

**MINUTES OF  
SITE REVIEW TECHNICAL ADVISORY COMMITTEE**

**2:00 P.M.**

**CITY COUNCIL CHAMBERS  
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE  
PORTSMOUTH, NEW HAMPSHIRE**

**AUGUST 3, 2004**

**MEMBERS PRESENT:** David Holden, Director, Planning Department, Chairman  
David Allen, Deputy Public Works Director;  
John Burke, Parking & Transportation Director  
Deputy Chief David Young, Portsmouth Police Department;  
Steve Achilles, Assistant Fire Chief;  
David Desfosses, Engineering Technician (Engineering)  
Thomas Cravens, Engineering Technician (Water)

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The Chair called the meeting to order at 2:00 pm.  
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**I. OLD BUSINESS**

A. The application of Eric & Martha Stone, Owners, and Sierra Construction, Applicant, for property located at 1039 Islington Street, wherein site plan approval is requested to construct two 3-story buildings as follows: 1) a commercial building totaling 11,520  $\pm$  s.f. and 2) a 10-unit residential building totaling 13,320  $\pm$  s.f., with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 171 as Lot 14, and lies within a Business district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech appeared on behalf of Sierra Construction Company. Also present was Roger Roy of MJS Engineering. Attorney Pelech indicated that they had appeared before the TAC Commission and have had numerous meetings with City personnel. They believe that they have complied with all of the outstanding issues. The traffic information requested by John Burke has been presented. He felt that the site issue had been resolved to John Burke's satisfaction, pending the approval of NHDOT. They have down sized the plan and the size of the structures and relocated them and hopefully this is a plan that can be recommended by this Committee.

Mr. Holden advised Attorney Pelech that they had the report back from Royd Benjamin, of the Maguire Group, and a copy was given to him for his review.

Roger Roy, of MJS Engineering, presented the plans. The current plan has 10 residential units contained in one building and one commercial building. They have 13,320 s.f. of residential use and 11,520 s.f. of commercial use. The Grading Plan (C-2) shows their guard rail proposal. They are tapering it back for better site distance. This will require NHDOT approval.

Mr. Holden indicated that this plan had been reviewed more often than most plans that come before them. He asked if the new reconfiguration of the residential building allows for vehicles of sufficient size to make the corner around the back of the building?

Mr. Roy indicated that it did.

Mr. Holden asked if anyone was present from the public, wishing to speak to for or against the petition. Seeing no one rise, the public hearing was closed.

## **DISCUSSION AND DECISION**

Mr. Desfosses made a motion to approve with stipulations. Mr. Cravens seconded.

Deputy Chief Young reported on the past accidents in the area. He went back 4 years and indicated that there were three that occurred in the immediate area and three that took place down Spinney Road. As this is a very heavily traveled road, these figures are not unusually high. Of the three that were in the immediate area, one was a rear end collision with people heading eastbound into town with a third vehicle attempting to make a left turn into the property in question. Two vehicles from behind struck each other. The other two accidents were people trying to pull out of 1039 Islington Street and pulled out into the way of oncoming traffic.

(For the record, Deputy Fire Chief Achilles was called out on duty.)

Mr. Burke indicated that the information called out the need for proper site distance. He asked for an independent evaluation of the trip generation as the City does not want to see the site become any more intense. This information was passed along to a traffic engineer and the end result was that the trip generations at peak hour for the existing situation will become more intense with this property by between 12% - 30%. That puts more of a burden on site distance and the City still needs to see a profile.

Mr. Holden summarized that if the applicant does not meet the site standard, the City would expect the application to reflect less of a use to bring the intensity of use in conformance with the existing condition.

Brad Richards asked if they hadn't already proved the site distances? Mr. Burke indicated that the City's independent review showed that the site distance was measured from the stop bar and not from 6' behind which is typically done. Mr. Richards indicated that his site distance was more than the City's criteria. Mr. Burke indicated that he was not able to determine that as he had requested a profile and had not received that at the time of his review.

Mr. Holden indicated that this is setting the parameters for when the City would look at this and it must be proved that the existing conditions that are represented actually do exist.

Mr. Burke stated that a stipulation that State stop, turning and site distance is met. A profile is needed to show the 6' behind the stop bar so that the City can verify that and put it in the record. That needs to be done for the Traffic & Safety Committee Meeting on August 19<sup>th</sup>. Mr. Burke also would like to see the typical section of the guardrail and approval of the City and NHDOT for removing and upgrading the guardrail.

Mr. Holden indicated a landscaping plan would be required, for review by Lucy Tillman.

Mr. Desfosses had some concerns about drainage in general and their decreasing flow, however, under the existing condition there is sheet drainage going down the By-Pass. Under the proposed condition it will be a more concentrated flow. He would like to note for the record that any damage caused in the slope by-pass is the responsibility of the applicant and should any erosion occur, NHDOT compliance will be required to determine how to address the situation. It might not happen but it could happen and it should be reviewed prior to the final bond release for slope stability.

Mr. Holden indicated that a copy of the Letter of Decision should be sent to NHDOT to put them on notice.

Mr. Allen asked about the crosswalk at the end of their driveway and whether there was a handicapped ramp on the other side.

Mr. Roy indicated that there was a handicapped ramp at the end.

Mr. Desfosses indicated that was shown on the plans. However, he did ask several times to have the sidewalk shown on the plan and it still hasn't been added.

Mr. Allen asked that the plan include notes for the appropriate termination of utilities.

Mr. Desfosses indicated that the sidewalk in front of the residential was asphalt. He asked what the curbing was?

Mr. Roy indicated that it would be a concrete sidewalk with a monolithic curbing.

Mr. Holden asked how they were handling site lighting.

Mr. Roy indicated that they had a lighting plan. Four 20' poles, several wall packs on the back of the residential building, there are some down lighting underneath the overhangs and two bald lights over the front door of the commercial building.

Mr. Holden indicated that Dave Desfosses and Dave Allen should review the lighting plan.

Mr. Desfosses asked if there was proper lighting at the entrance?

Mr. Roy indicated they would verify street lighting and add it to the plans.

Mr. Holden assumed there would be plantings to the curb areas to the east and west of the residential units?

Mr. Roy indicated that was reflected on the landscape plan.

Mr. Burke wanted to introduce into the record the letter from Maguire Group to the City dated July 30, 2004, which includes very specific instructions for the application with respect to the guardrail and this will be reviewed by Traffic & Safety.

Mr. Holden encouraged the applicant to get with all of the conditions prior to Traffic & Safety to review them as the Planning Board is meeting that same night.

The motion to approve with the following stipulations passed unanimously:

- 1) If the Applicant does not meet the sight distance standard, then the application will have to be amended to reflect less of a use so as to bring the intensity of use in conformance with existing conditions (the existing conditions must be verified);
- 2) That the profile showing the sight distance should be revised to show the measurement from 6' behind the stop bar so that conditions can be verified, and made available for the Traffic & Safety Committee on August 19<sup>th</sup> (On Site review on August 17<sup>th</sup>);
- 3) That approvals of the Public Works Department and NHDOT for the change in the guardrail be obtained;
- 4) That a landscaping plan be submitted and approved by Lucy Tillman of the Planning Department;

- 5) That any damage caused by the slope by-pass is the responsibility of the applicant to repair and if erosion does occur, NHDOT compliance will be required to determine how to address the situation;
- 6) That subject to the release of Bond, slope stability shall be inspected by David Desfosses, (a copy of this letter will be forwarded to NHDOT to put them on notice);
- 7) That the existing sidewalk should be shown on the Site Plan;
- 8) That the Site Plan should include notes for the appropriate termination of utilities;
- 9) That the sidewalk in front of the residential units will be concrete with monolithic curbing, and with a detail on the Site Plans;
- 10) That a Lighting Plan be submitted and approved by David Desfosses and David Holden;
- 11) That a street light detail be shown on the Site Plans;
- 12) That the letter from Maguire Group to the City of Portsmouth, dated July 30, 2004, which includes very specific instructions for the guardrail section, shall be referred/addressed at Traffic & Safety Committee meeting;

(Note: Deputy Fire Chief Achilles returned to the meeting)

**II. PUBLIC HEARINGS**

A. The application of SGB & RGB Ventures, LLC, Owners, for property located at 1800 Woodbury Avenue, wherein site plan approval is requested to construct a 1-story 2,292 ± s.f. brick building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 239 as Lot 7-3 and lies within a General Business district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech addressed the Committee on behalf of the applicant. The site is adjacent to the Circuit City parking lot. There is an existing structure and another structure of like size is being proposed. This application went before the Planning Board for a Conditional Use Permit Application that was granted, after receiving a favorable recommendation from the Conservation Commission. That recommendation was favorable because they were actually reducing the amount of impervious area. The new building is being constructed on an area which is presently hot top. They went to the BOA to get the necessary set back variance on the Circuit City side. He felt it was a fairly straight forward proposal, utilizing a lot of the existing utilities and there is adequate parking on site.

John Balfour, of Millette, Sprague & Colwell, indicated they will be removing approximately 3,000 s.f. of pavement and replacing it with 900 s.f. of greenspace and 2,200 s.f. of building. The grading of the site will not be changed. They will catch the water pretty much in the same location as it was currently being caught with a dry inland put into the current existing system. From the sewer lateral from the existing sewer manhole, they will come up with the water from the existing building. They do not propose to add any lighting. They will keep the parking to what it currently was minus the removal of pavement.

Mr. Allen asked if they had an existing conditions plan?

Ms. Tillman indicated that was all that was submitted.

Mr. Holden asked if anyone was present from the public, wishing to speak to for or against the petition. Seeing no one rise, the public hearing was closed.

**DISCUSSION AND DECISION**

Mr. Desfosses asked what the proposed use was for the new building?

Mr. Balfour indicated it would be retail.

Mr. Desfosses asked about the handicapped parking and indicated that it appeared that the handicapped person would have to go into the travel lane to get into the front door. He felt they should pull the travel island in a little bit.

Mr. Balfour agreed that would be a good idea as extra area was needed.

Mr. Desfosses asked if there was a back door to the proposed building?

Mr. Balfour indicated there was no back door.

Deputy Chief Achilles asked what the second egress out of the building would be.

Mr. Balfour was unsure about a second egress.

Attorney Pelech indicated that there was going to be a door on the southerly side of the proposed building, on the southwesterly corner.

Mr. Desfosses asked for a walkway out from the door to the property line. Mr. Desfosses asked if the guardrail in the back of the building could be removed.

Attorney Pelech did not see where it served any purpose and they could remove it and put a chain link fence in.

Mr. Desfosses asked for clarification on Note 8 as he was not present at the Conservation Commission meeting.

Attorney Pelech indicated that either the Conservation Commission or the BOA asked for maintenance reports be provided on the detention pond.

Mr. Desfosses asked how the cross over was related to the detention pond?

Mr. Balfour showed how the outlet drains into a catch basin, and then runs back into a few other catch basins into the detention area.

Mr. Holden asked if they had the right to run the water across that lot?

Attorney Pelech indicated that there are reciprocal drainage easements across all of the lots.

Mr. Holden asked why the easements weren't shown on the plan.

Attorney Pelech indicated that they could be, along with access easements.

Mr. Cravens indicated that the water main in the street stops at the water service that comes over or this building and the old 6" water link picks up on this property about 20' inside the property line. That's been there forever. He would like to see that shown on the plan as well.

Mr. Desfosses made a motion to approve with stipulations. Mr. Cravens seconded.

Mr. Cravens indicated that as this is only one lot, they will only service it with one meter. Therefore, all the water for the new building will have to go through the meter for the new building. This plan needs to be corrected as it shows a tap off of existing service and it has got to go back into the existing building and then to out into the new building. And the 6" water main needs to be shown.

Mr. Desfosses indicated that all easements need to be shown on the plan. The guardrail should be removed from behind the building. The island needs to be modified so that handicapped people don't have to go into the travel lane.

Deputy Chief Achilles indicated he would like a walkway from the second door.

Mr. Holden asked if lighting was needed for the doorway?

Deputy Chief Achilles indicated there should be lighting at the doorway.

Mr. Desfosses asked about a dumpster.

Mr. Balfour indicated it was currently on the location of the new building.

Mr. Desfosses asked where it was going to be put?

Mr. Balfour indicated it would be next to the walkway.

Mr. Holden indicated it was right in the wetland and not his first choice. It was also pretty far from the new building.

Mr. Desfosses indicated they needed to show a dumpster pad with screening. The dumpster cannot be located in the front yard.

Ms. Tillman read the ordinance indicating that no dumpster shall be located within 20' of a residential or mixed residential property or within 10' of any property line.

Mr. Desfosses indicated they have a 70' setback so the dumpster has to go on the side of the building. He felt the best place for it was on the side of the building between the two trees but there are overhead wires over it which could make emptying it difficult.

Mr. Balfour indicated that between the trees may be the only place that they can place the dumpster.

Mr. Desfosses indicated they will have to check the wire heights and the wires may have to go underground.

Mr. Holden asked what the purpose of the chain link fence was as that is not normally viewed as a positive attribute to a site.

Mr. Balfour stated that the second chain link fence was requested by the Conservation Commission. There is a lot of trash that finds its way down into the wetland and this is to prevent people from trying to get to that part of the site. He was unsure what the existing fence was for.

Mr. Holden indicated that if they were taking the guardrail down on the other side, perhaps they could put it over there to keep the vehicles out and put the chainlink fence on the other side. He just didn't feel that a chainlink fence was serving anything. Mr. Holden stipulated that the guardrail be relocated so they can work with the chainlink fence and the department will work with the applicant if there are any problems that come out of that. Mr. Holden indicated that a landscaping plan should be reviewed by Lucy Tillman. He indicated that they were acting on existing site plan and he asked if everyone was comfortable acting on this plan or did they want to see a revised plan?

Mr. Desfosses felt the plan was fairly simple but would like to see the driveway revisited. He felt it was a very narrow turn and the vertical curbing was probably not the best choice. Mr. Holden suggested that the Committee recommend that the curbing be replaced with sloped granite curbing and the applicant can do with that what they choose.

Attorney Pelech was unsure what they could do with that as it was not on their property.

Mr. Holden indicated that was why it was a recommendation and not a stipulation.

Mr. Burke indicated that he did not have a concern with the turning radius but admitted that it was probably tight. As there will probably be delivery trucks entering for the retail use, he suggested that they send it to Traffic & Safety for the turning radius.

The motion passed unanimously with the following stipulations:

- 1) That the Site Plan be revised to reflect the water service for the new building going through the meter for the existing building and then being tapped off;
- 2) That the 6" water main on the old path be shown on the Site Plan;
- 3) That all access, drainage, water and "Welcome to Portsmouth" sign easements be shown on the Site Plan;
- 4) That the guardrail be removed behind the building and so reflected on the Site Plan;
- 5) That the island located in front of the existing building be modified so that handicapped people do not have to go into the travel aisle and so shown on the Site Plan;
- 6) That a snow storage area be shown on the Site Plan;
- 7) That the walkway for the proposed second door be shown on the Site Plan;
- 8) That a dumpster pad with screening be shown on the Site Plan (not to be placed within the 70' front setback; if placed between trees, wire height must be checked and utilities may have to go underground);
- 9) That the guardrail be relocated so that the chain link fence can be replaced with it and shown on the plan;
- 10) That a landscaping plan to be submitted and reviewed by Lucy Tillman of the Planning Department;
- 11) That this application be reviewed by the Traffic & Safety Committee relative to concerns about the turning radius;

It was also recommended by the Committee to the applicant that the vertical granite curbing should be replaced with sloped granite curbing.

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B. The application of Henry S. Dutkowski, Owner, for property located at 806 US Route 1-ByPass, wherein site plan approval is requested to construct a 2-story 652 ± s.f. addition to the front of the existing building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 161 as Lot 43 and lies within a General Business B district.

This application was withdrawn by the request of the applicant. It is pending before the Board of Adjustment on a re-hearing request.

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C. The application of Parrott Avenue Place, Inc., Owner, for property located at 127 Parrott Avenue, wherein site plan approval is requested to construct a 30' x 18', 540 ± s.f., 2-story addition, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 115 as Lot 3 and lies within a Mixed Residential district and Historic District A district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Bob Iafolla spoke on behalf of the applicant. He indicated this was a very minimal project. The Parrott Avenue Home is a Senior Daycare Center on the first floor. It became apparent shortly after they moved in that the people that they service are much more disabled than they had anticipated. Therefore, they are unable to service the number of people that they were licensed for and permitted for. They have considered this issue for a couple of years and decided that by adding one more bay, 18' x 30', they would have adequate room. They appeared before the BOA and received approval for a parking variance. They appear before the HDC and received approval.

Mr. Desfosses clarified for the record that the addition is 16.9 x 32'.

Mr. Holden asked if anyone was present from the public, wishing to speak to for or against the petition. Seeing no one rise, the public hearing was closed.

**DISCUSSION AND DECISION**

Mr. Desfosses moved to approve with stipulations. Mr. Allen seconded.

Mr. Holden asked Mr. Iafolla to brief them on the gate that separated this property from the Housing Authority in the rear. It was Mr. Holden's understanding that the Planning Board, in various approvals, was looking for that gate to be locked and secured.

Mr. Iafolla confirmed that the gate is secured and locked and is only unlocked for snow removal purposes.

Mr. Holden asked for a note to be added to the plan to that effect.

The motion passed unanimously with the following stipulation:

- 1) That a note be added to the Site Plan clarifying the status of the gate;

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D. The application of MacLeod Enterprises, Inc., Owner, for property located at 1390 Lafayette Road, wherein site plan approval is requested to demolish and remove 48,500 ± s.f. of existing buildings and 12,700 ± s.f. of existing pavement, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 252 as Lot 8 and lies within a General Business district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill, representing MacLeod Enterprises, was present along with Kevin MacLeod and Greg Mikolaities, of Appledore Engineering. Attorney McNeill indicated that the site consists of 7.5 acres at 1390 Lafayette Road and is located in the General Business Zone. There is a



121 room hotel, 45,000 s.f. of restaurant and 3,500 s.f. of retail space to the street side of the hotel. They are proposing to divide the lot into two separate lots, one lot containing 2.49 acres and the 121 room hotel and the demolition of the retail space. The second lot containing 5.09 acres will result in the removal of the restaurant, lights and signage, not sooner than October 1<sup>st</sup> of this year. They propose 147 parking spaces for the hotel. There are not waivers with regard to the site except an Equitable Waiver with regard to a setback that is scheduled to appear before the BOA on August 17<sup>th</sup>. The Equitable Waiver deals with a 1987 approval for a 50' setback that was actually only 34'.

The Yoken's sign is an icon in the community and the applicant is willing to make a donation of the sign to the City. There was concern over a fence separating the Champagne property. That fence has been rebuilt and is in its appropriate location. There was a request that they appear before Traffic & Safety and they believe they have been dissolved of those issues. There was a TAC letter issued on June 3, 2004 with regard to various conditions and they believe they have complied with all of the conditions. There was a request that easements be shown on the plan which they have done.

Attorney McNeill indicated that they comply with all of the zoning requirements except for the Equitable Waiver which they are seeking relief before the BOA. He indicated they are retaining the two accessways off of Lafayette Road and Peverly Hill Road. They would fully expect, at an appropriate time when there is further development on this site, that type of review would come into play. This is really a reduction plan rather than a growth plan.

Mr. Burke asked about the cross easement to the Comfort Inn and it shows the existing driveway and continues along the island and does that anticipate a future driveway?

Greg Mikolaities, of Appledore Engineering, stated that it presumes nothing is going to be built. The two curbcuts on Lafayette Road are existing now and they are just giving cross easements across the property. If someone missed the first curbcut and wanted to go into the hotel, they could come in through the second curbcut.

Mr. Burke indicated they would have a single driveway for Lot B and a double driveway for Lot A and, he understands that they are not getting in to the hypothetical of what is being built, but they definitely will make sure that driveway is outside of the queue for the signal. There isn't a right turn lane onto Peverly Hill Road so his assumption is that driveway will end up sliding no matter what goes into that site. As it gets closer to the property line, it would start to break access management standards as it would be too close to the other driveway for turns. He didn't know if anything in easement language could protect the city.

Mr. Mikolaities indicated that what they were presenting to them right now was a vacant lot. When someone develops the lot, he would agree that they would have to look at the traffic management.

Attorney McNeill noted that all easements will be handled by the City Attorney.

Mr. Allen was concerned about the utilities and asked if they were approving this as one site or as the subdivided site because it would determine where they would like the utilities cut and capped. If this is one site, he would like to see the existing sewer line coming out of Yokens capped as close to the main as possible on the back side of the Comfort Inn. But, if the Comfort Inn is a separate site, they would probably cut and cap right near the sewer easement near the manhole.

Mr. Holden indicated the applicant had received preliminary subdivision approval but not final so they are actually looking at it as one lot right now. It is safe to imagine that this is going to be two lots and he would recommend proceeding in that manner.

Mr. Mikolaities agreed with Mr. Holden regarding the anticipated subdivision and future development.

Attorney Robert Ciandella, representing DeMoulas as local Land Use Counsel, who was an abutter to this site, was present with Kevin Dandrade, of Transportation Engineering & Construction, Inc. (TEC). Attorney Ciandella first wanted to confirm that his previous letter dated July 15, 2004 was part of the record and part of this proceeding. He handed out copies to the Committee members. He felt this was an unusual application and this is a piecemeal review. The challenge is to avoid deferring issues to the next stage and not cut a corner because they feel they will have another opportunity to address an issue. There is an unusual issue where they are appearing before the BOA for relief. They are raising today another zoning issue which needs to be addressed. The geographic context is also an issue. They need a 40' buffer before accessing parking and accessways. They do not believe that this matter should proceed until the zoning issues have been resolved. Also, it is a very busy intersection and the challenge is to correct this existing condition and make an overall improvement over time. They feel that TAC should consolidate the curbcuts or they are going to have some curious turning movements as people try to avoid the intersection. They feel they have an opportunity to combine the curbcuts and should act on that.

Secondly, the internal traffic flow needs to be addressed. They believe now, when there is common ownership of the site, is the time to come up with a rational internal traffic plan. In connection with the internal parking on the site, they believe there is a zoning issue. If Route One is the front yard, then as they read Article XII there must be a 40' buffer into a site before you are in parking maneuver space or traffic aisle. They do not see that buffer existing. They believe more pavement must be removed to create that buffer. Attorney Ciandella indicated he would be turning this over to Mr. Dandrade to go over those issues in more detail.

Kevin Dandrade, of TEC, referenced his July 15<sup>th</sup> letter to Mr. Holden regarding this application. Even with the revision of the plans, many of his points are still valid. He began with access on Route One with three driveways, two for the Comfort Inn and one for the current restaurant. From an access management perspective, the City should consider consolidating the three driveways to one location. There is currently a dual use turn lane on Route 1 because of the curbcuts, which is not as safe as a single use turn lane. By consolidating the driveways, they would be able to eliminate the dual use turn lane. Once they subdivide the property, they may not have the ability to negotiate with the applicant of the Yoken's parcel.

Mr. Dandrade indicated that there was a zoning infraction where there wasn't a 40' buffer on Route 1. With the removal of the existing use on the Yoken's parcel and to provide a consistent site layout on the Comfort Inn site, all along Route 1 it should provide a 40' landscaped buffer. It is also best to remove parking from the edge of the roadways. With the buffer, it would remove approximately 8 parking spaces from the Comfort Inn space which would make it non-conforming. He also raised an issue about the meeting space at the Inn and that should be removed or modified on the plans. Another issue that they discovered is that with the removal of the existing use there is no requirement regarding when it would have to be restored. That provides a wide open area for traffic to cross the site and bypass the traffic light. Lastly, Mr. Dandrade pointed out a disconnect on the sidewalk in front of Goody Two Shoes and as part of the site review process they should plan for continuous sidewalks along that Route 1 side. He felt that the safety issues were substantial enough for review.

Attorney McNeill did not feel that they were present to defer issues. Their legal responsibilities comply with the regulations as they relate to the present application and not to speculate, conjecture or think about what may be or what have been. The "is" is a relatively simple two lot subdivision that is being opposed by the presumed competitor of this project. Regarding the BOA issue, it is reasonable for them to proceed forward with the Equitable Wavier and have that be a condition of final approval. Regarding the access issue, Attorney McNeill indicated that he did not fully understand it at this stage. If Code Enforcement determines that they are in violation, they will have to deal with that issue.

Mr. Dandrade indicated that the 40' must be measured from the front yard back to the start of the parking, for both lots. This eliminates 4-6 parking stalls.

Mr. Holden recognized 4 parking spaces that might be in the setback. He asked Attorney McNeill about the proposed Lot B and if his position was that if the lot was vacant, it was totally subject to the City's building regulations at the time that a building permit is applied for.

Attorney McNeill agreed with this.

Mr. Holden indicated that by taking down the building, the lot would lose its grandfathering.

Attorney McNeill felt that was probably accurate but could not commit to it.

Mr. Holden felt that City would take the position that if a new application were to come in, they would take the position that they would be looking to apply the 40' restriction on Lot B. It would be unreasonable to be showing it at it at this point because they don't know what is out there.

Attorney McNeill indicated that that made sense to him.

Mr. Holden indicated that issue could be contested at the time that Lot B was being developed.

Attorney Ciandalla agreed with Attorney McNeill but the point he was trying to make was reflected in the last exchange. They have an application before them for Site Review and subdivision and part of the criteria is a duty to insure that all regulations are complied with. He felt they were in violation.

Mr. Holden indicated this was not "an existing zoning violation" but rather it was grandfathered. It is a legal pre-existing grandfathered setback. With a vacant lot there is no recognized use on the site and when the application is filed the standards of the ordinance will be applied at that time.

Attorney Ciandalla indicated that with regard to the curbcuts and internal traffic the City shouldn't defer action but rather should do what they can now.

Mr. Holden was concerned that the City was being sucked into an issue that it didn't need to be involved in. If an issue is becoming more conforming it doesn't necessarily go before the BOA.

Mr. Holden asked Attorney McNeill if this is a vacant lot, the City's ordinances and regulations that are in force at the time of the building permit application will apply to that development?

Attorney McNeill felt that the answer was probably yes. He wanted to be sure for the benefit of his client but he felt there was immense logic to it.

Mr. Mikolaites indicated that they submitted their application on April 29<sup>th</sup> and it is now August 2<sup>nd</sup> and Mr. MacLeod is anxious to finalize this. They have done everything that has been asked of them.

Mr. Holden asked if the site plan was malleable so that those 4 parking spaces that are potentially at issue can be addressed?

Mr. Mikolaites will take a look at those 4 spaces.

Attorney Ciandella indicated that DeMoulas has a direct concern about what goes on at this site. They do not want to be viewed as a "bad guy" everytime they speak to this issue. They intend to participate in this proceeding.

Mr. Holden asked if anyone was present from the public, wishing to speak to for or against the petition. Seeing no one rise, the public hearing was closed.

## **DISCUSSION AND DECISION**

Mr. Burke indicated that Traffic & Safety is looking at this as one site and will look at them separately when the application comes in. He is struggling with the practical reality that the existing driveway on Lot B probably already meets 95% queuing now. He is hung up on whatever development of Lot B is proposed, if the driveway through a traffic study meets within 60' of the Lot A driveway, they would have some major issues. A large fully multi lane driveway in proximity to that driveway would have some issues and he is wondering what mechanism might exist to ease this possibility.

Mr. Holden thought a possibility to explore a condition that subsequent to the development of Lot B that the two curbcuts on Lot A be reviewed. If Lot A agrees to the condition then it could be binding.

Deputy Chief Achilles was concerned about cross traffic and he asked if the driveways were closed off on Lot A, could they be opened up again if they had to be?

Mr. Desfosses felt that two existing driveways was excessive and there should be one common access for both lots.

Mr. Burke felt it was reasonable to have a single driveway on both sites. If the two driveways are given to Lot A it creates a potential problem with the City. He asked the applicant if there was something with easements that would allow Lot A to entertain a joint use driveway.

Attorney McNeill indicated that Mr. MacLeod was willing to entertain a joint use driveway. However, Attorney McNeill went on to ask where the subdivision was in violation of their regulations?

Mr. Holden did not believe that it was. Mr. Holden was not convinced that the 40' buffer was a violation. Normally when a situation becomes more conforming, it does not go to the BOA. This site has been developed since 1947 and they have approximately 10 BOA approvals. The parking standards over the years have become stricter so the application has been put in the tougher position to meet the 1995 requirements rather than the 1967, 1975, 1980, 1982 and 1995 ordinance. Mr. Holden felt this was a nuisance issue brought up by an abutter and felt it could be addressed.

Mr. Holden's recommendation to the Committee is that the subdivision meets all of the requirements of the ordinance and it also has to go through final subdivision approval at the Planning Board. As a condition of the final subdivision approval, the applicant or the owner of the property agrees that, with the development of Lot B and the issue of the existing curbcuts for Lots A & B onto Route 1 will be re-evaluated and reconfigured as appropriate.

Attorney McNeill asked if the Committee was asking the owner to commit to access changes on the development of Lot B?

Mr. Holden indicated that he was.

### **A 5-MINUTE BREAK WAS TAKEN**

Mr. Holden indicated that they were trying to clarify a potential condition.

Attorney McNeill stated they could be assured of Mr. MacLeod and his successors' cooperation with regard to the possible modifications of access after the completion of the subdivision.

Mr. Holden indicated that the applicant will work with the department on the evaluation of the 40' wide grass easement to the effect of either determining whether it is a zoning issue or whether potential modifications to the site plan will be necessary.

Ms. Desfosses requested that temporary mulch be placed on the demolition site until spring, when grass will be planted.

Mr. Holden indicated that barriers be installed at the driveways that are not in use to eliminate traffic from cutting through. This would occur as soon as demolition is started. They would block off the two most southerly driveways.

Mr. Allen indicated that there are a couple of water services servicing Yokens. The service coming up Peverly Hill should be terminated at the main and the one coming off of the feed to the Comfort Inn will be terminated at the feed at the Comfort Inn. Also, that all utilities will be pulled out of the ground during demolition and the cutting and capping of the sewer line should be witnessed by Public Works.

Mr. Desfosses made a motion to approve with stipulations. Mr. Allen seconded.

Mr. Holden indicated that technically they were out of order as he thought there was a motion on the table when they went through the stipulations. He asked Mr. Ciandella if he felt the record was accurate enough to reflect the discussion on the stipulations.

Mr. Ciandella had no problem with the record.

Mr. Desfosses made a motion to approve with stipulations. Mr. Allen seconded.

Mr. Holden asked if the applicant had a problem with the sign being presented, not as a condition, but as an offer of the applicant so that the Planning Board was aware of it?

Mr. MacLeod was agreeable to that.

The motion passed unanimously with the following stipulations:

- 1) That as a condition of the Final Subdivision approval, the applicant or the owner of the property agrees that with the development of Lot B, the issue of the existing curbcuts for Lots A & B out onto Route 1 will be re-evaluated and re-configured as appropriate;
- 2) That the Applicant will work with the evaluation of the 40' wide grass easement to the effect of determining whether it is a zoning issue or a potential modification to the Site Plan;
- 3) That mulch will be placed to stabilize the ground over the winter and shall be so noted on the Site Plan and that a suitable vegetative material (grass) will be planted in the spring;
- 4) That semi-permanent barriers shall be installed at the beginning of demolition at the two most southerly accessways closest to the intersection (one on Peverly Hill Road and one on Lafayette Road/Route 1) and that they will remain in place as traffic control devices;
- 5) That the water service coming up Peverly Hill shall be terminated at the main and the one coming off of the feed into the Comfort Inn would be terminated at the Comfort Inn feed and be so shown on the Site Plans;
- 6) That at the time of demolition, all utilities will be pulled out of the ground and the cutting and capping of the sewer line shall be witnessed by Public Works;

That the Applicant has indicated their willingness to offer the Yoken's sign to the City.

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**II. ADJOURNMENT** was had at approximately 4:00 p.m.

These minutes were taken and transcribed by Jane M. Shouse, Administrative Assistant in the Planning Department.