

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

**CONFERENCE ROOM B
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 P.M.

MAY 15, 2008

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

MEMBERS EXCUSED: John Rice and Norman Patenaude, Alternate

ALSO PRESENT: David M. Holden, Planning Director; Lucy Tillman, Chief Planner

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I. APPROVAL OF MINUTES

- A. Approval of Minutes from the April 10, 2008 Joint Work Session with the Conservation Commission – Unanimously approved.
- B. Approval of Minutes from the April 17, 2008 Planning Board Meeting – Unanimously approved with adjustment regarding Councilor Dwyer’s attendance.

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II. PUBLIC HEARINGS

A. The application of **Aquila Chase and Marcia N. Chase, Owners**, for property located at **71 Baycliff Road** and **Stephen J. Little and Rosemarie Golini, Owners**, for property located at **82 Driftwood Lane**, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 42 as shown on Assessor Plan 207 decreasing in area from 24,695 ± s.f. to 24,618 ± s.f., with 71.20’ ± of continuous street frontage on Driftwood Lane and Lot 46 as shown on Assessor Plan 207 increasing in area from 12,203 ± s.f. to 12,280 ± s.f. and with 27.75’ ± of continuous street frontage on Baycliff Road, and lying in a zone where a minimum lot area of 15,000 s.f. and 100’ of street frontage is required. Said properties are located in a Single Residence B district and are shown on Assessor Plan 207 as Lots 42 and 46. (Plat plan is on file in the Planning Department Office and is identified as Plan #02-01-08). *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

SPEAKING TO THE APPLICATION:

Mr. Holden advised the Board that the Department has been working with the applicant’s legal representative. There are issues that need to be addressed and it was agreed by the applicant that the

matter should be postponed to next month with no further advertising. The Chair read the notice into the record.

Mr. Coker made a motion to postpone to the next regularly scheduled meeting. Mr. Coviello seconded the motion.

The motion to postpone to the next regularly scheduled Planning Board meeting passed unanimously.

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B. The application of **Stephen J. Little, Owner**, for property located at **2 Moebus Terrace** and **Donald H. Sargent Living Trust, Owner**, for property located at 33 Pleasant Point Drive, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 25 as shown on Assessor Plan 207 increasing in area from 22,783 ± s.f. to 28,427 ± s.f., with 113.63' ± of continuous street frontage on Moebus Terrace and Lot 26 as shown on Assessor Plan 207 decreasing in area from 27,912 ± s.f. to 22,268 ± s.f. and with 322.58' ± of continuous street frontage on Pleasant Point Drive, and lying in a zone where a minimum lot area of 15,000 s.f. and 100' of street frontage is required. Said properties are located in a Single Residence B district and are shown on Assessor Plan 207 as Lots 25 and 26. (Plat plan is on file in the Planning Department Office and is identified as Plan #03-01-08). *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernie Pelech spoke on behalf of Mr. Little and Mr. Sargent, both abutting property owners. They have agreed to a lot line adjustment whereby Mr. Sargent is conveying a portion of his back yard to Mr. Little. Mr. Little will then have 100' of frontage and Mr. Sargent will remain conforming. Mr. Holden asked him to explain a little bit about the Little property. Attorney Pelech indicated that when that building permit was issued he did not represent Mr. Little. Mr. Pelech represented the abutting property owner. There was an agreement regarding the platted street and driveway by the City. It had previously been used by the Levine's and an agreement was reached which is recorded in the Rockingham County Registry of Deeds where Mr. Little, with a non conforming lot, was able to build his driveway up the street and for access to the water. They are looking to transfer 5600 s.f. The Little property is in dire need of a front yard and "parcel A" constitutes that front yard. It is basically a lot line adjustment between the two properties.

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. Coker asked the difference between a paper street vs. a platted street? Mr. Holden explained that was why they were looking for a history and getting that on the plan. That is #1 on the recommended conditions.

Deputy City Manager Hayden made a motion for Preliminary approval with 4 stipulations. Vice Chairman Hejtmanek seconded the motion.

The motion to grant preliminary subdivision approval passed unanimously with the following stipulations:

1. That explanatory notes depicting the status of this driveway/street be added to this plat to add to the title information subject to approval of content and form by the City Attorney's Office;
2. That permanent boundary monuments shall be established per the requirements of the Department of Public Works;
3. That when these aforementioned conditions are satisfied that a request for Final Subdivision Approval shall be made to the Planning Board per the requirements of the Subdivision Rules and Regulations; and,
4. The submission, to Department of Public Works of electronic data, suitable for updating the City's Assessing Records.

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C. The amended application of **David F. Mahoney Marital Qtip Trust, Owner** and **Granite State Minerals, Applicant**, for property located at **227 Market Street**, where an amendment to an approved site plan is requested to allow utilities to be brought on site above ground. Said property is shown on Assessor Plan 119 as Lot 6 and lies within the Waterfront Industrial district; *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernie Pelech appeared for Granite State Minerals. Attorney Pelech confirmed that they received Site Plan approval almost a year ago. This amendment project involves the relocation of the scale building and the office building from one side of the existing scale to the other side so they can install a second scale. They thought everything was a "go" and they pulled their building permit. PSNH then notified them that they would not allow underground utilities on the corner of Bow Street because there were too many transformers on the pole. Therefore, they discussed this issue with the Department and it was decided to come back for a waiver of the underground utilities to run overhead for about 15'. They are seeking to amend the site plan to amend that underground electric line.

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. Holden confirmed that everything Attorney Pelech said was correct and the Department reviewed this with DPW and they concurred it would not be appropriate to have it underground. This requires a two thirds vote for a waiver of the Site Review Regulation.

Vice Chairman Hejtmanek made a motion to grant a waiver with the original stipulations. Mr. Hopley seconded the motion.

The motion to grant a waiver for underground utilities passed unanimously.

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D. The amended application of **Parrott Avenue Place, Inc., Owner**, for property located at **127 Parrott Avenue**, where an amendment to an approved site plan is requested to relocate a fence to the property line, plant two new trees and create three new parking spaces, with related paving, utilities,

landscaping, drainage, lighting and associated site improvements. Said property is shown on Assessor Plan 115 as Lot 3 and lies within the Mixed Residential Office District and Historic District A; *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

J. Corey Colwell, of MSC Engineers, appeared on behalf of the applicant. Also present was Julie Stone, Director of Compass Care, a non profit organization which provides health care for senior citizens. There is a need for parking at the senior center. There are currently vehicles parking on gravel out back and one grass spot and they are growing and bulging at the seams. They are proposing 3 new parking spaces shown in darker gray on the color plan that Mr. Colwell handed out. The hatched areas show maneuverability. Two or three years ago, adjacent to #3 there was a tree but it was hit by a vehicle, it died and was removed. They are proposing two new trees in the rear courtyard to make up for that. Finally they are proposing the relocation of a chain link fence. They are proposing to relocate that fence at or near the northerly boundary line, which will allow more maneuvering room for the parking spaces.

Chairman Ricci asked how tall the 2 ½ caliber trees are when planted? Mr. Colwell confirmed they would be 6-8 feet.

Mr. Coker remembered many years ago when parking was done by the housing authority, suddenly the back gate appeared. The housing authority had to come back and the benefit of the doubt was given that it was an oversight. It was agreed that that gate would be used for emergency access only with keys at the fire department. He is troubled by note 11 which says the gate will be locked other than for snow removal operations. He doesn't recall having that on the last plan. Why has this morphed into snow removal?

Mr. Colwell stated that was an item they discussed at a pre-TAC and it was suggested that they add that note. One of the stipulations of the Planning Board approval was that the gate shall remain locked. The note now follows the TAC recommendation.

Mr. Holden verified that there was concern with the gate. There has not been an issue but by pushing it to the lot line this will prevent damage during snow removal.

Councilor Dwyer noted that the middle school potential expansion is still under discussion, however she could understand why in the absence of that consideration, parking was a key issue. If there is potential for this property, the school expansion may use this property and she wondered if there is value in planting trees until a decision has been made regarding the middle school given that this property would have a different use. Mr. Colwell felt that was a good point. That would be a risk that they would take. It was recommended by TAC that they would like to see an effort to replace a tree that was removed. Councilor Dwyer felt the tree might be an expense that is not warranted. Mr. Holden indicated that normally they would require vegetation in a situation like this. They are dealing with the situation as it, and not what it potentially may be down the road. Councilor Dwyer felt a better choice would be to wait a few months to plant the tree. Chairman Ricci felt they had to deal with the here and now. Deputy City Manager Hayden didn't think these were expensive trees and this time of year is the time to plant them.

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. Holden indicated that the Department recommended approval of the amended site plan with any appropriate stipulations.

Mr. Coker made a motion to approve with one stipulation, that hat note 11 be changed to reflect the exact language as contained on the 2004 Site Plan.

Councilor Dwyer suggested that the applicant be given the opportunity whether to plant the trees or not, depending on the disposition of the property.

Mr. Coker was confused about what might happen to the property. Councilor Dwyer explained that the school architectural conceptual design studies are underway and one option is to move toward the right of the middle school for additional building and discussions have been had with the owner of the property. Those conceptual designs are to be delivered in the next 60 days. She thought if the only reason the applicant is planting trees is because of the TAC suggestion, she thought it would be better to give the applicant a chance to decide. Mr. Coker asked if those trees could be moved?

Chairman Ricci asked when will they do construction? Mr. Colwell felt it would be this summer. Spring or fall is the best time for planting so they could either do May or the fall. Deputy City Manager Hayden asked if they would have any problem transferring the trees down the road? Mr. Colwell did not think that would be a problem. Chairman Ricci thought they could maybe have them plant the trees in the fall.

Mr. Coviello assumed the thought process is that by fall they will know what they are doing with the school. Mr. Holden added that if they approve as presented, the bond will not be returned until the trees are planted. Chairman Ricci stated they only need to plant them by the fall.

The motion to grant amended Site Review Approval passed unanimously with the following stipulation:

- 1. That Note 11 on the Revised Site Plan shall be changed to reflect the exact language as contained on the Site Plan approved on August 19, 2004.

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E. The application of **7 Islington Street, LLC, Owner**, for property located at **29 Tanner Street**, and **7 Islington Street, LLC, Owner**, for property located at **40 Bridge Street**, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 49 as shown on Assessor Plan 126 decreasing in area from 3,342 ± s.f. to 3,025 ± s.f., with 48.96' ± of continuous street frontage on Tanner Street and Lot 52 as shown on Assessor Plan 126 increasing in area from 7,111 ± s.f. to 7,428 ± s.f. and with 119.47' ± of continuous street frontage on Bridge Street, and lying in a zone where a minimum lot area of 7,500 s.f. and 100' of street frontage is required. Said properties are located in a Mixed Residential Office District, Central Business B District and Historic District A and are shown on Assessor Plan 126 as Lots 49 and 52. (Plat plan is on file in the Planning Department Office and is identified as Plan #05-02-08). *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon appeared on behalf of the applicant. Also present was Paul McEachern. Mr. Chagnon explained that the proposal was to relocate a lot line between two existing lots which are at an odd configuration. The proposal is to create a single line between the properties, as proposed to the three jogs that exist now. They will need a variance from the BOA so they are looking for preliminary approval. The Tanner Street lot will become smaller. As part of the proposal, an existing addition to the Tanner Street property would be removed making it less non-conforming. They find the Department's recommended conditions acceptable except #3 which prohibits a thru driveway being added to the plat.

The 40 Bridge Street lot had HDC approval for a building on that lot and they will be going forward with that. At the time of that HDC application, access was to and from the building, with some covered parking on the front of Bridge Street. They want to keep the option open for a future configuration since retail space maybe more valuable than covered parking and they would lose parking. He doesn't want to get into those issues tonight but he would like to take that condition off from Preliminary approval and address it at the final approval hearing after review by BOA and Traffic & Safety. They would like to address that at Site Review.

Mr. Hopley asked what lot is 7 Islington Street? Mr. Chagnon stated it was Lot 51, at the corner of Islington and Bridge. Mr. Hopley didn't understand the Department's condition regarding 29 Tanner Street. Mr. Holden clarified that it should be 41 Bridge Street and not 7 Islington Street.

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 mad a motion to approve with Stipulations 1, 2, 4, 5 and 6. Mr. Hopley seconded the motion for discussion. Mr. Holden indicated #3 is because the development on Bridge Street did not go through Site Review and the driveway is a considerable point of issue with TAC. Also in discussions with the Applicant, he understood it would not be needed for Tanner Street. He felt it should be left on as a reminder that it is an issue. Mr. Hopley stipulated that it be modified to say 40 Bridge Street.

Mr. Coker stated the only thing that jumped out to him was #3. Would it be fair to say this is was a highly unusual driveway, using one piece of property to access another piece of property? Mr. Holden confirmed that the Zoning Ordinance would prohibit it in certain districts. Mr. Coker stated he will be voting against the motion because he feels #3 should stay in. They could take it out at Final if necessary.

Vice Chairman Hejtmanek indicated that the HDC had a number of meetings on this and cutting through there as a driveway did not seem appropriate. He also felt the condition should remain in.

Mr. Coviello amended his motion to include #3.

Mr. Holden indicted that Steve Kelm is the owner of both parcels and needs to sign the application form and that should be a condition.

Mr. Hopley agreed to the amended motion.

Mr. Coviello felt this type of construction was not out of the ordinary. The Capt. Andrew Hussey House on Islington Street has a parking garage out back and access to Hanover Street so this doesn't seem out of the ordinary. Mr. Holden stated that the Hussey House was out of the ordinary. Mr. Coviello added that the Master Plan states they should have parking in the back. Mr. Holden also

added that he is speaking about two different zoning districts with two different degrees of development.

The motion to grant Preliminary Subdivision Approval passed unanimously with the following stipulations:

1. That the Board finds sufficient justification in this particular application to allow for the creation of a non-conforming lot in order to promote the orderly development of both lots;
2. That the Board of Adjustment shall consider and approve this application;
3. That a condition prohibiting a through driveway over 29 Tanner to 40 Bridge Street shall be added to the Plat;
4. That Stephen Kelm, owner of both lots, shall sign the Subdivision application on file at the Planning Department;
5. When the aforementioned conditions are satisfied, that a request for Final Subdivision Approval shall be submitted to this Board;
6. That property monuments shall be set as required by the Department of Public Works; and,
7. The submission, to Department of Public Works of electronic data, suitable for updating the City's Assessing Records.

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F. The application of **Madison Commercial Group, LLC, Owner**, for property located at **72 Mirona Road**, wherein Site Review approval is requested to construct a 3,400 s.f. footprint retail/commercial use building, garage and storage area, after the demolition of a portion of the existing building, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 253 as Lot 3 and lies within the General Business district. *The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb of Altus Engineering appeared on behalf of the applicant. Also present was Michelle Rancourt from Madison Commercial Group. The site is the former Artisan Outlet parcel. They were before the Board in 2003 for approval of the Kindercare facility on Mirona Road and Mirona Road extension. In March they were before the BOA for a variance for parking relief to have 201 spaces when 222 were required. This is one of the last sections of the site which has not been improved. The new owners have made an effort to upgrade the site and it looks very nice now. There is one small piece between the facility and Kindercare which is in rough shape and they hope to take it down and rebuild. On file there are letters from abutters supporting the construction and the feeling is that this enhances their property as well. Part of construction is that it will be very close to the playground area. Matt Taylor, of Kindercare, has reviewed the construction plan and it has been agreed that they will reduce the area of the playground.

Mr. Weinrieb reviewed the site plan with the Board. The yellow area was an existing gravel parking lot and they will make it a paved parking area. They will clean up the dumpster area as well as put an enclosure on the other dumpster. The orange area shows the building expansion area with a two car garage. They have company vehicles for snow plowing and they have had continued problems with

theft of snow plows. They will relocate the generator and transformer and there is a utility pole right in the middle of the proposed driveway which they will relocate and they will need City Council approval for the licensing.

Mr. Weinrieb talked about the design a little bit. They want to look at different ways to implement LID impact on designs. They were granted a variance for parking so they are providing less paved area. Another feature is that they are not putting closed drainage in the back. It is open drainage and it sheet flows to the treatment swales versus directly into closed drainage. They also added a rain garden that allows infiltration as well as a settling area. It will be a significant improvement in the area as it is gravelly and not well maintained. The landscaping and vegetation will be big improvements.

TAC had 15 conditions which they have addressed in their letter which was submitted.

Mr. Coker noted this is on top of a dump and he asked how that affects them now and what they have done to determine whether this is a safe area? Mr. Weinrieb explained that this has been deemed safe but they have a geotechnical engineer lined up. They have had to hold off on that because part of the landfill terminates in the area of the construction. Because a portion of the building is coming down, they have decided to do the actual borings within the building footprints to get a better representation of what is underneath. Matt Taylor does not think there is a significant amount of refuge out there. Driving piles is expensive and not appropriate next to the Child Care Center. In summary, Mr. Weinrieb confirmed that they are looking into that and they will probably remove the refuge.

Deputy City Manager Hayden asked if a lighting detail was included? Mr. Weinrieb responded that was on the photometric plan. Deputy City Manager Hayden asked if there are pole lights and lights on the building? Mr. Weinrieb confirmed there were both and the maximum pole height is 14'.

Councilor Dwyer asked Mr. Weinrieb to describe where the children's play area will be during construction, how it will be protected, and after construction how the children's play area will be accessible and/or visible from the new building. Mr. Weinrieb stated that the rear of the new building does not have any windows so the workers will not be able to see the children. The fence line does not presently go up to the building but they will now tie it into the edge of the building. The current building does not have any gutters or roof drains, which they did not feel was appropriate with kids around. Therefore, they have a gutter system so that the kids can play up against the building. During construction they are putting in a chain link fence to allow access to vehicles around the building. Councilor Dwyer asked about during construction the children's play area will be reduced and surrounded by a fence. Mr. Weinrieb confirmed that was correct and that Kindercare was comfortable with that. Councilor Dwyer asked if the children will be viewing the smoker's outdoor platform on the new building? Mr. Weinrieb confirmed the children cannot see it.

Mr. Coviello asked about the pile system. Mr. Weinrieb explained that the foundation hasn't been designed yet as they haven't done the geotech. It is their intent to pull out any unsuitable material. Mr. Coviello asked if they will have any internal monitoring in the Kindercare during construction? Mr. Weinrieb confirmed that none of that was required but they do have a ventilation system underneath the building and they are on piles. Mr. Coviello was worried about them disturbing a methane pocket or something. Mr. Weinrieb stated they have not discussed that and it has not been an issue.

Deputy City Manager Hayden asked if there is a detail of the lighting fixtures and, if not, can they add them? She would like to make that a condition. Also, the rain garden is to the right of the lime green area on the grading plan. She felt that should be shown on the site plan as well. It is also on the detail sheet.

Mr. Coker asked if it would be an unreasonable request that they send Gillespie's report to the Planning Department? Mr. Weinrieb stated that would be fine. Mr. Coker then asked that the Department forward it to the Planning Board.

Chairman Ricci asked if the rim of the rain garden was 4" above the bottom of it? Mr. Weinrieb indicated that his intent is that it is an overflow. Chairman Ricci asked how the rain garden perform when they call the area out as an additional snow storage area? Mr. Weinrieb stated that all of the vegetation is crushable vegetation.

Chairman Ricci referred to Sheet C-7, the rain garden detail. The plan refers to the Maine DES manual and this is New Hampshire. Mr. Weinrieb explained that NH does not have a standard manual for rain gardens and that is the best they could find.

Councilor Dwyer noticed that as well and she knows that New Hampshire and Maine have some different plantings on invasive species. They should just make a note of that.

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 the 15 TAC stipulations, Mr. Coker's request that the geotechnical report be forwarded to the Department and Deputy City Manager Hayden's request for a detail of light fixtures on the Site Plan.

Vice Chairman Hejtmanek seconded the motion.

Ms. Geffert understands that Matt Taylor has been consulted and agrees with the modifications but she would like to see Kindercare sign off on the construction plan. Michele Rancourt, Executive assistant to the applicant, stated that they would never do anything against Kindercare and they want them as a partner. Kindercare was always one of their main concerns.

Mr. Coker likes Ms. Geffert's idea for a sign off. Mr. Holden suggested a letter of support as abutters can't sign off. Mr. Coker thought that would be fine or just something saying that Kindercare has reviewed the plans.

The motion to grant Site Review Approval passed unanimously with the following stipulations:

Stipulations from the April 29, 2008 Technical Advisory Committee Meeting:

- 1) That a snout shall be added to the catch basins and a detail shall be added to the Site Plans;
- 2) That all utilities companies must agree and sign off on the location for the new utility pole;
- 3) That the applicant shall appear before the City Council for pole licensing approval;
- 4) That the relocated water line shall be copper;
- 5) That the drain types and type of pipe in the proposed drains shall be listed on the Site Plans;
- 6) That the Site Plan drafting shall be clarified, specifically the grey area;
- 7) That the note referencing the handicapped symbol shall be removed from the Site Plans;
- 8) That the construction barrier, the stabilized construction entrance and the proposed filter fabric fence shall be added to the Construction Management & Mitigation Plan (CMMP);
- 9) That the crushed stone between the building and the sidewalk shall be corrected;
- 10) That a Knox Box shall be installed by the entryway;
- 11) That the applicant shall explore the possibility of putting a rain garden at the low point where the first flush will go;

- 12) That the existing dumpster on the opposite side of the property in the back shall be enclosed;
- 13) That Mirona Road Extension shall be labeled on the Site Plans;
- 14) That a sign identifying the employee parking in the back shall be added to the Site Plans;
- 15) That the applicant shall meet with David Desfosses and Deborah Finnigan to discuss a contribution towards sidewalks on the roadway;

Stipulations from the May 15, 2008 Planning Board Meeting:

- 16) That the applicant shall forward the geotechnical report to the Planning Department, for distribution to the Planning Board; and
- 17) That a light fixture detail shall be added to the Site Plans.

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III. CITY COUNCIL REFERRALS/REQUESTS

A. Request of Brora, LLC, to erect a free standing pylon sign on a public right-of-way at the intersection of Market Street and Portsmouth Boulevard;

Attorney Malcolm McNeill appeared on behalf of Brora, LLC. This matter comes as a result of a request to the City Council to locate a sign in a City right of way. This has been done before at Durgin Lane and there have been other identification signs on private property, i.e. Peverly Hill Road and Mirona Road. The proposed sign is smaller than is permitted under the regulations but it seeks to identify Commerce Center, which contains approximately 9 buildings. People coming from the highway have trouble finding Commerce Center. There is also the new Hilton Homewoods Suites Hotel on Portsmouth Boulevard that is sometimes to difficult to find. Hesser College also has a site that could benefit from directional aid. That summarized the reason for the request.

Attorney McNeill stated there are unusual characteristics of the signage. The sign is in fact 26' plus from the paved surface. The law says a pedestal sign must be 20' back from a property line. The property line of this site is significant distance back from the right of way. Because of the large half moon area in the right of way, it is a rather unique circumstance which causes no adverse effect on the municipality. If anyone went to look at the site, they put up a frame where the legal location would be and the pedestrian foot bridge would block the sign. There would also be additional cutting from the west. The sign in the legal location is 5' below grade so they would have to use fill to bring it to a reasonable level. The area where they would view the legal sign there is a beautiful tree that would block the sign. The sign is 84 s.f. where 150 s.f. is permitted. The sign is 13.5' high where 20' is permitted. He reviewed the Department Memorandum and he supports their findings and conclusions.

What will control this is a license as opposed to an easement. It is designed to be readily revocable and is subject to liability protections with regards to the City. The language which the City Attorney will approve will say it is there at the approval of the City and if asked to be removed, it will be at the applicant's expense. There was a provision with regards to the reduction of lumens and lighting, with regard to this internally illuminated sign and they believe that is an appropriate condition. They are requesting a sign that provides reasonable notice without an adverse affect on the City and the ready ability of the City to revoke the sign. The City Council could act on their own, but they are seeking the Board's expertise and determination from a planning perspective.

Vice Chairman Hejtmanek noted there are temporary signs there now. Attorney McNeill confirmed that the City has been very patient with regard to those signs. They would be removed if the propped sign is allowed. Mr. Hopley asked if the real estate signs would also be removed? Attorney McNeill confirmed the real estate signs would also be removed.

Councilor Dwyer asked about the internal illumination and if it was an absolutely necessary aspect or are there other alternatives? Attorney McNeill stated they explored that with the sign people in terms of the glare and quality and the sign people felt the internally illuminated sign was the best option. The City retains ultimate control over this if for some reason the Planning Department feels the light is excessive.

Deputy City Manager Hayden asked if 5th stipulation was changed to not an internally illuminated sign would they still go forward? Attorney McNeill did not have that authority. The difficulty he has is that form of illumination may be a preference of his client.

Deputy City Manager Hayden asked if this sign were not in a public right of way, is that the same parcel that is subject to their Conservation Commission site walk next week? Attorney McNeill confirmed it was. Deputy City Manager Hayden then stated, as part of the project before the Conservation Commission, that parcel may become retail then all of that vegetation would be removed? Attorney McNeill responded that some but not all of the vegetation would be removed. Deputy City Manager Hayden asked if they would then have to come back and look at the sign again. Attorney McNeill was unable to determine that at this point in time. It would depend on how that progresses, recognizing that it has not been completed or may not be completed, the fact that they have had a hotel up for a year without a permanent sign at the end of the street and the fact that they have a revocable license to allow the City to make changes if necessary.

Mr. Coker elaborated on Deputy City Manager's points, he had two questions. The wetlands shown on their plan are jurisdictional wetlands? Mr. Holden was not sure about that location. Mr. Coker was questioning that because vegetation is going to be cleared 40' from the edge of the wetland and the sign is 92' from the edge of the wetland. Therefore, if the wetland is jurisdictional, why aren't they talking about Conditional Use? Mr. Holden did not believe a Conditional Use is required for this one but he is not sure. The right of way might even be exempted. Attorney McNeill was not aware of the need for any conditional use permit. If necessary, they will seek one. Mr. Coker also thought that their zoning prohibits internally illuminated signs. Mr. Holden confirmed that was only in the Central Business District. Mr. Holden confirmed this was in a right of way so zoning may not even apply to it. The zoning applies to private property and this is a City right of way which is why it involves the City Council. Mr. Coker asked how can they determine if this is jurisdictional? Mr. Holden suggested making that a stipulation.

Deputy City Manager Hayden noted that the only dimension not shown is the depth of the sign. She assumed this was a two faced sign? Attorney McNeill was not sure of thickness but it would be adequate to house the lighting. Deputy City Manager Hayden asked if it was the intent to have sayings on both sides of the sign. Attorney McNeill confirmed that. Mr. Holden added that a two faced sign counts as the same.

Mr. Coviello was trying to find the difference between this request and the one they got at Exchange City in the right of way. Mr. Holden pointed out that there was no access to that site from this location. This sign identifies the access to Portsmouth Boulevard to many tenants. That is why they worked with Attorney McNeill on the sign faces. It works to identify numerous sites.

Deputy City Manager Hayden has no objection to this request except for the internal illumination. She would rather have them recommend an externally lit sign. The Council would have the option to change that. Mr. Holden felt they should still keep the controls on it for review by DPW.

Mr. Coviello made a motion to keep the controls on but have an externally lit sign. Councilor Dwyer seconded the motion.

Mr. Coker asked to add a stipulation that Peter Britz review the wetlands to determine if they are jurisdictional and to provide a report to the City Council with this recommendation.

Vice Chairman Hejtmanek asked for a Stipulation that this be the only sign. Mr. Holden thought it might be better to instead stipulation that all existing non-permanent signs be removed, including the real estate signs.

Mr. Coviello was agreeable to the additional stipulations.

The motion to recommend to the City Council with the following conditions passed unanimously:

1. That the request should be subject to a municipal license approved by the Legal Department as to content and form, which should be revocable by the City and that if the sign needs to be removed or relocated for any purpose, that it will be done at no cost to the City;
2. That sign dimensions shall be as presented by the applicant in their Council submittal, the sign shall be limited to the three proposed sign panels and with no dimensional changes to these to be allowed, other than for content, without first receiving approval from the City;
3. That the owner shall adhere to the "Dig Safe" process and following the sign's placement, any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department of Public Works;
4. That the applicant shall be responsible for all electric utility work and all subsequent operational payments subject to review and approval by the Department of Public Works;
5. That the sign should be externally illuminated (not internally as requested) with the lighting fixtures and lamps to be reviewed and approved for use by the Public Works and Inspections Departments. (The intent is to minimize energy use and reduce glare by evaluating fixtures and lamps based on their lumens and photo-metric characteristics.)
6. That the Planning Department shall review this proposal to determine if the nearby wetlands are jurisdictional (this task has been completed and staff finds that the wetlands are jurisdictional, but the proposed sign location is not within the jurisdictional boundary so there is no impact); and,
7. All existing, non-permitted signs, including real estate signs, shall be removed before this sign is placed.

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IV. NEW BUSINESS

- A. Update on U.S. Route One Advisory Committee – Rockingham Planning Commission;

Mr. Holden advised the Board members that the Rockingham Planning Commission along with NHDOT and other parties, have been working for two years on a study of what needs to be done to this corridor. It is an update of the old Kimball Chase study and the old Highway Memorandum #1. They have a draft report and copies are available to Board members tonight. They would like them to take 45 minutes at the June meeting for a brief presentation of the findings of the study. He recommends scheduling this for 7:00 to 7:45 at their June meeting.

It was the consensus of the Board to schedule an update on the U.S. Route One Corridor Study by the Rockingham Planning Commission for the next regularly scheduled Planning Board Meeting on June 19, 2008 from 7:00 – 7:45 pm.

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B. Request of HarborCorp, LLC for a One-Year Extension of Subdivision Approval which was granted on June 7, 2007 for property located off Deer Street, Green Street, Russell Street, Market Street and Maplewood Avenue:

C. Request of HarborCorp, LLC for a One-Year Extension of Site Review Approval which was granted on June 7, 2007 for property located off Deer Street, Green Street, Russell Street, Market Street and Maplewood Avenue:

Mr. Holden recommends granting the extensions as a normal course of action. There was litigation which normally stays any action however in an abundance of caution, Attorney McNeill has made these two requests.

Attorney McNeill appeared on behalf of Harborcorp, and stated that that when a permit has been appealed, it stays the running of the expiration date of any permit. This case has resulted in every conceivable form of litigation and after both the subdivision and site review approval of this project, 1000 Market Street/Ocean properties has appealed and these cases still remain pending in the Supreme Court. They cannot proceed forward with either approval despite the fact that the Subdivision approval was not appealed as the subdivision is dependent upon the site review. The City clearly confirmed that the normal and customary practice of staying approvals pending court action is a consistent one but it is also one that is not clearly addressed in their regulations so to be extra careful he is requesting an extension which the regulations clearly allow. He acknowledges that he presents in an overabundance in caution.

Mr. Holden stated that the Department suggested that they grant the extensions and note that they are being done in light of the special conditions.

Deputy City Manager Hayden made a motion to approve a one year extension of the Subdivision approval. Vice Chairman Hejtmanek seconded the motion.

The motion passed unanimously.

Vice Chairman Hejtmanek made a motion to approve a one year extension of the Site Review approval. Deputy City Manager Hayden seconded the motion.

The motion passed unanimously.

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V. OLD BUSINESS

A. Appointment of Planning Board Representation to the Historic District Commission;

Mr. Holden recommended tabling this to the June meeting.

NON-AGENDA ITEMS:

Mr. Holden provided handouts regarding future meetings in May and June.

Mr. Holden reminded the Board of the "Zoning 101" presentation that was scheduled for next Wednesday in the Levinson Room at the Library. It will be taped and broadcast at a later day. Also, on May 29th they will be doing a joint site walk with the Conservation Commission at Commerce Way. On June 5th they will be working with Rick Taintor as well as on June 12th. June 19th they may do a work session prior to the regular meeting and there is a possibility of a work session on June 26th.

Chairman Ricci highly recommended the “Weathering the Storm seminar” on June 12th in Somersworth. It is an 8 hour seminar and Chairman Ricci will be attending. The afternoon program will be on the UNH stormwater center.

Mr. Coviello advised the Board that he recently graduated from a program called Leadership Seacoast. He felt it was a very valuable program and he encouraged board members to look into it.

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VI. ADJOURNMENT

A motion to adjourn at 8:30 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 19, 2008.