The regular monthly meeting of the City Planning Board was held on June 17, 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), Dolcino (who arrived at 7:03 PM), Foss, Gross, Hicks, Meyer, McClure (alternate member representing the City Council who arrived at 7:06 PM), and Alternate Member Kenison (who was seated for absent Member Swope). Mr. Woodward, Mr. Henninger and Ms. Osgood of the City Planning Division were also present, as was Ms. Aibel, the City's Associate Engineer.

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

APPLICATIONS

Minor Subdivisions

1. Application by **Michael & Cleo Beretta, Charles M. Hersey, and John Stewart and Heather K. Fulton** for approval of a subdivision of property located at **70-90 Birchdale Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision, of the Zoning Ordinance. **(#2009-27)**

Determination of Completeness

Mr. Henninger explained this proposal to subdivide a lot on the east side of Birchdale Road into two lots. In addition, property is being transferred to the abutting properties to the north and south at 70 and 90 Birchdale Road.

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. Ms. Meyer seconded. Motion carried.

Public Hearing

Mr. Henninger explained this proposal to subdivide a lot on the east side of Birchdale Road into two lots. In addition, property is being transferred to the abutting properties to the north and south at 70 and 90 Birchdale Road. The applicants have also requested a Conditional Use Permit to allow a conventional subdivision in the Open Space Residential Zoning District. There is an existing single family home on each of the three existing lots. No wetland buffer or wetland impacts are proposed. The proposed 4.55 acre conservation area is located adjacent to the existing Bela and Turee Brooks conservation areas and includes wetlands, wetland buffer areas and some adjacent uplands. A draft conservation easement has been submitted and is under review. The Conservation Commission is supportive of accepting the easement.

(Ms. Dolcino arrived at 7:03 PM.)

There was no one present who wished to speak on behalf of the applicant.

Mr. Gross asked for an explanation of the requirement for a conservation easement. Mr. Henninger explained Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision of the Zoning Ordinance, which requires a Conditional Use Permit to be granted in order to establish a non-cluster subdivision in the Open Space Residential Zoning District, subject to providing a comparable amount of open space as a cluster development would require. The conservation easement was proposed in conformance with that requirement.

(Ms. McClure arrived at 7:06 PM.)

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:08 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board grant a waiver to Section 8.04(2)(a)(ii) of the City's Subdivision Regulations to allow a plat to be submitted at a scale of 1"= 60' instead of 1"=50'. Ms. Meyer seconded. Motion carried.

Ms. Foss moved that the Planning Board grant a Conditional Use Permit for a conventional subdivision pursuant to Article 28-5- 46 of the City's Zoning Ordinance. Ms. Dolcino seconded. Motion carried.

Mr. Gross moved that the Planning Board grant final subdivision approval for the "Subdivision and Lot Line Adjustment Plan for Michael and Leo Beretta, Tax Map 88 Blk 2 Lot 13 - 88 Birchdale Road; John Stewart & Heather Fulton, Tax Map 88 Blk 2 Lot 9 – 90 Birchdale Road; Charles M Hersey, Tax Map 88 Blk 2 Lot 10 – 70 Birchdale Road; Concord, New Hampshire" subject to the following standard conditions:

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.

2. Prior to the final plat being signed by the Planning Board Chair and Clerk, 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. Conservation Easement for Open Space

3. Traffic, recreation and school impact fees shall be assessed for any construction on lots contained within this approved subdivision. 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 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

a. School Facilities – Single Family Residence
b. Recreational Facilities – Single Family Residence
c. Transportation Facilities - Single Family Residence

Ms. Meyer seconded. Motion carried.

2. Application by **Joseph J. Fitzgerald & Raina J. Eckhardt** for approval of a subdivision of property located at **89 Appleton Street**. Along with this application are requests for a Conditional Use Permits pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision, and Section 28-4-3(d), Conditional Use Permit Required for Certain Disturbance of Wetland Buffers, of the Zoning Ordinance. **(#2008-41)**

At the request of the applicant, this public hearing was postponed until July 15, 2009.

3. Consideration of the revocation of the recorded plat of a minor subdivision of property of **Claude M. and Lisa M. Turgeon and Paul Lillios** at **127 Lilac Street and 69-73 Village Street (#2008-48)**

Public Hearing

Mr. Woodward explained that the Planning Board, at a meeting on May 20, 2009, considered a report from the Planning Division concerning the revocation of the recorded plat of the subdivision of Claude M. and Lisa M. Turgeon and Paul Lillios at 127 Lilac Street and 69-73 Village Street based on a request pursuant to RSA 676:4-a, dated May 14, 2009, from Claude and Lisa Turgeon. After the plat was recorded, no deed was recorded transferring the title in accordance with the recorded plat. It was noted that the City Solicitor advised that the revocation process should be initiated in order to remove any cloud that may occur to the title from a recorded plat where the transaction was never consummated. The Turgeons then requested that the plat be revoked so that they may make other plans for the disposition of their property. The Board voted to set a public hearing for this evening for the consideration of the revocation of the recorded subdivision plat.

Mr. Gross asked if there had been a request for revocation from the applicants and Mr. Woodward responded that the Board had received a written request from Claude and Lisa Turgeon.

Timothy Bernier, from TF Bernier, Inc., was present on behalf of the applicants 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 7:18 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board, based on the provisions of RSA 676:4-a I (a), revoke the approval of the subdivision plat of Claude M. and Lisa M. Turgeon and Paul Lillios at 127 Lilac Street and 69-73 Village Street, which was recorded in the Merrimack County Registry of Deeds as Plan #19117 on December 9, 2008, under the title of, "Lot Line Adjustment Plan for Paul C. Lillios; Tax Map P23, Block 1, Lot 4; 69-73 Village Street; and Lisa M. Turgeon; Tax Map P23, Block 1, Lot 17; 127 Lilac Street; Concord, New Hampshire", and direct the Clerk to provide written notice of the revocation to the owners and to file a declaration of revocation at the Merrimack County Registry of Deeds after 30 days following the written notification.

Ms. Foss seconded. Motion carried.

Major Subdivisions

4. Application by **Preferred Homes, Inc. on behalf of Claude M. and Lisa M. Turgeon** for preliminary and final approval of a major subdivision of property located at **127 Lilac Street**. **(#2009-22)**

Public Hearing

Mr. Henninger explained this proposal to subdivide a 2.91 acre residential lot with frontage on Lilac Street and Tower Circle into four lots. The subdivision involves the construction of a cul-de-sac at the end of Tower Circle to create three new lots for development purposes. Two of the new lots will be for single family residences and the third lot is designed for a duplex. The existing house and barn will be located on a remnant parcel of 1.05 acres with frontage on Lilac Street.

He reported that the Planning Board on May 20, 2009, granted a waiver to allow the consideration of preliminary and final subdivision approval at the same meeting.

He reported that the applicant proposes to extend municipal water and sewer services in Tower Circle to the three new lots. The existing house on the remnant one acre lot is served by municipal water but the applicant is requesting a waiver not to extend municipal sewer to the existing house.

A hearing for revocation of a previous subdivision approval of this property was held just prior to this hearing and the revocation was authorized.

He reported that the applicants have also requested a waiver to allow a width less than 60 feet for a portion of the useable land area rectangle for one of the new lots.

The terminus of the proposed cul-de-sac is 890 feet from Lilac Street. The proposed extension of Tower Circle will be constructed to the same standard as the existing section.

Mr. Henninger reported that existing and proposed curbing is shown along the entire length on both sides of Tower Circle and a sidewalk is proposed along the north and east sides of Tower Circle. He explained that the Planning Board has the discretion to require a sidewalk on one or both sides of a cul-de-sac or dead end street. The applicant has shown an extension of the sidewalk on the north side of Tower Circle consistent with the subdivision approved in the late 1980's which created Tower Circle. Currently, there are no sidewalks on Lilac Street. The City's Master Plan recommends a sidewalk on one side of Lilac Street its entire length. City staff is recommending that the extension of Tower Circle be consistent with the existing portion by only requiring a sidewalk on one side of the street.

He reported that proposed Lot 1 at the north end is only 100 feet wide at the north property line due to the location of the existing property line on the east side of the property and the location of the easterly right-of-way line at the present terminus of Tower Circle. Tower Circle is shifted further to the west on the subdivided property to allow for a widened useable area width at the south end of Lot 1. This results in a useable area width of 51 feet at the north end of Lot 1, but a 69 foot width on the south end. Due to the existing location of Tower Circle, Lot 1 cannot be developed without the waiver. The average width of the useable area is approximately 60 feet. City staff believes granting this waiver will not violate the spirit or intent of the regulation and is the minimum necessary to allow for a reasonable development of the property. This duplex lot meets and exceeds all other dimensional requirements for a lot in the RM District.

He reported that the existing lot on Lilac Street has non-conforming frontage inasmuch as there is only 175.94 feet of frontage where 200 feet is required. This subdivision will neither change the legal status of the lot nor in any way increase the degree of non-conformity.

Mr. Henninger explained that the existing municipal water service is already provided to the existing home on Lilac Street. The three new lots will be served by an extension of the existing water line in Tower Circle. The existing home at 127 Lilac Street is served by an on-site septic system. The three new lots will be served by an extension of the existing municipal sewer line in Tower Circle. City staff has asked the applicant to extend both water and sewer to just beyond the proposed cul-de-sac to facilitate future service to the residential property to the south.

He reported that the municipal sewer line extending along Lilac Street terminates approximately 200 feet north of the existing residence. No changes are proposed to the service. If sanitary sewer service was extended southerly, the house at 127 Lilac Street

could be converted to a duplex. Municipal sewer service was not available to this house when it was built circa 1880. The applicant has requested a waiver not to connect to the municipal sewer system. City staff is supportive of the waiver request since the home was built long before sewer lines were extended to the area, and the property and all adjacent properties are served by municipal water. It was staff's recommendation that a condition be placed on Lot 4, and noted on the subdivision plan, that if the use of Lot 4 changes from single family residential use, or if the existing septic system fails, connection to the municipal sewer system will be required.

He reported that two flowering crab apple trees have been shown as street trees for each new lot and four shade trees have been shown in the cul-de-sac. City staff has made a number of recommendations relative to the landscape plan for the cul-de-sac.

He reported that it is the opinion of City staff that roadway connection to the terminus of Tower Circle is not feasible or expeditious at this time. Further extension southerly is precluded by Hoyt Brook and its ravine. City staff is of the opinion that a southerly extension another 110 feet to the maximum limit of 1000 feet for a dead end street is not considered feasible. An extension westerly to Lilac Street might be feasible in the long term. City staff recommended that a 50 foot wide right-of-way be extended to the southerly property line to facilitate future access to the Medium Density Residential zoned portion of the abutting property to the south of this subdivision and the applicant revised the plan accordingly.

Mr. Henninger explained that a waiver of the Subdivision Regulations has been requested to the requirement for the lot at 127 Lilac Street to be connected to the municipal sewer system because it is within 1500 feet from the existing municipal system. He noted that the house pre-dated the municipal sewer system and that a new septic system is now being installed. A condition of approval is recommended such that the property shall be connected to the sewer system if either the septic system fails or the sewer system is extended to the frontage of the lot.

He also explained that a waiver of the Subdivision Regulations has been requested to the requirement for the useable area rectangle as proposed lot #1 cannot achieve the minimum dimension of 60 feet at the northerly end where the property joins the existing Tower Circle, which was originally built prior to the requirement for the useable rectangle for new lots. The staff supports the waiver request as the average width of the useable area is 60 feet.

Ms. Meyer asked if staff had received a plan showing the proposed street trees and Mr. Henninger responded that it had been submitted and is available for the Board. She also noted that they should not use the flowering crab apple for street trees. She also felt the Board should emphasize that they use native wildflowers. Mr. Henninger suggested that the staff's comments regarding landscaping be made a condition of approval and Ms. Meyer agreed.

Timothy Bernier from TF Bernier, Inc. and Alan Johns from Preferred Homes Inc. were present to answer questions from the Board.

Mr. Bernier addressed the subject of the septic system for the existing house. He explained that they are in the process of replacing the septic system as a condition of the sale of the house. He explained the concern of the applicant is that if there is any problem regarding the septic system, the property owner could be confronted with an expense of upwards to $50,000 for extension of the sewer. The current septic system probably would not meet today's standards, and the mortgage company and the prospective buyers wanted a new system installed. Approval has been obtained for the new system from NH Department of Environmental Services. Mr. Bernier asked for re-wording of proposed special condition #10 to require the sewer system hook-up if the septic system is required to be replaced by either NHDES or the City.

Mr. Bernier also indicated they agree with staff's comments regarding landscaping.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:44 PM.

Deliberations and Action on Application

Ms. Dolcino moved that the Planning Board grant a waiver to Section 8.04(2)(a)(ii) of the City's Subdivision Regulations to allow a plat to be submitted at a scale of 1"= 40' instead of 1"=50'. Ms. McClure seconded. Motion carried.

Ms. McClure moved to grant a waiver to Section 9.09(2)(a) of the Subdivision Regulations to allow the existing residence at 127 Lilac Street to not be connected to the municipal sewer system since the home was built before sewer lines were extended to the area, and a new septic system is being installed. Mr. Kenison seconded. Motion carried.

Ms. Foss moved to grant a waiver to Section 9.03(b)(1) of the Subdivision Regulations for a width less than 60 feet for a portion of the useable land area rectangle for proposed Lot #1. The contiguous useable area will be of a trapezoidal shape that meets the minimum area requirements, and the dimensions of which are sufficient to meet the purpose and intent of the regulation. Mr. Gross seconded. Motion carried.

Mr. Gross moved grant conditional preliminary and final subdivision approval of the "Tower Circle Extension – Residential Subdivision" at 14, 16, & 17 Tower Circle and 127 Lilac Street subject to the following standard and special conditions:

Standard Conditions

1. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall revise the plat drawings to address the minor corrections and omissions noted by City staff.

2. Prior to the final plat being signed by the Planning Board Chair and Clerk, approvals of construction drawings for on-site improvements shall be obtained from the Engineering and Planning Divisions.

3. Prior to the final plat being signed by the Planning Board Chair and Clerk, the following easement documents and/or agreements, 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 the extension of Tower Circle right-of-way.

4. Prior to the final plat being signed by the Planning Board Chair and Clerk, 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.

5. Approvals shall be obtained for the construction drawings and specifications for all public improvements from the Engineering Division prior to the commencement of any of the public improvements. No construction activity on the public facilities may commence prior to the pre-construction conference.

6. Prior to the final plat being signed by the Planning Board Chair and Clerk, the applicant shall obtain approval of private utility plans from Unitil, Fairpoint Communications and National Grid.

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 form and content acceptable to the City Engineer.

8. No certificate of occupancy for any building or use shall be issued until all public improvements have been completed to the satisfaction of the City Engineer and accepted by the City Council. In this instance, no certificate of occupancy will be issued until the extension of Tower Circle is accepted by the City Council.

9. Traffic, recreation and school impact fees shall be assessed for any construction on lots contained within this approved subdivision. 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 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

    a. School Facilities – Single Family Residence
    b. Recreational Facilities – Single Family Residence

c. Transportation Facilities - Single Family Residence

Special Conditions

10. Prior to the final plat being signed by the Planning Board Chair and Clerk, the plat shall be annotated to state that if the proposed septic system fails and is required by the City or NH Department of Environmental Services to be replaced, or the municipal sewer system is extended to the frontage of the lot at 127 Lilac Street, the property owner at that time shall be required to connect the structure thereon to the municipal sewer system.

11. Prior to the final plat being signed by the Planning Board Chair and Clerk, the notice of revocation of approval for the "Lot Line Adjustment Plan for Paul C. Lilios Tax Map, P23 Block 1 Lot 4, 69-73 Village Street (Route 3), and Lisa M. Turgeon, Tax Map P23 Block 1 Lot 17, 127 Lilac Street, Concord New Hampshire" shall be recorded in the Merrimack County Registry of Deeds.

12. Prior to the final plat being signed by the Planning Board Chair and Clerk, the landscape plan shall be revised as follows:

    a. Substitute shade trees for the six flowering crab trees proposed around the outside of the cul-de-sac. A mixture of Red Maple, Green Ash, Oak or Callery Pear trees would be appropriate for this location.

    b. Substitute Red Maples for the Sugar Maples in the center of the cul-de-sac.

    c. The cul-de-sac island shall be seeded with a native wildflower mix and 8-10 shrubs shall be planted such as Blueberries, Viburnum, and/or Mountain Laurel.

Ms. McClure seconded. Motion carried.

Minor Site Plans and Conditional Use Permit Applications

5. Application by **26 Centre Street LLC** for a site plan of property located at **26 & 26 ½ Centre Street** in the Civic Performance (CVP) District. **(#2009-18)**

At the request of the applicant, this public hearing was postponed until July 15, 2009.

6. Application of **81 Hall Street, LLC** for a Conditional Use Permit pursuant to Section 28-7-11(b), Construction of Fewer Parking Spaces, of the Zoning Ordinance at **81 Hall Street. (#2009-26)**

Determination of Completeness

Mr. Henninger explained this proposal to expand the number of deferred parking spaces to be constructed.

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. Ms. Meyer seconded. Motion carried.

Public Hearing

Mr. Henninger explained that the applicant had received approval from the Planning Board to construct a 92 room Residence Inn and to make site plan modifications for an existing office building at 81-91 Hall Street. Construction has commenced on the Residence Inn. A revised site plan and a Conditional Use Permit to show but not construct nine of the required parking spaces was subsequently approved by the Planning Board. The CUP granted by the Board allows the applicant to initially construct only 183 parking spaces where 192 were required. At the February meeting at which the revised site plan and Conditional Use Permit were approved, the Board offered the applicant the opportunity to expand the number of deferred parking spaces. The applicant has met with staff and now proposes a further reduction in the number of parking spaces to be initially constructed from nine spaces to twenty-five spaces. One parking bay north of the office building was restriped to provide 20 additional compact parking spaces.

He explained that the applicant, at the request of the principal office building tenant, proposes that the total number of spaces be reduced an additional 16 spaces to 167 spaces. A Conditional Use Permit has been requested to show, but not construct, twenty five of the required 192 parking spaces. Planning staff advised the applicant that it is their opinion that a reduction to 168 spaces would be appropriate. The 167 spaces proposed to be initially constructed is an acceptable response to that recommendation.

He explained that additional green space will be created around the office building and along Hall Street and will have a positive impact on the amount of runoff being generated from this development.

John Chorlian was present on behalf of the applicant as was Carol Tate from the Center for Integrative Medicine, the first floor tenant of the office building.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 7:53 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board grant a Conditional Use Permit pursuant to Article 28-7-11(b), Construction of Fewer Parking Spaces, of the Zoning Ordinance, to construct 167 parking spaces where 192 spaces are required for 81 Hall Street, LLC at 81-91 Hall Street. The Conditional Use Permit site plan shows the location of the twenty

five spaces to be constructed if the Zoning Administrator determines that parking demand warrants the additional spaces. Ms. Meyer seconded. Motion carried.

7. Application of **Jeffrey Farwell, dba Farwell Cycle and Motor Sports, on behalf of the Penacook Fibre Company** for a Conditional Use Permit pursuant to Section 28-2-4(j), Table of Principal Uses, J-4, Automotive repair, service, and towing, excluding body work, of the Concord Zoning Ordinance for property at **382 Village Street in Penacook (#2009-23)**

Determination of Completeness

Mr. Henninger explained this proposal for a change of use for a portion of an industrial building on the east side of Village Street immediately south of the Boscawen town line. The applicant has requested permission to occupy 1,440 square feet of floor area for a motorcycle and small engine repair shop.

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. Ms. Foss seconded. Motion carried.

Public Hearing

Mr. Henninger explained that the applicant proposes a change of use for a portion of an industrial building on the east side of Village Street immediately south of the Boscawen town line. The applicant has requested permission to occupy 1,440 square feet of floor area for a motorcycle and small engine repair shop. The applicant also desires to perform motor vehicle inspections for motorcycles and repair ATVs. The use in the Urban Commercial District requires a Conditional Use Permit. He reported that no construction is proposed. The applicant proposes to occupy a portion of a mixed use building which was constructed as an industrial building in 1836. This building was built on the edge of the river and most of the structure is located in the town of Boscawen. The proposed use will be limited to a small portion of the building located in Concord.

He reported that the applicant has provided a layout for four parking spaces on existing pavement. The applicant needs to stripe the parking spaces and provide a van accessible sign for the proposed handicapped space.

He reported that the applicant obtained a variance from the Zoning Board of Adjustment for automotive repair services to be located within the Shoreland Protection Overlay District. Automotive repair service is one of the uses prohibited within the 250 foot buffer area along the Contoocook River, whether inside or outside an existing building. Service and repair uses (non-automotive) is permitted within a building in both the Shoreland Protection Overlay District and the Urban Commercial District

No traffic impact fees are due for the proposed change of use since the proposed use is expected to generate a similar amount of traffic to the proceeding use.

Ms. McClure asked if any special drainage facilities are being provided in this situation. Mr. Henninger responded that it all takes place inside the building. He suggested a condition be affixed to the approval that they provide proof that they are properly disposing of hazardous materials.

The applicant was not represented.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 8:00 PM.

Deliberations and Action on Application

Mr. Gross moved that the Planning Board grant a Conditional Use Permit to establish an "Automotive Repair, service, and towing excluding body work" use for 1,440 square feet of floor area in an existing mixed use building at 382 Village Street. Ms. McClure seconded and asked that a condition be added that the applicant work with Code Administration to ensure that all the petroleum products and solvents are properly disposed of according to City and State regulations to assure that there is no contamination of the groundwater or surface waters. The motion as amended carried.

Ms. McClure moved that the Planning Board grant Conditional Minor Site Plan approval for the conversion of use for 1,440 square feet of floor area in an existing mixed use building at 382 Village Street to an auto repair, a small engine and ATV repair service facility subject to the following conditions:

1. Prior to the issuance of any permits for the use by the Code Administration, the applicant shall stripe the four parking spaces and install a handicapped accessible sign for the handicapped space.

2. Traffic, recreation and school impact fees shall be assessed for any 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 1, School Facilities Impact Fee per variable unit; and Table 2, Recreational Facilities Impact Fee per Variable Unit; and Table 3, Transportation Facilities Impact Fee per Variable Unit.

    a. Transportation Facilities – (**$0.0**)

Ms. Meyer seconded. Motion carried.

8. Application by **Wheelabrator Concord Company, L.P.** for a site plan of property located at **11 Whitney Road**. Along with this application is a request for a Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Zoning Ordinance. **(#2009-24)**

Determination of Completeness

Mr. Woodward explained this proposal to construct a new gravel, 30-space parking lot adjacent to the west side of the existing building and to cut a new gated driveway through to the right-of-way of Whitney Road.

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. Ms. Dolcino seconded. Motion carried.

Public Hearing

Mr. Woodward explained that in 1986, the Planning Board granted site plan approval for the construction of the waste-to-energy plant on Whitney Road. Once the plant was built and in operation, it required scheduled maintenance activities and occasional repairs to the boilers and turbines. The maintenance and repairs have been conducted by outside contractors who arrive at the site in personal vehicles numbering about 30. The parking for these contractor vehicles has been accommodated off-site on the adjacent property of the Whitney family who has granted permission for this use until recently. The applicant now wishes to construct a new gravel, 30-space parking lot adjacent to the west side of the plant and to cut a new gated driveway through to the right-of-way of Whitney Road.

He reported that the applicant has also applied for a Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Zoning Ordinance, to allow for the lot and driveway to be gravel and not be paved in recognition of its use for a total of 30 days over the course of a year.

He reported that the proposed new driveway will have a grade of 7.5% over the first 100 feet starting from the edge of the Whitney Road right-of-way, out of the total driveway length of 312 feet. The proposed driveway will cause the removal on the Wheelabrator property of 37 trees of a variety of species with trunk diameters between 4 inches and 19 inches in size. An additional six trees of similar caliper will need to be removed from the Whitney Road right-of-way, although three of these will likely be lost to the extension of Whitney Road by the Concord Regional Solid Waste Cooperative.

Mr. Woodward explained that City staff recommended to the applicant that the access to the proposed parking area come from the existing internal site driveways as this would eliminate another curb cut on Whitney Road which is classified as a collector street and intended to carry a substantial volume of traffic. Furthermore, an internal site connection to the parking lot will eliminate the alteration of terrain and removal of a

significant number of trees from construction of the driveway through what is a very effective forested buffer between the Whitney Road and the power plant, a large building with a continuous level of noise from plant operation and delivery activities. The applicant has maintained that the on-site truck traffic creates a safety hazard for the contractor vehicles if they attempted to access the parking lot from an internal site driveway. The City staff noted that since it has been in operation until the present, Wheelabrator's contractors have accessed the parking on the Whitney property via internal driveways. As the internal drives are essentially a loop system back to the same entry/exit point to the site, the parking lot access has apparently functioned successfully for the past 20 years.

He reported that the laid out right-of-way of Whitney Road ends just past Wheelabrator's existing entry/exit driveway to the plant. The land immediately south of, and adjacent to, the current end of Whitney Road belongs to the Malinskys who own Boyce Highlands across the street, and it is subject to a future highway easement to the City, but is not currently laid out or accepted. This area of Whitney Road may be constructed by the Concord Regional Solid Waste Cooperative and offered for acceptance in the next year. However, at present, SES may not have a right of passage across that area and may need cooperation and permission from the Malinskys to establish the proposed driveway access.

Chris Nadeau from Nobis Engineering and John Lariviere from Wheelabrator Concord Company, LP were present to answer questions from the Board.

Mr. Nadeau addressed the question of ownership of Whitney Road and indicated they felt the situation could be resolved.

Mr. Lariviere explained they do not want to cut down more trees. What they experience is that during their busy periods trucks line up over the scale and down the access drive onto Whitney Road. That traffic will impact access to this parking area as proposed by the City. They feel this is a safety issue. There is too much risk to have people crossing that truck traffic. During high volume times, which is 70% of the year, the existing access driveway sees heavy traffic. They have weighed the concerns of the City versus the safety of their contractors and feel they have proposed the best location.

Mr. Drypolcher suggested creating a gap before trucks get to the scale to a driveway that would be diagonal across the lot and that would be used only when the contractors are on the site. He felt there would be some impact but it would be much less.

Mr. Gross asked for an explanation for the need for this driveway versus the loss of the trees, the use only being for 6-8 weeks each year for contractors providing routine maintenance during planned shut-down situations. Mr. Lariviere responded that there is potential for conflicts even during outage and shutdown periods because they still accept trash.

Mr. Lariviere indicated that they would be willing to look at Mr. Drypolcher's suggestion.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 8:31 PM.

Deliberations and Action on Application

Ms. Meyer moved that the Planning Board grant the Conditional Use Permit pursuant to Section 28-7-11(e), Alternative Surfacing, of the Concord Zoning Ordinance for the lot and driveway to be gravel and not be paved in recognition that the parking lot will be used for a total of 6 to 8 weeks over the course of a year; that the gravel surface will not be detrimental to adjacent property and streets by reason of the generation of dust, the disintegration of the surfacing, or the dispersal of stormwater runoff; and that the gravel surface will support an acceptable degree of access to the property by Fire Department apparatus. Ms. Foss seconded. Motion carried.

Mr. Gross moved to table action on the Site Plan Application to allow the applicant the opportunity to explore the alternative driveway location as suggested by the Chair. Ms. Foss seconded. Motion carried.

Major Site Plans

9. 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, and Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. **(#2009-04)**

The Chair explained that the Board had tabled action on this application last month and consequently this should have been listed as a further consideration item under the Regular Meeting section of the agenda. He reported that it would be taken up later in the agenda.

Architectural Design Review

10. 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.

- **Auto Showcase Grappone Automotive Group** at 134 Manchester Street
- **Laconia Savings Bank** at 165-167 North Main Street (5 signs)
- **Sunny's Table** at 11 Depot Street
- **TD Bank** at 277 Sheep Davis Road (Steeplegate Mall)
- **Tire Warehouse** at 113 Manchester Street
- **Zoe and Co.** at 92 North Main Street

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

- **Auto Showcase Grappone Automotive Group** at 134 Manchester Street

Mr. Henninger explained this proposal for a replacement panel in an existing freestanding sign and noted that the plan submitted showed a time and temperature panel which is part of the existing sign and will be allowed to remain without changes.

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

There was no one present on behalf of the applicant.

Mr. Gross moved approval as submitted and Ms. Meyer seconded. Motion carried.

- **Laconia Savings Bank** at 165-167 North Main Street (5 signs)

Mr. Henninger explained this proposal for a small freestanding sign, a sign over the entrance to the new lobby affixed on the side of the building, an affixed sign on the front of the brick drive-up building, and a small affixed sign on the architectural detail at the end of each of the two buildings.

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

Kathy Champagne from Jutras Signs was present on behalf of the applicant.

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

- **Sunny's Table** at 11 Depot Street

Mr. Henninger explained this proposal for white lettering on a blue awning.

He reported that the Design Review Committee found the placement and design of the proposed 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. Kenison moved approval as submitted and Ms. Meyer seconded. Motion carried.

- **TD Bank** at 277 Sheep Davis Road (Steeplegate Mall)

Mr. Henninger explained this application for a new freestanding sign adjacent to Sheep Davis Road. He explained that they did not have a freestanding sign now but have

received a variance from the Zoning Board of Adjustment to allow an additional freestanding sign on this space leased from Steeplegate Mall.

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.

Rick Granby from Bohler Engineering was present on behalf of the applicant to answer questions from the Board.

Ms. Meyer moved approval as submitted and Ms. McClure seconded. Motion carried.

- **Tire Warehouse** at 113 Manchester Street

Mr. Henninger explained this proposal to remove all signage on the site and replace it with a new freestanding sign.

He reported that the Design Review Committee found this proposed signage to be an improvement over the existing and had recommended approval as submitted.

There was no one present on behalf of the applicant.

Ms. McClure moved approval as submitted and Ms. Dolcino seconded. Motion carried.

- **Zoe and Co.** at 92 North Main Street

Mr. Henninger explained this proposal for a new awning with a sign on the valance for the existing business.

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.

Michelle Pendola was present on behalf of the applicant.

Ms. McClure moved approval as submitted and Ms. Dolcino seconded. Motion carried.

11. Application by **2 Pillsbury Street LLC** for approval of a Master Signage Plan at **2 Pillsbury Street**. **(#2008-38)**

Public Hearing

Mr. Henninger explained this master sign plan for a two building complex bounded by South Main Street, Dakin Street, Pillsbury Street and Allison Street. The plan includes two freestanding signs, three affixed signs, and one directional sign.

He reported that a variance was granted by the Zoning Board of Adjustment to allow the freestanding sign to be installed within two feet of the recently expanded right-of-way for Pillsbury Street at the intersection of Pillsbury and South Main Street. The proposed sign will appear to be set back further than required along Pillsbury Street. The widened right-of-way was intended to facilitate future signalization at this intersection if warranted. A variance was also granted to allow the sign for The Optical Shop to be located on a frontage not occupied by the business.

He reported that the Design Review Committee had reviewed the proposed signage and recommended approval as submitted.

Mr. Hicks noted the internally illuminated signage and asked if there was any information about hours of illumination. Attorney Richard Uchida from Orr and Reno was present on behalf of the applicant and responded that the signs will not be internally illuminated. The signs will have external lighting that will be turned off after Plymouth State University finishes classes each evening at about 9:00 PM.

Mr. Gross noted that the numeral "2" looked like a "Z" on the freestanding sign.

There was no one who wished to speak for or against this application and the Chair declared the hearing closed at 8:47 PM.

Deliberations and Action on Application

Ms. Meyer moved that the Planning Board grant approval of a Master Signage Plan for 2 & 30 Pillsbury Street as submitted by the applicant pursuant to Article 28-6-5, Master Signage Plan, of the Zoning Ordinance. Ms. Foss seconded. Motion carried.

Mr. Gross moved that the Planning Board grant Architectural Design Review Approval for two affixed signs at 2 Pillsbury Street, one affixed sign at 30 Pillsbury Street, one free standing sign at 2 Pillsbury Street and another free standing sign at 30 Pillsbury Street as submitted by the applicant. Ms. Meyer seconded. Motion carried.

REGULAR MEETING

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

> 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, and Section 28-7-11(f), Driveway Separation Alternatives, of the Zoning Ordinance. **(#2009-04)**

Mr. Henninger explained that the Planning Board, at its regular meeting on May 20, 2009, opened a public hearing on the this site plan, accepted testimony, and closed the public hearing. The Board then tabled action on the application to allow for further staff

review and comment on the revised plans, to satisfactorily address prior staff comments, and to allow the applicant time to address the Board's concerns relative to traffic and pedestrian circulation and conflicts at the project driveways and on-site.

He reminded the Board that the proposal is to demolish an existing auto service building at 155 Loudon Road and an existing Burger King Restaurant at 157 Loudon Road and to construct a new 13,225 square foot CVS Pharmacy and a new 2,598 square foot Burger King. Drive-up windows are proposed for both the Burger King and the CVS. A total of 101 new parking spaces are proposed.

He reported the applicants had requested a Conditional Use Permit to defer the construction of six parking spaces. The applicants have also requested a Conditional Use Permit to allow two driveways on Loudon Road where one is allowed and with a spacing between driveways of 130 feet and 40 feet where 200 feet is required. The applicant has also requested a CUP for spacing between driveways for the relocated entrance on East Side Drive. The existing driveway is shifted 30 feet northward away from the Loudon Road intersection, but is only separated by 110 feet from the Loudon Road intersection and 130 feet from the Burns Avenue intersection. The applicant has agreed to extend the Loudon Road median so one drive will be an enter only access and the second drive an exit only.

He reported that since the Board's last meeting, the applicant has submitted a number of alternative driveway and circulation plans. City staff, the applicant and the tenants agree that the alternative now being presented for approval is the best for both on-site and off-site traffic circulation, given the applicant's development program.

Mr. Henninger reported that the Zoning Board of Adjustment had granted a variance to permit the required buffer to be placed along the property line inside a residential zoning district when such buffer is required to be placed along the district boundary at 151 – 155 Loudon Road.

He reported that the Design Review Committee had reviewed the site and building plans and recommended approval subject to the following comments:

> *Burger King* - The Committee found the proposed elevations to be generally acceptable as submitted. The Committee noted that only three of the five signs proposed are permissible and suggested that two of the signs on the east side be removed. These signs had limited utility and might be visible from the residential area to the north. The applicant agreed to these changes and noted that the stone façade over the entry would be continued up to the roof.
>
> *CV*S - The Committee found the proposed elevations to be a significant improvement, but noted that the CVS Pharmacy signs overpowered the elevation where they were placed and recommended that they be reduced in size. It was noted that the exterior block would be a solid block with 4" x 16" dimension which will appear more like brick. The Committee and the applicant agreed that the roof top units would be screened with horizontal "envisor^2" rooftop screen, matching the

peachy beige color on the façade, and with horizontal louvers. The applicant noted that the dumpster screen will now match the exterior block at CVS.

Lighting – The Committee was concerned with the proposed 20-foot high lighting along the rear property line. City staff noted the 20 foot light fixtures used at McDonald's on Loudon Road resulted in an inappropriate amount of light falling on the abutters even with extra shielding. It was suggested that 12-foot tall lights be installed with low wattages and full cutoff fixtures along the rear property line and within 50 feet of the northerly property line.

Landscaping – The Committee generally found the landscaping acceptable but deferred comments on details of the proposed plantings to the City's Landscape Architect. It was noted on the site plan that the proposed six foot buffer fence is to be opaque but the details still show a fence with gaps between the vertical slats.

Free Standing Signs – No plans have been received for the two proposed free standing signs.

He reported that City staff has been working with the applicant to add additional landscaping along the residential district boundary along the north side and additional shade trees around both the perimeter of the site and internal to the parking lot. The City's landscape architect has made recommendations on the plantings and the applicant has agreed to make the changes. Final revisions are pending a successful resolution of the traffic circulation issues.

He reported that City staff has been concerned with the amount and effectiveness of the proposed residential district buffer on the north side of the site, as well as lighting and other impacts on abutting single family residences. The experience at Dick's and now at McDonald's has indicated that the current practice of full cut-off fixtures does not adequately prevent spill over lighting onto adjacent residential properties. City staff noted the 20-foot high light fixtures used at McDonald's on Loudon Road, even with extra shielding, resulted in an inappropriate amount of light to fall on the abutters. The applicant has reduced the height of the lights to 12 feet along the rear of the property. Staff has recommended that 12-foot tall lights be installed with low wattages and full cutoff fixtures along the rear property line and within 50 feet of the north property line. The applicant has revised the lighting accordingly along the rear of the property.

He reported that CVS has removed façade lighting from the north side of the building and reduced the amount of lighting on the building on the west side. The CVS affixed sign facing East Side Drive will be visible to a number of residences along East Side Drive to the north. It would be desirable to have this sign reduced in size and be provided with automatic shutoffs so the sign can be turned off after closing. If the applicant follows the recommendation of the Design Review Committee, to remove two signs from the east side of the Burger King building, the affixed signs will only be partially visible from the abutting residential area. It would be desirable to provide the signs with automatic shutoffs so the signs can be turned off after closing.

Mr. Henninger explained that the site has access from both Loudon Road and East Side Drive. The applicants propose to close two right in/right out driveways and one full access drive on Loudon Road and replace the three drives with two right turn in/right out driveways. The East Side Drive entrance is proposed to be shifted 30 feet to the north further away from the intersection of East Side Drive and Loudon Road.

He reported that City staff has recommended that the Conditional Use Permit to construct fewer parking spaces be expanded to include not constructing at least three or more parking spaces at the corner of East Side Drive and Loudon Road.

He reported that a number of revisions had been made in response to concerns expressed by the Board at the public hearing. The applicant has revised the stacking lane to avoid conflicts with parking as well as the entrances. In response to concerns related to lack of pedestrian connection between CVS and Burger King the applicant has proposed 5-foot wide colored stamped concrete at several additional areas to facilitate pedestrian movement.

The applicant will provide an additional five feet of right-of-way along the East Side Drive frontage of the residential lot at 42 Burns Avenue to allow for wider shoulders and a longer turn lane north from East Side Drive when this section of road is reconstructed in the future.

Mr. Henninger reported that left turn movements into and out of the existing driveway to Burger King and American Brake Service on East Side Drive operate in a force flow condition. There are no gaps available in traffic during the peak hours and other high travel times along East Side Drive. Southbound queues along East Side Drive usually extend past both the existing and proposed entrance and commonly extend past Burns Avenue. Movement into and out of this driveway functions only by the courtesy of drivers waiting for the Loudon Road light to allow the turning drivers to slip through the queue. The amount of left turn traffic exiting the East Side Drive driveway is expected to increase from 9 vehicles to 21 vehicles in the weekday PM peak hour and from 14 vehicles to 20 in the Saturday peak hour. The amount of left turning traffic entering the East Side Drive driveway is expected to increase from 4 vehicles to 26 vehicles in the weekday PM peak hour and from 5 vehicles to 27 vehicles in the Saturday peak hour.

He explained that the City, when it last reconstructed this intersection a little over 10 years ago, created a double nested turn lane to allow the two existing businesses to retain access. The applicant's traffic engineer believes the increased traffic at this intersection can be satisfactorily handled in the same way turning movement is accommodated today. The City's traffic engineer is not so confident that this behavior will occur with increased activity at the East Side Drive access to the site. This intersection cannot be suitably evaluated with conventional capacity analysis methods due to the forced flow condition.

City staff has recommended that this driveway be monitored beginning six months after both businesses are open for business and then annually for three years. The monitoring

would consist of turning movement counts during the PM peak hour and the Saturday peak hour, accident data and evaluation of each accident, and the length of the queue during peak hours on East Side Drive. If, in the opinion of the City Engineer and Clerk of the Board, a safety problem exists at the project's entrance on East Side Drive or the increased turning movements at this drive adversely impact traffic at the intersection of East Side Drive and Loudon Road, or adversely impact traffic flow on East Side Drive, a median should be installed along East Side Drive extending approximately 200 feet north of the intersection of Loudon Road. A design for this median and a financial guarantee should be provided which would allow the City to implement changes on East Side Drive which may be deemed desirable.

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Mr. Hicks noted that if traffic turning left onto the site northbound on East Side Drive becomes a problem and the median is extended to prohibit left turn movements out of the site, that would mean all traffic would exit using Loudon Road. Anyone wishing to travel north will then have to make their way through the abutting residential neighborhood or down to Hazen Drive. That was a real concern to him.

Attorney Richard Uchida from Orr and Reno was present on behalf of Tropic Star Development and indicated that the applicants would be willing to provide timers or shut-offs for the illuminated signage as well as to provide only downlighting on the buildings.

Ms. McClure asked the applicant's response to the recommendation that the CVS affixed signs be reduced in size. Scott Mitchell from Tropic Star responded that CVS has a contract with a company that deals separately with signage. Their experience has been that CVS has timers on the signage and they will probably be illuminated during their hours of operation.

Ms. McClure also asked if they would be willing to eliminate some parking spaces and Mr. Mitchell explained that typically they have at least 65 spaces. This site plan shows only 59 and the spaces closest to the entrance are the most important to them.

Ms. McClure suggested that any lighting on the buildings should be turned off by 9:00 PM in deference to the neighborhood. She also suggested removing about five more parking spaces, or showing them on the site plan but not building them and replacing those parking spaces with more landscaping.

Mr. Kenison discussed site circulation. He felt there is a lot being shoehorned into this site and he does not feel the applicants have done enough to address the concerns expressed about circulation, parking and access. He has not been satisfied that the traffic is not going to be a disaster. He felt it was a public safety issue and no matter what is done with the design, the impact on the Loudon Road/East Side Drive intersection cannot be overcome.

The Chair noted the concerns expressed by members so far and suggested that it appeared that the only appropriate motion would be a motion to deny for which the

Board would have to articulate its reasons. The alternative is to send the application back for further revisions by tabling action. He then asked the pleasure of the Board.

Ms. McClure felt the traffic issues trump everything.

Ms. Foss asked if it is absolutely essential for the two businesses to exist in separate buildings and wondered if it would help the situation if there was a single building with a drive-up for CVS on one face and a drive-up for Burger King on another face.

Ms. Meyer had concerns about internal circulation but also felt access into the site is restricted and there is too much activity for this site.

Mr. Gross asked Mr. Mitchell which of the two businesses he expected would have the higher daily volume of traffic. Steven Pernaw, the applicant's traffic engineer, answered the question. He explained that his information is related to peak hour volumes and that during the week, the highest peak hour volume belongs to CVS, but on a Saturday peak hour, Burger King has the greatest volume of traffic.

Mr. Gross explained that he saw two major impacts with this site. One is traffic circulating around the neighborhood and the other is the internal circulation of traffic into these two businesses. He asked whether swapping the locations of the two businesses would simplify the internal circulation, if the Burger King being closer to the east would provide a quicker trip in and out. Mr. Pernaw responded that the impact on East Side Drive would be a net change of 1-2%. That is the range of change that happens on a day-to-day basis. He explained that for access management, the City preferred to cut down on the number of access drives on Loudon Road. They would be happy to provide a second access on Loudon Road to help mitigate the impacts of traffic.

He felt that the request by the City for a follow-up study was great but he also noted that if there is a problem, a raised median on East Side Drive is not necessarily the best solution to the stacking problem if it should occur.

Mr. Kenison suggested reasons for a denial of this application. He felt that the overriding issue is traffic, both external and internal movement of vehicles. The internal movement is, by demonstration and illustration, circuitous and does not seem to distinguish any clear pedestrian areas. The remedial efforts on East Side Drive are not clearly demonstrated that they will work. The proposed remediation steps are speculative. He has not heard any evidence that if the traffic situation is onerous that those remedial efforts will alleviate the problem. With respect to the 1% overall increase in traffic, those numbers were based on peak periods. The Board needs to look at this project not just at peak periods. This is a change by which the existing brake service business is being replaced by a 13,000 square foot pharmacy. It is not clear to him that by saying that there will only be a 1% increase in peak flows that this does not exacerbate traffic on Loudon Road and East Side Drive. They are both already heavily travelled. The access and egress pattern on East Side Drive is based solely on courtesy and not on design. That is not really a sound design principle.

Ms. Meyer did not think this was only an issue of concentrating traffic exiting the site. What this is encouraging is that people exiting the property will be using other property to turn around to make the turns they actually want to make. She saw the exit on East Side Drive failing pretty quickly because right now there are options for people and this plan takes away one more option.

Ms. Foss felt that there are two kinds of people who will be using these businesses. One category is local residents who trade at CVS and Burger King and want to go to those two businesses above any others. It seemed to her that the category of people is likely to know when the peak hours are and plan their visits to avoid the highest congestion. The other category of people is visitors who are passing through or visiting the area and are looking for a pharmacy or a place to eat. When faced with a high traffic area with those kinds of establishments on either side of the road, they will go to the one they can reach most easily. She felt that maybe some of the concern relative to East Side Drive and customers getting back to where they want to go may be a little excessive. People do what is the easiest to do. She felt it was human nature to do the easiest thing possible.

Mr. Gross wondered if it was really his job as a Board member to deny this application for the reasons articulated by Mr. Kenison. He felt it was his job to determine whether this project would have an adverse effect on public safety and to decide whether this creates traffic that will be so hazardous that anybody going into the site runs a high risk of being injured. Using that description he felt he would vote to approve this since it is an improvement over the original proposal in terms of risk to pedestrians. He was not convinced there is a high hazard either within the site or at the intersection, certainly no higher than exists which is not to say it is an inviting site to go into. Ease is everything. It is not his job as a Board member to determine whether he would go into the site. His job is to determine if this creates a hazard. If City staff and interaction with the applicant has resulted in substantial improvement and it cannot be said that public safety is harmed, then he does not feel it is the role of the Planning Board to deny. People should be allowed to do with their property what they want to do so long as they do not adversely affect public safety or public health. He feels this is too much on the site but it is not for him to say that this will affect public safety or public health.

Ms Dolcino pointed out that Section 28-9-4 says that the responsibility of the applicant is to meet the burden of persuasion. She felt the most minimum reduction would be to have one drive onto Loudon Road without any driveway onto East Side Drive.

Mr. Woodward explained that the Zoning Ordinance needed to be applied within the context of what is reasonable. The Board needs to determine whether the applicants have minimized the impacts of the proposed development. The way the Conditional Use Permit authority is defined is to give the Planning Board guidance, and how that is applied is up to the Board.

Mr. Hicks did not like this application. He did not think this was a good use for this area but he did not see any real reason to deny it even though he does not like it. If the entrance is changed, he felt that would create other problems. There are no good answers here.

Mr. Woodward noted that Loudon Road has one of the worst, if not the worst, safety record in the state, and he asked Mr. Pernaw if he had any accident data for the intersection. Mr. Pernaw responded that he had received information from NH Department of Transportation for the years 2005-2007 that indicates a total of 29 crashes but he felt there are some accidents that are not reported and the number should actually be higher.

Mr. Kenison moved and Ms. McClure seconded that the Planning Board deny this site plan application based on his previous comments.

Ms. McClure also agreed with Mr. Gross about the Board's responsibilities. She felt that would be good basis for denial because the Planning Board has the responsibility to not allow things to happen that are unsafe.

Motion to deny failed on a 4-4 vote with Members Gross, Foss, Hicks and Drypolcher voting against the motion.

Mr. Gross moved approval of the site plan subject to the conditions outlined in the staff report because he feels it does not cause undue public safety. He further moved that there be additional conditions to remove five more parking spaces and sign illumination be turned off after 9:00 PM. Mr. Hicks seconded. Motion failed, 3-5, with Members Drypolcher, Gross and Hicks voting in favor.

Ms. Foss moved to table action with the request to the applicant to review the design they have submitted so far to see if there is anything else they can do to resolve site circulation and access. Mr. Hicks seconded.

Ms. McClure felt there would have to be significant changes for the Planning Board to change their minds on this application.

Mr. Drypolcher felt internal traffic flow was an issue that needed to be resolved.

Mr. Gross felt that there are two sets of concerns, internal circulation and friction on the periphery. He felt there would be more willingness to accept a proposal that had simpler internal circulation. That is what is concerning him. It is too complicated to get into and out of this site. He felt they needed to simplify internal circulation on the site. Regarding friction on the periphery, he did not hear anything that indicated there is friction westbound on Loudon Road. He did not think a court case could be sustained on a Board assertion of friction along Loudon Road. The concerns he has heard have to do with East Side Drive. He felt the Board needed to communicate to the applicants that they needed to address friction along East Side Drive and fix internal circulation.

Ms. Meyer indicated that the longer she looks at the site plan, the more she finds things that are awkward. Circulation leaving CVS drive-up reinforces to her that there is a huge conflict in the way the site is designed. The Burger King redesign is a much better

solution, so she felt they could come back with resolution of the stated concerns of the Board.

Ms. Foss felt this plan is a significant improvement over the last one the Board saw as far as pedestrian access. She indicated she has faith in their problem solving abilities and would like to see them solve the rest of the problems.

Motion to table carried.

(Ms. McClure left the meeting at 11:00.)

Minutes

Mr. Gross moved approval of the minutes of the meeting of May 20, 2009 as submitted and Mr. Hicks seconded. Motion carried.

New Business

13. Consideration of a communication from **Chester and Elizabeth Hoadley** requesting the Planning Board to recommend release of a conservation easement on the property at **74 West Parish Road,** for which a Conditional Use Permit pursuant to Section 28-5-46, Single Family Dwellings in a Standard (non-cluster) Subdivision of the Zoning Ordinance, was granted and a subdivision plat and conservation easement were approved and recorded in April 2009.

Mr. Gross noted that no one else is present regarding this item except the petitioner. He suggested that the Planning Board schedule a public hearing because there are interests involved other than the petitioners. He felt there may be people who have very different perspectives on this matter. He did not think the Planning Board should act on this matter without a public hearing.

He did not feel it was appropriate to continue without the opportunity for others to provide input. He suggested setting a public hearing to receive input relative to this request.

Mr. Gross moved to set this for public hearing on July 15, 2009. Mr. Kenison seconded. Motion carried.

The Clerk asked for direction relative to notification of the public hearing inasmuch as this is not a subdivision application but consideration of a recommendation to the City Council.

In answer to a question by Mr. Kenison, Mr. Woodward explained subdivision applications require notice by certified mail to applicants and abutters but this is more a hearing on policy and that might be more appropriately noticed by advertising and notice to the petitioner. Board members felt this was tied to a subdivision and abutters needed to have notice as interested parties to this request.

Mr. Kenison felt that appropriate notification would be legal advertising in addition to notice by certified mail to abutters. He felt it should be handled as both a standard subdivision action and an action regarding public policy.

Members also suggested notifying the Conservation Commission as an interested party.

14. Consideration of an **amendment to the Zoning Ordinance to address Small Wind Energy Systems** pursuant to recent statutory changes.

Given the lateness of the hour, the Chair asked if there was a time constraint related to this item. Mr. Woodward noted that this relates to a new State statue that takes effect in July.

The consensus of the Board was to postpone discussion on this item until July.

After a brief discussion relative to pending agenda items, the Clerk was instructed to contact members relative to their availability for a recessed meeting on either July 22 or July 29.

There was no further business to come before the Board and the meeting adjourned at 11:22 PM.

A TRUE RECORD ATTEST:

Douglas G. Woodward
Clerk

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