

A continuation of the regular September meeting of the City Planning Board was held on October 5, 2011, in the Second Floor Conference Room, City Hall, 41 Green Street, at 7:00 p.m.

Present at the meeting were Members Drypolcher, Lavers, Foss, Smith Meyer, Gross, Swope, Hicks (who arrived at 7:20 p.m.), and City Council Representative Shurtleff. Mr. Henninger, Ms. Hebert, and Ms. Muir of the City's Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

At 7:01 p.m., a quorum was present, and the Chair called the meeting to order.

APPLICATIONS

Major Site Plan Applications

1. Application by the **Bindery Redevelopment, LLC**, on behalf of the Duprey Center, LLC, and the New Hampshire Bindery, Inc., for a site plan of property located at **43 and 45 South Main Street**. (2011-0034)

Deliberation and Action on the Application

Mr. Henninger stated that hearing was closed and the deliberations were tabled at the previous Planning Board meeting, in order to allow the demolition review process to be completed. Ms. Hebert stated that the demolition review process has been completed.

Ms. Hebert stated that there were a few changes to the revised Planning staff report. She stated that the crosswalk is being moved back to the south side of the intersection where it is currently located. Bump outs would be provided on both sides of the crosswalk. She said that an additional tree would be planted along the frontage of South Main Street and that the trees would be smaller in size and variety than the ones located in front of the Smile Building.

Ms. Smith Meyer asked whether it was premature to have the information relating to the enclosure on the coach included in the site plan. Ms. Hebert responded that the tentative location of the coach enclosure is shown on the plan, and the applicant will return to the Planning Board for review and approval as an architectural design review item.

Ms. Foss asked for clarification regarding the utilities section of the report. She stated that it appears that there will be less impervious surface but more runoff post-construction. Ms. Aibel responded that the runoff is now going through the bindery building, through the State areas, and onto Storrs Street. After construction the runoff will be going into South Main Street drainage system, down to the Capitol Commons, into the Merrimack River, so the runoff amount will be the same it will just be going to a different place.

Mr. Gross moved to grant Architectural Design Review (ADR) approval for the site and buildings for a 69,360 square foot office building, proposed by the Bindery Redevelopment, LLC, at 43-45 South Main Street, subject to revision to the final review and approval of the building elevations and landscape plan by the Architectural Design Review Committee (ADRC). If the ADRC and the applicant cannot reach consensus with regards to the design of the building and landscape, the applicant may return to the Planning Board for final approval. The design of the proposed Concord Coach display structure shall be reviewed as a separate ADR item.

Ms. Smith Meyer seconded the motion.

Ms. Smith Meyer stated that she appreciates the efforts for those individuals who spoke at the demolition delay public hearing and for those who send letters to the editor. She thinks it is important that those individuals took the time to express their opinions.

Mr. Gross stated that he agrees with Ms. Smith Meyer. He stated that he has been trying to draw some lessons from this process that go beyond this particular project. He feels that the process for approvals for historic buildings is completely out of whack and that the idea that the Planning Board had to recess its process in order to allow another process to be carried out, that he believes should have happened a lot earlier in the overall process, so that the property owner and the developer would have had some greater ability to respond to the public concerns about preservation of historic buildings. He said that the Planning Board's awareness of the historic significance of the property didn't not happen until the Board was handed a fully developed application.

He thinks that the City Council ought to do something about coordinating these two processes. If we are going to continue to have a demolition review process that is supposed to be alert to the preservation of historic building, it has to happen at the appropriate time in the overall process. It is only fair to the people who participate in the process, so that they can have some assurance that what they say will have some weight. And it is only fair to developers, so they know what there are up against, which will allow them to make adjustments if they perceive that a demolition plan is not going to work out terribly well.

Mr. Gross stated that another point he would like to make is that he thinks that if the City of Concord, and not just the administration but the community as a whole, are going to hold historic preservation as a value that should be publically entertained and enforced, then the City has to find a way that the entire cost of enforcing that value is not imposed on developers. Previous downtown revitalization projects in the late 1970s and early 1980s worked because there was public financial participation that made it worth the developers' efforts to preserve historic properties.

Mr. Gross also believes that there should be more objective standards in order to make the system less random that come to bear in determining whether a structure is of historic significance.

Ms. Swope agrees with Mr. Gross. He stated that it is essential if the City of Concord and the taxpayers are serious about historic preservation, to have funds available to offset the costs. He also thinks that it has to be decided in advance what is of historic importance, prior to someone having other plans for it. Mr. Swope stated that it is also important for the criteria to be objective. The community has to identify their most valuable historic assets prior to a developer beginning a project.

Mr. Shurtleff explained that both Mr. Gross and Mr. Swope brought up excellent ideas, and in looking at the building that SEA is interested in purchasing from the League of NH Craftsmen, which has been in the works for about two years now, but the public was not made aware of it until recently. There needs to be a way to get the word out. The NH Preservation Alliance and other groups have always done a wonderful job, but unfortunately when they are against the clock, there are many options. He thinks that Concord should be more draconian, like Portsmouth and Keene, where the demolition review can actually stop a demolition completely. He said the City's demolition review committee is made up of excellent people who have a good knowledge of the City's history and background, but if they don't have the proper tools, they can't be effective. Mr. Shurtleff stated that the City continues to try to lure people to historic Concord, but at the same time, the City is losing so many buildings.

The motion passed unanimously.

Mr. Swope moved to approve the Conditional Use Permit (CUP) pursuant to Article 28-5-48 of the Concord Zoning Ordinance, for relief from the “build to line” in the Central Business Performance District to allow for the construction of the widened sidewalk. The building has a setback approximately 10-13 feet from the South Main Street right-of-way to allow for the widened sidewalk. This setback is consistent with the adjacent buildings to the north and south, and will provide a consistent sidewalk width in front of the Bindery Redevelopment building and the SMILE office building.

Mr. Gross seconded the motion.

The motion passed unanimously.

Mr. Swope moved to grant Conditional Site Plan approval for the major site plan application of the Bindery Redevelopment, LLC, at 43 - 45 South Main Street, as prepared by the Opechee Construction Corporation, 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 on-site improvements shall be obtained from the Engineering and Planning Divisions. No construction activity may commence prior to the preconstruction conference.
2. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the applicant shall obtain approval of private utility plans from Unitol, Fairpoint Communications and National Grid.
3. Prior to the issuance of a certificate of approval by the Planning Board Chair (and issuance of any building permits for construction activity on the site), the following State and federal permits shall be obtained and copies provided to the Planning Division:
 - a. NH Department of Environmental Services Water Quality & Sewer Discharge Permit
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 – General Office (*See Attached Impact Fee Worksheet.*)
5. 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.

6. No certificate of occupancy for any building or use shall be issued until all public improvements have been substantially completed to the satisfaction of the City Engineer.
7. Prior to the release of a financial guarantee for any public improvement, an as-built plan shall be provided to the City Engineer in a form and content acceptable to the City Engineer.
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 following easement documents, in a form acceptable to the City Solicitor and suitable for recording in the Merrimack County Registry of Deeds, will be provided to the Planning Division.
 - a) A deed of easement for a private drainage easement on the south side of the building from the property at 49 South Main Street for the benefit of the property at 45 South Main Street
 - b) A deed of easement to the City of Concord for an eight (8) foot wide sidewalk easement along the South Main Street frontage.

Special 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 application for the voluntary lot merger to combine parcels 34/4/5 & 34/4/6 shall be approved by the City and recorded at the Merrimack County Registry of Deeds.
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 demolition plan and the construction phasing plan shall be approved by the City Engineer.
3. 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 rights to use the 15-foot wide passway owned by the State of New Hampshire.
4. Within six months of the issuance certificate of occupancy, the parking study prepared for the Sanel block site plan applications shall be updated to evaluate the impact of the Bindery Redevelopment project. The updated study shall include the original field inventory of parking done for Sanel Block, the original parking projection for Sanel Block, an updated inventory of actual post-Sanel Block conditions, and a future projection/analysis of Bindery parking conditions.
5. Within six months of the issuance of the certificate of occupancy, an evaluation of the following intersections shall also be prepared by a traffic engineer: Storrs Street & Pleasant Street Extension; Storrs Street & South Main Street; and Storrs Street & North Main Street. The updated evaluation shall include the original intersection counts done for Sanel Block, the original parking projection for Sanel Block, an updated count at the subject three intersections, and a future projection/analysis of Bindery impacts at the three intersections.
6. 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 site plan shall be revised to include a bump-out on the east and west sides of South Main Street at the location of the proposed

crosswalk; the applicant shall include a street tree within the bump-out on the west side of the street; and four street trees shall be included along the South Main Street frontage. The proposed street trees shall be a smaller caliper size of three to four inches, and the Cork tree shall be replaced with a different street tree appropriate for urban landscapes.

Mr. Gross seconded the motion.

The Chair asked the applicant, Mr. Duprey, whether he would be putting some type of brick or stone, like the name plate for the Smile Building, onto the building.

Mr. Duprey stated that they are thinking of putting a brick or stone name plate on the front of the building, but they have already agreed to go back to ADRC. He stated that they will also be going back to ADRC to incorporate comments from the last meeting and for the change in the color of the back of the building.

The motion passed unanimously.

Mr. Duprey stated that the historic process is useful but it is too late within the process. He discussed various buildings in Concord that he was responsible for saving. Mr. Duprey suggested that if Concord wants to save historic buildings, it is important that RSA 79-E should be amended to extend the tax incentive to include redeveloping existing historic buildings. He stated that currently RSA 79-E only extends the tax breaks for five years. He believes that the statute should be changed to allow for local options, which would allow the towns to extend the tax break for additional time periods.

Architectural Design Review

2. 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.
 - **Bekdash Temple** for one (1) freestanding sign at **189 Pembroke Road**.
 - **Concord Christian Academy** for revisions to an existing freestanding sign at **37 Regional Drive**.

Mr. Henninger reported that no additional information regarding these applications has been received from the applicants, and his recommendation is to continue tabling these applications.

Mr. Gross moved to table these two applications, and Mr. Hicks seconded the motion. Motion carried.

Subdivision Regulation Amendments

3. **Revisions to the Subdivision Regulations** to address omissions, oversights, and other minor modifications.

Public Hearing

Mr. Henninger stated that these revisions to the Subdivision Regulations are intended to deal with errors and omissions that have been identified after implementing the newly adopted regulations for approximately nine months.

Ms. Smith Meyer asked what the requirements for street trees in cluster developments. Mr. Henninger replied that the number of trees is dependent on the frontage.

Mr. Gross asked what the revisions are in Figure 21-7 (Revised). Mr. Henninger stated that the original drawing was not drawn to scale and that more details were included in the revised drawing.

Mr. Gross asked whether these criteria apply to the City when the City designs and builds a roundabout. Ms. Aibel stated that the City is bound by these design criteria. Mr. Gross stated that there has been some controversy about the radius being large enough for large trucks, as there have been comments regarding the tendency for large trucks to tip when maneuvering through roundabouts. Ms. Aibel stated that the Fire Department, which has been the biggest skeptic, has not had any problems at the roundabout at Liberty Street.

Ms. Smith Meyer asked whether landscaping is required in the raised islands and in the island in the center of the roundabouts, as the legend doesn't indicate that. The Chair stated that it is important to have a landscape maintenance plan for the future of these plantings at the roundabouts. Ms. Hebert stated that some of the spaces were too small to require landscaping, but the City can work with the developers on a case-by-case basis. It was agreed that a note would be added to Figure 21-7 (Revised).

Deliberations and Action on the Amendments

Mr. Gross moved to accept the revision to the Subdivision Regulations as presented and to include the changes to Figure 21-7 (Revised) as discussed in the meeting. Ms. Foss seconded the motion. Motion carried.

REGULAR MEETING

New Business

4. Request by **Capital Offset Company, Inc.**, at **181 North Main Street**, to rezone the southerly portion of Tax Map 55, Block 3, Lot 15, and consideration of rezoning a parcel owned by **First Congregational Church**, at **177 North Main Street**, Tax Map 55, Block 3, Lot 14, from the Downtown Residential (RD) Zoning District to the Urban Commercial (CU) Zoning District.

Ms. Hebert stated that the Capital Offset Company, Inc. requested through the Mayor's solicitation of comments regarding the proposed changes to the City of Concord Zoning Ordinance, that a portion of the property at 181 North Main Street be rezoned from Downtown Residential (RD) to Urban Commercial (CU). The parcel is located off of North Main Street, between Pearl Street and Washington Street. The zoning district line currently divides the property, leaving the southwesterly portion of the parcel in the Downtown Residential (RD) District and the northeasterly portion of the parcel in the CU District. The zoning district line crosses through the Capital Offset building.

Ms. Hebert reported that the portion of the property that is located within the RD District is considered to be a pre-existing, non-conforming use. The adjacent land uses on Pearl Street are residential, and the Capital Offset Company also abuts the First Congregational Church, which is located off of Washington Street and North Main Street. The Capital Offset building encompasses almost the entire lot and the business is accessed through existing rights-of-way off of Washington Street and of North Main Street.

Both of these access easements cross through the church's property, and the church also owns the parking lot to the west of the Capital Offset building.

Ms. Hebert explained that the annex building to the First Congregation Church off of Washington Street is adjacent to the Capital Offset facility. This building is similarly split by the RD District/CU District zone line. The Staff's recommendation is to also rezone church property from RD to the CU District, to bring the entire building into the same district. The church use is allowed by Special Exception in RD District and by Conditional Use Permit in the CU District. The parking area is located on a separate parcel, and is surrounded by residential uses and could remain in the RD District. Furthermore, the parking lot is allowed as an accessory use in the RD District.

Ms. Hebert stated that the rezoning request will bring the Capital Offset property into conformance with the Zoning Ordinance with regards to the use, but the property will remain nonconforming with respect to the lot coverage, building setbacks, landscaping, buffer to the adjacent residential district, driveway access, loading areas, parking, etc. The area proposed for rezoning is approximately 0.37 acres and approximately half of this land is owned by Capital Offset.

The 2030 Master Plan has identified the future land use of this parcel as Downtown Commercial and High Density Residential, the use line is in approximately the same location as the existing zoning district line. The proposed rezoning includes a small area of land and a revision to the Master Plan may not be necessary.

Mr. Gross moved to recommend to the City Council that the portion of the properties at 177 and 181 North Main Street that are within the Downtown Residential District be rezoned a compatible zoning classification of Urban Commercial (CU).

Mr. Swope seconded the motion. Motion carried.

5. Request for a one-year extension of Site Plan approval and a Conditional Use Permit for driveway separation at **26 Centre Street for Twenty-Six Centre Street, LLC**, approved on December 16, 2009.

Mr. Gross moved to grant a waiver of the Site Plan Review Regulations for a one-year extension for the Site Plan and Condition Use Permit applications of Twenty-Six Centre Street, LLC, with the provision that all conditions of approval as set forth in the decisions of the Board on December 16, 2009, shall remain in full force and effect.

Ms. Smith Meyer seconded the motion. Motion carried.

Old Business

6. Continuation of the review of the **draft Site Plan Regulations** including a communication from the Heritage Commission with regard to the draft regulations, and a response to the Heritage Commission's comments from the Deputy City Manager – Development, together with excerpts from the draft regulations related to historic preservation.

Mr. Henninger stated that since the last review of the Site Plan Regulations, which was basically a complete review, the Heritage Commission submitted to the Planning Board three recommendations for improving the Site Plan approval process.

Mr. Henninger reported that the first recommendation by the Heritage Commission is to establish a process whereby demolition is prohibited until a reuse for a building site has received all approvals from the Planning Board and Zoning Board. The details of this process would need to be more completely elaborated, including exceptions for hazardous buildings and the applicability to historically or architecturally insignificant structures. He stated that City staff is in concurrence that incorporating demolition restrictions in the proposed Site Plan Regulations would not be appropriate, advisable, or effective. City staff is interested in revising the Demolition Delay ordinance instead.

Mr. Gross stated that the Planning Board's coordination of historic building preservation and the demolition review is completely in the wrong part of the sequence. Mr. Henninger stated that the demolition review process is a different process than the Site Plan approval process. There is no relationship between the two processes. He stated that if the City Council wants to amend the demolition review process, it would have to be in a different area other than the Site Plan Review Regulations.

Mr. Gross explained that he doesn't like this recommendation, but agrees that something must be done with respect to the preservation of historic structures. He stated that the process was totally wrong for the Bindery building, but understands that this is the only mechanism that is available to the City. There needs to be something that identifies buildings as having historic value. Mr. Gross says that he supports the Planning staff's recommendation.

Mr. Henninger stated that unless a proposal is put forward that actually has the ability to avoid demolition instead of simply delaying the demolition for a certain number of days and unless the Concord community is willing to protect key buildings, he doesn't see the process being effective.

Mr. Shurtleff stated that one of the reasons that the Heritage Commission brought this issue forward, is that the request for demolition normally comes to the attention of the Heritage Commission at the last minute which causes frustration for all involved.

The Chair suggested that having a list of sites that are historically sensitive, so that potential developers know in advance prior to money being invested in a development.

Mr. Swope stated that demolition review is a City process that goes beyond the Planning Board, and the City needs to be aware and to provide the tools and funding to save these buildings.

Mr. Shurtleff stated that conversations have been held with the Mayor and City Council regarding the formation of an ad hoc committee made up of developers, planners, preservationists, Council members, etc., to discuss how the process could be improved.

Ms. Foss asked whether the Planning staff or the Heritage Commission has found out how other New Hampshire communities have dealt with this issue. She stated that she agrees that the Planning Board, developers, preservationists, and the public should get together and discuss this issue. Ms. Hebert stated that the staff could certainly pull together examples of what other communities are doing.

Ms. Smith Meyer suggested that the 49-day delay begin after the demolition review public hearing is held, which would provide more time for alternatives to be discussed.

Mr. Henninger stated that the demolition review process has saved a number of historic structures in the past including the Rolfe Barn, Abbott Village, 4 South State Street, and two properties on Clinton Street near the Trinity Baptist Church. He said that some developers view the demolition process as simply a waiting period and are not interested in looking at alternatives to demolition.

Ms. Smith Meyer stated that something has to be done right away, as the Master Plan does state that one of the goals is to preserve the historical fabric of the community. Mr. Shurtleff stated that the only tool available to the Demolition Delay Committee is public outcry, and that doesn't always work.

Mr. Swope reiterated that this is a City Council issue and that an inventory of important historic properties, so that this information is available to the prospective developers before they have invested time and money into a project. He said that the City needs to have money to back up their desire to preserve historic properties.

Mr. Gross made a motion for the Planning Board to adopt a resolution to the City Council stating that the Planning Board is concerned about the inadequacies of present procedures governing the preservation of historic structures and the demolition process, and the Planning Board strongly urges that the City Council takes appropriate action.

Ms. Foss seconded. Motion carried.

Mr. Henninger stated that the second recommendation by the Heritage Commission is to establish an informal pre-application consultation for applications which may have impacts on a historic structure or site. He stated that the City does meet with property owners and developers prior to the application being submitted, offering them a chance to discuss issues related to historic, archeological, shoreland protection, conservation, wetlands, demolition delay, state and federal permitting requirements etc. These meetings are scheduled on a weekly basis, but it is voluntary on the part of the property owners or developers.

Mr. Gross asked whether the sketch plan option for review by the Planning Board was still being used. Ms. Hebert said that the option still exists, but people aren't using it. Mr. Henninger stated that it could be the economy, but he also believes that the site plan process is more articulated and the staff is able to respond to many of the concerns that would be raised during the sketch plan process, and therefore only brings projects before the Planning Board that are ready for consideration for approval or those that have real policy issues to be discussed.

Ms. Foss asked if it would be appropriate to require pre-application consultations in circumstances with defined historic or environmental concerns. The Chair responded that that would be the Planning staff's responsibility to deal with these items.

The Chair stated that no action was necessary on this recommendation, as pre-application consultations are already in place.

Mr. Henninger stated that the third recommendation by the Heritage Commission is to add historic resources to the requirements for application submittals. In response, the Planning staff has proposed the following modifications to the Draft Site Plan Regulations.

1. Section 3 - add new subsection (3.17) "To identify and minimize impacts on historic sites, buildings and structures."
2. Subsection 6.01 (6) Sentence 2 - add "historic resource study" after fiscal impact study and before and school impact study.
3. Subsection 14.02, (3) (b) - add new subsection (ix) "Any historic structures or sites listed or eligible for the National or State Registers of Historic Places, and any historic markers;"
4. Subsection 15.03 (6) add new subsection (25) "*Historic Structures or Sites:* The location and description of any historic structures or sites listed or eligible for the National or State Registers of Historic Places, and any historic markers on the site or abutting properties or rights-of-way."

Mr. Gross moved to accept the changes on the Draft Site Plan Regulations as outlined by Planning staff.

Mr. Swope seconded. Motion carried.

INFORMATION

- Letter to Town of Pembroke Planning Board for **F.L. Merrill** in regard to a **Development of Regional Impact (DRI)** by F.L. Merrill on **Silver Hills Drive**.

The Chair asked for an update regarding the Development of Regional Impact for the Town of Pembroke.

Mr. Henninger stated that a meeting with the applicant, the Town of Pembroke staff, and City staff, as well as the City's consultant, was scheduled for Thursday afternoon, October 6, 2011.

There was no further business to come before the Board, and the meeting adjourned at 8:37 p.m.

A TRUE RECORD ATTEST:

Stephen L. Henninger,
Acting Clerk

djm