

**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.

JULY 19, 2007

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

MEMBERS EXCUSED: n/a

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

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6:00 -7:00 pm – WORK SESSION on Non-Residential PUD

Mr. Holden indicated that this was coming back to the Board from the City Council. Deputy City Manager Hayden reminded the Board that they had been working on the NR-PUD for some time and the intent was to open up development in this district. Although it became focused on the Lafayette Road parcel, she reminded the Board that they are referring to all OR parcels that qualify. The City Council did not vote in favor of the Board’s proposal and they have since had a meeting with the City Council to find out their concerns. Mr. Taintor will help the Board deal with the City Council concerns as well as the abutters to the Lafayette Road parcel. Tonight is to find out what the Board wants to do with this ordinance. Mr. Taintor handed out a document summarizing the recommended changes.

Mr. Taintor ran through some of the changes on his handout. On Page 2, C-3, they added a requirement that the track should have 200’ of continuous frontage on a City street. There is a parcel on the North Mill Pond that is very long and skinny which runs along the pond and they felt it would be inappropriate to develop that site in this way.

On Page 2, E-1, they added a clarification by adding “as of right” to clarify whether something was permitted by right or by special exception.

Under E-2 they crossed out words and moved them to other parts of the ordinance.

Under E-2 & 3 they moved performance standards to another area.

On Page 4, G-5 gets into the significant changes. This is new and addresses some of the potential impacts of a development, ie., parking spaces shall not be oriented towards residential areas unless they are screened by a solid wall.

They re-titled the landscaping section to landscaping buffers. It now starts with the effect of what the landscaping buffer should be. Under Item 2, bottom of page 4, top of page 5, there are alternative options to consider which are partly stricter and partly more lenient.

On Page 5, Items labeled 3 & 3, Landscaped Buffers and design standards to include a variety of items. If they are facing or adjoining a residential district there are even more requirements to block headlights or similar impacts. They address berms, salt tolerant species, and mulches.

On Page 6, Performance Criteria for Industrial Uses is the same but is packaged together.

At the bottom of page 6, they added that they need a plan prepared by a landscape architect.

On Page 2, D-1 & 2, they deleted “non-accessory” use from the district. On D-5 they clarified when measuring the distance for the hazardous use it is the residential property line and not the residential district line.

Deputy City Manager Hayden stated that they tried to summarize some items to assist the Board members. Uses were summarized to show whether they are allowed now and how they would have an added layer of protection under the NR-PUD. She felt there was confusion over what would be allowed. There are not a whole lot more permitted under this proposal.

Deputy City Manager Hayden distributed the last handout showing what is allow under the current ZO and what would be allowed under the proposed ordinance for landscaping. The left hand column was the uses from the Use Table and those were simplified. The top 8 uses are permitted in the existing OR zone. (Business offices, hospitals, medical offices, professional offices, schools, hotels and motels, temporary structures, construction trailer and earth products removal). The third column shows what the proposed NR-PUD would propose with an added layer of protection and would require a conditional use permit. Going down to the industrial occupancies and food processing, those are currently not permitted and under the NR-PUD they would be allowed if they could meet the requirements of the Conditional Use Permit and performance criteria. Restaurants, gallery or museum, arts and crafts studio or workshop are not allowed in the current use table but they would be allowed under a Conditional Use Permit under the NR-PUD. The bottom block (research, development and testing labs, biological or chemical labs, hotels and motels over 500 people, outdoor storage, satellite dish receivers and heliport) are all currently allowed in the OR district by special exception and she felt there might have been some confusion over this at the City Council but the test to get a Special Exception is an easy threshold rather than a variance test. Under the proposed NR-PUD they don't permit those uses. They tried to summarize the uses as there was confusion over is permitted under existing vs. what would be permitted under the proposed NR-PUD. It's not really much more that would be permitted.

The second handout showed the differences in the landscaping and parking requirements. Ms. Tillman reviewed the landscaping and explained how the proposed NR-PUD requires considerably more landscape buffering. The existing Zoning Ordinance requires 50' depth of frontage and 1 tree per 30' of linear frontage. The proposed NR-PUD required 50' depth of frontage, 1 tree per 27' of linear frontage plus 4 shrubs per 100 s.f. plus for abutting residential (all sides) an opaque screen. She also reviewed parking. The current Zoning Ordinance allows parking in front of the building 50' from the property line and 100' from residential and mixed residential districts and in the PUD you are not allowed to park in front as that area would have to be buffered. The parking would have to be in the back or on the side and those parking spaces would be required to face sides of the lot or to be screened by a solid wall.

Mr. Coviello realized that the 2,325,000 gallons was a conversion from barrels but he felt it seemed silly. What he heard back from the City Council was that they had a concern with the setbacks and he didn't see where those were changed. He believed the Council was looking for 100'. He also

wondered under J, 2-f, if that would be a licensed architect? Mr. Taintor felt they would check on that. Mr. Hejtmanek felt they should consider the 100' setback. In a controlled way they are going to allow industrial uses but they are awfully close to residential areas. Mr. Coker disagreed and asked how that would impact the two areas going from 50' to 100'? Deputy City Manager Hayden Cindy thought they should probably clarify what setback they are talking about. What don't they want near the street? Mr. Hejtmanek indicated for him it was the building. He is concerned with noise pollution and odors. Deputy City Manager Hayden stated that H,3 and H,4 have 300' setbacks (brewery) so the setback would be used for office buildings. Councilor Dwyer felt the Councilors who were concerned felt that was 50' from the zoning boundary which is a different thing which would have put it very close to the road. They thought it was measured from the middle of the road. Mr. Taintor agreed there are several setbacks. He felt it was important to keep the front setback of 50' the same. If they moved it back they would be impacting the development and would be allowing more room for parking in the rear. The H3 & H4 is a 300' setback and should be kept the same. Under D,3, it says that any use not permitted in the OR district is 75 feet and he thinks they could consider increasing that. Mr. Coviello asked about 100' for industrial and food processing. Mr. Coker suggested under E,3, 75' from any residentially zoned property. Given the landscape buffer design standards which are much more strenuous than what they currently have and it sounds like a really good buffer. He doesn't have a problem with 50' from the OR property line.

Deputy City Manager Hayden felt they have to keep the balance in mind that they want to create something good for this district and if they add restrictions that are so restrictive no one will want to develop under the new NR-PUD. Ms. Geffert asked for clarification on the setback change recommendations. Mr. Coviello felt that D,3 doesn't deal with the property line but deals with the street so it is irrelevant to change it. He recommends under 1A, one more line item for industrial and food processing to go to 100'. Ms. Geffert felt some movement would be needed to satisfy the Council concerns. Chairman Ricci indicated that everyone likes the landscape buffer but he asked for a definition of exactly what landscaping is. Mr. Taintor pointed out that the section on the bottom of Page 4 is the previous draft and at the top of Page 5 he had two alternate ideas on landscaping. That would describe exactly what the landscape buffer would have to be. Chairman Ricci noted that 3A says it would include a combination so he asked if they would have to identify what was required? Mr. Taintor confirmed that the other section would cover it. Mr. Coker wanted to clarify where the boundaries were. If they leave it at 50' for a setback of the building from the property line, will between the NR-PUD and a residential area have a landscape buffer in it. Will there be a landscape buffer between the edge of Route One and whether a building goes in?

Mr. Taintor explained two options. If they went with the option at the bottom of page 4, that would be a 50' buffer of landscaping. The front is always the side that faces the street. The second option on the top of page 5, was used very successfully in Framingham at a Shopper's World, and the buffer shall be 1/3 of the distance between the street right of way line and the building line. If the building was set 50' back from the road, they would only need to have 1/3 of that but it would still be very dense. Ms. Roberts mentioned a sidewalk. Mr. Taintor confirmed that a sidewalk would be in the public way and would not be included in the landscaping buffer. Mr. Coker felt they can justify a 50' set back from the property line with the buffer. He asked if that would be acceptable to the City Council? Mr. Hejtmanek felt that the buffer is progress in his mind. Mr. Taintor felt this was very similar with what they did with CBA. They heard the concern, which is impact, but there is another way to address impact. Chairman Ricci felt that the landscaping was a lot and maybe a model would be helpful for the City Council to get a better understanding. Councilor Dwyer suggested that all items should line up, even if they need to repeat them in different parts of the ordinance. She would also like the maximum flexibility for the landscaping, at the top of Page 5. She doesn't want them to just go "cheap" and the more they require, the cheaper the landscape quality they will get. Their vision was to do something more campus style and she doesn't want them to reduce that intention. Is there another way to be more descriptive. Chairman Ricci felt that was a difficult request. Deputy City Manager Hayden preferred the flexible approach. Chairman Ricci felt it was important that the Planning Board would have the final say on what was proposed. Mr. Coviello noted in 2A, it is physically describing

the width and at the top of page 5 it seems to deal with the depth. Mr. Taintor explained those are two alternate ideas. Mr. Coviello felt they could they be combined. Mr. Taintor agreed they could do that and it would probably strengthen it. Mr. Coviello suggested rather than describe sidewalks they could just deduct 5' from the depth. Mr. Taintor felt they could take it out as it's too much of a red flag. Ms. Geffert thought they could combine some of the requirements. Mr. Taintor explained that the one tree per 27' does not mean they have to be 27' apart but rather they could cluster them together. Chairman Ricci stated that would deal with accessways and views.

Deputy City Manager Hayden referred to Page 6, I, Performance Criteria for Industrial Uses. She asked what uses does this refer to? Mr. Will felt that a hotel was a concern of some of the residents. Mr. Coviello felt grouping the trees is a good idea but how do people know that? Mr. Holden indicated that a project will go through plan review.

Deputy City Manager Hayden suggested taking a step back and asked if it made sense to move forward as written right now or should they consider this as part of the overall zoning re-write? They should think about that. Chairman Ricci stated he would like to see a table of buffers from zone lines, property lines, types of uses so that it is something that is easier to read. He felt the Council could read that much easier also. Deputy City Manager Hayden suggested they could do a graphic representation on the trees and shrubs. Councilor Dwyer asked about revisiting limiting this to 10 acres. She knows they can't do it on anything that is too small but wondered if there was a number between 5 and 10 that would work. Mr. Taintor stated he was also thinking about the landscaping and screening model as a more general model for the commercial development corridor. In looking at the OR district, which became a drive thru analysis, they could go along that direction. If there is very little use change in the Ordinance, it comes back to Mr. Holden being right after all and they didn't have to do the PUD. Deputy City Manager Hayden added that still wouldn't give them the mixed use campus style. Mr. Coker asked if it was the sense of this Board that it is acceptable to have a 50' setback from the property line given the buffers. Mr. Coviello agreed, except for industrial and food processing. Deputy City Manager Hayden stated that both of those uses have to meet very strict performance criteria. Mr. Coviello noted that as this is such a short document, he felt that would reflect well for the City Council. Deputy City Manager Hayden felt that wouldn't leave much land area to work with if they changed the buffer. Mr. Hejtmanek agreed with Mr. Coviello. Mr. Taintor asked if the proposal to increase the 75' buffer from any residential property, which means nothing on Lafayette Road, to 100' from the front lot line of the lot? Mr. Coviello felt they should keep the 50' except for industrial use for front lot line use 100'. Mr. Taintor felt it depends on what property line they are talking about. Non hazardous use set back is the same on the front as it would be for an office building but if he was talking about something abutting the side of a residential zone or in the back it would have to be 75' from it's own property line. Mr. Coviello confirmed that the front would have to be the street side and that is the only side he is talking about. Mr. Coker felt that a 50' buffer was sufficient with landscape requirements. Deputy City Manager Hayden asked what would be an industrial use that was not an H3 or H4. Mr. Hopley indicated any type of manufacturing and assembly. She doesn't see the need for the additional setback for those. Ms. Roberts felt they should stay at 50'. Mr. Hejtmanek felt they should increase the buffer to 100'. Mr. Hopley felt they should stay at 50'. Mr. Will was leaning towards 100'. Ms. Geffert felt they should leave it at 50' but add frontage to H3 or H4 uses. Councilor Dwyer was split between Mr. Coviello and Mr. Hejtmanek so she recommended going with 75'. One analog for her is that they are building a new fire station on the same strip and they wouldn't want to have to put that back 100'. Chairman Ricci wanted to stay with 50'.

Deputy City Manager Hayden felt that Mr. Taintor now has some minor edits from the Board and those revisions could be brought back at next Thursday's Planning Board meeting. The Board has the options of reporting back to the Council that they are taking no action, they want to incorporate parts and pieces in the new Zoning Ordinance rewrite or they can bring back a new proposal.

Mr. Coker stressed that they need to have a very simple explanation of this proposal as he doesn't want any confusion again. Deputy City Manager Hayden agreed that it was too complex last time.

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Chairman Ricci advised the public that, due to the length of the agenda, he would like to take Public Hearings F-J, as well as New Business and Old Business and schedule them for next Thursday. Mr. Will made a motion to reconvene next Thursday, starting with Public Hearing F. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the May 10, 2007 Planning Board Work Session – Unanimously approved.
2. Approval of Minutes from the June 7, 2007 Planning Board Meeting – Unanimously approved.
3. Approval of Minutes from the June 21, 2007 Planning Board Meeting – Unanimously approved.
4. Approval of Minutes from the June 28, 2007 Planning Board Meeting – Unanimously approved.

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Chairman Ricci asked to take Public Hearings C & D out of order. Deputy City Manager Hayden made a motion to take items C & D out of order. Mr. Hopley seconded the motion. The motion passed unanimously.

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II. PUBLIC HEARINGS

D. The application of **David F. Mahoney Marital Qtip Trust, Owner, and Granite State Minerals, Applicant**, for property located at **227 Market Street**, wherein in Site Review approval is requested to relocate an existing 24' x 58' scale building and to install a second scale, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 119 as Lot 6 and lies within the Waterfront Industrial (WI) District;

Mr. Holden advised the Board that the applicant agreed to be postponed until the July 26th meeting.

Mr. Will made a motion to postpone to July 26, 2007. Deputy City Manager Hayden seconded the motion. The motion to postpone passed unanimously.

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C. The application of **Michael and Leanne Edwards, Owners**, for property located at **64 Brackett Road** and **Eugene and Kimberly LaCroce, Owners**, for property located at **68 Brackett Road**, wherein Preliminary Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 22 as shown on Map 206 decreasing in area from 6,738 s.f. to 6,338 s.f. and street frontage on Brackett Road decreasing from 62' to 58' and Lot 21 as shown on Map 206 increasing in area from 5,849 s.f. to 6,249 s.f. and street frontage on Brackett Road increasing from 56' to 60', and lying in a zone where a minimum lot area of 15,000 s.f. and 100' of street frontage is required. The intent of this application is to convey a 4' x 100' strip of land situate between the two lots from Lot 22 to Lot 21. Said lots are shown on Assessor Plan 206 as Lots 21 and 22 and lie within a Single Residence B District;

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eugene LaCroce, of 68 Brackett Road, owner and applicant presented. This is an application to correct a title defect. He provided a photograph to the Board showing the property. The section of land in question has been used by the property since 1957 and anyone would assume that it was part of his property but the chain of title did not reflect that and in 2004 a title search confirmed it. From what they can figure out, at one time one family owned both parcels and the parents lived at 64 and the children lived at 68. The transactions happened before zoning. The purpose of their application is to correct the title issue and set the record straight.

The Chair asked if anyone 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. Hopley indicated that they were given two plans with the proposal and as this moves forward someone should verify the metes and bounds and there should only be one set of plans. Mr. LaCroce explained that his survey is correct but he wanted them to see both parcels.

Mr. Holden indicated that this is just for preliminary and that will be clarified at a later date. This has to go to the BOA and then back to the Planning Board for final subdivision approval.

Mr. Coviello made a motion to grant preliminary subdivision approval. Mr. Will seconded the motion.

The motion to grant preliminary subdivision approval passed unanimously.

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A. 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; (This application was postponed at the June 21, 2007 Planning Board Meeting)

Chairman Ricci stepped down from this hearing and Vice Chairman Hejtmanek chaired the hearing.

The Vice 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.

Mr. Coker pointed out that the legal description included a gas station/convenience store and the gas station is not on the plan. Mr. Holden indicated that the applicant will clarify what they are requesting.

SPEAKING TO THE APPLICATION:

Attorney Malcolm McNeill presented on behalf of the applicant. Also present were two representatives from the site engineers from VHB and Mike Parsont, their environmental consultant. As the Board knows, the process of coming before them relating to the Conditional Use Permit and the relief frequently involves discussion about the merits of the criteria. Mr. Coker had previously asked to be convinced on criteria #4 and many Board members were concerned about the gas station on the

site. They are also aware that they received a petition from abutters regarding their concerns about the gas station. They have listened to all of that and they wish to make a reasonable use of this valuable property. They deleted the gas station and have addressed the issues of underground tanks and spillage. The response to the least impact alternative, in Attorney McNeill's view, would be nothing and to not develop the site at all. However that would not be contemplated as reasonable. They bring to the Board now all permitted uses and only require a Conditional Use Permit. There are facts that need to be brought forward. They appeared before the Conservation Commission twice and an independent consultant was hired and concluded that their measures were reasonable. Despite that, the Commission voted 4-3 against the project and made comments that required addressing. Subsequent, they went back with a revised project but retained the gas station and the Conservation Commission approved the project unanimously with the gas station on May 9, 2007. They came to the Planning Board and heard concerns about the gas station and the impacts. They have curtailed restaurants, removed the gas station and shuffled the buildings on the site. They do not believe that they need to go back to the Conservation Commission and feel the Board can make an independent determination. Another item was the intensity of the development of this project. This is a very valuable piece of property and they need to be able to reasonably develop this property and that is what they are proposing. It is not a car dealership or a form of uses that might not be as attractive as others. They have a desirable hotel and desirable restaurants. Regarding the intensity issue, they are currently before them for a Conditional Use Permit and will be back for Site Review.

Gordon Leedy, of VHB, Landscape Architect and Planner, stated that they had a significant discussion at the last hearing so he would be brief. He pointed out the site on the plan which is bordered by the traffic circle, the Route One by pass, Coakley Road, a signalized intersection and a right in/right out by the by-pass. Most of the site circulation and the uses remain the same as before. The major difference is a restaurant along with some retail in the bottom section which they shifted down to the area occupied by the gas station before, a building was reduced by 15, 000 s.f. and they sited a restaurant where the other two buildings were before. This is similar but a little less than what was presented before from an intensity standpoint. Mr. Leedy felt that wrapped up the differences between the two plans.

Vice Chairman Hejtmanek noted that the building encroached in the buffer and they haven't revised that and the new restaurant seems to be entirely in the buffer. Mr. Leedy explained that the issue is that they need to move the road and that area of the site is largely going to be impacted by the redevelopment of the site regardless of what configuration that may take. They need to provide safe and adequate access to the property.

Deputy City Manager Hayden asked what the total square feet of the impact to the buffer is currently and what the total is under this new proposal. Mr. Leedy stated it hasn't changed and is 81,000 s.f. Deputy City Manager Hayden confirmed there was no change to the plan except the restaurant and retail and the elimination of the gas station.

Councilor Dwyer noted, in anticipation that restaurant A & B will be drive thrus, the question is whether the drive thru would be in the buffer for Restaurant A. Mr. Leedy confirmed that was correct and both restaurants anticipated to have drive thrus and the drive thru for Restaurant A would be in the buffer. But, he repeated the area would be largely impacted by the access road anyways. Councilor Dwyer asked if he meant during the construction stage? Mr. Leedy confirmed that was correct and no drainage will go untreated to the brook or the wetland area. All water coming from the site goes through a treatment drain that significantly reduces pollutant loading to the brook.

Deputy City Manager Hayden asked, since the stormwater maintenance is so important, how do they guarantee that their function over time will continue to work and what level of maintenance do they propose?

Mike Leo, of VHB, stated they will be preparing a Stormwater Management Plan at the next stage which will include a list of each of the maintenance proposed for the site, including catch basins, gravel wetlands, pavement sweeping and maintenance logs will be kept on sediment accumulations. If there is something that requires over time a structural fix, that will be kept in the inspection logs as well. The logs will be available to the City and provided to the City every year. Deputy City Manager Hayden's real question asked how low maintenance are these and are they a tried and true technology? Mr. Leo stated that the catch basins will have to be inspected yearly and vacuumed out. The sediment basin will have to be cleaned and sediment removed.

Mr. Coker asked about drainage and stormwater treatment and if on the June 12th and June 29th plans the gravel wetland stormwater system are identical? Mr. Leo confirmed they were the same. Mr. Coker asked him to detail the drainage in the new area for retail and restaurant A. Mr. Leo explained that the area has a series of catch basins in the parking lot and access drive, routed along the edge of the road to the high side of the wetland where they will discharge to the first fore bay and the gravel wetland prior to discharge. They propose to treat the first inch to hit the pavement in any storm event, which would be 90% or greater. Mr. Coker asked if inch 2 and 3 go right into Hodgson Brook? Mr. Leo responded if they get one inch of rain and then have a delay and then another inch of rain, it would all go through the system. The first inch of rainfall will get better than 90% of everything on the pavement. For the second and third inches, if the first inch generated 5 CSF of runoff and 3 inches of rainfall generated 10 CSF of runoff, 5 CSF would go through the rain treatment and the other 5 CSF would go right to the Hodgson Brook. Mr. Coker stated there was a project a number of years ago before this Board that was 100% in the buffer and the Board was concerned about pollution into the wetlands. It was resolved that the applicant agreed to testing the water in the wetland once a year for five years. It was a reasonable accommodation in his opinion. Mr. Coker's concern is Hodgson Brook as people have worked very hard to clean it up. Would it be an unreasonable request to agree to test the water, and if it is being polluted, take remedial action? He asked them to think about that. The gas station was the one that did it for him and he did not believe they could have a gas station on that property. Mr. Leo responded that is something that has been done on other sites. He understood that the Hodgson Brook Committee was going to set up testing right next to their site.

Mr. Coviello asked what their consideration was of putting the drive thru where the retail was and not inside the wetland buffer? Mr. Leedy asked if he was suggesting switching the two buildings? Mr. Coviello noted that the drive thru restaurant is the smallest building but the most intensive use. Mr. Leedy indicated that drive thrus can only go in one direction and there are issues with that by switching them. He felt they could look at that but, as he mentioned before, the buffer is to enhance water quality by treatment of overland flow so regardless of where the drive thru is it will not have any greater impact on the buffer. In addition to the gravel wetlands, it discharges out to an old mitigation area of wetland area which provides further treatment.

Deputy City Manager Hayden asked about the gravel wetland planting plan and whether any changes had been made since the Conservation Commission approval? Mr. Leedy stated it had been changed and it was a more extensive plan.

Mike Parsont, of NH Soils, referred to an aerial photo that was provided to the Board and referred to the yellow line which was the mitigation area. He explained what happens when rain bypassed the gravel wetland. He pointed out the mowed lawn, which is greatly disturbed, which was a mitigation area consisting of 4 acres of fill to treat the run off before it got to the Hodgson Brook. The water will still go through the mitigation area and provides a secondary treatment method. It is very much still functioning. With all that fill in the buffer right now, it is serving very little function value. He felt that the plantings and wetland mitigation system that they are proposing is much better than anything that they currently have.

Mr. Coviello referred to the colored plan and noted that the yellow area is currently treating. He asked if this was new information as they previously stated that there was no treatment in that area. Mr.

Parsonts stated that they were told it was out there at a Conservation Commission hearing and went out and identified the mitigation area. Mr. Leedy explained it is a further safeguard before water gets into Hodgson Brook which is what everyone is concerned with.

Attorney McNeill indicated that concludes their presentation.

The chair called for speakers.

Ralph DiBernado, of 1374 Islington Street, former member of the Traffic & Safety Committee. He thanked the Board for their public service. He believes people speaking tonight are trying to save the residential neighborhoods of the City and to prevent unacceptable developments. He is very concerned about the impact on the wetlands. He asked about the gravel treatment system and whether it is replaced every 5 years or so? He believes the Conservation Commission has the right to review this again as there have been changes. "Another fine restaurant with a drive thru" was an interesting statement by the applicant. He sees no reason for an exception and it only makes the development larger with a larger impact on the wetlands.

Vice Chairman Hejtmanek referenced the petition which had been received by the Board and was signed by 90 residents.

Peter Bresciano, 101 O'Leary Place. He felt this project was encroaching on the wetlands as a result of a cost analysis of the project. Buffer zones were set up for a reason and should be followed. He was responsible for all oil/water separators on Pease and without constant maintenance and testing, no system will be any good and that has been proven out at Pease. He also felt that a mitigation area was not a treatment area. He felt the same thing will happen that happened at Pease and they will be sorry that the Board allowed the impact on the wetlands. The wetland buffers were set up to protect the wetlands for hundreds of years.

Rebecca Wiley, 6 Coakley, direct abutter for 41 years. She is very pleased that the gas station has been eliminated. She also thanked the Board for their tough questions. She has not been able to see the new plan but has several concerns. She is concerned about the buildings being in close proximity to Hodgson Brook and treatment of rainfall over one inch is a concern as we have had two 100 year storms recently. In January of 1976 they had snow, which turned to rain, and their property line sits about 125' back from the Hodgson Brook and the water flooded and extended over their property line and also went across Coakley Road. Their buffer is valuable and irreplaceable. Her concern is also traffic which this development would generate. She hopes the Board will be diligent in addressing all concerns.

Vice Chairman Hejtmanek reminded the Board and public that traffic was a site review issue and not being considered this evening.

Mark McNicholas, 66 Coakley Road. His major concern was traffic. He has lived there for 32 years and they already have a traffic problem. Additional traffic and changed traffic patterns would affect their value of life.

Colleen Romano, 3 Coakley Road. She was very concerned about Hodgson Brook. There is alot of wildlife including deer, muskrats, and cat o nine tails. She is also very concerned about traffic. The intersection at Borthwick and Route One is always backed up and that makes it very dangerous at the Coakley intersection.

Mr. Holden felt compelled to remind the public that this is a Conditional Use Permit application and it is not appropriate to bring up traffic or other unrelated concerns at this hearing. There will be other hearings where traffic will be addressed.

Bill St. Laurent, 263 Colonial Drive. He is very concerned with the Hodgson Brook. He lives in an area where there was a great deal of filling at Liberty Mutual and that water backs up to Panaway Manor so they have to be very careful about filling in around brooks and streams. The Brook is as valuable as the property. He also asked about the lighting that would be used for the project. He is concerned about traffic. The Board has to be very diligent in their deliberation.

Candice Dolan, coordinator of Hodgson Brook Restoration Project. She thanked the developers for eliminating the gas station. She is pleased to hear this will go before the Site Review process. The developer has represented that the stormwater system is pushing the density of the site but she sees it just the opposite.

Cathy Pierce, 876 Woodbury Avenue. When the traffic circle is reconfigured, there may be additional encroachments on the wetlands so this encroachment may be the straw that broke the camel's back.

Lenore Bronson, 828 Woodbury Avenue. She asked them to consider that cars produce run off. About 7 years ago there was a wetland on Wholey Way and engineers were hired when a residential development was proposed. When that property was measured, it did not come within the 75' wetland buffer, which was the requirement at that time. That property was built on and as a result there were quite a few animals in the neighborhood yards and a pristine wetland was destroyed. Water has now come down from that area and eroded the land, creating a tunnel to the wetland and the pond is now stagnant and the ducks are gone. The wetland set back was then increased to 100' and that is an important ordinance. If they let a 5 story hotel with all of the impact into a 100' buffer, what don't they allow? Just because they took out a gas station that shouldn't mean they should be allowed to have retail and restaurants in the buffer instead.

Mr. Coker advised the public that the 100' buffer is not a 100% prohibition against impact. It is to trigger a process to make sure that the four conditions are met.

Tom Sweeney, Woodbury Avenue. He did not believe the addition of a hotel, restaurants and retail would be an improvement over what they have now.

Stuart Wisong, 41 South Mill Street. He is very concerned about the area and the quality of life for the residents. He would like to see the area going towards beautification rather than over-development.

Peter Bresciano, 2nd time speaker. He hopes there is a snow removal plan. He repeated that wetlands are used to handle run off.

Francis Provost, 103 Woodlawn Circle. He felt that developers are ruining his City. This creates the need for more Police and more Fire personnel. He doesn't see where the residents gain anything.

Rebecca Wiley, 2nd time speaker. She referred to the request to have testing done to make sure the stormwater treatment is working properly. She indicated that she observed them getting samples of the water on Pease and testing it but they are still cleaning up the base, even with all of that testing.

Bill Healy, Dennett Street. Variances and exceptions are granted by the City but Portsmouth does not need to do this. He does not see any reason to grant an exception to the wetland buffer.

Attorney McNeill appreciated the comments by the residents. He emphasized that there is no contradictory scientific evidence with regard to the criteria that needs to be satisfied by this project. It is off a highway ramp, has been used for commercial uses for years, and is somewhat similar to the new Home Depot property. The land has no treatment currently and may continue with it's current use with no approvals. He felt there was no doubt that the circumstances of this site will be improved. There is no evidence to support impact on surrounding wetlands. The City's own expert spoke to the reasonableness of the treatment program and the Conservation Commission unanimously approved the

project. There is always an inherent balancing act and the ordinance was written to address a site such as this. The criteria is whether under the totality of the circumstances, they have complied with the criteria. In the 2 years that they have attempted to do this, they have reached a stage where they can go with regards to this project without jeopardizing the environment. They feel they have satisfied their burden of proof.

Mark McNicholas, 66 Coakley Road, 2nd time speaker. The reason they have not reviewed all of the material is because they do not have access to them.

Bill St. Laurent, 2nd time speaker, took exception what Attorney McNeill said. People are present tonight to protect their neighborhood.

Mr. Coker asked Attorney McNeill if he would have any objection to setting up a water monitoring and testing program that would test the waters of Hodgson Brook. He was asking them to put proof to their statement that they will have no impact to the Hodgson Brook. Attorney McNeill did not have exception to reasonable monitoring. Mr. Coker also indicated it would be at the cost of the applicant.

Mr. Hopley referred to criteria #4, dealing with the least impact. He asked how they validated that when 90% of a new building is within the buffer zone? Attorney McNeill stated they have to look at the totality of the whole project. Under the circumstances, they are clearly improving the site.

The Chair asked if anyone 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. Will echoed Mr. Hopley's questions. Attorney McNeil represented that they have to look at the project in its totality however Mr. Will felt they had to look at the jurisdiction of the project. He is troubled by the fourth criteria.

Mr. Coviello made a motion to approve for the purpose of discussion, with stipulations. One stipulation would be that at Site Review he wants a thorough analysis of why the restaurant cannot be outside the buffer. The second stipulation would be for the water quality testing. Councilor Dwyer seconded the motion.

Mr. Will felt that the first stipulation is a reason why the building could not be outside the buffer zone and why wouldn't that be their purview now? Mr. Coviello stated if they can give them a good reason and they can rearrange the site, he would like to move the project forward. Mr. Will felt that needed to be addressed at this hearing and maybe a tabling motion or denial would be more appropriate.

Mr. Holden stated that Mr. Will was correct. The issue before them is Conditional Use and they need to decide how they want to respond to that. He suggested Mr. Coviello rephrase his motion. Mr. Coviello asked if it would be appropriate to say they move the building with the drive thru outside of the buffer?

Mr. Coviello stated he would withdraw his motion. Councilor Dwyer seconded the withdrawal.

Mr. Coviello made a new motion to approve with the stipulations that water quality testing be done and that no building with a drive thru shall be inside the 100' wetland buffer. Councilor Dwyer seconded the motion. For clarification, Councilor Dwyer indicated that the drive thru was more important than the building so she would not want the restaurant outside the buffer and the drive thru inside the buffer. The intent was to eliminate the drive thru from the buffer. Deputy City Manager Hayden asked how are they distinguishing between building, pavement for parking and pavement for drive thru? Is it what the cars are driving over?

Vice Chairman Hejtmanek felt they have buildings and pavements and he is concerned with the gravel stormwater system. The project seems to push the rules inside the buffer.

Mr. Will agreed with Ms. Bronson when she says that the building structure is nearly completely in the wetland buffer and with the motion on the floor it does not speak to impervious surface. It looks like at some point, they have concerns that cannot be met tonight.

Deputy City Manager Hayden stated that one issue they should discuss is what could be built there by right. If this application was denied, what would happen next. There is some truth that this is innovative treatment and the Conservation Commission has approved it.

Mr. Coker indicated that discussion could be settled by a question – does this proposal meet the zoning regulations absent the Conditional Use Permit? Mr. Holden confirmed that it does. Mr. Coker reiterated that, absent the Conditional Use Permit, they have the right to build this.

Mr. Coviello stated the reason for his motion was to move this forward and he would support a tabling motion to see a redesign of the project. This is the most innovation water treatment that he has seen proposed yet and UNH will back him up on that.

Deputy City Manager Hayden indicated that something is going to get built there. If they were to redesign this and build nothing in the buffer, what else will go in there? She has not heard any concerns about the driveway into the site. The Board appears to be struggling with why the buildings are in the buffer.

Mr. Will made a motion to table to see a reconfiguration of the design without a building in the wetland buffer, but some sort of impervious surface allowed in the wetland buffer. Mr. Coviello seconded the motion.

Ms. Roberts noted they already have part of the proposed hotel and retail in the wetland buffer so that would be in addition to Restaurant A.

Vice Chairmian Hejtmanek clarified that Mr. Will's tabling motion was for no building in the wetland buffer.

Mr. Coviello withdrew his second to table.

Mr. Will indicated he would withdraw his tabling motion until they can discuss it a little bit further. There is a motion on the table however he does not believe the Board is comfortable approving it this evening.

Mr. Coker felt this was a very difficult decision but they have to acknowledge the fact that people have the right to develop their property and this developer has done a reasonable job and he will support Tony's motion. Mr. Coker felt it should move forward and they can add stipulations and will have another shot at it at site review.

Mr. Coviello was not comfortable having a drive thru inside the wetland buffer and he wants to resolve that, whether through a motion to grant or table. Mr. Holden recommended that he stipulate that.

Mr. Holden felt it would be better to have the secretary read back the original motion.

Jane Shouse, recording secretary, stated that the motion was to approve with water quality testing and not building with a drive thru within the 100' wetland buffer.

Mr. Coviello asked to revise that motion. Mr. Holden suggested they start over.

Mr. Coviello made a motion to approve with the water quality testing stipulation and that no drive thru be in the 100' wetland buffer. Councilor Dwyer seconded the motion.

Deputy City Manager Hayden asked what was so important about the drive thru?

Mr. Coviello indicated it was his assumption that a line of idling vehicles in the buffer is not a good thing and is worse than parked cars. Councilor Dwyer added that the reason is the treatment they have for the run off relating to parked cars. That is why they saw the Conservation Commission being more comfortable with this plan. They approved all of this which was much more egregious. The Conservation Commission was persuaded by the runoff treatment.

Mr. Coker asked to clarify the first stipulation. He wants to make sure that the testing is set up by the proper person, either a state licensed or environmental planner, and testing is acceptable to the City and it will accomplish what the Board wishes to accomplish, which is hold the developer's feet to the fire to not pollute Hodgson Brook.

Vice Chairman Hejtmanek asked how will they test the Brook to know whether the pollutants will come from this property?

Mr. Coker stated they will test both sides of the stream and where else could it come from? If they find pollution the developer will be responsible for remediation.

Mr. Holden suggested that they work with the developer for a proposal which they will bring back to the Board for review and approval.

Ms. Roberts was ambivalent about the project and did not feel beholden to the Conservation Commission and the Board doesn't have to rubber stamp it. They have approved several projects where there have been impacts to the wetland buffers because there have been significant improvements by the applicant to the treatment so post application status is an improvement. Maybe in an ideal world the entire lot would be open space but they have to deal with the application that comes before them.

Mr. Will referred to Deputy City Manager Hayden's concern about the original debate about a building in the wetland buffer rather than a drive thru and precedent was mentioned. His big concern is that 90% of a building is in the wetland buffer.

Deputy City Manager Hayden felt that as a general statement all impermeable surfaces should be treated the same in the buffer. She felt the applicant had a compelling reason to situate that building where they did. She felt that the reason they haven't made that case is because it is a financial reason. What they are proposing for treatment is extremely good and much better than what is there. This is also much better for the natural resources than what is there.

Mr. Will had less of a problem with the impact to the buffer by the hotel as he did with the Restaurant A building. The question is how important is that to the overall project. Maybe they should have tabled for a reconfiguration without Restaurant A and he made a tabling motion for that reason. There was no second.

Mr. Hopley asked if every portion of every structure was outside of the wetland protection zone they would not be hearing this other than because the driveway is in the buffer. In terms of mitigation of run off, wouldn't that still be addressed at Site Review?

Mr. Holden confirmed that it would be reviewed at Site Review. He also added that economic consideration alone is not sufficient reason to grant a motion.

Mr. Coviello wanted to make himself clear. It was his opinion that all impervious surfaces are created equal and both will divert stormwater to a treatment system. It is his gut feeling that with a drive thru, the exhaust will be let off over the wetlands and is a concern to him.

Deputy City Manager Hayden continued to be concerned about setting a precedent on an assumption that may or may not be true.

Mr. Hopley indicated that the development always struck him as the property is very large, which is unusual, and pretty intensive regarding the quantity of buildings. In the past he has voted for the Conditional Use Permits because he felt the projects warranted it due to their scope and magnitude. He felt this is flying in the face of economics but they are trying to balance that with the spirit of the ordinance and he is having trouble understanding why they have to encroach in the wetlands.

Deputy City Manager Hayden suggested a joint work session with the Conservation Commission. They could vote tonight to send it back to them because there has been a significant change. In this case the gas station is gone and it is environmentally better but there is not an understanding on how the wetland mitigation works which is part of the balancing. In the interest of the project and natural resources, she felt that might be better.

Deputy City Manager Hayden made a motion to table to hold a joint work session with the Conservation Commission and the applicant. Mr. Will seconded the motion.

Mr. Coker stated that the Conservation Commission is an advisory body only and they have advised. Deputy City Manager Hayden indicated that they have not advised on this plan. A roll call was done on the vote:

Mr. Coviello	No
Councilor Dwyer	No
Mr. Coker	No
Mr. Will	Yes
Mr. Fortier	No
Ms. Roberts	Yes
Mr. Hopley	Yes
Deputy City Manager Hayden	Yes
Vice Chairman Hejtmanek	Yes

The motion to table to hold a joint work session with the Conservation Commission passed with a 5-4 vote, with Mr. Coviello, Councilor Dwyer, Mr. Coker and Mr. Fortier voting in the negative.

The joint work session will be scheduled by the Planning Department.

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B. A public hearing is convened to consider the request of Icon Realty, LLC, the owner of a parcel of commercial land formerly known as "Woodbury Gardens" at the corner of Woodbury Avenue and Market Street, shown on Map 217 Lot 1, for two proposed zoning amendments to the City's 1995 Zoning Ordinance, as amended. The first amendment proposes to delete the small Mixed Residential Business (MRB) zone from Icon's property and change the zoning to General Business (GB). The second amendment proposes to rezone two lots on Granite Street, shown on Map 217 as Lots 3 and 4, from Single Residence B (SRB) to General Business (GB). The purpose of this hearing is to solicit public comment on this request. Relevant materials are available for public inspection in the Planning Department;

The Chair read the notice into the record.

SPEAKING TO THE REQUEST:

Attorney Malcolm McNeill addressed the Board on behalf of the proponent. Last year he proposed two different zoning proposals for the Board to consider and this was one of them. He supplied a written request to the Mayor and City Council and ultimately it is before them for a recommendation. This matter is on the agenda for a review to determine how to proceed.

They handed out aerial photographs of the area, used during the site review process for the recently approved Rite Aid parcel. Additionally, they handed out blow ups of the zoning of the parcels. They show how minimal the areas are that they are seeking to rezone. He displayed the Site Plan that they approved in May for Rite Aid. The property on the business zone side of Granite Street side is taken up by the new development. There were five variances necessary, due to the fact that the lot suffered from road takings and land takings making it difficult to develop. For the initial re-zoning that is being requested, the entire parcel on the northern part of Granite Street can be used for business purposes. All buildings on that parcel will be taken down. The MRB zone that they seek to change is a long piece that lies at the base of the existing Rite Aid property. That zoning when enacted was entirely appropriate because there used to be Angelina's Pasta Shop and two homes so a mixed district was sensible. However, all buildings will be removed and used for business use. The long MRB zone becomes merged into the business zone that it is contiguous to. This is no different than uses that can be permitted there right now. In terms of compatibility and utilization of the long section that is approximately 90' in width, there is no continuing reason for that zoning to continue. Regarding concerns of residents about commercial "creep", that has already occurred and they have received approval to use this property for development.

Regarding the issues of compatibility for the MRB property, across the street is a store, a chiropractic office, a karate studio and a glass company. The two parcels they wish to rezone are surrounded by compatible businesses.

Their second rezoning request deals with two residences on the other side of Granite Street to be rezoned from SRB to Business. How does that figure into the picture presently? The SRB zone is abutted on two sides by districts that allow business. On the other side is the municipal zone where the previously used school sits and provides a buffer to commercial "creep". The upshot of changing the SRB zone is that it would be a compatible continuation of the general business zone that permits commercial use. There is no fixed exclusive residential zone around this property now. The owners of these two lots, surrounded by business permissible lots and the municipal zone, would prefer to have their lots become commercial as it is compatible with the other zoning that exists in the area and it is in an area of continuing development and it is reasonable to extend business zones where the underlying zones are compatible with existing zones. The Master Plan made reference to this area, and possible economic development. There were very few areas in the community where they discussed zoning changes.

They believe that there will be no change of substance with regard to the MRB rezoning. During the processing of this application, Rite Aid bought out Brooks. The permitting for this Rite Aid drug store is 11,000 s.f. and they hope to build a larger drug store on the site and this would facilitate that process. They were at a position where they could not turn back in terms of proposing the other store.

They either proceed with the existing store that completely consumes the lot or they allow a variance and allow the applicant to come back and get a larger store. A Rite Aid store is already approved for that lot. The SRB zone was carved out and was probably spot zoning in itself and it is far more consistent with logical land use planning to have a continuation of the land use in the area. The owners

of the two lots have no definite plans for their property. The logic of continuing this process for rezoning makes sense.

Regarding the neighborhood impacts, a realistic review of what is being proposed is that one impact has already occurred and they have the ultimate protection by the fact that the City owns the area that is contiguous to this rezoning area.

Mr. Will referred to the zoning map they handed out. It's SRB sandwiched in around MRB. He felt it has some SRB aspects. Mr. Will noted Attorney McNeill made the assertion that a smaller Rite Aide has been approved and the rezoning was to allow a larger Rite Aid within a previous MRB. How would that not be an encroachment on residents?

Attorney McNeil stated that the use is already there. It should be reasonable for a property owner to request the removal of a useless zone. He may want to add on to a corner of the building or make alterations to parking and this gives more flexibility in use of the land. They are not asking them to change the use but are asking them to permit the change of use as a matter of zoning. The question is whether there can be flexibility in the zone. Is there a desire of the applicant to do something with the property? Yes, they want to expand their building and have more flexibility.

Vice Chairman Hejtmanek asked how the SRB area is being used now? Attorney McNeill stated it was residential.

Mr. Coker asked how that is not commercial "creep". Attorney McNeill stated that the underlying reasons don't support it. The rational in changing an existing zone is what is next to it in terms of existing zoning. It would be far more irregular to put an irregular use in. The issue is that there are circumstances and facts that support the zoning. He cannot think of a greater reason than the two residential houses should be used for something else.

Mr. Coviello asked if the original restaurant was in MRB? Attorney McNeill stated that was correct. Mr. Coviello felt that the argument was to have it fit the zone. He wanted to clarify that it was not this Board that granted the variance but they did grant the Site Review.

Attorney McNeill represented that owner of the property closest to the school supports the rezoning.

Jonathan Smith, of 1283 Woodbury Avenue, owner of the parcel in SRB on Granite Street, stated he has lived in this area his entire life and he grew up in that house. He was fortunate enough last summer to buy the house next door to his. He wants to rezone the property because everything around him is commercial use. He has no intention to leave the area. Across the street has always been commercial. He does not object to what they are trying to do because it does not change the neighborhood.

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THE BOARD TOOK A 5 MINUTE RECESS

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Vice Chairman Hejtmanek introduced Attorney Alec McEachern who requested that the Parade Mall public hearing be tabled until next Thursday's meeting due to the unreasonably late hour.

Mr. Will made a motion to table the Parade Mall public hearing until the reconvened meeting next Thursday, August 26th. Mr. Coviello seconded the motion.

The motion to table this matter to be the first item on next week's agenda passed unanimously.

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The Board resumed the re-zoning hearing. Vice Chairman Hejtmanek called for public speakers.

Kate Mallen, 140 Woodlawn Circle. The neighborhood accepted the Rite Aid project but now they want to expand it. They do not believe re-zoning SRB is logical but rather feel it is a logical continuation of their neighborhood. This property is the only land that stands between them and more development. They also have no assurances that the City won't sell the school.

Ralph DiBernado, Islington Street. They are not all versed in the zoning requirements. Maybe the City should consider creeping in the other direction and start a residential creep. The only re-zoning requests come from developers trying to make money. He would like them to leave the zoning line at Granite Street.

David Palumbo, 181 Echo Avenue. He has been attending meetings at T&S and TAC regarding all of the development in their area for Home Depot and Christmas Tree Shop. He moved here in 1971 to a beautiful residential area. The traffic in this area is already very bad. He felt enough was enough and it has to stop. They need to protect their residential area. He would like to see the developers give their names and addresses when they speak. He was told by the developer at a previous meeting that he wants to buy the school from the City.

Peter Bresciano, 1001 O'Leary Place. He agreed with Ralph DiBernado. The City is going to sell the Wentworth School. They have Granite Street so why do they need to rezone the other side of the street which is residential? They do not need to rezone that. And they don't need to rezone the long narrow strip either as that is business and they can do what they want there. Also, he pointed out that the residents will be looking at the back side of a business from Woodbury Avenue.

Bill St. Laurent, 253 Colonial Drive. He felt the City needed to stop rezoning in residential areas. The property is already MRB and he can still add on to his business with it zoned that way. Now he hears there is a possibility that the City may sell the school. He did not feel business should be able to encroach down Woodbury Avenue any more. He asked the Board to seriously consider what they were doing this evening.

Walter Lewis, 700 Woodbury Avenue, used to live at 1 Durgin Lane, which was the first farm house on Durgin Lane. That is now a Shaw's. The small areas that they want to change is a very bad thing. They should stay residential. They need to have a place for people to live. He doesn't support the re-zoning at all.

Kathy Keith, Woodbury Avenue. She is disheartened that they even have to have this discussion. Woodbury Avenue does not need any additional commercial activity. They should concentrate on keeping a safe residential neighborhood.

Tom Sweeney, Woodbury Avenue. He stated this was creep. They are taking away the residential neighborhood one bite at a time. The City should stop taking away residential areas in favor of businesses.

Ann Perkins, 759 Woodbury Avenue. She felt that the present zoning should be enforced. How do they say no to the next developer if they approve this tonight? What is left of the residential section of Woodbury Avenue is 6-7 blocks. She feels they should keep residential residential.

Frank Provost, 103 Woodlawn Circle. No one has given any thought to sewer and water systems. What will happen with all of the building in the City?

Virginia Geraci, 1 Martha Terrace. She felt this is really a transparent disguise for encroachment. The Granite Street area is residential and it should stay that way. She felt enough was enough.

Cathy Pierce, 876 Woodbury Avenue. It seems to her that MRB limits the size of buildings. A neighborhood near small businesses thrives but a neighborhood that lives within a 15,000 s.f. business withers. There is a housing shortage in town but when did you last hear someone complain about not having enough drug stores?

Lenore Weiss Bronson, 828 Woodbury Avenue. She read something that Dennis Robinson wrote about Woodbury Avenue that abuts their neighborhood, which would be expanded if this was approved. Entitled "My Least Favorite Portsmouth Places", the last one listed is Woodbury Avenue towards the malls. The Portsmouth Herald noted that some protesters will not be around in 50 years but the land will still be here and hopefully the houses and the neighborhood. They need to act with stewardship and responsibility. She also noted that the only access to Woodbury Gardens was from Granite Street. She had previously asked if the Planning Department was aware that trucks were not allowed on Woodbury Avenue and she didn't get an answer. They actually have complained about trucks speeding on Woodbury Avenue with no response. The traffic on Woodbury Avenue is a serious problem and they will not allow their neighborhood to be destroyed by encroaching development.

Duncan McCallum, State Street. He does not agree with commercial creep. The proven technique is to do everything piece by piece. Attorney McCallum was upset to hear Attorney McNeill stated they hope to increase the size of the Rite Aid building as he sat on the BOA when they approved that building. That application was originally denied by the BOA as being too big and out of place.

Bill Healy, Dennett Street. This is commercial creep, no matter how they disguise it. The applicant is saying that the SRB area was a mistake so it should be rezoned to their advantage. Rezoning such as this should be broadly discouraged. There is no reason to rezone this land.

Patricia Taylor, 700 Woodbury Avenue. She thinks the Rite Aid was a lousy thing to do to their neighborhood and she asked the Board to do the right thing.

Eric Pierce, 876 Woodbury Avenue. He is opposed to the zoning change. They say they want to make the drug store bigger but they could change their mind any time and do something different.

Attorney McNeill felt there were two different zoning requests. One related to the property on the Rite Aid piece. It took a number of months to get the Rite Aid through the planning process and he does not remember any opposition to the plan at all. The change that has occurred to that side of Granite Street is over, it was not objected to and it went through the process. The rezoning they are requesting is that it will be compatible with the surrounding property.

On the other side of the street, there are two people who are next to business zones, who wish to have their property rezoned. There is no proof of adverse effect on property values, there is no illogic to making the probable uses of this area compatible to the surrounding area. He inevitably deals with the process of change. The only way these projects get through the system is under circumstances where the logic of land use prevails. In terms of bringing this forward, there was some basis in the master plan for consideration of change and in any community there would be reluctance to any change but he is asking the Board to look at the logic of what is being proposed. It is not difficult for him to argue both sides of the street and the best argument is to look at the businesses surrounding the site. They are requesting the modification of a business zone. NIMBY is always present. Attorney McNeill indicated they have come before them in good faith and this request is logical and consistent with land use planning.

Peter Brseciano, 101 O'Leary Place, stated that this project was approved for a certain size and now they want to rezone to be able to expand the project.

Lenore Weiss Bronson indicated that she wasn't able to go to meetings regarding the Rite Aid project however she called Rite Aid on several occasions and never received calls back.

Mr. Will stated that the approved Site Plan for Rite Aid included renderings and the building does not look anything like the North Hampton Rite Aid.

Kate Mallen stated that they did not object to Rite Aid as it was zoned for business and was better than other things that could have gone in there.

The Chair asked if anyone 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. Coker asked Attorney McNeill about his statement that the people across the street requested the property to be rezoned. Did they come to him and say they want their property rezoned? Attorney McNeill stated that the Icon people spoke to the property owners and asked if they wished to have their property rezoned and the answer was yes.

Mr. Coker indicated that they were asked to look at the logic of what was being proposed and he does not see the logic. There are many unsaid things about this and there is no logic in rezoning two pieces of property across a City street. He sees no compelling argument for rezoning the properties across the street.

Mr. Coviello confirmed they have three options. They can get a matrix done now, deal with it during their rezoning process or decide to not to go forward at all.

Deputy City Manager Hayden stated this is a City Council referral and they have never responded back to the City Council without doing a matrix.

Ms. Geffert asked if the Board were to say they were not going to deal with this now, would they have to do the work now? Mr. Holden responded that they normally do the matrix and the purpose of this was to get information to make an informed decision.

Councilor Dwyer asked if this is more properly a BOA issue rather than rezoning? Mr. Holden felt what is most interesting is that there are two requests. Theoretically it doesn't really matter what happens on either side of Granite Street as their approvals are already granted. If they want to walk away from those approvals and file something else, they would effectively have to start over. It's a chicken and the egg. They may have underestimated what the issues were.

Deputy City Manager Hayden felt it was a Planning Board issue and rightly belongs with them. Her thinking would be, guessing what the Board may feel, she would not want to see staff do a lot of work on this right now as they are so busy, she would rather see them review this, not report back to the City Council at this time and take it up as part of the overall zoning rewrite project.

Mr. Coker appreciated Deputy City Manager Hayden's point of view but he made a motion to recommend that this not move forward in any form. Mr. Will seconded the motion for discussion.

Mr. Will felt that usually at the public hearing there is a matrix and they also have a lot of comment from the public and developer before seeing the matrix. He is satisfied with the information they have and a matrix would not make much difference. He did not believe this would set a precedent as this is an unusual situation. He asked if it was possible to dovetail this into their normal deliberations and would that mean they will not see a zoning matrix? He doesn't see this as a high priority. He can

think of a lot of different zoning changes they need to work on and they don't have matrixs on those either.

Mr. Holden stated that when they do the whole zoning map they will not do a matrix on every single change but they will go through a series of public hearings. The applicant is able to appear before the BOA anytime. If the Board said to staff to prepare a matrix, he felt there are some issues between the two phases that require some deliberation.

Mr. Will felt there have been instances where a matrix has not been introduced so it's not unheard of. Mr. Holden confirmed they have done a matrix more times than not and he cannot think of one in the recent past where they have not done one.

Mr. Coviello spoke to the motion. He was fine with not moving this forward and he would like to send a message that he is not in favor of the requested changes. He would like to see this in the future because maybe another zoning is right for that area. The zoning matrix would help with that in the future.

Mr. Coker urged the Board to end the process here and now. There is something about this that they are not being told and there is more to this than meets the eye. He would like to be told the big picture. Rezoning property across the street from a public street makes no sense whatsoever. This is one rezoning request that does not deserve to move forward.

Vice Chairman Hejtmanek felt if they deny the request tonight they can still take this up with the rezoning process.

Mr. Holden stated they would need a request as the Board has already taken an action but it would be reasonable to look at it again.

Councilor Dwyer thought it made more sense to look at overall zoning rather than directly denying it. There are two different issues. One deals with logic and one does not.

Mr. Will felt they may want to revisit this as an overall rezoning question. Mr. Will asked Mr. Coker if he would be adverse to look at it later on and leave open what was proposed.

Deputy City Manager Hayden did not feel they were really denying the rezoning request but are reporting back to the City Council.

Mr. Coker rephrased his motion to recommend to the City Council that this not move forward at this time. Mr. Will was agreeable to the revised motion.

The motion passed with Mr. Coviello voting in the negative.

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V. ADJOURNMENT

At 11:00 pm a motion to adjourn, and reconvene next Thursday, July 26, 2007, 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 August 16, 2007.