



Mr. Coker asked about the common passageway.

Mr. Davis indicated that it was owned by the City, it is plowed and maintained by the City and it is used quite a bit.

There being no further speakers, the Chair closed the Public Hearing.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Coker moved to approve with stipulations as noted by the Planning Department. Ms. Roberts seconded.

The motion was approved unanimously with the following stipulation:

- 1) Installation of permanent boundary monuments per the requirements of the Public Works Department;

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B. The application of **City of Portsmouth, SAU #52**, for property located at **50 Andrew Jarvis Drive** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the construction of an addition to the industrial arts wing. All building construction will take place in a previously disturbed area (existing pavement). The addition will be located within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 229 as Lot 3 and lies within a Municipal district.

Bradlee Mezquita, of Appledore Engineering, presented color plans to the Board and indicated that this matter will be coming back for Site Review. He indicated that they had appeared before the Conservation Commission last week and they recommended approval. The addition would be on the existing pavement in the rear of the school. This would be no new buffer impact. They will be back before the Planning Board on March 18<sup>th</sup>.

Chairman Smith thanked Mr. Mezquita for the color drawings which were very easy to read.

Mr. Ricci asked about erosion controls and Mr. Mezquita indicated those would be included on the site review plans.

Mr. Coker asked about drainage information.

Mr. Mezquita indicated that would also be included with Site Review.

Mr. Sullivan asked where they were taking down the new building, would it be grassed area or parking?

Mr. Mezquita pointed out the portion of the building that was coming down and indicated that it would be grass area.

Mr. Coker indicated he was a little uncomfortable granting a Conditional Use Permit without any drainage information and indicated that if the information provided next month was not satisfactory, they would be sending it back for more work.

Mr. Holden indicated that he felt the amount of drainage would be reduced over the existing condition.

Mr. Coker's point was that if some of the drainage was going straight into the wetlands, for the sake of discussion, this was an opportunity for the Board to improve that drainage and he just wanted to make sure they would be looking at that.

There being no further speakers, the Chair closed the Public Hearing.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Sullivan made a motion to approve. Mr. Coker seconded. The motion was approved unanimously.

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C. The application of **Aranosian Oil Company, Inc.** for property located at **1166 Greenland Road** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the demolition of an existing building and canopy and the construction of a 3,588 s.f. single-story building for use as a store, a 24' x 36' building for use as a car wash, refueling islands with canopies and new pavement and fill within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 279 as Lots 1 and 2 and lies within an Industrial district.

Attorney Malcolm McNeill addressed the Board on behalf of Aranorian Oil Company. Dennis Moulton, of Millette, Sprague & Colwell passed out some reduced plans. Paul Kenny and Floyd Hayes of Aranco Oil were present as well as Steve Rickridge from Ranson Environmental.

Attorney McNeill reminded the Board that they were before the Board on December 18, 2003 and were denied approval for a Conditional Use Permit. The denial was based on the Wetland Ordinance, Section 10-608(B)(4). "Specifically, the applicant failed to demonstrate that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of the ordinance." They tried to listen closely to the concerns of the Board members and they have also had intense discussions with the City administration since that meeting. They have retained their rights to the Board's December decision however they are attempting to make a plan that would gain the Board's approval.

Attorney McNeill indicated that the present arrangement has a convenience store, a gasoline facility for automobile and primarily for trucks. It currently is a valid non-conforming use. The applicant wishes to significantly upgrade the site. Attorney McNeill reviewed their previous plan that was presented to the Board which included a 3900 sf building, a 100% recycling car wash, which was a condition of the Conservation Committee, improvement of the canopies and a reduction of the available area for truck parking to 10 spaces, as well as various retention ponds and drainage devices. They also proposed berming around the site. Questions had been raised about the septic system on the site and they made it clear that they would be pursuing a septic system but their needs were very nominal. The Conservation Commission had approved this plan on two separate occasions.

Attorney McNeill felt that one of the previous concerns was that they could just do a little bit better. Also, the ability of the City to enforce truck parking. Therefore, their effort was to address those concerns.

The plan before the Board showed a reduction of the building from 3900 sf to 3588 sf with all sections of the building outside of the buffer zone. They reduced the number of parking area for trucks from 10 to 9 and reduced the depth of the parking in the wetlands buffer by 5'. They reduced the impervious surface by 4,781 s.f. and reduced the fill by 3,700 s.f. The reductions in buffer disturbance was 21 1/2 % from the December plan.

Additionally, they have come up with a security system. The edge of the pavement will have a sensitive type of grass, then you will come to boulders and then a jersey barrier of a 2 ½' area that is connected to the most sensitive areas of the site, where there is the greatest probability of impact and incursions by trucks. The remainder of the site will have boulders and other protections. Additionally, there were concerns about enforcing these precautions. They would establish an enforcement easement of 50' back from the pavement to the City of Portsmouth. The purpose of this is to protect against contamination and prevent the parking of vehicles beyond the new edge of pavement, to prohibit the storage of equipment or materials or debris and to protect the Wetland Protection zone. If there was a violation, it has been established that the City would put them on notice to cure the violation within 10 days and if not cured then the City could take action against them.

This most recent plan was approved by the Conservation Commission last week and it was noted that "this was the best plan yet". They did recommend the easement stipulation.

Attorney McNeill addressed the criteria that they needed to consider that the land was reasonably suited to the use and that the wetland values were not adversely impacted. The Conservation Commission hired Michael Cuomo to look at the project and no evidence was presented by any expert that there would be an adverse effect on wetland values. Secondly, there would be no adverse wetland impact on any surrounding properties. Attorney McNeill indicated that everything that surrounds this property is their own property and the highway is to the rear.

Thirdly, the applicant will demonstrate that alterations of the natural vegetative state will only occur to the extent necessary to achieve construction goals. Lastly, the applicant will demonstrate that this proposal has the least adverse impact to areas and environments under the jurisdiction of the ordinance.

Attorney McNeill indicated that this project will cost over \$1 million and so there will have to be some commercial activity on the site. They are proposing 24 hour monitoring of the site and they believe they have provided every reasonable means for the city to protect its interest.

Attorney McNeill felt there was no contradictory environmental evidence with regard to any adverse impact on this site, or the Great Bay or Great Bog or adjoining properties. He felt the site was being developed in a reasonable fashion. There is a lessening of the impact by 20% from the previous plan, security with regard to the liability of the applicant and the readability by the City to enforce by a recorded document to protect the environment.

Dennis Moulton, of Millette, Sprague and Colwell, spoke about the changes from the previous plan, including the number of parking stalls and the reduction in their length. They brought in grading to reduce the impact into the buffer. The building has been configured so that it is completely outside of the buffer. Stormwater treatment has not changed since their previous plan. Drainage would flow to catch basins, then to oil/water separators, to the wet detention area which will allow 12,000 gallons of storage of a contaminant, released to a riprap section, continue on to a vegetative treatment strip and then it will enter into the wetlands. The site currently has no stormwater treatment at all. There is a leach field in the rear. The new plan will relocate the septic to the front of the lot. They feel this is the best area for the septic system and will be entirely outside of the buffer.

Mr. Moulton indicated that there will be barriers that are 6' back from the edge of the pavement for snow storage for a small storm. Snow will be removed from the site for large storms.

Mr. Coker asked if there was any area where the stormwater runoff did not get caught by the treatment system?

Mr. Moulton indicated that there was a small area in front of the canopy. This was due to the constraints caused by the roadway.

Mr. Coker clarified the area that Mr. Moulton was referring to on the plan and indicated that he was concerned about that.

Mr. Will asked about a Cape Cod berm and if it was just some sort of a curbing along the paved area.

Mr. Moulton confirmed that was correct. It is a low profile curb which allows a tire to come up on it but a driver would realize that they were on it.

Mr. Ricci asked what the total amount of fill on the site would be.

Mr. Moulton indicated that they haven't calculated that yet.

Mr. Ricci asked about the ribbing grass being planted around the boulders and requested additional information regarding that.

Paul Kenny of Aranco Oil indicated that they would be checking with DES for a finding on what type of vegetation to plant.

Mr. Ricci asked what the depth of the basin was?

Mr. Moulton indicated it would be around 1 ½ to 2 feet.

Mr. Ricci asked about the fill.

Mr. Moulton indicated that they would be looking carefully into what fill to use around the detention area but the majority of it will be common borrow fill.

Steve Rickridge, a professional geologist with Ranson Environmental Consultants, indicated that they were the environmental consultants for the site. He addressed a question regarding the diesel tank truck canopy and incidental spills and whether it could run forward and into the wetlands. He indicated that currently there are no canopies so there is no protection. As designed, the new plan has substantial canopies and a concrete apron around the dispensers. Should a spill occur, it would be caught by grooves and forced back. The canopy allows for a sufficient containment from rain. If the spills were to run off the concrete and head backwards onto the property, it would run into the oil/water separator. Mr. Rickridge indicated that the same thing would happen in the front of the canopy. Overspills from the gas canopy would not flow forward but surface water in front of the gas tank canopy would run forward and discharge to the wet area.

Mr. Coker asked if there was any way to prevent that?

Mr. Rickridge didn't believe so due to the elevations involved coming up from Route 33. Currently, if there were spills anywhere on the property, they would be uncontrolled and the property has not been modified to direct it any specific way.

Mr. Savramis asked about the location of the gas tanks.

Mr. Rickridge indicated that the tanks were currently partially in the buffer zone. Under the proposed plan, none of them would be in the buffer zone. This would be a significant improvement. DES has indicated that they fully support this upgrade.

Chairman Smith asked about the car wash.

Mr. Rickridge indicated that all of the water was recycled and none of it goes to the leach field. It does not go to subsurface or the drainage system.

Floyd Hayes of Aranco Oil spoke relative to the car wash. He indicated it was a closed loop system. All chemicals and water stays within the confines of the garage. There is a heated pad so that it prevents icing in cold weather. If the system was to fail, the system will shut down. As it is a closed system, the water will go through a closed osmosis system. If it wasn't a closed loop system they would clean it once a year. The closed system is cleaned once a month. The tank is a cement cased tank and there are two of them.

Chairman Smith asked how they would know if they had a crack in the tank.

Mr. Hayes indicated that it would be similar to if you had a crack in your sewer tank. They also have inspectors go down into the tanks so they would see a crack.

Mr. Will asked about variances for trucks and the car wash.

Mr. Holden indicated that this was the Conditional Use portion and it would be going to the Board of Adjustment for variances. The only issue before them is Article VI and whether they meet the criteria.

Mr. Coker indicated that he would like to see some information about the carwash at the next level.

Chairman Smith reminded Mr. Coker that the carwash does not fall within the purview of this hearing.

Mr. Holden reiterated that the carwash is not in the buffer and the only flag they are carrying tonight is regarding the buffer zone. He indicated that Attorney McNeill has clearly shown how they listened to past comments of this Board and have incorporated those changes into the new plan before the Board. The next step would be the Board of Adjustment, it would then go to TAC and then to Site Review.

Councilor Ferrini asked for clarification on what the inland protection district was.

Mr. Holden indicated that was actually the 100' buffer that they were working with. Mr. Holden further stated that the City has worked with the applicant to create a significantly better site plan, one that can be administered and enforced and also to address other concerns that have arisen over the years. They have issued building permits to replace the existing fuel tanks with tanks that are of a higher caliber because they are not within the buffer area. That is a positive benefit.

Chairman Smith asked if this concluded their presentation, which it did, and indicated that the Board would take general questions.

Chairman Smith asked about the dumpster and whether it would be fully enclosed by fence?

Mr. Moulton indicated that it was enclosed with a fence.

Chairman Smith asked about the utility pad next to the dumpster and whether cement ballards would be going in to protect the air conditioning units.

Mr. Moulton indicated that that would be more fully defined at Site Review.

Mr. Sullivan indicated that he has previously asked about the Old Greenland Road and a piece of property that is owned by the City. He takes exception that they are using part of that road and it appears they are putting more asphalt on city property and still using it as an exit from their property. He also noted that the canopy sat on the Greenland Road line.

Ms. Tillman indicated that the setback depends on which district the property was in and for the industrial sideline it would be a 50' setback.

Attorney McNeill indicated that both of those matters would be resolved at Site Review.

Mr. Holden affirmed that those matters were not relevant at this hearing. City Attorney Bob Sullivan has indicated that no rights will be given up by the City. The issue will be addressed by staff and addressed at Site Review.

Mr. Sullivan stated that problems with paper streets pop up occasionally and he feels that if someone is using city property they should be paying for it.

Mr. Holden indicated that the canopy issue is a Board of Adjustment matter and subject to their review.

Mr. Coker asked if a Planning Board Member spoke at the Board of Adjustment hearing, couldn't Attorney McNeill challenge that testimony?

Attorney McNeill indicated that it would depend on how someone testified and what issues he raised. If they conflicted with the issues that ultimately had to be determined before the Planning Board, then there might be a conflict. However, if it was phrased appropriately, he did not feel there would be a problem.

Attorney McNeill indicated that they have attempted to address the previous concerns of the Planning Board members and have spent a great deal of time with the City administration to come up with an acceptable plan.

Martin Cameron, of 469 Ocean Road, spoke to the project. He asked how far into the buffer zone the property penetrated?

Mr. Moulton reviewed the map of the property and pointed out the buffer zones, reflecting that 80% of the site is wetlands and the buffer itself and additional encroachment were indicated by the lighter gray area on the map.

Mr. Cameron stated that there did not appear to be any protections whatsoever, however, Planning Board members explained what protections were being proposed.

Mr. Coker addressed Mr. Cameron and explained the drainage treatments that were being proposed with the new plans. He confirmed that this would be a huge improvement over the existing conditions.

There being no further speakers, the Chair closed the Public Hearing.

#### **DISCUSSION AND DECISION OF THE BOARD:**

Mr. Will made a motion to deny the application. Mr. Coker seconded. Mr. Will indicated that the last time around they used the four criteria under Section VI, which indicated the applicant shall demonstrate the proposal with the least impact. Mr. Will did not believe it was their purview to tell the applicant what they should do with their property however he felt that 18,000 s.f. of additional

impervious space was in violation of the spirit and intent of the ordinance. He felt there were too many additional items on the site.

Mr. Ricci indicated that he would be voting against the motion as the stormwater treatment far exceeds the impervious areas. From an environmental and stormwater standpoint, this proposal is a significant improvement.

Mr. Coker indicated he would be voting against the motion to deny although he did say that occasionally applications came before the Board that he was not comfortable with and this was one of them. He felt the Site Review for this Board would be much more detailed and that was where he would be spending his time. He felt this was a tremendous improvement although a lot was self inflicted.

The motion to deny failed with a 1-8 vote.

Mr. Coker wanted to be very clear that they are merely talking about the 100' buffer zone.

Mr. Holden indicated that Attorney McNeill could indicate that it would be subject to all necessary approvals or that this Board is acting on a conditional use application and should not be construed by other Boards as forcing a positive review.

Mr. Hopley confirmed that they were voting on the Conditional Use but not on the design of the stormwater detention at this time. That approval will come later at Site Review.

Councilor Ferrini made a motion to approval the application with stipulations as indicated. Mr. Sullivan seconded.

Mr. Sullivan liked the concept of the monitoring wells. He was not as concerned in the summertime but in the wintertime he felt they should have at least one in the corner.

Chairman Smith counted two monitoring wells on the site and asked how many there would be when they were set.

Mr. Rickridge indicated there were 6-7 on the site and they are monitored actively by the State and inspected twice a year. They will be monitored until they meet groundwater standards. Those reports are not forwarded to the City but they would be happy to provide copies.

Councilor Ferrini stated that this was a narrow issue and easily meets the criteria.

Mr. Coker referred to Mr. Cuomo's letter dated February 14<sup>th</sup>, item #1, and asked that the monitoring by a third party be a stipulation.

Mr. Savramis asked that the plans indicated where the new fuel tanks will be located.

Chairman Smith asked that snow removal be noted on the plan, a note that ribbon grass will be planted and that maintenance reports be provided to the City on the swales, as well as the small swale along the front.

Chairman Smith also asked that, when this matter comes up for Site Review, that the City Attorney be made available to the Board.

The motion to approve passed unanimously.

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**III. NEW BUSINESS**

Approval for a Special Planning Board Meeting for PSNH

Mr. Holden gave an update on PSNH. They have been in contact with the Planning Department and they are in the process of getting additional information to the Planning Board. At the present time, they have asked that their schedule "slide" a little bit. Mr. Holden asked if the Board would agree to schedule a special meeting at a date to be determined. PSNH is next scheduled before the Board of Adjustment on March 30<sup>th</sup> and there may possibly be a TAC meeting before that.

Mr. Sullivan asked that they stay away from Holy Week, which would be the week of April 4<sup>th</sup>.

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Chairman Smith advised the Board Members that a copy of the Simplex decision had been given to each member that evening.

Mr. Holden stated that this was a very significant decision and empowering to the city to regulate land use through it's by-laws. It is a very important case.

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**IV. ADJOURNMENT**

A motion to adjourn at 9:20 pm was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on March 18, 2004.