

The regular monthly meeting of the City Planning Board was held on October 20, 2010 in the City Council Chambers in the City Hall Annex at 7:00 PM.

Present at the meeting were Members Drypolcher, Swope, Dolcino, Gross, Hicks, Meyer, and Shurtleff (City Council representative). Messrs. Woodward and Henninger, Ms. Hebert and Ms. Osgood of the City Planning Division were also present, as was Mr. Roberge, City Engineer.

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

APPLICATIONS

Review of Governmental Land Uses Pursuant to RSA 674:54

1. The **State of New Hampshire** proposes to construct a new exterior stair tower on the east facade of the Graphic Services Building at **12 Hills Avenue. (#2010-41)**

Public Hearing

Mr. Henninger explained that the State of New Hampshire had submitted plans for the renovation of an existing State facility at the intersection of Storrs Street and Hills Avenue. The external modifications include a new stair tower designed to match the existing historic brick façade and changes to the parking in front of the building.

He explained that this building was damaged in a storm event and funding has been provided to renovate the building and replace an existing metal egress stair with a three story, fully enclosed stairwell. The new stairwell will include the new main entrance to the Graphics Services Bureau located on the third floor of the structure. The lower two stories are used as a food distribution warehouse operated by the State of New Hampshire. The foundation for the addition will encroach into Railroad Street.

He reported that the State's project will necessitate modification to existing parking spaces, drainage systems, curbing, and landscaping within Railroad Street and possibly within surrounding streets. Unlike most street right-of-ways, the City has fee simple ownership of Railroad Avenue. This means that the street itself is actually a parcel of City-owned land rather than an easement over other private properties. The use of City property for non-City purposes is governed by the City's Code of Ordinances. The Ordinance requires that any private use of the City's right-of-way secure a license from the City Council. The State has requested that the City grant a license authorizing them to make the desired improvements on the City's property.

Most of the parking in front of this state facility is either entirely or partially located on City property. In order to construct the new staircase, modifications to the parking spaces next to the new addition will be necessary. The State is proposing to modify the curb cut on Hills Avenue and is asking to convert Railroad Street to one way

southbound, so that the proposed handicapped parking next to the stairwell can be retained as angle parking.

It is anticipated that the project will create approximately five new on-street parking spaces within Railroad Street. Unlike other parking spaces along the frontage of the State's building which are partially located on property owned by the State and the City, these new spaces will be solely on the City's property. Because of this circumstance, the City's Parking Division will install meters for these spaces once the project is completed.

He reported that the revisions to the parking need to be based on a plan of the entire Railroad Street parking lot. Angle parking may not be the best solution at this location. The State is bidding this project as a design/build project. The final plans will not be prepared until the Governor and Council approves the contract for this project. The final layout of the parking in Railroad Street will need to be reviewed in detail when a complete plan is submitted.

Mr. Henninger reported that the Architectural Design Review Committee had reviewed the proposed building plans and recommended approval of the renovations at 12 Hills Avenue as submitted, with the recommendations that they add three elements on the south façade simulating window openings similar to those facing east, and add a light (window) in the entry door.

Mike Connor, Mark Nogueira, and Dana Abbott were present from the State of New Hampshire to answer questions from the Board.

Mr. Connor reported that the contract for this project was approved today by the Governor and Council.

Mr. Nogueira explained that the final design for the parking lot will be done by the contractor and they will take into consideration the City's suggestion regarding angled parking for the entire parking lot. He explained the challenges they had encountered in their efforts to address ADA accessibility issues.

Mr. Swope asked that they return to the Planning Board with the parking lot design when it is finalized and Mr. Nogueira agreed.

There was no one else who wished to speak for or against this proposal and the Chair declared the hearing closed at 7:13 PM.

Deliberations and Action

Mr. Swope moved that the Planning Board advise the City Council to grant the license for the encroachment and to allow for further review and approval of the proposed parking layout on Railroad Street by the Planning Board and the Parking Committee, once a final design is prepared, and, further, that the Planning Board advise the Department of Administrative Services that the exterior façades of the stairwell are acceptable with the following recommendations:

1. The addition of three fake windows on the south elevation to match those on the east elevation.
2. The addition of a window in the door of the stairwell.

Mr. Gross seconded and asked that the reference to “fake windows” be replaced with the phrase, “mock infill windows”. Motion carried.

Major Site Plan Applications

2. Application by **Franklin Pierce Law Center Corporation** for a site plan of property located at **2 White Street. (#2010-35)**

Public Hearing

(Ms. Dolcino recused herself and left the table.)

Ms. Hebert explained this proposal by the University of New Hampshire School of Law, formerly known as the Franklin Pierce Law Center, to construct a 12,700 square foot building addition at 2 White Street. The new space will house the school’s Intellectual Property Center. The existing facility has approximately 92,241 square feet of floor space. The new addition will be located at the corner of Rumford Street and Washington Street and involves the removal of 30 parking spaces and a small building. The site improvements include the construction of four handicap parking spaces, walkways, outdoor plaza space, and the associated stormwater and utility improvements. To mitigate the loss of 30 parking spaces on the property, the school is proposing to make improvements to the on-street parking along Washington Street, White Street, and Blanchard Street.

She reported that several variances related to the building setbacks, buffers, landscaping, and parking were granted by the Zoning Board of adjustment to allow for the construction of the building addition and to allow the school to maintain existing non-conformities on the site as follows:

2 White Street:

1. A variance to Article 28-4-1(h), The Table of Dimensional Regulations, to permit a building setback of 10 feet from the Washington Street property line where a building setback of 30 feet is required,
2. A variance to Article 28-4-2(e), Buffers for District Boundaries in Collector or Local Streets, to permit a buffer varying from 0 feet to 20 feet where a buffer of 10 to 20 feet averaging 15 feet is required
3. A variance to Article 28-7-2(e), Table of Off-Street Parking Requirements, to permit a post secondary non-residential educational facility with 136 off-street parking spaces, where 340 off-street spaces are required,

4. Variances to Article 28-7-13, Off-Street Loading Requirements, to maintain existing non-conforming off-street loading configuration adjacent to Washington Street where a 50 foot setback and screening is required,
5. A variance to Article 28-7-7(g), Setbacks and Restrictions, to permit parking in an IS Institutional district within the 30 foot front yard setback when non-residential parking is prohibited within the front yard setback at 2 White Street;

76 – 84 Washington Street:

6. Variances to Article 28-7-7(a), Standard Parking Spaces & (e), Minimum Aisle Widths to maintain existing parking configurations with parking spaces and aisle widths that do not meet current standards,
7. A variance to Article 28-7-7(g), Setbacks and Restrictions, to maintain parking: within 5 feet of the lot lines where no parking within 5 feet of any lot line is permitted; within the front yard setback adjacent to Rumford Street in a residential district when non-residential parking is prohibited within the 15 foot front yard setback; and with no setback adjacent to Washington Street where a 10 foot setback is required,
8. Variances to Article 28-7-10(a), Parking Lot Perimeter Landscaping Required, to maintain existing conditions with no perimeter landscaping for the off-site parking lots where 5 foot perimeter landscaping with 10 foot landscaped strip adjacent to Washington Street is required, and a
9. Variance to Article 28-7-10(b), Parking Lot Interior Landscaping Required, to maintain existing conditions with no interior landscaping where 5 percent of the gross parking lot area must be landscaped.

She reported that the building addition has been designed to match the architecture of the existing structure, with brick, cast architectural stone, metal panels, and architectural shingles. There will also be an outdoor patio area at the corner of Rumford Street and Washington Street. The building has been designed with a maximum height of 35 feet, in order to be compatible with the surrounding residential neighborhood. The mechanical equipment on the roof-top of the new addition will be screened from view and the Law Center has also offered to screen the existing roof top units to reduce the noise in the neighborhood.

She reported that most of the existing landscaping and street trees will be preserved and a few new plantings will be added to supplement the vegetative buffer between the residences and the Law Center along Blanchard Street. Landscaping has also been provided around the base of the building and patio area.

Ms. Hebert reported that the Architectural Design Review Committee had reviewed the design of the building addition and related site improvements at their meeting and recommended approval of the building, landscape and site plans as submitted.

She reported that this project will not be assessed a traffic impact fee because there will be no increase in the number of staff or students as a result of the proposed building

expansion. When the law school expanded in 2000 the enrollment was 461 students; today the enrollment is 460 students.

She explained that the school would typically be required to provide 340 parking spaces according to the parking standards outlined in the Zoning Ordinance, but they will only be providing 136 spaces. These spaces are located on both on-site and off-site surface parking lots. The applicant has provided a plan to add 31 on-street parking spaces in the city block surrounding the Law Center, to replace the parking spaces lost on their property. Nine spaces would be added on the east side of White Street; eight compact angled spaces on the south side of Blanchard Street; and fourteen spaces on the north side of Washington Street. Blanchard Street would be restricted to one-way traffic westbound from Essex Street to White Street and all of the proposed spaces would be available for public use. The parking spaces on the south side of Washington Street will also be re-striped to prevent overcrowding and conflicts with the adjacent property owners, primarily due to the blockage of driveways along Washington Street. If the restriping along the south side of the street does not successfully limit the parking conflicts, the applicant and the City will pursue implementing time-limited or resident-only parking along Washington Street. In order to create the additional on-street parking some of the driveway entrances to the Law Center have been narrowed or closed altogether.

She reported that the applicant has agreed to plow and maintain the angled parking spaces along Blanchard Street and has also agreed to maintain the striping of the parking spaces on Washington Street, Blanchard Street, and White Street. The Law Center will need to convey an easement to the City for the portion of the angled parking spaces along Blanchard Street that encroaches onto the Franklin Pierce Law Center Corporation property.

The proposed on-street parking and the proposed one-way circulation on the western half of Blanchard Street will require action by the City Council to amend the Code of Ordinances for parking and one-way streets.

Ms. Hebert reported that the Traffic Operations Committee and Parking Committee have reviewed the off-site improvements and recommended in favor of the proposal as submitted.

She reported that the Zoning Board of Adjustment granted the variance related to parking based on the following representations made by the applicant:

- Institute a ride share/car pool program and designate spaces for this use in UNH SOL's Off-street parking lots;
- Increase the number of bike racks provided to students;
- Develop a parking map with available and preferred parking areas. The map will be provided to incoming students and will encourage students to park in outlying areas further away from the neighborhood;

- Institute a required student ID/car sticker program. A sticker will be required for all students parking in UNHSOL's off-street lots. The sticker will also provide an easy method of monitoring and reporting student parking violations;
- Give neighbors a telephone number/single source contact (Peter Husak) to report parking problems or otherwise communicate concerns. Additionally hold neighborhood meetings more regularly;
- Level out the scheduling on peak class days to help spread parking demand out throughout the week beginning in fall 2011;
- Work with PATH to find alternative, long term solutions to reduce cars on campus;
- Educate and involve the students and employees in being better supporters of the community;
- Discuss possibility of having city busses come up Washington Street from Main Street; and
- Develop possible shuttle from off-site locations, such as park & ride lots, Everett Arena and surrounding neighborhoods.
- The applicant shall return to the Zoning Board of Adjustment for a full review of the conditions at a public hearing one year from the issuance of the Certificate of Occupancy.

Ms. Hebert reported that the Law Center and the City Engineering Division had analyzed the potential to create additional parking on the west side of White Street through the installation of angled parking spaces which would have also included the construction of curbing and sidewalk. This project would have required a financial commitment from the City as well as the Law Center, with the City possibly funding the curbing and sidewalk and the Law Center addressing the paving and striping of new spaces. City Engineering subsequently determined that the installation of angled spaces would have necessitated the conversion of White Street to a one-way direction. It was felt that this would present challenges to circulation in the neighborhood and to White Park. Therefore, this option was not recommended. The installation of curbing and sidewalk to maintain the current parallel parking on the west side of White Street would not generate significant new parking alternatives for the school. This project is also not currently programmed in the City's Capital Improvement Program. As such, City Engineering did not recommend that this be considered as a requirement for the Law Center at this time.

She reported that the City had received a collection of correspondence regarding the metering and use of on-street parking spaces within the neighborhood as well as the leasing of parking spaces at White Park to UNH Law. These concerns fall within the City

Council's authority and would require ordinance changes or legal review by the City Solicitor. The Planning Division recommended that the Planning Board refer these communications to the City Council for consideration.

Mr. Shurtleff asked about the feasibility of building a two-story parking structure over the current surface parking lot on Washington Street. Ms. Hebert responded that the applicant had explored that possibility and deferred to them to answer the question.

Attorney Richard Uchida from Orr & Reno, Erin Reardon from Nobis Engineering, Duene Cowan from DC Designs, and John Hutson, Cathy Green, Eric Norman, Peter Husack, Dave Willoughby, and Mike Cretello from the University of New Hampshire School of Law were all present to answer questions from the Board.

Mr. Uchida reported that there were no plans to increase either staff or students as a result of this addition.

John Hutson, Dean and President of Franklin Pierce Law Center, explained that they intend to not grow. They are at a size they like. This will be a conference center for intellectual property law. They intend to hold seminars and conferences there as well as provide research facilities, distance learning, and classrooms. Intellectual property is what makes the Law Center great and this building is what will keep the school on top.

Duene Cowan, architect, explained the building design. He explained they wanted this to be a seamless addition and to break up the building module to keep it at a more residential scale. There will be a green roof over the entrance along with a number of other features to make it energy efficient.

Mr. Gross asked about the possibility of building an elevated building over the surface parking lot. Mr. Cowan responded that they cannot sink parking below the surface because of the water table. If they placed the building on stilts they would lose too much space in order to keep the building to the current height in order to maintain it at a residential scale. Also, the cost would have been almost prohibitive. Mr. Uchida also noted that they would also have needed more variances for the height, and this kind of building would have changed the substance of the neighborhood.

Mr. Gross acknowledged that they had not requested sign approval at this time but reported that he felt the sign shown on the plans was not consistent with the residential character of the neighborhood. He hoped they would instead place a discreet sign on the surface of the building to lead visitors to the entrance. He felt the sign shown would change the character of the neighborhood.

Erin Reardon described the site plan. She explained there will be a 5% decrease in impervious surface. Because of the high water table in that area, they were not able to decrease it any more. She explained the construction plan as it would affect parking in the neighborhood.

Ms. Meyer had questions relative to the proposed landscaping. She also suggested that vegetation to be preserved needed to be protected by a barrier so that delivery vehicles and construction vehicles do not damage it. Ms. Reardon responded that there is some very nice existing vegetation that they would like to preserve. Ms. Meyer also suggested adding one more shade tree at the easterly end of the parcel. Ms. Hebert noted that there are power lines nearby that will have to be taken into consideration when considering landscaping at that location.

Eric Norman, Vice President of the Law School, indicated the reaction to their application has helped to increase their awareness of the neighborhood and its needs. He reported they had reviewed their class schedules and noticed that most classes are held Monday through Wednesday from 9:30 AM to 3:00 PM. They have worked with their schedule and spread out their classes so there will not be as much of a peak traffic or parking period. He also described some of the other incentives they are implementing to try to minimize parking problems.

David Willoughby, president of the Student Bar Association, explained that many of the people involved from the Law Center had a personal stake in the improvements because they live in the neighborhood as well and have the same problems with improper parking as the other residents.

Mr. Shurtleff asked if the Law Center could build a parking structure in the neighborhood. Mr. Uchida responded that they had looked at the possibility of building a structure over the existing surface lot on Washington Street. In order to provide enough parking, they would have to build a three-story building costing about \$3 million and it would be about 45-50 feet high. They did not get a very warm feeling from the neighborhood about this idea. The odd lot shape and setbacks would make it very tall and it would not fit the residential nature of the neighborhood.

Ms. Meyer asked about utilizing the snow storage area near Dillon Field for satellite parking. Mr. Uchida responded that the City is not willing to provide that lot for parking, but they have looked at the possibility of leasing space at Everett Arena and providing a shuttle to the Law Center, especially for people coming in from out of town.

Mr. Gross suggested creating a hazardous parking zone in which fines would be so much more than anywhere else that it would discourage inappropriate parking. He was concerned about everyone improperly parking and not just those motorists related to the Law Center.

Mr. Hutson indicated that law students are very concerned about their record regarding conduct. These parking violations would be considered conduct violations so that alone may be the incentive.

Timothy Sink, from the Greater Concord Chamber of Commerce, spoke in favor of the application. He understood there are challenges regarding parking in the neighborhood and felt that they had made major progress in addressing the neighborhood's concerns.

There was no one else who wished to speak for or against this proposal and the Chair declared the hearing closed at 8:40 PM.

Deliberations and Action

The Chair addressed the written communications received by the Planning Board from the neighborhood and discussed how best to handle those comments.

Mr. Swope did not think just handing over the various pieces of correspondence to the City Council would be effective. Someone should sift through them and forward the salient points to the Traffic Committee of the City Council.

Mr. Woodward felt there were two themes addressed in the communications: parking in White Park and on-street parking. The Planning Board's purview is limited to what takes place on the site. Those other issues would be better dealt with by the City Council.

Ms. Meyer felt rescheduling classes was a great idea to help spread out traffic. She felt it was worth giving them a chance to see how the various improvements work out before making any more dramatic changes.

Mr. Swope felt the steps taken by the Law Center so far are admirable and felt a further step should be to institutionalize the position of neighborhood liaison so that it does not disappear over time.

Mr. Gross asked if the Planning Division could review the communications the Board had received and abstract them and then provide a summary to the City Council so that when the City Council considers the proposed ordinances they can be aware of the concerns that have already been expressed. Mr. Woodward indicated that an analysis and summary could be provided to the City Council.

Mr. Hicks indicated comments in support of the project should also be included in the analysis and report to City Council.

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 Franklin Pierce Law Center Corporation as submitted by Nobis Engineering, Inc. and DC Designs Architects, PLLC with the understanding that this does not constitute approval of signage. Mr. Swope seconded. Motion carried with Ms. Dolcino abstaining from discussion and vote.

Mr. Gross moved that the Planning Board grant conditional Site Plan approval for the Site Plan Application of Franklin Pierce Law Center as submitted by Nobis Engineering, Inc. and DC Designs Architects, PLLC 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.

Special Conditions:

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 following easement document, 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. The conveyance of an easement for the parking on Blanchard Street
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 applicant shall obtain City Council approval for the parking improvements on Washington Street, Blanchard Street, and White Street as well as the proposed one-way traffic along Blanchard Street. This approval will stand as the Planning Board's favorable recommendation to the City Council in regard to the on-street parking improvements.

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 applicant shall sign a maintenance agreement with the City for the plowing of the angled spaces on Blanchard Street and the striping of all of the proposed on-street parking.
8. Prior to the issuance of a certificate of a certificate of occupancy, the applicant shall demonstrate to staff compliance with the Zoning Board of Adjustment's decision on September 29, 2010.
9. 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 a construction staging and interim parking plan to minimize impact to the neighborhood; such plan shall be approved by the City Engineer.
10. The Planning Division shall abstract comments and concerns that came to the Planning Board and provide them to the City Council.

Mr. Shurtleff seconded. Motion carried with Ms. Dolcino abstaining from discussion and vote.

After a brief break, the Chair reported that it had come to his attention that Condition #6 under Special Conditions, relating to City Council approval of on-street parking and circulation changes, created a dilemma for timing for breaking ground on the project as the condition required Council action prior to issuance of any building permits. The request of the applicant was to change the condition so that the Council action would be required precedent to the issuance of any certificate of occupancy. The Board was reminded that the City's Parking Committee had recommended that parking changes, and that the Traffic Operations Committee had recommended the circulation changes.

Mr. Gross moved reconsideration of the previous vote regarding site plan review. Mr. Shurtleff seconded. Motion carried with Ms. Dolcino abstaining from discussion and vote.

Mr. Gross then moved that the Planning Board grant conditional Site Plan approval for the Site Plan Application of Franklin Pierce Law Center as submitted by Nobis Engineering, Inc. and DC Designs Architects, PLLC subject to the following standard and special conditions, with Condition #6 being modified to be required precedent to the issuance of a Certificate of Occupancy:

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.

Special Conditions:

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 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. The conveyance of an easement for the parking on Blanchard Street
6. Prior to the issuance of a certificate of occupancy, the applicant shall obtain City Council approval for the parking improvements on Washington Street, Blanchard Street, and White Street as well as the proposed one-way traffic along Blanchard Street. This approval will stand as the Planning Board's favorable recommendation to the City Council in regard to the on-street parking improvements.
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 applicant shall sign a maintenance agreement with the City for the plowing of the angled spaces on Blanchard Street and the striping of all of the proposed on-street parking.
8. Prior to the issuance of a certificate of a certificate of occupancy, the applicant shall demonstrate to staff compliance with the Zoning Board of Adjustment's decision on September 29, 2010.
9. 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 a construction staging and interim parking plan to

minimize impact to the neighborhood; such plan shall be approved by the City Engineer.

10. The Planning Division shall abstract comments and concerns that came to the Planning Board and provide them to the City Council.

Mr. Shurtleff seconded. Motion carried with Ms. Dolcino abstaining from discussion and vote.

Old Business

6. Further consideration of a revised **draft of an Aquifer Protection Ordinance** and other related matters

Presentation by the consultant firm of Emery & Garrett Groundwater, Inc.(EGGI)

Mr. Woodward reported that the Planning Board had received a revised draft Aquifer Protection Ordinance prepared by the consultant firm of Emery & Garrett Groundwater Inc. with modifications based on comments from City staff, the staff of the NH Department of Environmental Services Drinking Water and Groundwater Bureau, and the consultants. He reported the consultants had also addressed several related matters including the reclassification of groundwater in the wellhead protection area for the City's Pembroke wellfield, the exploration and testing of sites for potential future groundwater use by the City for public water supply purposes, and the hydrologic testing and analysis in relation to proposed rural subdivisions which are dependent on wells.

He reported that while the majority of the City's current municipal water supply is drawn from surface water sources, the City does have a well field across the Soucook River in Pembroke which draws groundwater from both communities. Similarly, the Town of Pembroke has two municipal well fields adjacent to the Soucook River and these wells also draw from groundwater in both communities.

Groundwater has been identified as a potential source of future City water supplies as well as a continuing source of private water supplies outside the Urban Growth Boundary. Prior to the current interest in aquifer protection, Concord had focused all of its attention on its municipal water supply system. However, as potable water is a fundamental matter of the public health and welfare, and as no residence, business, or institution can function without it, the City is fortunate that in areas not served by the municipal water system, it has not encountered problems related to groundwater quality and quantity as other communities have.

He explained that the consultants were originally retained under a Community Technical Assistance Program grant to prepare regulatory measures for the protection for the City's aquifers and groundwater resources so as to preserve the option for the use of these resources for future public and private water supplies. After review meetings between Emery & Garrett Groundwater Inc. and the City staff, a report and

draft aquifer protection ordinance were presented to the Planning Board. The Board then recommended to the City Council that further funding be sought to complete the process and requested the Planning Division to edit the initial draft into City ordinance format. Another grant was subsequently obtained to finalize the ordinance so that the Board might make recommendations to the City Council relative to the adoption of this ordinance.

He reported that the second grant also included funding for the consultants to advise the City on the matter of groundwater reclassification for the City's well field located in Pembroke, to advise the City on pursuing the exploration and preliminary testing within some of the identified primary groundwater development zones in order to determine the viability of these sites to provide for the City's future water needs and to pre-empt others from gaining control over the groundwater rights to these areas, and to provide further information and cost estimates related to requiring hydrologic assessment of proposed residential developments that are dependent on domestic wells for water supply. This could include guidelines and thresholds related to the size of developments that would require such studies, the geological conditions on the development site, and the proximity to existing neighboring wells.

Mr. Woodward introduced Dr. John Brooks from Emery & Garrett Groundwater Inc. who explained that Emery & Garrett had completed and submitted a draft Aquifer Ordinance to the City which outlined protection measures for a Community Water Systems Protection Area; a Non-Transient, Non-Community Water Systems Protection Area; a Transient, Non-Community Water Systems Protection Area; and a Domestic Wells Protection Area. He explained that the various performance standards and prohibitions assigned to each of these Protection Areas reflected a delicate balance between the benefits resulting from the protection of water resources within each Aquifer Protection Area and the potential economic impact to the City and water resource owner to implement the ordinance.

Dr. Brooks reported that they believed the City should seriously consider further investigation of the available groundwater resources identified within the City limits. Such potential aquifers cannot be replaced and they may serve to provide the City with an excellent water supply source that future generations may find more cost effective than other water supply options. Information is needed regarding this water source and they strongly encouraged the City to more fully understand this important resource, particularly in light of possible proposed changes in the State's rules and policies that could serve to further limit the permitting of public water resource withdrawals.

Mr. Gross asked if the study discussed the regulation of industrial extraction. Dr. Brooks was not sure how the City could regulate that as the permitting is done by the State, and the State has made it clear that there shall be no permitting by the municipalities. For now at least, New Hampshire municipalities are without authority to regulate industrial extraction. However, the State does have a rigorous permitting process.

Mr. Hicks asked how this would affect business water systems and Dr. Brooks responded that businesses would have a reporting requirement in addition to a few requirements for things such as sloping land away from the wells. The main thing it does is mirror a lot of the regulations in the State permitting process.

Mr. Swope moved that the Planning Board forward the proposed Aquifer Protection Ordinance to the City Council with a favorable recommendation for adoption, and further, forward to the City Council's attention the matter of the reclassification of the groundwater related to the Pembroke well field, and the exploration and testing of potential sites for future sources of groundwater for a public water supply. He further moved that the Planning Board direct the Planning Division to work on a specific amendment to the subdivision regulations to incorporate standards and requirements to address hydrologic testing related to rural subdivisions. Mr. Gross seconded. Motion carried.

Architectural Design Review

3. Applications by the following for approval of signs at the following locations under the provisions of Section 28-9-4(f), Architectural Design Review, of the Code of Ordinances.

- **Barb's Beer Emporium** for one new affixed sign & one panel insert in an existing free standing sign at **249 Sheep Davis**
- **Bob Mariano Chrysler, Jeep, Dodge, Inc.** for five affixed signs at **146 Manchester Street**
- **Brookside Pizza III** for two affixed signs at **151 Manchester Street**
- **Exit 1st Realty** for a reader/message board addition to an existing free standing sign at **2 South State Street**
- **Pembroke Place Apartment Community** for one free standing sign at **83-87 Manchester Street**
- **Schnitzer Northeast by Polarized New England Company LLC** for one free standing sign at **11 Sandquist Street**
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The Chair opened the hearings on all of the above signs.

- **Barb's Beer Emporium** for one new affixed sign & one panel insert in an existing free standing sign at **249 Sheep Davis**

Mr. Henninger explained this proposal for signage for the relocation of this business to an existing strip mall.

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

There was no one present on behalf of the applicant.

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

- **Bob Mariano Chrysler, Jeep, Dodge, Inc.** for five affixed signs at **146 Manchester Street**

Mr. Henninger reported that the Zoning Board of Adjustment had granted a variance to allow for five signs where three are allowed. He noted that the combined area of the five signs is less than allowed for this use.

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

There was no one present on behalf of the applicant.

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

- **Brookside Pizza III** for two affixed signs at **151 Manchester Street**

Mr. Henninger reported the applicant had submitted a design using a yellow background with larger Coca Cola logo. He noted the building will have yellow vinyl siding. There was also a submittal for an alternative showing a white background and a small Coca Cola logo in a circle. Committee members felt the submittal with the white background had the most attractive graphics and suggested black shadowing around the red letters of that design.

He reported that the Design Review Committee had recommended approval of the proposed affixed signage with white background and red lettering outlined in black and a smaller Coca Cola logo.

He reported that revised plans had been submitted showing the changes recommended by the Design Review Committee.

There was no one present on behalf of the applicant.

Mr. Hicks asked if they would be removing all of the existing signs and Mr. Henninger responded that they have started removing the signage and all will be removed before the new signs are installed.

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

- **Exit 1st Realty** for a reader/message board addition to an existing free standing sign at **2 South State Street**

Mr. Henninger explained that the applicant plans to use the existing posts and to install a new changeable message panel below the existing sign. The new panel will have a maroon background with white letters.

He reported that the Design Review Committee had expressed concern that the total signage as proposed might be oversized and not in compliance with the Zoning Ordinance. Members also felt the colors should match the background and lettering of the existing sign. Given where it is located, the sign should read as a unified sign.

He reported that the Design Review Committee had recommended approval subject to the condition that the background and lettering colors will match the existing signs and that the overall sign will comply with the Zoning Ordinance regarding size.

There was no one present on behalf of the applicant.

Ms. Meyer asked if this sign had been determined to be in compliance with the Zoning Ordinance as to size. Mr. Henninger responded that he had not been informed that a determination had been made. Ms. Meyer expressed surprise that an application had reached Planning Board without being reviewed for compliance with the Zoning Ordinance.

Mr. Gross moved approval subject to the conditions that the sign area be revised to conform to the maximum 12 square feet allowed in the CVP District, and that the letters and background of the reader board match the colors in the existing sign. Mr. Swope seconded. Motion carried.

- **Pembroke Place Apartment Community** for one free standing sign at **83-87 Manchester Street**

Mr. Henninger reported that the applicants had received a variance for the third freestanding sign for this property.

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

There was no one present on behalf of the applicant.

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

- **Schnitzer Northeast by Polarized New England Company LLC** for one free standing sign at **11 Sandquist Street**

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

There was no one present on behalf of the applicant.

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

4. Application by **Twelve North Main Street Realty LLC** for approval of renovations to the building façade for Siam Orchid at **12 North Main Street. (#2010-39)**

Mr. Henninger explained this proposal to convert the ground level of the existing building to a restaurant and the second story into two apartment units. He reported they have submitted revised plans for review by the Design Review Committee next month.

REGULAR MEETING

Minutes

Mr. Gross moved approval of the minutes of the meetings of September 15, 2010 and October 6, 2010, as submitted. Mr. Shurtleff seconded. Motion carried.

Old Business

7. Further consideration of the **proposed new Subdivision Regulations** as revised to reflect Board comments, together with a proposed schedule for public hearing and adoption of the same.

Mr. Woodward presented updated Subdivision Regulations with revisions made to reflect Planning Board review comments. He pointed out that under Section 31 some new procedures had been added that he realized had not been thoroughly reviewed by the Planning Board regarding the completion and maintenance of improvements. He explained that the current Regulations require all public improvements to be completed and accepted by the City Council before Certificates of Occupancy can be issued. Developers have asked that Certificates of Occupancy be issued after the base course paving of a new road has been installed. They have asserted that this is a common practice in New Hampshire. However, legal research has shown that communities are prohibited from spending public money on unaccepted streets.

He explained the proposal for an alternative procedure that could provide a conditional acceptance after the base course of pavement has been provided, upon recommendation by the City Engineer to the City Council which would have the discretion to reject the request. The proposed Regulations also now have a provision for interim maintenance of conditionally accepted streets. This would set up a situation whereby, if the City accepted the street, the City would then have to plow the street. It would also provide a mechanism for the developer to be obliged to provide a financial guarantee for the completion of the new road. He reported that the development community at one point was very much in favor of this amendment to the Regulations and was very unhappy with the City for requiring fully constructed new streets.

Mr. Gross noted that this is at least an orderly process to clarify the responsibility of the developer. It also provides some mechanism to deal with developers' contentions that while the subdivision is being built out they should not be obliged to provide a final

course of pavement that could be damaged during the remainder of the construction on the site. It also provides a way for the new homeowners to get services.

Mr. Swope felt the Planning Board should forward this to the City Council for comment.

Ms. Meyer asked if acceptance of the street could be tied to completion of the landscape requirements. Mr. Woodward responded that the only thing that would be deferred is the final course of pavement, so landscaping would have to be in place before acceptance of the new street.

Mr. Gross moved that the Planning Board adopt the proposed schedule for review and adoption of the draft updated Subdivision Regulations and transmit copies of the proposed Regulations to the City Council prior to the public hearing and in the transmittal letter to the Council highlight in particular the amendments relative to conditional acceptance of public streets. Mr. Swope seconded. Motion carried.

8. Further consideration of a proposed asphalt plant on **North Pembroke Road in Pembroke by Continental Paving** on the site of the former Concord Sand and Gravel and adjacent to the City's well field in Pembroke. A request has been filed with the Pembroke Zoning Board for a rehearing

Mr. Woodward reported that he had been made aware of a rehearing request by Continental Paving for the Pembroke Zoning Board of Adjustment to reconsider its decision to deny an asphalt plant in Pembroke's Rural/Agricultural-Residential and Aquifer Conservation Zoning Districts. The site is the location of the gravel pit formerly owned and operated by Concord Sand & Gravel Company. The rehearing is to be scheduled for early November. He reported that the Pembroke Zoning Board of Adjustment had denied this application for special exception for the asphalt plant on the grounds that the use was one which was not permitted and would require a variance instead of a special exception, and also on the determination that fuel should not be stored in Concord's well head protection area.

He explained that the Concord Planning Board had voted to communicate to the Pembroke Zoning Board of Adjustment that this is a matter of serious concern to the City as regards the City's public water supply well field on an adjacent parcel in Pembroke. The Board further advised the Pembroke Zoning Board of Adjustment that variances would be required from the Concord Zoning Board of Adjustment for the access to the proposed asphalt plant through the gravel pit in Concord. Concord's Zoning Administrator has ruled that the driveways and truck access are accessory to the asphalt plant as a principal use and, as such, are not part of the grandfathered gravel pit operation in Concord, and would not be permitted as a new use in the current zoning districts governing the gravel pit.

He reported that the rehearing request to the Pembroke Zoning Board of Adjustment indicated that the applicant will be removing a 20,000 gallon fuel tank from the plans and replacing it with natural gas as a source of fuel to heat the asphalt. The City's consultants, Emery & Garrett Groundwater, Inc., have indicated that the diesel fuel

posed a significant contaminant threat to the groundwater so that this change is beneficial. They also advised that they do not consider the presence of the liquid asphalt tanks as a significant contaminant risk due to the viscosity of the asphalt, but note that an emergency response program would need to be in place to respond to spills of the liquid asphalt by removing saturated sand as quickly as possible. There are also other sources of contamination from the operation of an asphalt plant including the use of solvents for cleaning the equipment and trucks, the storage of fuel on site for trucks and equipment, and the on-site fueling of trucks and equipment.

He reported that if the plant were to be allowed, EGGI recommended that a groundwater monitoring program be required, including the installation of a monitoring well network between the plant and the City's well field, and quarterly sampling and analyses of groundwater quality. They also recommended the creation of best management practices for the various aspects of the plant operation, and that the City should be provided with the right of inspection of the plant and the right to review and approve all best management practices.

EGGI indicated their view that the operation of an asphalt plant in such close proximity to the City's well field is not a good idea as there are just too many potential sources of contamination and accidental spills that lead to groundwater contamination can occur despite the best efforts of the facility's operators.

Mr. Gross felt it is still not a good idea to site a plant like this in our watershed area because of the risk of accidents from other noxious substances that are used. That is a rational basis for the Planning Board to reassert its position to the Pembroke Zoning Board of Adjustment that there is a hazard here and it does not meet requirements of a variance because of the hazards. Surely after what the Planning Board heard this evening about aquifer protection, if the Planning Board did not speak against this, it should not bother to adopt the aquifer ordinance. This is still an inappropriate use in a sensitive area.

Mr. Gross moved and Mr. Swope seconded that the Clerk be authorized to transmit to the Pembroke Zoning Board of Adjustment the Planning Board's continuing concern for allowing this use in the City's wellhead protection area. Motion carried.

There was no further business to come before the Board and the meeting adjourned at 10:39 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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