foot shoulders, and a 5-foot sidewalk on the east side of the street.

The extension of Whitney Road will require the conveyance of a 66-foot wide road right-of-way through the property, to a point across from the proposed access drive to the recycling facility. The remaining section of roadway will be constructed by others at some point in the future, when access is needed to the land southerly of this project. The applicant will be required to provide an agreement to convey the remaining right-of-way to the City at such time the property is subdivided or is required by future development.

The layout of the roadway creates a nonbuildable parcel of land west of Whitney Road. The parcel includes the land within the Open Space Residential District, Shoreland Protection Overlay District and buffers to the bluffs associated with the Merrimack River

and Burnham Brook. Planning staff has strongly recommended that the applicant consider placing a conservation easement on this property to further protect the natural resources along the Merrimack River.

She reported that the applicant had applied for a Conditional Use Permit to allow for the proposed use of the property, material recycling and processing, within the Industrial District.

The applicant has also applied for a Conditional Use Permit to construct fewer parking spaces than would typically be required by the Zoning Ordinance. The recycling center does not anticipate using the amount of parking required by the City's Zoning Ordinance, which would be 122 spaces. The facility when operating at full capacity will employ 35 people. There will be five Concord Cooperative employees and two shifts of 15 operating personnel. The applicant proposes to construct 50 parking spaces and has shown where the remaining 72 spaces could be located on the property if at some point in the future the additional parking is required.

Ms. Hebert explained that the building will be a metal framed structure with a combination of vertical and horizontal metal siding and a standing seam roof. The Architectural Design Review Committee reviewed the architecture and landscaping and made a favorable recommendation to the Planning Board for the design of the building, landscaping, and site layout. The applicant plans to seek LEED certification for the construction and design of the 7,610 square foot office area and plans to incorporate recycled materials into the design of the building.

She reported that the design of the employee parking lot includes pervious pavement, rain gardens, and a bioretention cell. Areas of the site that will see heavy truck traffic will be surfaced with traditional pavement.

She reported that the site plan includes the layout of a future rail spur onto the property. This would not be constructed until the rail service is an economically viable option for the transport of materials off site, and the construction of the rail spur will require the approval of a Wetlands Permit by the NHDES. The actual design of the rail spur will need to be approved by the Planning Board at a later date.

Ms. Hebert reported that the Conservation Commission discussed the proposed Conditional Use Permits at their meeting on April 8, 2009 and expressed concern with the proximity of the road to the bluff and the possibility of the erosion of the bluffs associated with Burnham Brook and the Merrimack River, and could not make a favorable recommendation to the Board without first conducting a site walk.

Jim Presher, director of the Concord Regional Solid Waste/Resource Recovery Cooperative, was present to answer questions from the Board.

Mr. Drypolcher asked if there was a mapped line of future street for the portion of the future road not being constructed at this time. Mr. Woodward responded that there was a long-term plan for the extension to the south to the Concord Monitor property but

there was no metes and bounds description in order to allow flexibility for the future development of the property.

Craig Musselman from CMA Engineers was also present and explained the sorting process for the movement of recyclables through the building.

David Rauseo, owner of Concord Crossing property at the corner of Route 4 and Whitney Road, spoke in favor of the application. He explained he had visited an existing facility in Auburn, Massachusetts. He discussed his concern about trash falling off trucks on their way to the facility and asked if the Planning Board could require a cleanup program. He also discussed the circulation of the trucks at the facility and wanted to make sure that trucks will not queue up onto Whitney Road.

Mr. Gross suggested asking staff to explore the possibility of adding a condition of approval that would require the applicant to have a plan to clean up trash blowing off trucks.

Paul Schmidt from CMA Engineers addressed the question of trucks backing up onto the street. He explained they have anticipated that concern and as a result they propose two scales and have also designed the interior space for tipping in such a way as to minimize a queue onto the public street. They have also provided space in the back of the property for those trucks that need to turn their trailers around to tip.

Mr. Gross asked if the Coop would be able to handle the clean-up of trash falling off of trucks, and if a management plan for such clean-up could be prepared. Mr. Presher indicated they could prepare a management plan for trash clean-up.

Geordie Wilson from the Concord Monitor, the abutter to the south, also spoke in favor of the project. He expressed concern about the view from the road of the really large proposed building. It seemed that there were only a few trees proposed for screening. He indicated that anything that could be added to the landscape plan would be appreciated. He also discussed zoning in the area and expressed concern that the Master Plan calls for the Monitor property to be classified as a first class office park. He noted that this application further promotes the industrial use of the area and asked that the Monitor property continue its industrial zoning.

There was no one else who wished to speak for or against this application and at 8:30 PM Mr. Gross moved that the Planning Board recess the public hearing to allow the Conservation Commission time to conduct a site walk and provide recommendations to the Planning Board on the proposed Conditional Use Permits relating to the disturbances to the shoreland buffer, buffer to the bluff, and wetland buffer. Mr. Swope seconded. Motion carried.

(Ms. McClure arrived at 8:30 PM.)

5. 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, of the Zoning Ordinance. (#2009-04)

The Chair reported that the applicant had requested that the Planning Board postpone this public hearing until the May 20, 2009 meeting.

### Architectural Design Review

6. 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.

- **Ed Reilly Subaru** at 150 Manchester Street (1 freestanding sign)
- **Ichiban Japanese Steakhouse & Sushi Bar** at 118 Manchester Street (1 freestanding sign)
- **TD Bank** at 344 Loudon Road(1 affixed sign)
- **TD Bank** at 277 Sheep Davis Road (2 affixed signs)

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

- **Ed Reilly Subaru** at 150 Manchester Street (1 freestanding sign)

Mr. Woodward explained this proposal for the replacement of an existing freestanding sign with a new freestanding sign that is reduced in size. He reported that the Design Review Committee found the placement and design of the proposed 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. Ms. Meyer seconded. Motion carried.

- **Ichiban Japanese Steakhouse & Sushi Bar** at 118 Manchester Street (1 freestanding sign)

Mr. Woodward explained this proposal for the replacement of an existing freestanding sign and reported that the existing freestanding sign is externally lighted. He reported that the Design Review Committee found the placement and design of the proposed 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. Ms. Meyer seconded. Motion carried.

- **TD Bank** at 344 Loudon Road(1 affixed sign)

Mr. Woodward explained this proposal for the replacement of an affixed sign at the existing Wal-Mart building. He reported this is part of the bank's rebranding. He reported that the Design Review Committee found the placement and design of the proposed sign to be appropriate for the location and use, and recommended approval as submitted.

No one spoke on behalf of the applicant.

Mr. Gross moved approval as submitted and Mr. Kenison seconded. Motion carried.

- **TD Bank** at 277 Sheep Davis Road (2 affixed signs)

Mr. Woodward explained this proposal for the replacement of affixed signage at the bank's existing building at the Steeplegate Mall site. He reported this is part of the bank's rebranding. He reported that the Design Review Committee found the placement and design of the proposed sign to be appropriate for the location and use, and recommended approval as submitted.

No one spoke on behalf of the applicant.

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

#### **Amendments to the Subdivision Regulations**

7. Consideration of an **amendment to the Subdivision Regulations** relative to application fees.

#### **Amendments to the Site Plan Review Regulations**

8. Consideration of an **amendment to the Site Plan Review Regulations** relative to application fees.

#### **Public Hearings**

Mr. Woodward suggested that the public hearings relative to amendments to both the Subdivision Regulations and the Site Plan Review Regulations be held together as they are both related to application fees.

He explained that for the past 25 years the application fees for subdivision and site plans have been inclusive of recording costs, in part to minimize the number of financial transactions with each application, thereby simplifying the process for both the applicant and the City. The proposed amendments will require that all recording fees be collected in addition to, and separate from, the application fees in the same manner that other municipalities do. It is not proposed to lower the basic application fees, just make clear that all recording fees are not included and are over and above the application fees.

He explained that the other new fee that is recommended is a separate \$600 fee for a sketch plan for a major subdivision. Currently, the sketch plan is treated as an optional phase or stage of a major subdivision, and the full major subdivision application fee is collected at the time of the filing of a sketch plan application. The new fee is intended to separate the sketch plan from the actual formal major subdivision application which will require a separate application fee if and when the full application is filed.

Mr. Drypolcher asked whether staff had developed regulations to clarify if the sketch plan will initiate the vesting of rights against subsequent regulatory changes. Mr. Woodward responded that the subdivision regulations already address sketch plan but that staff will be looking at the site plan review regulations and will the vesting issue when those amendments are drafted.

There was no one who wished to speak for or against the amendments and the Chair declared the hearing closed at 8:43 PM.

#### Deliberations and Action

Mr. Gross moved that the Planning Board adopt the proposed amendments to the Subdivision Regulations in respect to application fees. Mr. Swope seconded. Motion carried with Mr. Harrington abstaining from vote.

Mr. Gross moved that the Planning Board adopt the proposed amendments to the Site Plan Review Regulations in respect to application fees. Mr. Swope seconded. Motion carried with Mr. Harrington abstaining from vote.

Mr. Gross then returned to the matter of the application by the Concord Solid Waste Resource Recovery Cooperative and asked that it be made clear to staff that they should pursue with the applicant the development of a management plan dealing with trash that falls off of trucks en route to the plant which will otherwise litter the City street. Board members agreed.

#### Zoning Ordinance

9. Consideration of a proposed amendment to **Section 28-2-3(e), Lots Transected by a District Boundary, and Section 28-4-2(b), Buffer Width Standards**, of the Zoning Ordinance.

#### Public Hearing

Mr. Woodward explained that at the regular meeting on February 18, 2009, the Planning Board considered a report of the Zoning Administrator to the City Council together with a proposed amendment to Section 28-4-2, Buffer Requirements for Residential District Boundaries, of the Zoning Ordinance, with regard to the Buffer Width Standards in Section 28-4-2(b). The Council had voted to refer this matter to the Planning Board and the Board was provided with copies of the related minutes. The Planning Board reviewed this matter together with a report from the Planning Division and voted to

recommend that the Council adopt an ordinance amending Section 28-2-3(e), Lots Transected by a District Boundary, of the Zoning Ordinance so as to apply to only those lots that were transected by a zoning district boundary as of the effective date of the Ordinance; and further, amending Section 28-4-2(b), Buffer Width Standards, of the Zoning Ordinance, by adding a new subsection 28-4-2(b)(4) relating to the location of the buffer in the case of a lot transected by a zoning district boundary.

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

He reported that Attorney Uchida's letter proposes that the so-called "self-created" lots transected by a zoning district boundary be allowed to extend the predominant district provisions as a Conditional Use Permit. Mr. Uchida's letter described the process of assembling lots in adjacent districts and then merging the lots to create a transected lot as a redevelopment tool and a "relief valve" to avoid variances for dimensional setbacks. The letter also suggests that in 1977 the Planning Board and City Council made a conscious choice to omit the language restricting the transected lot provisions to lots that were transected by a district boundary at the date of adoption of the ordinance, and were aware of the value of this tool.

Mr. Woodward then explained that, historically, zoning maps were drawn with many district boundaries noted as a setback at a specified distance from a street, with the boundaries transecting properties that did not neatly conform to the setback dimension. However, the maps for the 2001 Zoning Ordinance were drawn so as to minimize to the greatest extent reasonable the number of lots transected by zoning lines. In this case, where the maps for the Zoning Ordinance were prepared so as to use existing property lines to the greatest extent possible and limit the use of dimensioned setbacks, it seems appropriate to return to the language which limits the applicability of the 40-foot extension to those transected lots which were originally affected by the passage of the ordinance. A brief review of the record of the 1977 rezoning indicated that the revised language for the section related to transected lots was proposed by the consultant at that time as part of a draft ordinance. There was no recognition of it as a redevelopment tool by the Planning Board.

He reported that, in general, the zoning boundaries are adopted by the City Council as part of the Zoning Ordinance referred to as the zoning map, and those with land on either side of a boundary have certain expectations conferred with respect to the use of their own land as well as to what may or may not occur on neighboring parcels. The boundaries may be modified by zoning map amendments which the City Council is

empowered to adopt, usually after a recommendation by the Planning Board. To confer authority on the Planning Board via a Conditional Use Permit process to judge the reasonableness of extending a district boundary on a self-created transected lot essentially grants the Board a sort of power to re-district.

Mr. Woodward explained that the transected lot section was a relief valve for those lots transected by a boundary at the time of adoption of the zoning ordinance, and which would have small pieces of land segregated from the frontage and primary useable area of the lot. In earlier versions of the Zoning Ordinance, district boundary lines were generally straight line setbacks from the edge of a street right of-way. However, with the advances in GIS mapping, an effort was made in 2001 to carefully align district boundary lines with property lines, thereby eliminating to the greatest extent possible the case of isolated portions of a parcel being segmented by a district line. This type of property line-based district boundary delineation provided residents with a seemingly clear basis for assumptions and understandings relative to uses allowed on their own lots and uses allowed on neighboring parcels.

He reported that the Planning Division stood by its previous recommendation endorsing the proposed amendment as previously presented, restricting the transected lot provisions to lots of record transected by a zoning district boundary which was established at the effective date of the Ordinance.

Attorney Richard Uchida from Orr & Reno explained that he intended to testify in general and not on behalf of any client or development project on which he may be working. He explained that the 40-foot ordinance is a valuable tool in redeveloping property, especially those parcels along the city's non-residential corridors that are in need of redevelopment and that back up to other zoning districts. He felt that in 1977 when the City Council removed the requirement, the Planning Board and City Council were aware of the value of this tool because over the years the ordinance has been amended to decrease lot coverage, increase buildable land requirements, create greater limits on what constitutes buildable land, increase setbacks from water bodies, arterial roads, bluffs, and wetlands in addition to streets and property lines, increase parking, stacking and loading requirements, and establish new landscaping and buffer requirements as well as stringent requirements on what can be done in those buffers. With these changes, a developer seeking to redevelop a lot can no longer maintain the same level of development previously allowed on that lot. The developer is almost always restricted to building less than what was on the site previously, which is why the Zoning Board of Adjustment often sees 6-18 variances to redevelop property and nearly every one of them is ultimately dimensional in nature because the redeveloped projects do not fit.

He felt the 40-foot ordinance in its present form provided a relief valve when adjoining property is available and one can acquire that property to spread out the development. As recommended by the Planning Board, that tool will be outlawed if a lot is not transected by a zoning district boundary on the date the ordinance passes.

He asked that the Planning Board carve out an exception if lots were assembled for redevelopment and in the process of merging those lots, a transected lot resulted. In the alternative, he asked that the Board entertain a proposal to allow developers to assemble land and create lots transected by zoning district boundaries for redevelopment and to be allowed to use the 40-foot ordinance on such reassembled land by Conditional Use Permit. This is a tool that the Planning Board can use under the State's Innovative Land Use Control statute. The Conditional Use Permit, by its very nature, requires the Board to weigh the use of the rule against such impacts as traffic, character of the neighborhood, public health and safety, and impacts on natural, environmental and historic resources.

Robert Baker of 26 Penacook Street explained that he lives in the neighborhood where the proposed CVS will be, and that he has put in countless hours in opposition to the project at 161 North State Street. The ordinance change as proposed would not preclude any development on the property. The purpose of the zoning provision is to prevent overcrowding and to prevent encroachment. The relief valve should be the zoning ordinance. He felt that the proposed amendment is a good one and provides abutters with proper notice about what is going on. He also felt zoning boundary amendments should not be dealt with by the Planning Board. He also discussed the rights of abutters. He felt that developers should go through the proper process to construct their buildings. He urged the Planning Board to re-affirm what it did previously.

Meredith Hatfield of 5 Perkins Street agreed with Mr. Baker. For abutters to a project, a 40-foot difference is not what this is about. It is about a major change in a given neighborhood. Homeowners have an expectation that the ordinances will be adhered to.

There was no one else who wished to speak for or against the amendments and the Chair declared the hearing closed at 9:22 PM.

#### Deliberations and Action

Mr. Gross moved that the Planning Board re-affirm its prior recommendation to the City Council of a proposed ordinance amending Section 28-2-3(e), Lots Transected by a District Boundary, of the Zoning Ordinance so as to apply to only those lots that were transected by a zoning district boundary as of the effective date of the Ordinance; and further, amending Section 28-4-2(b), Buffer Width Standards, of the Zoning Ordinance, by adding a new subsection 28-4-2(b)(4) relating to the location of the buffer in the case of a lot transected by a zoning district boundary. Mr. Swope seconded.

Mr. Gross indicated that zoning is not just an inconvenience that can be circumvented in order to develop and that land use policy exists to protect an array of interest in addition to development. The Board acknowledged that zoning lines and transition between districts do create problems, but that the City has reduced the problem by using lot lines to define district boundaries. The related section of the ordinance was originally intended to deal with a problem created by the zoning ordinance, not provide an opportunity for the circumvention of it.

Mr. Swope noted that there was a procedure in place to amend the Zoning Ordinance if someone thought the zoning needed to be changed and, while as was noted by Mr. Uchida, it may be slightly more cumbersome and time consuming, it can be done.

Motion carried.

## REGULAR MEETING

### 9. Consideration of **minutes** of Planning Board meetings.

Mr. Gross moved approval of the minutes of the meetings of March 18, 2009 and March 25, 2009. Mr. Swope seconded. Motion carried.

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

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

Ms. Hebert explained that The Scott Lawson Group proposes to construct a 44,215 square foot office building off Break O' Day Drive. The interstate highway previously crossed through the property and the land was once owned by the State of New Hampshire and is vacant. The site improvements include the construction of 185 parking spaces, drop off area in front of the building, outdoor water feature, and the construction of an ornamental pond. The building will include office space, cafeteria, racquetball court, fitness center, 126-seat auditorium, a laboratory, and storage area. In addition to the construction of the office building and related infrastructure, the applicant is proposes to relocate the existing historical school house at the corner of Break O' Day Drive and Loudon Road. The school house would be moved to the site and adapted for use as an ice skating house, adjacent to the proposed manmade pond.

The Scott Lawson Group has filed an application with the U.S. Green Building Council for the Leadership in Energy and Environmental Design (LEED) Platinum certification for new construction. This is the highest level awarded by the private organization and, if the application is successful, this would be the first platinum building in New Hampshire. The platinum standard is awarded to projects that demonstrate exceptional energy efficiency and sensitivity to the environment. Consideration has been given to the design of the site and building to achieve the highest level of energy efficiency. The project includes a green roof, wind turbines, clear story third level for daylight, relocation/preservation of the schoolhouse, pervious concrete pavement, low flow fixtures and waterless urinals, operable windows, car pool only and low emissions vehicle parking spaces, outdoor patios, rainwater collection system, alternative septic system, geothermal heating and cooling, and wood pellet boilers.

She reported that the applicant has requested a waiver from the Site Plan Regulations not to extend and connect to municipal sewer and water utilities. It is a requirement of both the Site Plan Regulations and the Zoning Ordinance that proposed buildings connect to the municipal utilities. The Zoning Board of adjustment granted a variance to allow the Scott Lawson Group not to connect to the municipal utilities with the condition that the applicant submit an application for LEED's Platinum certification. The City Administration has expressed its support of the waivers within the parameters defined in a communication to the Board from the Deputy City Manager - Development dated February 10, 2009.

The applicant will receive points towards the LEEDs certification if 100% of the wastewater is treated on site and believes that the installation of an on-site well will use less energy to supply water to the property than the municipal water system. Although there are LEEDs points awarded for not connecting to the municipal sewer system and treating the effluent onsite and recharging the aquifer, there are no LEEDs points awarded to the project for the use of an onsite well as the primary water supply.

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

She reported that the applicant has applied for a Conditional Use Permit to construct fewer parking spaces than would typically be required by the Zoning Ordinance. The Scott Lawson Group's building will include office space, cafeteria, racquetball court, fitness center, 126-seat auditorium, a laboratory, and storage area. The relocated school house (skate house) would also require nine parking spaces. The total number of parking spaces required is 219. The request is to defer the construction of the parking spaces for non-simultaneous uses. The laboratory, cafeteria, fitness center, school house, and racket ball court will all be used by employees who will also have office space within the building. The total number of deferred spaces would be 34 spaces; and the applicant proposes to construct 185 parking spaces.

She reported that the applicant has also applied for a Conditional Use Permit to construct additional compact parking spaces. The City's regulations allow up to 25% of the parking spaces to be compact, which would be 54 parking spaces and the site plan has been designed with 92 compact parking spaces. The Zoning Ordinance provides for the construction of up to 50% compact parking spaces with a Conditional Use Permit. The applicant has requested that 49% of the parking spaces be compact.

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

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

Ms. Hebert reported that the Architectural Design Review Committee reviewed the site and building plans and made a favorable recommendation to the Board for the design of the site, landscaping, and office building; however the Committee felt that the proposed renovations to the school house should be discussed with Planning Board and Design Review Committee as a separate item once the design is complete.

The Planning Board closed the public hearing on the site plan application and Conditional Use Permits on March 18 2009 and voted to table action on the application. The Board also tabled action on the request for waivers to not connect to municipal water and sewer utilities to allow the applicant time to prepare written findings to satisfy the requirements for waivers as contained in Section 9.05 of the Site Plan Review Regulations, particularly as regards to the purposes of this section being "served to a greater extent by an alternative proposal". In taking the action to table, the Board acknowledged the applicant's commitment, made in testimony, to extend the water main in Break O' Day Drive and to install a fire hydrant within 300 feet of the property. The applicant has provided the City with a plan for the extension of the water line and the installation of a fire hydrant. In a related action, the Planning Board also tabled

action on a recommendation related to the proposed road maintenance agreement which was offered by the applicant in lieu of constructing a cul-de-sac at the end of Break O' Day Drive. The Board directed the Planning Division to continue its discussions with the applicant in an effort to provide a document for the Board's consideration. The Board specifically indicated that removal of debris and obstacles other than ice and snow should be addressed within the proposed agreement.

She reported that a written summary of the findings of fact was provided by the applicant on Friday, April 10th. The summary includes an outline of the waiver request, the standards for waivers from the Site Plan Regulations, additional background information on the project, and an explanation of the considerations of the waiver criteria. The Planning Board may choose to accept the entire document as the findings to support the waiver requests, or may modify or reject the proposed findings. Comments from the Planning Division regarding the findings of fact were also provided to the Board.

The Board reviewed the written summary of findings of fact provided by the applicant as well as related communications from the applicant's attorney and City staff and made amendments to the findings.

Mr. Gross moved that the Planning Board adopt the findings as amended by the Board as grounds for granting waivers for sewer and water extensions as follows:

General Finding and Determination: The Planning Board is granting the requested waivers based on the cumulative record before it, and all of the features of this development and this site, including the type of development, the LEED® platinum development criteria to which the applicant is adhering, the location of the site, the natural features of the site, configuration of the water and wastewater systems in the area, the wastewater and water systems proposed by the applicant, the present plans of the City to supply water to locations beyond this site, the determination of the Fire Department about the adequacy of fire protection with the alternative water supply system proposed by the applicant, and other factors in the record and listed below. The granting of these waivers is not intended to set a precedent for any other factual situation

- a. The purposes of Section 8 of the Site Plan Regulations may be served to a greater extent by the applicant's alternative proposal because:
  - One of the critical purposes of Section 8 of the Site Plan Regulations is specifically to promote energy conservation designs. *See* Section 8.10.
  - As part of that Section, the Regulations state, as a goal to protect the general welfare of the City, energy conservation designs, including "the more efficient use of community facilities" and the "conservation of energy".

- The wastewater and water systems for the property are specifically designed not to burden or for that matter, utilize the community wastewater and water facilities, while creating systems for the building that are as appropriate and adequate as systems tied into the municipal water and sewer system. Thus, from an overall basis, the SLG alternative water and wastewater systems result in “more efficient use of ... (the City’s water and wastewater) ... facilities,” while losing nothing to quality.
  - Moreover, the technological measures proposed for the building, including solar power to assist in the operation of the wastewater system, go beyond conventional buildings to achieve the conservation of energy.
  - The requirement to tie the building into municipal water and sewer systems represents an investment that will discourage the use of the technologies described above, and encourage the use of municipal water and sewer resources that are not necessary to the safe and proper operation of the building and site. Such use of municipal resources would be encouraged by the investment in unnecessary infrastructure which, once built, should be utilized. This results in an unnecessary use of community facilities. To that end, the applicant’s proposal does a better job of achieving more efficient use of community facilities.
  - Where appropriate, the proposal employs energy saving measures for its water and wastewater systems. Based on these systems, this alternative proposal goes beyond the minimal energy conservation considerations in Section 8.10 of the Site Plan Regulations (related primarily to pedestrian friendly sites and use of passive solar energy designs), in terms of energy conservation designs and the broader goal of conservation of energy, and as such, better serves the purpose of the Site Plan Regulations.
  - Likewise, Section 8.09(3) of the Site Plan Regulations is better served by installing and maintaining a system that retains a substantial amount of water derived from the site on the site, together with the ongoing reuse and recycling of that water, results in preservation of the natural environment. To that end, the proposal advanced by the applicant does a better job at achieving such preservation than development consistent with the Site Plan Regulations.
- b. The waiver will not nullify the intent and purpose of the Site Plan Regulations because:
- The intent and purpose of the Site Plan Regulations is to prevent adverse impacts from “developments and uses of land” which, “because of their nature, size, complexity or other indices of probable impact, (are) capable of adversely affecting the public health, safety and welfare unless careful consideration has been given to certain critical design elements”. See Section 2, Site Plan Regulations.

- As applied to the Site Plan Regulation requirement that properties tie into the municipal sewer and water systems, the purpose and intent seem to be (i) to provide adequate water supply for the protection of the building and appurtenant improvements, (ii) to provide clean, quality potable water for consumption by the building's occupants, (iii) to ensure adequate treatment and disposal of wastewater, (iv) to ensure the orderly growth of the City's sewer and water infrastructure, (v) to recover the City's investment in constructing water and wastewater facilities in the area, and (vi) to ensure high quality water and wastewater facilities in a high density commercial zoning district.
  - The City Administration has determined that "there are no additional water or sewer connections proposed to the north beyond this property that would be impacted by SLG not being on the lines." See February 10, 2009 Memorandum from Carlos P. Baia to the Planning Board. It is noted that "in an abundance of caution", a sleeve will be installed through the SLG property to connect to an existing sleeve under I-393 to retain the possibility of providing municipal water from Break O'Day Drive to Josiah Bartlett Road neighborhood. But given the City's present plans and the preservation of the ability to extend water across I-393, the waiver will not impede the orderly growth of the city's sewer and water infrastructure.
  - As described above, the building will have high quality systems to provide potable water, irrigation water, and wastewater systems for the building, so a waiver will not endanger the City's interest in high quality water and wastewater facilities in the GWP Zoning District or adversely affect public health, safety or welfare.
  - The applicant's decision to provide for the installation of a hydrant within 300 feet of the property, as required by code, and the Fire Department's determination that the fire protection system of the building is appropriate, ensure that the property is adequately protected from fire hazards.
  - Finally, SLG urges that its development of a LEED® platinum certified building and the creation of the water and wastewater systems described above, not only do not "adversely affect ... the public welfare", they are in the best interests of the public welfare in terms of energy conservation, resource conservation, preservation of municipal resources, educational interest in the development, and re-use and recycling of natural resources.
- c. The granting of the waiver will not be detrimental to the public safety, health or welfare or injurious to other property nearby because:

- As described above, the building will have high quality systems to provide potable water, irrigation water, and wastewater systems for the building's occupants and guests, as well as members of the public, so a waiver will not endanger public health, safety or welfare.
  - The applicant's decision to provide for the installation of a hydrant within 300 feet of the property, as required by code, and the Fire Department's determination that the fire protection system for the building is appropriate, ensure that the property, including occupants and the public, is adequately protected from fire hazards. See Planning Staff report of Douglas G. Woodward, dated March 13, 2009.
  - The waiver affects no other property, as the only other possible user of the City's municipal sewer and water system is E.W. Sleeper Co., Inc./Big Step, LLC, which has the sewer and water systems at or immediately adjacent to their lots, and readily available for tie-in. The location of a hydrant further up Break O'Day Drive between the Sleeper and Big Step lots will likewise provide improved fire protection to those lots because the new hydrant will be centrally located for use on both lots.
  - It is also noteworthy that the City Administration supports the waiver, which is also evidence of the public welfare. See February 10, 2009 Memorandum from Carlos P. Baia to the Planning Board. Given Mr. Baia's memo, if this site is not connected to municipal water and sewer, there are no City agencies, departments or policies that will be adversely affected by the waiver.
- d. The conditions upon which the request for a waiver is based are unique to the property for which the waiver sought and are not applicable generally to other property, because:
- The property is not located in the middle of or surrounded by developed lands or lands expected to be developed, where failure to extend and tie into the municipal sewer and water systems would disrupt the orderly growth of the City sewer and water system, under the sewer and water master plans.
  - The City Administration has determined that "there are no additional water or sewer connections proposed to the north beyond this property that would be impacted by SLG not being on the lines." See February 10, 2009 Memorandum from Carlos P. Baia to the Planning Board. It is noted that "in an abundance of caution", a sleeve will be installed through the SLG property to connect to an existing sleeve under I-393 to retain the possibility of providing municipal water from Break O'Day Drive to Josiah Bartlett Road neighborhood.

- The size and topography of this site, as well as its excellent sandy soil conditions, are ideal for the development of the wastewater system, as well as the harvesting of stormwater for the water system, all as described above.
  - There is not another site in the GWP Zoning District that bears all of the characteristics described above; thus, the site is unique and not similar to other surrounding property or property in this zoning district.
  - The type of building and the water and wastewater systems proposed by the applicant, all of which, when constructed, will likewise make this property more unique. It is also noteworthy that these components are not proposed as a cost-savings measure. In fact, these systems will be more expensive than those otherwise required by the Site Plan Regulations. Thus, the applicant is not using cost savings as a reason not to tie into the municipal water and/or sewer systems.
- e. Because of the particular physical surroundings, shape or topographic conditions of the specific property involved, a particular hardship to the owner would result, as distinguished from mere inconvenience, if the strict letter of these Regulations is carried out, because:
- A hardship results in compelling an investment to create the tie-ins that will discourage the use of the technologies that feature energy savings and resource conservation and preservation, described above, and lead to use of municipal water and sewer resources that are not necessary to the safe and proper operation of the building and site.
  - In evaluating the surroundings of a site, the Board may consider not only existing site conditions, but proposed conditions. To that end, the development of this particular environmentally sensitive office building with all of the features described to the Board, together with the quest for LEED® platinum certification, are unique features the Board should consider. To that end, a hardship will occur if tie-in to the municipal sewer system means loss of the LEED® points for wastewater treatment, and potentially the loss of points to attain the platinum certification.
  - The requirement to tie this particular site, with its proposed improvements, into the municipal water and sewer system also runs afoul of the philosophy that the building should be environmentally sensitive and self-sustaining as much as is practicable, given current technologies. SLG considers this more than a mere inconvenience, but a hardship.
- f. The waiver will not, in any manner, vary the provisions of the Zoning Ordinance, Master Plan Reports, or Official Map because:

- While the request does vary from the literal provisions of the Zoning Ordinance, the Concord Zoning Board of Adjustment, which is charged with interpretation of the zoning ordinance, has determined that hardship exists in connection with the property, justifying a variance from the ordinance to not tie the property into municipal water and sewer services.
- The Master Plan also includes recommendations and measures involving conservation and open space, including goals on the wise use of the city's water resources - particularly surface and groundwater. The SLG proposal does a better job of satisfying these goals than a water system developed under the Site Plan Regulations.

Mr. Harrington seconded.

Mr. Swope noted that, because this particular facility does not interfere with the expansion of the City's utilities, he would vote in favor of the motion.

Motion carried.

Mr. Gross moved that the Planning Board grant Architectural Design Review approval for the site plan, landscaping plans, and building design for the Major Site Plan Application of the LAT Holding Company, LLC as submitted by the Nobis Engineering and Bruce Ronayne Hamilton Architects. This approval does not include the Architectural Design Review approval for the proposed skate house. Mr. Swope seconded. Motion carried.

Mr. Gross moved that the Planning Board grant a waiver to Section 8.05, Sanitary Sewage Disposal, of the Site Plan Regulations to allow LAT Holding Company, LLC not to extend and connect the municipal sewer utilities to the proposed office building at 20 Break O'Day Drive and to allow for the construction of an onsite subsurface treatment system. The basis for the granting of this waiver request includes the findings of fact, as amended by the Planning Board, from the written findings provided by LAT Holding Company, LLC. Mr. Swope seconded. Motion carried.

Mr. Gross moved that the Planning Board grant a waiver to Section 8.04, Water Supply, of the Site Plan Regulations to allow LAT Holding Company, LLC not to extend and connect the municipal water utilities to the proposed office building at 20 Break O'Day Drive and to allow for the installation of an onsite well. The basis for the granting of this waiver request includes the findings of fact, as amended by the Planning Board, from the written findings provided by LAT Holding Company, LLC. The approval is also conditioned on the applicant's offer to extend the water line along Break O'Day Drive and install a fire hydrant within 300 feet of the property, as shown on the plan provided by Nobis Engineering, entitled "Break O'Day Drive Plan and Profile" with a revision date of April 7, 2009. Mr. Swope seconded. Motion carried.

Mr. Swope moved that the Planning Board grant the Conditional Use Permit to allow the construction of fewer parking spaces pursuant to Section 28-7-11(b) of the Zoning Ordinance. The CUP will allow for the construction of 185 paved parking spaces rather than the 219 spaces that are required by the Zoning Ordinance. If the Zoning Administrator determines that the parking spaces are needed in the future, the additional spaces shall be constructed as shown on the site plan. Mr. Kenison seconded. Motion carried.

Mr. Swope moved that the Planning Board grant the Conditional Use Permit to allow the construction of additional compact parking spaces pursuant to Section 28-7-11(d) of the Zoning Ordinance. The CUP will allow for the construction of 92 compact parking spaces, which is 49% of the total number of parking spaces required. The increase in the number of compact parking spaces reduces the overall area of pavement required and the Scott Lawson Group provides a number of employees with company vehicles which are also compact cars. Mr. Harrington seconded. Motion carried.

Mr. Harrington moved that the Planning Board grant the Conditional Use Permit pursuant to Article 28-4-3(d) of the Zoning Ordinance, Conditional Use Permits required for disturbances of wetland buffers, to permit impacts to the wetland buffers. A portion of the proposed ornamental pond, the grading for the drop-off area/entrance drive, and the proposed improvements to Break O'Day Drive encroach into the wetland buffer. The applicant is proposing to replant the impacted area with a wildflower seed mix along with native trees and shrubs. Mr. Gross seconded. Motion carried.

Mr. Woodward called to the Board's attention the road maintenance agreement and indicated that the applicant and City staff had come to an agreement on this document. It will be subject to acceptance by the City Council or the cul-de-sac must be constructed as outlined in proposed Condition #12.

Mr. Swope moved that the Planning Board grant conditional site plan approval for the site plan application of LAT Holding Company, LLC at 20 Break O'Day Drive as submitted by Nobis Engineering. The approval includes the proposed off-site improvements to Break O'Day Drive, which includes the reconstruction/resurfacing of Break O'Day Drive to provide a travel way 26 feet wide and the construction of either a hammerhead (with the approval of the road maintenance agreement) or the construction of a cul-de-sac with a diameter of 80 feet at the terminus of Break O'Day Drive, as recommended by the City Engineer. The site plan approval is subject to the following standard and special conditions:

**Standard Conditions:**

1. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), approvals of construction drawings for all private and public improvements shall be obtained from the Engineering and Planning Divisions. The applicant shall revise the plans to address minor corrections and omissions as noted by Staff. No construction activity may commence prior to the preconstruction conference.

2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant will provide to the City Solicitor a financial guarantee for all public improvements in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.
3. Prior to the release of a financial guarantee for any public improvement, an as built plan shall be provided to the City Engineer in form and content acceptable to the City Engineer.
4. No certificate of occupancy for any building or use shall be issued until all public and private improvements have been substantially completed to the satisfaction of the City Engineer.
5. The wetland buffers shall be clearly and permanently marked before, during, and after construction of the sites.
6. The topographic survey and wetlands delineation shall be expanded to include the land within the City right-of-way adjacent to the proposed hammerhead, as recommended by the City Engineer.
7. 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 permits shall be obtained and copies provided to the Planning Division:
  - a. NH Department of Environmental Services Alteration of Terrain Permit
  - b. NH Department of Environmental Services, Water Supply and Pollution Control Division, subdivision approval for on-site septic systems.
8. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitil, FairPoint Communications, and National Grid.
9. Traffic impact fees shall be assessed for any non-residential construction contained within the limits of the approved site plan. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The specific fees assessed are those contained in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees; Table 3, Transportation Facilities Impact Fee per Variable Unit.
  - a. Transportation Facilities - 44,215 square feet (Single Tenant Office Space)

**Special Conditions:**

10. 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 easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division:
  - a. Utility Easement to the City of Concord for the future construction of a waterline through parcel 112/5/38
  - b. Utility Easement to FairPoint Communication and Unitil for the existing utilities that cross through parcel 112/5/38
  - c. Well Easement to LAT Holding Company, LLC from Eileen Sleeper for the portion of the 150-foot protective well radius that encumbers her property
  - d. Notice of Road Maintenance Agreement between LAT Holding, LLC and the City of Concord for the year round maintenance of Break O'Day Drive
11. 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), approval shall be obtained from the City Council for the extension of the potable water system located within the public right-of-way. This approval will stand as the Planning Board's favorable recommendation to the City Council in regard to the utility extension request.
12. 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), approval shall be obtained from the City Council for the Road Maintenance Agreement for Break O'Day Drive. This approval will stand as the Planning Board's favorable recommendation to the City Council in regard to the Road Maintenance Agreement, as provided by Attorney Richard Uchida and revised by the Planning Division. Should the City Council fail to accept the Road Maintenance Agreement, LAT Holding Company, LLC will be required to construct the cul-de-sac as shown on the plans entitled "Break O'Day Drive Cul-De-Sac" prepared by Nobis Engineering, with a revision date of February 11, 2009. 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), LAT Holding shall also post a financial guarantee for the construction of the cul-de-sac, in a form and amount acceptable to the City Solicitor and City Engineer.
13. 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 submit a letter from National Grid agreeing to the proposed location of the parking lot and associated site improvements as they relate to the existing gas line easement.

14. 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 submit a letter from New Hampshire Department of Transportation agreeing to the proposed location of the parking lot and associated site improvements and to the proposed grading with the state right-of-way.

Mr. Gross seconded. Motion carried.

### **New Business**

11. Consideration of the revocation of the recorded subdivision plat of the Emerald Abode Subdivision on Graham Road (#2003-37)

Mr. Woodward explained that the Planning Board, at a meeting on August 18, 2004, granted conditional final approval of the major subdivision application of Emerald Abode LLC for an eight lot conventional subdivision with a new cul-de-sac to be named Julie Drive, on property on Graham Road in a Residential Open Space (RO) District. A plat was recorded on August 31, 2006. Some site work was done in the fall of 2006, but nothing has occurred on-site since that time. The City's Zoning Ordinance was amended on March 12, 2007 to include mandatory cluster development in the RO District. As of the fourth anniversary of the date of approval, the subdivision had not achieved substantial completion to attain a vested status against changes in ordinances and regulations.

He reported that the Planning Division had reviewed the state of construction and permitting of the subdivision, and concluded that there is a failure to achieve substantial completion and therefore, vesting has not occurred. He reported that the Planning Division had attempted to follow case law guidance as well as conferred with the City Solicitor in order to arrive at its conclusions.

He reported that the Division had also offered suggestions to the owner as to how compliance might be achieved with the amended ordinance in a manner that would substantially preserve his investment to date.

RSA 676:4-a provides for the revocation of a recorded plat for failure to fulfill conditions of approval within four years, or failure to attain a vested status. The process to revoke a plat involves the Board voting to revoke the plat and ordering the Clerk to initiate the requisite notification process which extends to the owners or abutters the right to request a hearing prior to the recording of a declaration of revocation.

Mr. Gross moved that the Planning Board find that the Emerald Abode Subdivision has failed to achieve substantial completion within four years of the date of approval and therefore has failed to become vested pursuant to RSA 674:39, and must now comply with changes to the City's Zoning Ordinance adopted on March 12, 2007, and to set a public hearing on May 20, 2009, for the consideration of revocation of approval. Mr. Shurtleff seconded. Motion carried.

**12. Consideration of a communication from Robert Baker relative to an illuminated sign at 152 North State Street.**

Mr. Woodward explained that the Planning Board had received a communication from Robert Baker relative to the new illuminated sign at Boutwell's Bowling Center at 152 North State Street. Mr. Baker informed the Board that the new sign is visible to several residential neighbors and is illuminated at all hours seven days a week with bright red internal lighting. He felt that the visibility of the sign from traffic traveling on North State Street is minimal until directly in front of the business. He reported that the red light of the sign entered the rear window of his home and is reflected at the front of his house at a glass door. He asked that the Board consider revisiting this installation and do whatever it could to lessen the impact of the sign on his neighborhood.

Mr. Gross asked if there is any current regulation that covers lighted signs in residential districts. Mr. Woodward responded that there are sign illumination regulations for residential districts only but this is a transitional zoning district and there are no sign illumination regulations for transitional areas.

Mr. Drypolcher noted that any new zoning amendments would be in effect from the time of adoption and would not be retroactive.

Robert Baker was recognized as petitioner and explained that when he spoke to an employee of the bowling center, there was no interest in accommodating his request. He was told there was no switch on the sign to enable it to be turned off at night.

Mr. Gross suggested asking staff to bring to the owner's attention the concern of the abutter. Members agreed.

Mr. Baker also noted that there is a proposal before the City Council regarding electronic message centers, and he asked that consideration be given to this problem when reviewing the proposed amendment.

Mr. Swope moved that the Planning Board refer this request to staff with the recommendation that they transmit a letter to the owner of Boutwell's Bowling Center noting concerns of the neighbor and asking if they would address the concerns. Mr. Kenison seconded.

Mr. Harrington noted that the City Council has an energy committee that might have an interest in this concern. He felt there should be a concern about the needless use of energy by the constant use of electricity to light the sign.

Ms. McClure indicated that as she was the ward councilor for this area, she would speak with the owners about the neighborhood concerns, and if that failed to produce any result, then the Board could proceed to have the letter sent.

The motion was amended to reflect Ms. McClure's proposal. The Motion, as amended, carried.

### INFORMATION

The Chair reminded Planning Board members of the special public workshop presentation with regard to an Aquifer Protection Ordinance to be held on Thursday, April 30, 2009 as well as the annual OEP Spring Planning & Zoning Conference at the Center of New Hampshire in Manchester on May 2, 2009.

### New Business

13. Request for an **extension** of the period of validity of a conditional approval previously granted to the subdivision application for a revision to the condominium of **Sorrento Investments LLC at 9 Triangle Park Drive**.

Mr. Woodward explained this request for a one-year extension of approval to allow for all of the plans and condominium documents to be finalized and recorded and the sale of the property to be conducted. He reported it was expected that recording at the Merrimack County Registry of Deeds would take place within a week. Construction is expected to be completed by May 4, 2009.

Mr. Swope moved that the Planning Board grant a 90-day extension of approval. Mr. Shurtleff seconded. Motion carried.

Mr. Woodward reported that the City Council had received a request to consider changes to the Zoning Ordinance so as to permit electronic message center signs in certain districts and under certain circumstances.

Members of the Planning Board asked that the Board's City Council representatives request that this be forwarded to the Planning Board for comment.

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

A TRUE RECORD ATTEST:

Douglas G. Woodward  
Clerk

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