

**MINUTES OF  
REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**MAY 17, 2007**

**MEMBERS PRESENT:** John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Donald Coker; Raymond Will; Anthony Coviello; Paige Roberts; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and Timothy Fortier, Alternate;

**MEMBERS EXCUSED:** n/a

**ALSO PRESENT:** David M. Holden, Planning Director; and, Lucy E. Tillman, Planner I  
Peter Britz, Environmental Planner  
City Attorney Robert Sullivan

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the April 5, 2007 Planning Board Work Session – Unanimously approved.
- B. Approval of Minutes from the April 19, 2007 Planning Board Meeting – Unanimously approved.

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**II. MASTER PLAN UPDATE**

A Annual Update on Progress Towards Implementing Master Plan

Deputy City Manager Hayden gave a power point presentation on the City's annual up-date of what they have accomplished over the past year from the Master Plan. Items include:

Zoning Ordinance Revision;  
Designate Prime Wetlands;  
Improve the quality of wetland areas, buffer restoration demonstration project (grant funded);  
Protect land adjacent to open space (263 acres of Griffin land purchases with no City money);  
Partnered with other conservation projects – Estuaries Project & East Coast Greenway initiative;  
On going implementation of Peirce Island improvements (boat dock);  
Expand recreational opportunities – Peirce Island to Sagamore Headlands Water Trail;  
Upgrading neighborhood parks – Maple Haven Park;  
Sustainability practices – education & workshops;  
Design /construct new library that meets community needs and supports best practices;  
Preserve historical buildings – new Powder House roof;  
Recognize City's cultural assets heritage – replacing historic markers downtown and design Commemorative Park at African Burial Ground (Chestnut Street);

Increase public art through a local percent for the arts program;  
 Preserve City’s affordable housing supply – Betty’s Dream renovations;  
 Assist first time homebuyers – assisted six with down payments;  
 Fund social service providers – grants to 30 agencies;  
 Watershed protection – working with DES;  
 Promote water conservation;  
 Continue to implement Phase II and III of sewerage improvement plan. Finishing Deer Street pump station;  
 Publicize the City’s solid waste facility services;  
 Consider feasibility of conversion of city vehicles to alternative fuels;  
 Undertake a comprehensive review of the Islington Street corridor to better integrate traffic;  
 Continue systematic upgrades of traffic signal system, ie, Woodbury Avenue;  
 Create a system of multimodal transportation centers that will facilitate use of public transit and other modes;  
 Continue to seek bicycle project funding;  
 Work with NHDOT on bridge infrastructure – Memorial Bridge, Sagamore bridge.

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Chairman Ricci asked to take Items C & H out of order.

Mr. Will made a motion to take Items C & H out of order. Deputy City Manger Hayden seconded the motion. The motion passed unanimously.

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C. The application of **Richard and Linda Harding, Owners**, for property located at **1808 Islington Street**, wherein Preliminary and Final Subdivision approval is requested to subdivide one lot into two lots with the following: Proposed Lot 1 having 20,548 ± s.f. and 100’ of street frontage on Islington Street and Proposed Lot 2 having 61,803 ± s.f. and 124.17’ of street frontage on Islington Street, and lying in a zone where a minimum lot area of 15,000 s.f. and 100’ of street frontage is required. Said property is shown on Assessor Plan 241 as Lot 15 and lies within a Single Residence B (SRB) District; (This application was postponed at the April 19, 2007 Planning Board Meeting)

The Chair read the notice into the record.

Mr. Holden advised the Board that the Department has met with DPW and representatives of the owner. Discussions are continuing and the applicant has requested to be continues to the June Planning Board meeting.

Mr. Will made a motion to postpone to the June Planning Board meeting. Mr. Hopley seconded the motion. The motion to postpone to the June Planning Board meeting passed unanimously.

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H. The application of **Michael DeLaCruz, Owner** for property located at **75 Congress Street**, wherein Site Review approval is requested to convert 4th floor attic space to storage, office and residential, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 117 as Lot 5 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District A.

The Chair read the notice into the record.

Mr. Holden indicated that the Department has met with the applicant and there are concerns that the project may include some additional aspects. The owner has agreed that it needs to be looked at more closely. He recommended postponing to the June meeting.

Mr. Hopley made a motion to postpone to the June Planning Board meeting. Mr. Will seconded the motion. The motion to postpone to the June Planning Board meeting passed unanimously.

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**III. PUBLIC HEARINGS**

Chairman Ricci recused himself from Item A and B.

A. The application of **Harborcorp, LLC, Harborside Inn, Inc., Harborside Associates, and City of Portsmouth, Owners**, for properties located **off Deer Street, Green Street, Russell Street, Market Street, and Maplewood Avenue** wherein Preliminary and Final Subdivision approval (Lot Line Revisions) is requested to allow for the following: 1) the consolidation of Harborcorp, LLC lots 12, 21 and 28 into one lot consisting of 2.37 acres with conforming area, street access and frontage and including approximately 17,607 s.f. of land to be conveyed from the City to this lot (collectively these lots comprise the existing surface parking lot in the area bounded by Russell, Deer, Green Streets and Maplewood Avenue) and the City owned land is currently part of the Russell and Green Street right-of-ways and these two right-of-ways will be reconfigured as part of this application and subsequent development project; 2) Harborside Associates, Lot 1-1C (existing hotel and condominium lot) is conveying approximately 434 s.f. of land to the City for use within the proposed relocated Russell Street right-of-way; 3) Harborside Inn, Inc. Lot 1-1A with an area of approximately 2,640 s.f. is being conveyed to the City for use within the proposed relocated Russell Street right-of-way; and, 4) a conveyance from the City of a portion of the Russell and Market Streets right-of-ways totaling approximately 5,260 s.f. to Map 119, Lot 4 for the proposed realignment of the intersection of Russell and Market Streets. All resulting lots are in conformance with the Zoning Ordinances and Subdivision Rules Regulations. Said lots are shown on Assessor Plan 118 as Lot 28, Assessor Plan 119 as Lots 1-1A, 1-1C and 4, Assessor Plan 124 as Lot 12 and Assessor Plan 125 as Lot 21 and such other land of the City as shown on the subdivision/lot line revision plan and lying within the Central Business A (CBA) and the Central Business B District (CBB), the Downtown Overlay District (DOD) and the Historic District A. (This application was postponed at the April 19, 2007 Planning Board Meeting)

B. The application of **Harborcorp, LLC, Owner** for property located **off Deer Street, Green Street, Market Street, Russell Street and Maplewood Avenue**, wherein Site Review approval is requested to construct an 83,118 ± s.f. 6/7-story structure consisting of a hotel, convention center, parking garage and 21 residential condominiums, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 28, Assessor Plan 119 as Lot 1-1A, Lot 1-1C and Lot 4, Assessor Plan 124 as Lot 12, and Assessor Plan 125 as Lot 21 and lie within the Central Business A (CBA) District, the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District A.

The Chair read the notice into the record.

Mr. Will made a motion to take the applications off of the table. Mr. Coviello seconded the motion. The motion passed unanimously.

Mr. Holden indicated that the department recommended to the Board that they vote to go into a non-meeting to discuss the issues that were brought up at the last meeting.

Mr. Coker made a motion to go into a non-meeting. Deputy City Manager Hayden seconded the motion. The motion to go into a non-meeting passed unanimously.

Mr. Will requested a roll call vote:

- Mr. Coviello - yes
- Councilor Dwyer – yes
- Mr. Coker – yes
- Mr. Will – no
- Ms. Roberts – yes
- Mr. Hopley - yes
- Vice Chairman Hejtmanek -yes

THE BOARD WENT INTO A NON-MEETING WITH CITY ATTORNEY ROBERT SULLIVAN AT 7:22 PM AND RETURNED AT 7:52.

Attorney Sullivan explained that he recommended how the Planning Board should deal with Mr. Coker’s concerns and the Planning Board has accepted his suggestion. He explained that at the prior meeting Mr. Coker suggested under the well known jury standard that Planning Board members cannot sit on projects that they have some involvement in. Mr. Coker suggested that two employees and one City Councilor may have a conflict and should not sit. The question was complex and as this project is so important to the future of the City, he took the past month to look at this matter. He has determined that the precise issue raised by Mr. Coker is not an issue that has been decided by the Supreme Court in this state. This is important to this project because this project is subject to more serious legal challenges than any other project. Considering that situation, the hotel developer recognized that if the Supreme Court has not ruled clearly on Mr. Coker’s issue, not doing this would just be one more issue that could lead to complications. Because of that reason and not because he feels there is any prohibited conflict, but purely for the pragmatic reason of not creating one more issue that would have to be resolved in Court, he recommended that the three members voluntarily reclude themselves from this project. The underlying issue will be resolved on another day on another project.

The second part of his recommendation is that as the public hearing has already begun and the decision may be made by members who were not on the Board when that decision was made and the public may want to come to that meeting, he recommends that all hearings on this project be postponed to June 7<sup>th</sup> for a special meeting. The public hearing on all questions presented by the Westin project shall begin anew and be conducted in front of whatever members are seated that night. They are not ruling that any Planning Board member must reclude themselves but they may voluntarily reclude themselves.

Mr. Will made a motion to accept City Attorney Sullivan’s recommendation to reconvene on June 7<sup>th</sup> and begin renew. Mr. Fortier seconded the motion.

The motion to reconvene at a Special Meeting on June 7, 2007 passed unanimously.

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C. The application of **Millenium Borthwick, LLC, Owner**, for property located at **155 Borthwick Avenue**, wherein Site Review approval is requested to convert 72,232 s.f. from business office space to medical office space, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 259 as Lot 14-1 and lies within the Industrial District; (This application was postponed at the April 19, 2007 Planning Board Meeting)

The Chair read the notice into the record.

Deputy City Manager Hayden made a motion to take the application off of the table. Mr. Hopley seconded the motion. The motion passed unanimously.

**SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill presented to the Board. Gordan Leedy, of VHB, and Michael Leo, Project Manager were present. Mr. Leedy passed out a color plan. Attorney McNeill explained that this project was previously approved by this Board for two office buildings. They were now requesting to convert a building from business office to medical and to connect the two buildings. The main reason they are coming back is due to changes to parking requirements and parking lot improvements. Mr. Leedy will explain the project to the Board.

Gordan Leedy, Landscape Architect with VHB, spoke next. He stated that a conditional use permit was granted by the Board for additional parking in the buffer area. The new pavement will be constructed with porous pavement. That will be underdrained and outleted to the back of the site. One building is built and most of the parking is constructed and the front part of the site is largely completed. In addition to the new paved area in the back which was part of the proposal is to construct the approved building with parking underneath. They needed to revise the plan to allow for access to the underground parking. Changes include additional parking area, reconfiguration of the parking area, construction of a driveway down to the underground parking and construction of a connection to the two buildings, including an elevator. There is also a covered walkway proposed and the rest of the plan is the same as previously proposed and approved. In total they are providing an additional 58 parking spaces which is more than the required parking. They wish to change as much use to medical as the parking allows.

Mr. Leedy indicated they have addressed all comments from TAC.

Vice Chairman Hejtmanek asked him to run through the TAC stipulations:

- 1) That the underground parking garage layout shall be added to the Site Plans;  
A Layout Plan was added.
- 2) That a One-Way sign shall be added to the Site Plans at the front of the building;  
This was added to the Site Plans.
- 3) That the Landscape Plan shall be reviewed and approved by Lucy Tillman;  
This has been submitted and reviewed by Lucy Tillman.
- 4) That a detail for the handicapped parking shall be added to the Site Plans:  
This was added to the Site Plans.
- 5) That all monitoring wells shall be shown on the Site Plans for review by the Water Division;  
This is shown on the site Plans and was reviewed by the Water Division.
- 6) That the applicant shall meet with David Desfosses of DPW to determine whether it is feasible for all new paved areas to be constructed of porous pavement;

They met with David Desfosses who determined that the additional porous pavement areas would not be beneficial or practical. Mr. Desfosses also had questions about the drainage condition at the back of the site which they are reconstructing.

- 7) That the sidewalk shall be extended to the sidewalk constructed by the Northeast Credit Union along Borthwick Avenue.

They agree that the sidewalk shall be extended as stipulated on the previous Site Plan along Borthwick Avenue to the Northeast Credit Union.

Mr. Holden further explained that the prior Site Plan showing the sidewalks was still outstanding and the City still holds the bond.

Mr. Coker asked why Mr. Desfosses did not feel it was beneficial or practical to use porous pavement for all new paved areas? Mike Leo indicated that he spoke to David Desfosses about adding additional permeable pavement. They did borings and what they have is 4' -5' of sandy till over clay. Mr. Desfosses was looking for them to recharge the ground water on the site. Once he realized they had clay in the area he agreed it was not necessary to add porous pavement. What they have allows the water to remain in the gravel section.

Mr. Coker asked if the Department is satisfied? Mr. Holden indicated that they can confirm that as part of the approval process.

Mr. Coviello asked about the wetland on the Liberty Mutual pond and if there was any setback? Mr. Leedy stated that was a man made pond so there was no setback. Mr. Coviello asked about snow removal and where snow would be stored? Mr. Leedy stated there is an area at the margins of the lot. If it is an issue, it will be trucked off and removed from the site. Mr. Coviello asked for signage at the porous pavement indicating that the area cannot be sealed in the future.

Mr. Coker asked if there were motorcycle pads? Mr. Leedy confirmed they were on the Site Plans.

Councilor Dwyer asked them to review the entry and exit of cars into the underground garages. Mr. Leedy pointed out the entries to both garages on the plan.

Vice Chairman Hejtmanek opened public hearing and called for public speakers.

John Ricci stated that, in reviewing the plan, he did not see a landscaping plan and asked about it. He also commented on the little lip station and felt that the pipe coming into 21 may be backwards from 23. Mike Leo felt that Mr. Ricci had a good observation. It was probably supposed to be over elevation 25. They will do a point re-calc and that can be made a stipulation.

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

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

Mr. Coviello made a motion to approve with stipulations. Mr. Will seconded the motion. Mr. Coviello requested the existing TAC stipulations, a stipulation that the Department obtain a letter from David Desfosses confirming his opinion on porous pavement, that signs be added to the Site Plans indicating where the porous pavement is so that it is not sealed in the future, that the applicant shall review the invert to the pump station and revise accordingly and that a landscape detail be provided.

Mr. Holden requested that the porous pavement areas shall be maintained as to its function.

The motion to approve passed unanimously with the following stipulations:

**Stipulations from the April 3, 2007 Technical Advisory Committee Meeting:**

1. That the underground parking garage layout shall be added to the Site Plans;
2. That a One-Way sign shall be added to the Site Plans at the front of the building;
3. That the Landscape Plan shall be reviewed and approved by Lucy Tillman;
4. That a detail for the handicapped parking shall be added to the Site Plans;
5. That all monitoring wells shall be shown on the Site Plans for review by the Water Division;
6. That the applicant shall meet with David Desfosses of DPW to determine whether it is feasible for all new paved areas to be constructed of porous pavement;
7. That the sidewalk shall be extended to the sidewalk constructed by the Northeast Credit Union along Borthwick Avenue.

**Stipulations from the May 17, 2007 Planning Board Meeting:**

- 8) That the Planning Department shall obtain a letter from David Desfosses, DPW, regarding his opinion on porous pavement;
- 9) That signs shall be added to the Site Plans indicating where porous pavement is so that it is not sealed in the future;
- 10) That a note shall be added to the Site Plans stating that the porous pavement areas shall be maintained as to their function;
- 11) That the applicant shall review the invert to the pump station and revise accordingly;
- 12) That a landscape detail shall be added to the Site Plans;

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E. The application of **Key Auto Group, Inc., Owner**, for property located at **549 U.S. Route One By-Pass (Traffic Circle)**, wherein a Conditional Use Permit is requested as allowed in Article IV, Section 10-608(B) of the *Zoning Ordinance* to develop the site to include a new hotel, retail buildings, two restaurants and a convenience store/gas station, within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 234 as Lot 51 and lies within a General Business District. This application was filed on April 30, 2007 and is intended to replace a previous application filed on December 28, 2006

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill, representing the applicant, Key Auto Group, introduced Anthony Dilorenzo, owner, Gordan Leedy and Mike Leo, from VHB and Mike Parsont from NH Soils. Their request tonight was solely for a conditional use permit. This property was recently purchased by the applicant. The proposal is for a mixed retail use, hotel, convenience store, and gas station facility. The site consists of 18 acres, all proposed uses are allowed in the zone, and approximately 65% of the site is open space where only 20% is required. The sizing of the various units include a 120 room hotel, a 7,000 sf restaurant, 2 retail uses as well as a convenience store and gasoline station. Access into the site is a right in and right out on Route One and there is also access on Coakley Road. This is the second plan processed for this permit. The first application was reviewed by the Conservation Commission and denied by a 4-3 vote. Their concerns at the time of denial were that the proposal had too narrow of a buffer zone next to Hodgson Brook and sufficient consideration was not given to natural vegetation and the protrusion of buildings into the buffer zone.

They went back to the Conservation Commission with a revised plan and they voted to unanimously recommend approval. This is a parcel of land of significant value. This is an important area of the City for both commerce and for environmental considerations.

Gordan Leedy, of VHB, presented. With him were Mike Leo, Professional Engineer, and Mike Parsont, of NH Soils, wetland scientist. Mr. Leedy displayed the Existing Conditions Plan and described the site. There are three existing buildings on the site. One is a single story hotel building, and another two story hotel building with a walk out configuration with a 10' grade break which slopes gently towards Hodgsons Brook, runs under Coakley Road and ultimately under US Route One and into the North Mill Pond. There is an existing multiple story building that is just a short distance from the edge of Hodgson Brook. There are buffer impacts existing on the site. There are two access points to the site. One is from Route One, which is somewhat fixed as there is a limited access right of way. At the signalized intersection at Coakley Road, there is a second access to the site about 50' in. One thing they are going to need to do is move the Coakley Road access to a safer location, or 200 – 300' further back. In terms of the character of the site, the buildings are not in ideal condition. In the back of the site there is a large lawn area which has been modified and filled. Because of the vegetation, there is very little function to that buffer area. The rear third of the site is wetland which functions fairly well for flood storage as well as wildlife habitat.

They did a plan that was presented to the Hodgson Brook Committee and the Conservation Commission and there were several concerns. They were proposing to move the driveway, construct multiple buildings, as well as a number of low impact development techniques for managing stormwater treatment. The primary concern was the intensity of use on the site. Pushing the development out towards Hodgson Brook, there was a concern that there wasn't enough room left to adequately project a challenged resource.

They reconfigured the Hotel, reconfigured the retail to reduce its size and pull away from the wetlands, and eliminated one of the restaurants. They were able to pull the development area, with a couple of exceptions, to leave a 50' buffer from the wetlands, except where the buffer was already disturbed. They are proposing a 120 room hotel, 20,000 s.f. retail, a 2<sup>nd</sup> retail with a restaurant, a larger restaurant and a convenience store and gas station. Access right in and right out will be in approximately the same location as the existing and moving unsafe access to a safe position. By reducing the intensity of the development they are reducing the traffic impacts and impacts to the buffer. Originally they were proposing 101,000 s.f. of impact to the buffer and the proposal today is 81,000 s.f. of buffer impact.

Vice Chairman Hejtmanek asked if Coakley Road was in the buffer? Mr. Leedy confirmed it has a direct wetland impact so they are filling the wetlands. They cut that impact significantly from the first proposal.

Mike Leo, of VHB, described the stormwater management system proposed for the site. The grading difference is about 8' on the site. There will be a shallow fill section in the proposed condition in the front of the site and behind the building there is substantial fill. That will give them an area for underground storage. There will be catch basins in the parking lot with deep sumps in them. The storm drain wetland system will have hoods at select location. The fuel station will have an isolated stormwater collection system and the fuel pumps will have deep sump and hoods on them. In addition, they will pass through an oil/water separator and also put a safety valve on to shut off in case of emergency. About an acre of the site will collect in the storm drain system, go between the buildings and discharge into a series of underground chambers to allow discharge and treatment. The roofs for the larger retail and the hotel will be piped into another underground recharger system and that water will be allowed to infiltrate into the ground. The remainder of the site will be piped underground to a gravel wetland area, go under the first bay to allow sediment and the second bay is for treatment prior to discharge out to the wetland area. After the water goes through their treatment system, it also goes through a secondary treatment. They are proposing catch basins with pumps, going through a water quality system, there is a recharge area and any excess water will be taken back to the gravel wetland area. There will be an underdrain set in the area. The gravel wetland itself has a sump taking heavy sediment, which will go to a saturated gravel area which displaces the water to a second gravel area. In addition to the previously described areas, they will be putting together a Stormwater Operation and



Maintenance Plan. Additionally, they have areas along Coakley Road and part of the parking lot that can be used for snow storage

Mr. Leedy added that when they were discussing the site plan and the conditional use permit criteria with the Conservation Commission and with Staff, the question was asked, aren't they proposing a somewhat larger footprint so aren't they balancing out the benefits of the water quality methods with a larger footprint? They prepared a pollutant loading analysis which shows what the benefits of this integrated system are. They analyzed it a couple of different way. They looked at what the theoretical pollutant loading would be off of the existing site with no treatment. Then they looked at the pollutant loading with the same footprint of development with standard stormwater management. That included some additional pavement for relocation of the driveway. The third scenario was their site plan with their techniques. They analyzed total suspended solids, or TSS, total phosphorus (TP) and total nitrogen (TN). He referred the Board to a table that shows the estimated pollutant loading in pounds per year. This shows that this is the direction they should be going in terms of water quality management.

Vice Chairman Hejtmanek asked when they would start addressing the criteria for Conditional Use Permits? Mr. Leedy indicated that would be next in their presentation.

Mike Parsant, of NH Soil Consultants, Certified Wetland Scientist, was the next presenter. He indicated that one piece does address one of the four Conditional Use criteria in regards to vegetation and impacts to disturbed or natural vegetative states on the property. The only area now is in the entrance location. All other area is all mowed lawn and heavily disturbed. Hundreds to thousands of square feet of fill were added to the site in the 1980's. There is one small wetland area that is highly valuable. They placed the wetland treatment system in the proposal in this area as the flows will come through the area before entering into the Hodgson wetland system. He pointed out vegetative planting areas they are proposing. The plan lists out the density and types of those plantings. They will be creating a better buffer than what currently exists. They are entering some of the 100' buffer area but they are also proposing a much improved treatment system. They are proposing to contribute \$20,000 to a restoration effort in the Hodgson Brook area.

Mr. Leedy addressed the criteria. First, the land is reasonably suited for the proposed use and the wetland values will not be adversely impacted. Mr. Leedy felt that the land is certainly reasonably suited to the intended use. Although they are proposing some wetland fill, the high wetland values have been maintained. They will restore wetland areas to a much higher state of vegetation. As staff indicated, enhanced buffer will be a big improvement over much of the site.

Second, there are no adverse impacts to the wetland values of surrounding properties associated with the proposed project. They believe implementation of the plan with advanced water quality treatment, with improved buffer conditions, the water quality will be improved and therefore values on surrounding properties will be enhanced.

Third, the site plan depicts that the proposed work will occur in a previously disturbed area, and no alterations of the natural vegetative state will occur. The areas they are proposing for impacts to the buffer have been largely disturbed in the past and they have minimized them to what is appropriate to balance being able to provide the water quality treatment areas and restore the remaining buffer areas.

Fourth, the proposal is the alternative with the least adverse impact to the areas and environments under the jurisdiction of the City of Portsmouth ordinance. They believed that the restorative aspects of this plan along with the water quality benefits are positives and, rather than being an adverse impact to the area, will represent an improvement.

Mr. Leedy stated that stipulations from the Conservation Commission were that the applicant provide an Operations and Maintenance Plan which they are happy to provide along with logs of inspections.

Additionally, they talked about providing a level of landscaping. The hope is to provide a modern facility that will act as a gateway.

Councilor Dwyer felt this proposal is a concrete manifestation of the saying "Losing the forest for the trees". She asked them to readdress the fourth criteria as they simply repeated the answers of 1, 2 and 3 for criteria 4. Mr. Leedy indicated that the site is in desperate need of renovation. It is not a productive asset for the City or for the owner. In looking at ways to upgrade the site, they were careful to balance potential impacts to natural resources and making the plan work economically and physically in the redevelopment. The buffer impacts are really being reduced. They are pulling away from the brook thereby improving the situation. Also, some impact is a result of creating safe access to the site. The actual direct additional buffer impacts that are not actually necessary are quite small. They looked at this many different ways. They feel it is a good place for a gas station. They no longer use a MBT so that problem should go away. They have come a long way in the past 10-15 years regarding fuel tanks. This will be a state of the art fuel facility with double walled tanks and level alarms for leaks with a response plan in place to deal with leaks. They feel this is a good use of the property because of the location and the safeguards they have put in the design.

Deputy City Manager Hayden referred to a letter dated November 27, 2006 from the Hodgson Brook Advisory Committee, stating their concerns. Have they reviewed these new plans and comments in a formal way? Mr. Leedy indicated they had not done so in a formal way. Deputy City Manager Hayden felt it would be very useful to have that information from them. Mr. Leedy explained that the Advisory Committee has an executive director who was present at all meetings. Deputy City Manager Hayden stated she was looking for a formal weigh-in from that committee. She also referred to Mr. Romano's letter regarding wetland concerns.

Mr. Leo stated that they asked the Hodgson Brook Advisory Committee to readdress the letter and they told them that they did not have any further interest in writing comments as they were somewhat satisfied. The Chairperson came and spoke to the Conservation Commission both times and expressed concerns. They had extensive meetings with them to discuss how they were going to address their concerns. Their concern was intensity on the first plan but when they re-addressed the plan they were only concerned about maintenance. Mr. Coker asked if they would object to having the Board request a letter from the Advisory Committee concerning their position regarding the project?

Attorney McNeill indicated that from the beginning of the project, they have dealt with the Hodgson Brook Advisory Committee at every stage. That involved numerous meetings before plans were developed, participation in a site walk, meetings with them at Pease, and appearances before both Conservation Commission hearings. They have asked the Advisory Committee to make clear any concerns they have. They have done everything they possibly could to include them.

Mr. Leedy referenced Mr. Romano's letter. Traffic concern is not an issue for the Conditional Use level but there will be additional traffic at the intersection of Coakley Road and the ByPass but unlikely that the neighborhood will experience any additional traffic. Deputy City Manager Hayden referred to Mr. Romano's concerns about drainage and wetlands. Mr. Leedy confirmed, regarding drainage, that they are proposing a significant storage. At least a 10 year and probably 25 year storm can be contained by this system. There is no treatment today at all. They are planning, in addition to water quality measures, to provide a stormwater management system.

Mr. Will noted that a drainage study had not been done yet. Mr. Leedy explained that they have not designed the site yet. If they received conditional use approval they will go forward with a full study. Mr. Will asked what was the relation of underground storage tanks and the buffer? Mr. Leedy pointed them out on the plans.

Mr. Coker referred to the Hodgson Brook Restoration Project. He asked if they would have any objection to having the Board request a letter from the Hodgson Brook group, expressing their current opinion of the project?

Anthony Dilorenzo, owner, stated that they got involved with the Committee shortly after he purchased the property. They have incorporated a lot of the Committee's suggestions into their plans. The Director of the Committee came up to him, after speaking positively at the Conservation Commission meeting, and she commended them and thanked them for their help. He urged them to contact the Committee. Mr. Coker confirmed that he will ask the Department to request a report back.

Mr. Coker referred to the underground storage tank systems. Absent the gas station, the water treatment is certainly better than what is there now. He has a problem with a good portion of the gas station in the wetland buffer. From his perspective, he needs to become much more comfortable with the stormwater treatment of the gas station to be comfortable with this project.

Mr. Coviello referred to their comment concerning the existing site not having any treatment now. He asked if the couple of acres of grass that water is currently flowing over could be considered a treatment system? Mr. Leedy stated that it is but mowed lawn is a notoriously poor example of overland treatment. Even if they stopped mowing it would be tremendously more effective. You get very little biological infiltration as water runs off fairly easily. Maintenance with fertilizers actually have the effect of worsening water quality. Mr. Coviello felt that was a maintenance issue. Mr. Leedy felt that a natural 50' vegetative buffer would be far better than 150' of lawn area.

Mr. Coviello asked about the pollutant loading calculation. He needs an education on pollutants. Mr. Leedy explained that they don't meet the criteria of a vegetative filter strip. Regarding the removal of phosphates and nitrogen, as you slow water down they go through the gravel wetland system, there is a chemical process placed there as well as an anaerobic micro rich environment which also helps. They are proposing one swirl separator at the bottom of the site.

Mr. Will understood that a drainage study is usually done as part of the site review process and this is an issue of conditional use permit. Is there some sort of mid range between drainage study and what they have here? Mr. Holden indicated that the purpose of Board is to look at the conditions and the finding they must make tonight to decide whether to recommend or grant a Conditional Use. In his need to reach a conclusion if he needs additional information he felt it was prudent to ask for it. The City can seek an independent or have the Conservation Commission Chairman come in. The key is to indicate where he has an issue and give the applicant a chance to respond. Mr. Will stated that he is concerned with drainage in the southern portion and the issue of underground storage tanks. It's not so much a gas station on the site, but rather where the gas station is situated on the site. Mr. Will asked the applicant how he felt about additional information on the drainage study? Mr. Leedy indicated they can provide additional drainage information. This plan shows the level of where they are relative to drainage. This is a preliminary design and they cannot produce exact calculations. They are confident that the systems are adequately designed.

Mr. Coviello asked what would they learn from a drainage study? Mr. Leedy felt that Mr. Will was saying he needs more detail on the isolated area of the gas station. Mr. Coker echoed Mr. Will's concerns. He is concerned that in the past year they have had two 100 year storms. He does not have enough information regarding the handling of spillage. He would be much more supportive of that piece of the project with more information. Mr. Leedy felt the simple answer is that you always want to treat the first inch of rain.

Mr. Leo felt they have enough hydraulic calculations to make sure everything is adequate size. The By-Pass has nothing to do with the fuel station. There is a section regarding the fuel station, describing all of the protection provided and there is a spill protection plan. Mr. Coker confirmed that he does not

have enough information. He cannot support the application at this moment strictly regarding runoff and stormwater and potential spills from the gas station.

Attorney McNeill stated that he recognized the comments regarding the Hodgson Brook Association but they have been involved in the process all along. If an abutter group did not show up at the public hearing, then that should tell the Board something. They started working with them from the very beginning. With regard to Mr. Will and Mr. Coker's concerns, they will plan to do a better job at the next meeting to address their concerns. They will bring in professionals to address the gas station.

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

**DISCUSSION AND DECISION OF THE BOARD**

Deputy City Manager Hayden stated that she was not prepared to vote on this tonight but she felt this was a big improvement from what is there now in terms of conditional use but the key question is that she needs to be convinced that this is the least impact because there is still significant impact to the buffer. When they come back, that is what she wants to see. Attorney McNeill referred to criteria #4 where it speaks about the least adverse impact. He believes the ordinance intends to say that, given the circumstances, in order to produce the favorable effects that they get from this project, there also has to be an incentive and development potential for the developer to do it. The element of economics has come into the element of reasonableness and in this particular location and this particular project, in order to achieve these environmental results there needs to be a reasonable return on this project. Least impacting alternatives could mean a tremendously diminished development of this site but he assures them that that wouldn't happen.

Mr. Holden felt that Attorney McNeill was not adding the rest of the sentence, which was the least adverse impact to areas and environments under the jurisdiction of the ordinance. He felt what Councilor Dwyer and Deputy City Manager Hayden were getting at is the area of the buffer, and not the overall lot. Also, under criteria A-4, economic considerations alone are not sufficient reasons for granting conditional use. The Board is looking for more information.

Councilor Dwyer agreed with Mr. Holden. The burden belongs to the applicant.

Mr. Will made a motion to postpone based on criteria #4, for more information on the gas station and its impact in the buffer and information from the Hodgson Brook Restoration Committee. Mr. Coker seconded the motion. Mr. Coker's wanted to go into more detail. He would like to remind Attorney McNeill's of his kind offer to bring experts for the next meeting and a more detailed design of the drainage so the experts can education them as a Board as to the impact, particularly to 100 year storms, with sensitivity of Hodgson Brook. He would like to commend the applicant for all of the other improvements to the site. Mr. Will was agreeable as maker of the motion.

Deputy City Manager Hayden suggested inviting the Chairman of the Conservation Commission to attend the next meeting.

Mr. Holden referred to Sheet C-1, the Summary Chart. He felt it would be helpful to the Board if that chart reiterated what the existing conditions are and what the proposed conditions are. It is relatively meaningless without all of the information.

The motion to postpone to the June 21<sup>st</sup> Planning Board meeting passed unanimously.

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A TEN MINUTE BREAK WAS TAKEN AT 9:40 pm  
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F. The application of **Icon Realty, LLC, Owner**, for property located at **1303 Woodbury Avenue**, wherein Site Review approval is requested to construct an 11,186 s.f. 1-story retail pharmacy, with prescription drive-through window, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 217 as Lot 1 and lies within the General Business and Mixed Residential B District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill presented on behalf of Icon Realty, Owner. Also present were John Schmitz, Project Engineer, Randy Kangis, Architect, and Eric Eby, of Greenman Pederman Traffic Engineer. Attorney McNeill indicated that they are looking for site review approval. He handed out an elevation drawing. The Planning Board was seeing this project for the first time however they have been working on this with the City for over a year. The site is the old Woodbury Gardens site which also includes the old Angeline Pasta Shop. It is bounded on three sides by roadways. Existing and proposed uses violated just about every zoning setback on the site. The Applicant has received variances from the BOA which allows them to seek the proposed uses. Across the site are two residences and a formerly used school. Across from the site is Demoulas Shopping Center and a vibrant general business zone. The site plan has been subject to extensive review by TAC and Traffic & Safety. There has been a long standing entrance on Woodbury Avenue that will be a right turn in only. There will be a two way access off Granite Street and a one way into the site primarily for the drive thru pharmacy window. There is significant buffering around the site. They are not adding any new curbcuts. The site consists of 1.5 acres. 39 parking spaces are proposed.

John Schmitz, of BL Companies, reviewed the Site Plans. There are two existing signalized intersections, one at Granite and one at Market. He pointed out the three entrances. The building is centrally located on the site. The drive thru is for pick up and drop off for pharmacy use only. If it is not ready, they can park and the prescription will be brought out to them. The dumpster is in close proximity to the loading area and is screened. There is full two way access around the building for vehicles. They are proposing 39 parking spaces and 28 are required. Three handicapped spaces are adjacent to the front door. In addition, there were other stipulations regarding ADA access. They are extending the new sidewalk along Granite Street and the frontage of the site, as well as creating a new sidewalk along their main entrance drive. They were asked to provide another sidewalk ADA accessible ramp at the Market Street/Woodbury Connector. The TAC recommendation approval letter asked them to review the Woodbury Avenue sidewalk for better orientation. All variances that they received were added to the Site Plans.

Mr. Schmitz addressed the storm drainage and utilities. When they prepare a site design and Stormwater Management Plan, they try to mimic the existing drainage patterns on site. They designed a system to discharge at those same points, which is primarily north. The designed system provides for a 10 year storm event. The stormwater is collected on site in various catch basins, directed to two separate vortechnic system, the stormwater will feed by gravity to an underground detention system before getting to the infiltration system. The stormwater then flows to two separate locations. Currently all uses on site are serviced by full utilities. They propose to discharge into the Granite Street sewer. TAC requested that they TV that line and inspect the line and it was found to be in good shape. All utilities are available along the frontages but they will take them off of Granite Street. This includes gas, electric and telephone services and they will go underground. They included an erosion control plan in the packets and they went through the standards of NHDOT and developed areas short and long term sedimentation control items. They will have haybales and silt sacks at all catch basins inlets. Post construction sedimentation controls include sump pumps and two vortechnic units. Curbing is an erosion control method as well as all landscaping. They propose to add 39 trees to the site as well as buffering trees for year round screening to the building along Granite Street. They

submitted a lighting plan which DPW is reviewing. They received a letter recommending approval from TAC and Mr. Holden asked him to review the status of the conditions.

- 1) That the irrigation system specifications shall be provided to Tom Cravens, DPW, for his review and approval;

They provided these to Tom Cravens and he was satisfied with the plan.

- 2) That a photometrix plan be added to the plan set, for review and approval by David Desfosses, DPW;

This is being reviewed by DPW.

- 3) That sidewalks shall extend along the frontage of the property on Granite Street and shall be added to the Site Plans;

Those were added to Sheet C 101.

- 4) That a detail be added to the Site Plans showing the new ADA sidewalk from the corner of Market and Woodbury Avenue;

They added that to Sheet C 101.

- 5) That the Conceptual Improvement Plan be revised to clarify what is being removed and what is being proposed;

They have revised their plan accordingly.

- 6) That the applicant provide anticipated water demand for the project and include references of where that demand came from, ie., a similar type of store in another area or industry standard, and said report shall be stamped by a licensed engineer;

A letter was provided to Mr. Holden. They anticipate generating approximately 4,488 gallons of water per month. That is just for the building itself. They are proposing an irrigation system so in the summer months it will be higher by about 2,684 gallons in the summer months.

- 7) That "Do Not Enter" signs shall be placed at the one-way entrance off of Woodbury Avenue;

He pointed those out on the Site Plans.

- 8) That the applicant shall meet with DPW to review the sidewalk connection prior to the Planning Board meeting;

They are working on this with DPW.

Eric Eby, Traffic Engineer from GPI, spoke next. Mr. Eby stated that they completed a Traffic Study for the project and it looks at existing conditions and projected traffic from the project. They estimate the project will generate during peak hours approximately 90 – 95 vehicle trips/hour. After that there would be about 40 – 45 vehicles per hour. This is equivalent to the existing use. Pharmacy trips are based on surveys, and one half of the traffic will already be passing by the site so it is not a total increase of new traffic. Overall increase of traffic on the streets surrounding the site are about 5 20 cars per hour or a car every 3 - 12 minutes during peak hours. There is very little impact on the

intersections. Market/Woodbury intersection is at a level service C and will remain C. Granite and Woodbury is at a level service A and will remain A. One concern with Traffic & Safety was the left turns on Woodbury and into Granite Street and that they would hold up traffic. There is enough width to re-stripe Woodbury to add an exclusive left turn lane onto Woodbury to allow traffic to wait to make their left hand turn. Queues on Granite Street would not be more than 2 cars. They propose to re-stripe all lanes as they are faded. The existing signal is significant to handle the proposed traffic and does not require adjustments in timing at Granite Street which currently serves almost no traffic. They show the crosswalk that crosses Woodbury Avenue. There is a stone wall that limits site distance. They recommended eliminating the crosswalk which also gives them the ability to bring the left turn lane closer and stack more cars. They were asked to look at the loop detector on Granite. There is enough room so left and right turning cars will trip the signal. The signal is necessitated for safety reasons. There will be appropriate signage

Mr. Coviello asked about when leaving Granite Street to Woodbury Avenue, was there right turn on red? Mr. Eby indicated there was no right turn on red due to limited site lines. Mr. Coviello asked if there would be adjustments to timings on the light? Mr. Eby confirmed there would be no adjustments. There are minimum green times built into the Woodbury Avenue approach. He felt this intersection will actually work better.

Councilor Dwyer stated that with the more active use of the school now that it will be the music and arts school, resulting in traffic after school, evenings and a lot of drop offs, combined with the Capitol Improvement Plan for Woodbury Avenue to improve pedestrian access, Granite Street will have a different kind of use then when the study was done. She asked if the improvements anticipate that? Mr. Holden stated that TAC was primarily engaged in the impacts of this project. They might need to revisit that if the characteristics of the school change dramatically. Councilor Dwyer felt that the activity will change from school bus to parent drop off.

Mr. Coviello indicated that they didn't received a copy of the traffic study. Mr. Holden stated that was because they were all "A"s. The biggest issue was the curbcut at Woodbury and they made that one way.

Deputy City Manager Hayden asked about traffic circulation on the site. What prevents people from driving the wrong way? Mr. Eby stated there is a sign mounted on the post at the drive thru "Do Not Enter". But, you can drive around the site and there is plenty of room. There is two way circulation around the entire building.

Ms. Roberts asked about traffic and how it will work when vehicles will be coming out of Granite and going to Woodbury towards K-Mart. She asked about vehicles trying to jump into the left turning lanes and whether there would be enough queuing space? Mr. Eby felt there will be no competition when they get out on Woodbury and will have time to choose which lane they want to be in.

Mr. Coker stated he would have liked to see the Traffic Study also. He asked, in the traffic study, are there any indications that any intersection is having a reduced level of service? Mr. Eby confirmed that they all stay at the same level.

Deputy City Manager Hayden referred to the Landscape Plan. She noted that one side of the dumpster enclosure had plantings but there was nothing on the Market Street side. Mr. Schmitz stated they are not opposed to adding some there but noted that the dumpster is enclosed with a stained 6' wall. She also asked what the wall was made of? Mr. Schmitz stated the wall would match the side of the building.

Deputy City Manager Hayden didn't feel that the white pine creates much screening. Mr. Schmitz confirmed there was discussion with TAC about final treatment and the same issue was raised. Also

salt tolerance was addressed. They gave Cedar and another alternative and they are going to work together to come up with an alternative that offers year round screening.

Mr. Hopley referred to Site Lighting, Sheet C-105. The plan indicates Fixture Q1 and he could not find that. Mr. Schmitz was not sure that sheet was revised but it shows a flood light. The plan that went to DPW was revised. Mr. Hopley asked if that meant that Sheet C-105 was not applicable tonight and if there are more fixtures to cover their site? Mr. Schmitz believed they are proposing one fixture per pole so there are more fixtures. Mr. Holden stated that David Desfosses had the same concerns that Mr. Hopley did. Mr. Desfosses' goal was to decrease the intensity over the site so the end result was that a revised plan will be finalized. Mr. Holden indicated that they should be sure we get a report back from Mr. Desfosses.

Attorney McNeill stated that Traffic & Safety went to the site and the level of service at the traffic lights was not a concern to them.

Councilor Dwyer felt this was an effective beginning of the pleasant point of a gateway into our City. Given the height and what you would see, she was thinking of something a little more aesthetically pleasing than just a wall of arborvitaes. Attorney McNeill stated they are willing to work with Ms. Tillman on that. Councilor Dwyer was thinking of something even more pleasing like a wall rather than just vegetation.

Mr. Coviello asked if the building was brick on all four sides?

Randy Kangis, of Bruce Hamilton Architects of New Ipswich, NH, stated that was his exact impression of the site - as a gateway as it is on a higher elevation and the site transitions into a beautiful residential neighborhood with mature trees. He pointed out the rendering and stated that it shows that this is an appropriate building to the gateway. It reflects the traditional theme of Portsmouth in a thoughtful manner. There is a shingle roof that hides the top line of the building. At no point will you see the flat roof. The parapet shingle roof hides any mechanical rooftop units. There is a variety of gable roofs with a larger and more prominent gable at the entrance. There is no vinyl used on the building at all. The trims are a material that appears just like wood. There are a number of windows which are more vertical and rectangle shaped rather than picture windows. Some units are not fenestrations but are simply to break up the long wall surface. The shingles are an architectural tab shingle. They have a brownish wanes coating at the base with a precast concrete sill which complements the side color. Above that is more of a mill colored brick, like you see downtown. An option would be, since they are in a residential area, to utilize the hardy point horizontal point siding above the wanes coating.

Mr. Coviello asked, as this was a neighborhood pharmacy, if there will be any bike racks? Mr. Schmitz stated that none are proposed but they are not opposed to adding some.

Mr. Coviello asked about the drive thru's and the audio system due to the proximity of the neighborhood. Mr. Schmitz indicated this has been raised on other sites and this is no different. He does not have a decimal level but prescriptions are very private so the system does not broadcast what people are picking up. It is not like a restaurant drive through where you order at one stop and pick up at another, there is only one window.

Ms. Roberts asked Mr. Kangis to display the elevations of the other views which he did.

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

**DISCUSSION AND DECISION OF THE BOARD**



Attorney McNeill felt the three outstanding issues were the incomplete resolution of the ADA related sidewalk, Mr. Desfosses was trying to finish his review of the lighting plan, and consideration of Councilor Dwyer’s issues with regard to landscaping and creativity to be entrusted to Ms. Tillman’s review. He felt that all other items were addressed and they gave them as much as they could with regards to the building. They were asked not to make it look like the store in North Hampton which they have done.

Mr. Coviello made a motion to approve with the three stipulations outlined by Attorney McNeill and he also requested a bike rack. Deputy City Manager Hayden seconded the motion.

Mr. Will felt that the landscaping reconsiderations are for Gateway purposes, rather than just a landscaping plan. Councilor Dwyer didn’t see where they have any criteria but it makes her want to step up their gateway form design zoning plans.

Deputy City Manager Hayden also asked that the cross walk changes be referred to staff for review and approval.

The motion to approve passed unanimously with the following stipulations:

- 1) That a detail be added to the Site Plans showing the new ADA sidewalk from the corner of Market and Woodbury Avenue, subject to review and approval by DPW;
- 2) That a photometric plan be added to the Site Plans, subject to review and approval by David Desfosses;
- 3) That a Landscaping Plan be submitted for review and approval by Lucy Tillman;
- 4) That a bike rack be added to the Site Plans;
- 5) That crosswalk changed shall be referred to Staff for review and approval.

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G. The application of **The Home Depot, Owner, and Bed Bath & Beyond/Christmas Tree Shops, Applicant**, for property located at **100 Durgin Lane**, wherein Site Review approval is requested to demolish the existing building and to construct a 113,865 ± s.f. one-story, three-tenant retail plaza, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 239 as Lots 16, 18 & 13-2 and lie within the General Business district.

The Vice Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Malcolm McNeill, introduced the following individuals who were present: Dave Cameron, from New Jersey, Jim Winn from GPI, and Gregg Mikolaities, from Appledore Engineering. Attorney McNeill indicated this is a site that is very familiar to the Board as it is the old Home Depot site and previously was a Cosco building. The total lot area is 26.15 acres and the area of disturbance is 10.1 acres. They were before the Board in October of 2006 for a conditional use permit approval. The proposal is to demolish the existing Home Depot building consisting of 127,856 s.f., and to replace with a combined retail building, slightly over 115,000 s.f., resulting in a 12,000 s.f. reduction in building size. The proposed users are Christmas Tree Shoppes, Bed Bath and Beyond and the third area of retail space is not presently leased. Access to the site will be primarily from Durgin Lane, connected by the BJ’s intersection. There is also access from Gosling Road and as a condition of approval of the Home Depot Project, there will be a connector road constructed. There have been some improvements of the site including reduction to impervious surface and reduction of buildings in buffer areas. Under the existing development there is 516,000 s.f. of impervious area being reduced to 479,000, for a reduction of 36,000 s.f. On site impervious area within the 100’ wetland buffer for the

existing site is 72,000 s.f. and is being reduced to 50,300, for a 22,000 s.f. reduction. There is presently no stormwater treatment on the site, the site is basically asphalt with no treatment, so the site will be substantially improved.

McNeill stated that this project was basically a "traffic case". They have a different resolution to this case which has been endorsed by Public Works Director Steve Parkinson, the Traffic & Safety Committee and TAC, which is rather than this developer making specific improvements on its own, they have identified areas with the City along Woodbury where there are clear needs for improvements which are required even without this project. The issue of how to equitably acknowledge their traffic impact yet not make this developer bear the burden of issues that probably should have been shared by others or addressed in a different way. Through a long and protracted negotiation with the City, they have agreed to pay the City \$250,000 for improvements to the Durgan Lane, Woodbury Avenue area, including controller cabinets, improvements to traffic signalization system, emergency preemption system, improvements to Durgin Lane and a right turn lane of some consequence in front of Circuit City into Durgin Lane to address the project. The City has indicated the amount they will expend in that area is \$550,000. Attorney McNeill went on to explain the conditions. The City does not anticipate doing these improvements before 2008. So that they will not be held up, the City agreed upon them paying the \$250,000 and it will not delay the opening of the building. Secondly, this money will in fact be utilized in the general area of this development site. He handed out a general outline of the areas where the improvements will be made. The applicant is looking for a commitment that the applicant's money, which would normally be spent by them to make improvements to the area, the City will actually spend the money in this area. Attorney McNeill felt it was a different way of doing business but it is a very common procedure used throughout the state.

Gregg Mikolaities, of Appledore Engineering, reviewed the two plans. One outlined how the new footprint will sit against the existing Home Depot footprint. They have reduced the pavement on the site but increased the parking spaces. They had an opportunity to start over so they have squared off the lot and fixed some conflict areas. They have pulled pavement off of the turnpike and the buffers and they will be fully irrigated. They are putting in all new lights. They have introduced 1.5 acres of rain gardens. Everything is currently untreated but when they are all done, they will be treating the entire site as well as the Hampton Inn drainage to the site. There will be substantial landscape improvements. Out back they pulled the pavement back off the turnpike and added 23 trees. He displayed the elevations, which were in their packets. They buffered the loading docks with screen walls.

Mr. Mikolaities reviewed the TAC stipulations:

1. That all signage shall be added as part of the traffic mitigation plan for review and approval by City staff;

Jim Winn from GPI will address this.

2. That the applicant shall explore paving the entire access road, including extending past their property line;

They are proposing to repave this road to the property line. If the City chooses to spend the money they can pave the remainder of the roadway. They are pulling out some guardrails along the road that are not needed which will open up the road.

3. That the applicant shall prepare a Construction Management Plan and a Driveway Management Plan, for review and approval by the City Legal Department, Planning Department, City Traffic Engineer and City Manager;

They agree to prepare this.

4. That the Construction Management Plan shall include how work will effect the Hampton Inn and Saturn Dealership and how access shall be provided;

They agree to this condition.

5. That the Utility Plan be revised so that the fire service line is not shown as tying into the domestic line;

That was corrected on Sheet C-5.

6. That a second "Trash Area" be labeled on the Site Plans for clean up, located on the bottom right of the plans where a steep bank leads into the wetland area;

Peter Britz identified this second area of trash and they have agreed to clean that up and a note has been added to Sheet C-3.

7. That the applicant provide anticipated water demand for the project and include references of where that demand came from, i.e., a similar type of store in another area or industry standard, and said report shall be stamped by a licensed engineer.

They have submitted a spreadsheet on water demand, based on a Bed Bath & Beyond in Nashua which is similar to this facility.

Mr. Will asked about the rendering facing the turnpike. He asked if they are they planning on a mural similar to South Portland, Maine? Mr. Mikolaities indicated that the City did not want to see a mural as it would be counted as signage.

Jim Winn, of GPI, indicated that they prepared the original traffic study, dated October 2006 and evaluated the impact of this project. The access to the site is primarily on Durgin Lane but there is also access from Gosling. An additional benefit is not just a connection but the ability to have shared traffic between Home Depot and other uses on Durgin Lane. The study primarily centered on five signalized locations as well as the Woodbury connection with Durgin Lane. To summarize what they have been through, they had many meeting with TAC and Traffic & Safety. They received two responsive memos with two primary issues of discussion being trip generations and their contribution. Trip generations were used for a general shopping center. They also anticipated that the numbers in their traffic study were conservative. What was requested of them was to look at sales transaction data and they looked at the South Portland store, which is one of their busiest stores. There are certain weekends that are busier and one of the weekends they counted was one of those. The second site was Staten Island, NY which they felt was close to what they are proposing here. Their empirical data showed that it was fairly similar to the Home Depot Store. For mitigation there was a strong recommendation for a right turn lane on Woodbury by Circuit City but there are existing utilities and right of way constraints. This lead to the idea of a contribution so the City could do the improvements Durgin Lane were discussed and as it is fairly narrow a left turn lane was proposed into Shaw's.

Mr. Winn reviewed the improvements to be completed with the \$250,000 which include a new controller and cabinet, emergency pre-emption devise, off-site directional signs, Durgin Lane improvements, pavement overlay from the site to Gosling Road and a right turn lane on Woodbury Avenue to Durgin Lane.

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

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

Mr. Coviello asked if any outside businesses will be operating in the parking lot, as there is now, i.e., selling sausages. Attorney McNeil confirmed there would not be any outside businesses.

Councilor Dwyer referred to the area where you enter the site where the trash is and she asked what will be planted there? Mr. Mikolaities indicated there is a powerline easement that runs through there so they did all of the grubbing. The trash area is near a parking lot that is being removed. It is an isolated wetland that they will clean up. This is all going to grow back natural as brush.

Deputy City Manager Hayden asked about the merchandise storage area noted on the plans. Mr. Mikolaities stated it would be seasonal sales 3 times a year and this also came up with Home Depot and they realize that if they are going to put anything outside, they need to show it on the plan. Deputy City Manager Hayden asked if there was a note on the plan that it was only going to be 3 times per year and if not, she asked that be labeled as seasonal sales, rather than merchandise storage.

Mr. Will asked why the City had an objection to a mural along the Spaulding Turnpike side of the building. Mr. Holden did not recall discussion regarding the mural but it really isn't a site review issue and can be addressed at a later time. Councilor Dwyer felt they are creating a gateway issue and she asked when it can be addressed. Mr. Holden stated they could ask them to look into that and they should be able to work with the applicant. Attorney McNeill stated that they want to be cooperative but he was unsure where they are going with this. They are planting 23 trees on that side to try and block the building and they have tried to do their best on the back. Mr. Coker was astounded that the mural would even be in their purview.

Deputy City Manager Hayden made a motion to approve with TAC stipulations and that the merchandise areas be relabeled.

Attorney McNeill proposed that the \$250,000 be paid at the time of the building permit which relieves the applicant of any off site traffic mitigation responsibilities. Secondly that the City make every reasonable attempt to make their improvements in the area impacted by this project.

Mr. Will seconded the motion for purposes of discussion.

Mr. Hopley asked about the pavement overlay from the site to Gosling Road. Mr. Holden stated this was a misconception. Mr. Desfosses asked the applicant if they would consider paving it and they responded that it would be okay for the City to pave it and take it out of the \$250,000. To say that this is something that should go towards the \$250,000 is not totally accurate. Ultimately it is the responsibility of the land owner to properly maintain it and the City may choose to never do it. Attorney McNeill felt that Mr. Desfosses said that it was his wish for them to do it. They have consistently felt that this roadway is not in bad condition. During the elongated process of considering this, they put down the issues that the City wishes to address and if the City chooses not to do it, that's okay with them. Mr. Holden was quibbling now because there is probably no way that the City will use that money to pave the roadway and the question was rhetorical and was before the discussion of the money. Attorney McNeill would just like their list of improvements to be completed included in the record.

Deputy City Manager Hayden felt that the timing of the contribution should be agreed upon by City Staff and the City Attorney. Deputy City Manager Hayden would defer to staff regarding Attorney's McNeill's requested stipulation. She would like to stick with her original stipulation as she did not feel comfortable with it.

Mr. Will added a Stipulation that the Department work with the developer with signage issues and their intent to make a mural and if a tasteful mural could be created, pursuant to any sign constraints.

Deputy City Manger Hayden was not sure about that stipulation. Mr. Holden felt that all they needed now was a second for the purpose of amending the motion. There was no second so Mr. Will's stipulation was not accepted.

Mr. Hopley asked if the \$250,000 included the off site signage to get to the store? Mr. Holden confirmed that the City will work with them on the off-site signage. Attorney McNeill added that the signage will assist with traffic.

Mr. Coviello asked for clarification that the City is putting up the signs? Mr. Holden stated there were signs now listing businesses on Durgin Lane and they may post some directional signs. Councilor Dwyer asked if this would extend as far as getting people off of Woodbury and not going through the neighborhood? Mr. Holden confirmed it was limited to the general area, and probably would be limited to Woodbury Avenue, Durgin Lane and possibly on Gosling Road where the Saturn Dealership is. Mr. Holden did not think a lot of money was going to be spent on signage. Attorney McNeil indicated they are estimating \$5,000 to be spent on signage.

Deputy City Manager Hayden reaffirmed that the stipulations include the TAC stipulations, the merchandise storage area being revised on the plans to indicated that it will be used for retail X times per year, the timing of the contribution to be agreeable to staff and the City Attorney and that the City will make a good faith effort to make improvements with said funds, in the best interest of public safety and traffic.

The motion to approve passed unanimously with the following stipulations:

**Stipulations from the January 30, 2007 Technical Advisory Committee Meeting:**

- 1) That all signage shall be added as part of the traffic mitigation plan for review and approval by City staff;
- 2) That the applicant shall explore paving the entire access road, including extending past their property line;
- 3) That the applicant shall prepare a Construction Management Plan and a Driveway Management Plan, for review and approval by the City Legal Department, Planning Department, City Traffic Engineer and City Manager;
- 4) That the Construction Management Plan shall include how work will effect the Hampton Inn and Saturn Dealership and how access shall be provided;

**Stipulations from the May 1, 2007 Technical Advisory Committee Meeting:**

- 5) That the Utility Plan be revised so that the fire service line is not shown as tying into the domestic line;
- 6) That a second "Trash Area" be labeled on the Site Plans for clean up, located on the bottom right of the plans where a steep bank leads into the wetland area;
- 7) That the applicant provide anticipated water demand for the project and include references of where that demand came from, ie., a similar type of store in another area or industry standard, and said report shall be stamped by a licensed engineer

**Stipulations from the May 17, 2007 Planning Board Meeting:**

- 8) That the areas labeled "merchandise storage areas" be revised on the Site Plans to indicate that they will be used for retail "X" times per year;
- 9) That the timing of the monetary payment shall be agreed upon by the applicant, City Staff and the City Attorney;
- 10) That the City shall make a good faith effort to make the recommended improvements with said funds, in the best interest of public safety and traffic.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

A. Request for Review and Change of Duplicate Street Names;

Mr. Holden stated that the Department is looking for authorization to start looking at this process and they would like to start off with Market Street and Market Street Extension. They would like to schedule this for the June or July Planning Board meeting, depending on the agenda.

It was the consensus of the Board to schedule this in July.

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**V. AMENDED SITE PLAN REVIEW**

A. Amended Site Review Approval for **Temple Israel, Owner**, for property located at **200 State Street**, for the addition of one utility pole on applicant’s property with the underground service coming off said utility pole. Said amendment is due to constraints imposed by work on the City’s lower Court Street sewer, water and streetscape project. Said property is shown on Assessor Map 107 as Lot 66 and lies within the Central Business B (CBB) District, Downtown Overlay District (DOD) and the Historic A District.

Mr. Holden advised the Board that the Department has approved this as a minor plan amendment. Basically, PSNH and DPW have worked out a better system to deal with the utility demand by relocating a utility pole. It will still go underground to the Temple.

No vote was required.

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**VI. ADJOURNMENT**

A motion to adjourn at 11:35 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on June 21, 2007.