City of Concord Planning Board
June 21, 2017
Minutes

The regular monthly meeting of the City Planning Board was held on June 21, 2017, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

1. Call to Order
Chairman Woodfin called the meeting to order at 7:00 pm. Planning Staff present included Heather Shank (City Planner), Beth Fenstermacher (Assistant City Planner), John Stoll (Senior Planner), and Lisa Fellows-Weaver (Administrative Specialist). Engineering Staff present included Bryant Anderson (Associate Engineer).

2. Roll Call
Present: 8 – Chairman Richard Woodfin, Councilor Byron Champlin, Teresa Rosenberger (Ex-Officio for City Manager), Matthew Hicks, Susanne Smith-Meyer, David Fox, Ian West, and John Regan.

Absent: 3 – Vice-Chair Carol Foss, Alternate Chiara Dolcino and Alternate Frank Kenison.

3. Approval of May 17, 2017 Planning Board Meeting Minutes
On a motion made by Councilor Champlin, and seconded by Mr. West, the Board voted unanimously to accept the minutes of May 17, 2017, as written.

4. Planning Board Chair Overview
Chairman Woodfin announced that a request has been received from the applicant for item 7A, City Council referral regarding a request by Concord Orthopaedic to rezone portions of the Medium Density Residential (RM) District along Pleasant Street to the Institutional (IS) District, to postpone the item until July 19, 2017, 7:00 p.m.

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to grant the applicant's request to postpone the discussion until the July 19, 2017 Planning Board meeting, which starts at 7:00 p.m.

Consent Agenda Items

5. Design Review Applications by Consent
If an applicant, Planning Board member, or audience member wishes to remove an item from the Consent Agenda for discussion, it will be pulled for consideration during the public hearing segment of the agenda. Otherwise, consent items are approved subject to the recommendations of the Design Review Committee.

5A. Granite State Pain Associates, on behalf of PFP Associates, LTD Partnership, requesting ADR approval to replace four non- illuminated signs, including a wall sign, two roof signs, and a freestanding sign, at 24 Bridge Street in the Highway Commercial (CH) District. MBL: 45/A1/2

On a motion made by Mr. West, and seconded by Councilor Champlin, the Board voted unanimously to approve the application as submitted by consent.

5B. Charla Mayotte, on behalf of 154 Profile, LLC, requesting ADR approval for a window sign at 8 N. Main Street in the Central Business Performance (CBP) District. MBL: 35/3/3

On a motion made by Mr. West, and seconded by Councilor Champlin, the Board voted unanimously to approve the application as submitted by consent.

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Public Hearings

6. Site Plan & Subdivision Applications

6A. TF Moran Inc, on behalf of Eversource Energy, requesting an amendment to the conditions of a previously approved Major Site Plan and Conditional Use Permit for the purpose of conveying a Conservation Easement instead of an in-fee land transfer at 40 Farmwood Road in the Open Space Residential (RO) District. *MBL: 122/2/28*

Nick Golon of TF Moran was present on behalf of the applicant, Eversource Energy, along with Walter Billingsley of Eversource. Mr. Golon explained that this is a request for a modification to a previously approved Conditional Use Permit (CUP), which was approved with the 2013 Major Site Plan and included a condition stating that "prior to the issuance of a certificate of occupancy or use of the site, the area of the property located north of Farmwood Road, and westerly of the existing power line right-of-way, shall be conveyed to the City for conservation purposes as mitigation for the extensive wetland buffer impacts." Due to various unusual circumstances, the subdivision and conveyance of the land did not occur. The applicant is requesting to convey a conservation easement instead of the previously proposed in-fee land transfer via subdivision in order to meet the lot coverage requirements for a proposed expansion to the substation. He noted that if the Planning Board voted to deny their request, they have filed for a variance through the Zoning Board of Adjustment to exceed the minimum lot coverage requirement. Mr. Golon indicated that they went before the Conservation Commission at their June meeting.

Ms. Fenstermacher provided an overview of the Conservation Commission meeting noting the members expressed concern about the lower value of the easement to the City versus the value of the in-fee ownership of the land and the costs which could potentially be incurred for the City for additional monitoring and management responsibilities associated with an easement. Additionally, Conservation Commission members had concern that a decision was made and accepted on behalf of the public in 2013, and that decision should be upheld. Other members felt that the easement was more desirable, but agreed there would be an increase in costs for monitoring. It was suggested that the City request payment of stewardship fees. There was considerable discussion about the benefits of the City's ownership of the land versus holding an easement and in response to these discussions; a proposal was made by the Eversource representative to provide monetary compensation in the form of stewardship fees and the difference between the in-fee land ownership and easement value, in addition to conveying the Conservation Easement and also agreed to pay for the appraisal to determine the difference in value.

Ms. Fenstermacher stated that at the conclusion of the discussions, the Commission members were presented with 2 options:

1. Move forward with the original plan to subdivide and convey the land via in-fee transfer with conservation restrictions; or

2. Accept the Conservation Easement along with stewardship fees and a monetary contribution equal to the difference in value between the land and the easement value.

Under either option, the Conservation Commission would oversee either the management of the land or of the easement. The Commission voted to require the subdivision and in-fee land transfer to be consistent with the 2013 agreement.

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Chairman Woodfin opened the public hearing. There being no further comments from members of the public, the Chair closed the public hearing.

A brief discussion was held regarding the property taxes. Members felt it was important to keep the property generating taxes.

Ms. Shank commented that staff is comfortable with either decision. Ms. Fenstermacher noted that initially the majority of the Conservation Commission supported the idea of the conservation easement; however, voted against it as a motion. There was brief discussion regarding whether this would set a precedent. Ms. Fenstermacher indicated that the circumstances that led to this decision were very unusual, and hopefully this will not be a problem the City has in the future.

On a motion made by Councilor Champlin, and seconded by Ms. Smith-Meyer, the Board voted unanimously to accept the Conservation Easement along with stewardship fees and a monetary contribution equal to the difference in value between the land and the easement value.

6B. Merrimack County, on behalf of Nash Family Investment Properties, requesting Minor Subdivision approval for a lot line adjustment to convey approximately 2,000 sf to the County at 143 North Main Street in the Civic Performance (CVP) District. MBL: 46/1/2; 46/1/1

Ms. Shank stated that City Council will be voting on the request to discontinue a portion of Pitman Street to allow the site plan development to occur.

On a motion made by Mr. West, and seconded by Ms. Smith-Meyer, the Board voted unanimously to determine the application complete.

Chairman Woodfin opened the public hearing. There being no comments from members of the public, the Chair closed the public hearing.

On a motion made by Ms. Smith-Meyer, and seconded by Councilor Champlin, the Board **granted the Minor Subdivision** approval for the lot line adjustment, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

1) Address Engineering Review Comments dated 6/9/17 to the satisfaction of the Engineering Division.
2) Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.
3) The Licensed Land Surveyor shall sign and seal final plans and mylars.
4) Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of $25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.
5) The Applicant shall deliver to Planning, two plan sets and one (1) mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.

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6C. 2 Pillsbury Street LLC, requesting Minor Subdivision approval for a condominium lot line adjustment at 2 Pillsbury Street in the Institutional (IS) District. MBL: 23/5/3, 23/5/6, 23/5/1, 23/6/6

On a motion made by Councilor Champlin, and seconded by Mr. West, the Board voted unanimously to determine the application complete.

Peter Burger from Orr & Reno, represented this application. He explained that this is a proposal to re-configure condominium units within the third floor by transferring 400 square feet from Unit 3B to Unit 3C.

Mr. Stoll stated that an amended waiver request has been received; the only waiver being requested is for Section 12.08. The applicant concurred.

Chairman Woodfin opened the public hearing. There being no comments from members of the public, the Chair closed the public hearing.

On a motion made by Mr. West, and seconded by Mr. Hicks, the Board voted unanimously to **grant the waiver request to** Section 12.08 for Existing Conditions from the Subdivision Regulations.

On a motion made by Mr. West, and seconded by Mr. Regan, the Board voted unanimously to grant the **Minor Subdivision approval** for the minor subdivision, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

(a) **Precedent Conditions** – to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

(1) A Licensed Land Surveyor shall sign and seal final plans and mylars to certify that the plans meet the requirements of RSA 356-B.

(2) The Certification statement on the plan shall be signed by the Engineer of Record.

(3) The Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of $25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

(4) The Applicant shall deliver to Planning, one plan set and mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.

6D. 49 South Main Street Condominiums requesting Minor Subdivision approval to convert commercial office building units into commercial condominiums at 49 South Main Street in the Central Business Performance (CBP) District. MBL: 34/4/4, 34/5/1

Councilor Champlin recused himself from this project.

On a motion made by Mr. West, and seconded by Ms. Smith-Meyer, the Board voted unanimously to determine the application complete.

Peter Burger from Orr & Reno, represented the applicant. Mr. Burger explained that the property was developed 7 years ago and was funded with new market tax credits. He stated that the units were not able to be acquired and now the tax credit period has come to an end allowing for a minor

subdivision to be done in order to create two separate units, the League of NH Craftsman and The Chamber of Commerce.

Chairman Woodfin opened the public hearing. There being no comments from members of the public, the Chair closed the public hearing.

On a motion made by Ms. Smith-Meyer, and seconded by Mr. West, the Board voted unanimously to **grant the Minor Subdivision Plan approval** to convert commercial office building units into commercial condominiums for the minor subdivision, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board.

(a) **Precedent Conditions** – to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

(1) Address Technical Review Comments, noted in Section 2, above, to the satisfaction of the Planning Division.

(2) A Licensed Land Surveyor shall sign and seal final floor plans and mylars.

(3) The Certification statement on the Condominium Plans shall be signed by the Engineer of Record.

(4) The Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of $25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

Councilor Champlin returned to the Board as a voting member.

6E. Steve Luger, on behalf of Stephen and Ellen DeStefano, requesting Minor Subdivision approval for a 2-lot subdivision at 17 Graham Road in the Open Space Residential (RO) District. MBL: 123/4/2

On a motion made by Mr. Regan, and seconded by Mr. West, the Board voted unanimously to determine the application complete. Chairman Woodfin opened the public hearing.

Steve Luger was present for the applicant. He explained the proposal is to subdivide a 60 acre parcel on Graham Road into two lots; the new lot will be 7.02 acres and the remaining lot will be 53.08 acres. The seven acre parcel consists of the house and driveway. At this time there are no future plans for the remainder parcel. He noted that there are some wetlands in the rear of the property.

Ms. Fenstermacher stated that two waiver requests have been submitted. Staff supports the waiver to Section 16.03 of the Site Plan Regulations, to not supply soil test pit results and not depict the 4,000 sf septic drain area. Staff recommended that the waiver to Section 12.08(3) to not depict topography for the entire lot be approved with a condition that the information provided on the plan for refer to the datum of NAVD88 vertical datum. Mr. Anderson explained that the Engineering Division requires that all plans submitted using this vertical datum; it allows everything to be consistent and for the City to be able to review neighboring lots and any potential impacts. This waiver is typically not supported.

There being no comments from members of the public, Chairman Woodfin closed the public hearing.

On a motion made by Mr. Hicks, and seconded by Ms. Smith-Meyer, the Board voted unanimously to **grant the following waivers**, subject to the following conditions:

a) 16.03(14) Septic Systems, to not supply soil test pit results and not depict the 4,000 sf septic drain area.

b) 12.08(3) Topography, to not depict topography for the entire lot, **with the condition that the information provided on the plan for refer to the datum of NAVD88 vertical datum**.

On a motion made by Mr. Hicks, and seconded by Councilor Champlin, the Board voted unanimously to **grant Minor Subdivision approval** for the 2-lot subdivision, subject to the following precedent conditions to be fulfilled within one year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, unless otherwise specified:

(a) Precedent Conditions

(1) Address Engineering Review Comments dated June 9, 2017, to the satisfaction of the Engineering Division.

(2) Address Technical Review Comments, noted in Section 2 above, to the satisfaction of the Planning Division.

(3) Any waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Subdivision Regulations. Should the Board vote to deny the waiver request(s), applicant shall comply with said submission requirement(s).

(4) Prior to the final plat being signed by the Planning Board Chair and Clerk, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.09 of the Subdivision Regulations.

(5) The Licensed Land Surveyor and Wetland Scientist shall sign and seal final plans and mylars.

(6) Applicant shall submit two checks for recording the plan at the Merrimack County Registry of Deeds (including a separate check in the amount of $25.00 for the LCHIP fee). Both checks are to be made payable to the Merrimack County Registry of Deeds.

(7) The Applicant shall deliver to Planning, two plan sets and one (1) mylar(s) for endorsement by the Planning Board Chairman & Clerk and recording at the Registry of Deeds.

6F. TF Bernier, Inc. on behalf of H. Byers Smith & Marian B. Smith Trust, requesting Major Subdivision approval for a 7-lot subdivision at 393 Mountain Road in the Medium Density Residential (RM) District. MBL: 122/4/3 (2017-0016)

Ms. Shank indicated that the application was determined complete at the last meeting. Chairman Woodfin opened the public hearing.

Mr. Stoll stated that the ADR Committee was in favor of the site design; however, recommended that the white pine trees behind the proposed house locations be replaced with other species due to the possibility of causing damage from breakage. A revised plan indicating this recommendation has been provided. The applicant has met with the Conservation Commission who recommended two types of open space; Perimeter buffers will be restricted via covenant and the remainder open space lot under conservation easement.

Mr. Stoll stated that there are three waiver requests; all supported by staff.

a) Sections 24.02 and 25.02 to not extend municipal water and municipal sanitary sewers for parcels within 1,500 feet of existing water mains and sanitary sewer mains within the Urban Growth Boundary (UGB).

b) Section 20.11 to provide 18 feet of pavement with 1 foot of gravel for Common Private Drives where 22 feet of pavement and 2 feet of gravel are required. Additionally the applicant would like to provide a 30 foot wide right-of-way where 50 feet is required. The applicant did meet with the Fire Department and they were ok with the request.

c) Sections 20.14(1) & (2): requires dead end common private drives to terminate in a T-hammerhead, Y-hammerhead or cul-de-sac, based on the number of units served. An alternative turn-around has been proposed, which was acceptable to the Fire Department.

Tim Bernier represented the application. He explained that the proposal is a request to create a 7-lot cluster subdivision on property at 393 Mountain Road by subdividing the existing 26.390 ac. lot. The proposal is to create four residential lots fronting on Sewalls Falls Road and three residential lots on Mountain Road. It is the intent of the owner to use the design standards of the cluster development in creating the 7 residential lots and Open Space. The lots will be serviced by private water and sewer, and requires NHDES State Subdivision approval. The topography of the lot consists of slightly sloping fields on Sewalls Falls Road and Mountain Road, with steeper slopes and wetlands descending to Snow Pond Outlet in the middle of the lot. There is presently an existing farm house situated on Mountain Road. Lots 1-4 will be served by two common driveways on Sewalls Falls Road and lots 5-7 will be served by one common driveway on Mountain Road. A pedestrian access has been provided to access the open space. The landscaping plan shows a proposal for 71 trees and shrubs in addition to the existing extensive buffer for the existing house. He noted that the items in the staff report have all been addressed except for the legal documents.

Mr. Bernier stated that the legal items are still outstanding items. He expressed concern with one recommendation from engineering regarding the shallow drainage depressions. Item 17 of the engineering report states : The limits of the shallow drainage depressions should be shown on the plan to help identify them to the builders and the future home owners in addition they should be shown on the subdivision plan and a note should be added to it stating the purpose of the areas. It also states that they need to be maintained and cannot be filled in or re-graded. The applicant should consider providing plantings or other means of distinguishing the drainage depressions from the adjacent lawn areas.

Mr. Bernier stated that the condition is not appropriate or applicable or prudent and if he follows the recommendation there will be title flaws to the lots, since something completely different could be constructed. He stated that accurate engineering cannot be provided until they know what is going to be built. They cannot accurately state where drainage would be preserved at this time. Mr. Bernier felt that this condition was not necessary because the applicant has no intention of constructing any homes and is simply drawing lines on a plan in order to subdivide and sell lots. The builders and home owners will be responsible for providing adequate storm water solutions. Mr. Bernier felt that it would not be possible to adequately calculate for future development when they do not know what will be constructed and need flexibility. He stated that providing this information on the subdivision plat would not be appropriate and would inappropriately restrict the homeowner to constructing what is on the plan, or causing a title flaw if they construct something different.

Bryant Anderson stated that the applicant used the shallow depressions in order to calculate and comply with stormwater regulations. If the applicant could calculate and propose a plan that meets requirements for drainage without utilizing the shallow depressions then that would be acceptable. The plan currently shows that the shallow depressions are part of the drainage calculations, and

builders as well as future home owners need to be made aware of the importance of these shallow depressions. If something different is going to be constructed, then Staff would want to see revised drainage calculations demonstrating that the development can provide for the stormwater impacts.

Mr. Bernier restated that they had no idea what would be constructed and that providing calculations when you don't know what will be built is fake engineering, especially when you're dealing with incredibly low flows. Mr. Bernier stated that if the Board wants this information, then they should require site plans for construction of single family homes, then the people building the home could present the plan. He then stated that the state legislature does not give municipalities the authority to require site plans for the development of single family homes. He stated that recently they have been required to do "make believe" site plans with fake engineering, and that requiring the plat to account for the stormwater solution makes no sense and will create title problems. He stated that this has never been done in Concord before and that it would make the lots not marketable.

Chairman Woodfin asked if we are requesting something new. Mr. Anderson stated that requesting this type of information is very common. Although the location of the house and drive may not be certain, the drainage gets decided and the grading would need to conform to that. He noted that they are proposing a fairly significant shared driveway serving three houses and that they need to give the City a level of comfort that what gets built will be able to handle the stormwater in compliance with the regulations. He also noted that there was no mention in the response letter of any concern with this issue; otherwise Staff could have worked with him to resolve it ahead of time.

Chairman Woodfin asked for clarification on what was being requested. Mr. Anderson re-iterated that they can still have flexibility, but that the homeowners need to know that those areas of their lots serve a stormwater function. Otherwise, they are going to get ponding, and homeowners typically want to fill areas like that, especially if they are not told that those areas are part of a stormwater solution.

Chairman Woodfin asked for Mr. Bernier's response. Mr. Bernier re-iterated that the flows were insignificant, that he had never been asked to provide this information before, and that this type of requirement is driving up the cost of housing. He stated that he was very concerned about homelessness in Concord. He also stated that another application approved that night did not have to provide this information or meet this requirement.

Ms. Shank noted that the other subdivision was a minor subdivision and consisted of a 7-acre lot. While the 7-acre lot could clearly handle the disturbance from a single family home, Mr. Bernier is proposing 7 lots, clustered close together, with a significant driveway serving three homes. There is much more disturbance proposed with his project, concentrated in a smaller area.

Mr. Anderson re-iterated that they could resubmit their drainage calculations without using the depressions. If they really don't need them then it shouldn't be a problem. Chairman Woodfin asked Mr. Bernier if they could do that. He stated that they don't know what's going to be built, so it would be made up either way.

Ms. Shank questioned what specifically Mr. Bernier did not want to do. He stated that it was the notations on the plat that would deed restrict the property. Ms. Shank asked if there was a better way to communicate to the prospective property owner what those areas are for. Mr. Bernier stated that it doesn't make sense to require that. He stated that the state regulations were intended for new roads, not individual lots. He stated that it didn't make sense and is driving up the cost of housing.

Ms. Shank noted that all the City is trying to do is prevent flooding problems associated with major subdivision construction from becoming a tax payer problem. She noted that the only intent is to communicate to the homeowner that the shallow depressions are part of a stormwater solution and

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should not be filled; or, conversely, that if they are re-graded, the home owner is responsible for managing the stormwater or fixing any flooding problems that result. Ms. Shank asked if they could just add notes to the plan indicating this. Mr. Bernier replied that he would be happy to add notes to the plan since he didn't think there would ever be a problem.

Mr. Anderson re-iterated that the calculations that they submitted indicate that the site can handle stormwater by utilizing the shallow depressions. They are therefore required to be there. He stated that Mr. Bernier should revise the calculations to demonstrate that the depressions are not needed if there is a chance they will not be there. Mr. Bernier stated that the calculations are fake engineering and that they made it up. He also stated that there is no requirement for a site plan.

Chairman Woodfin stated that he is not comfortable moving forward at this point without resolving this issue. He stated that he is uncomfortable going against staff recommendations on this point. He asked Board members if they have any comment.

Member Smith-Meyer suggested that the depressions be shown but that it be made clear on the plans that they are representative of the intent to manage stormwater on site. She suggested that there be a detail of a rain garden or other feature to manage stormwater and that it be made clear to whoever constructs the lot that the intent is to manage stormwater on site with either the existing feature or a new feature constructed for that purpose if needed.

Mr. Anderson agreed that this would be an acceptable solution. He noted that a rain garden or other feature could be relocated provided it met a minimum size requirement to deal with the stormwater as indicated in the drainage report submitted by the applicant. He noted that even if things are moved around, when the request for a building permit comes in, they check to make sure it is meeting the intent of this plan.

Member West concurred with Chairman Woodfin's earlier assertion that he was uncomfortable moving forward until staff worked this issue out with the applicant. He made a motion to table.

Ms. Shank stated that Planning is not set on the notion that the plans must be deed restricted. She asked Mr. Bernier if he was comfortable with the solution Member Smith-Meyer and Mr. Anderson were discussing. He asserted that he would be ok with it as long as they have flexibility. Further discussion ensued.

Member Rosenberger stated that she was uncomfortable voting on the issue and seconded Member West's motion to table. The motion to table the project to the July 19, 2017 Planning Board meeting to allow Staff and the applicant a chance to come to an agreement over this issue passed unanimously.

6G. <u>JDH Realty Holding, LLC, on behalf of Jay W. Stewart Realty Holdings, LLC, requesting Major Site Plan approval for a 12,000 sf structure for the purpose of a warehouse and office, parking, and related site improvements at 52 Locke Road in the Residential Open Space (RO) District and the Industrial (IN) District. MBL: 40/Z/6 (2017-0015)</u>

Representing the applicant was Katie Weiss from Bedford Design and Jonathan Halle from Warrenstreet Architects. Atty. Phillip Hastings from Cleveland, Waters & Bass was also present.

An overview of the proposal was given by Ms. Weiss explaining that the lot is within a 12-lot industrial park. The applicant is proposing to construct a 12,000 sf building with 9,000 sf for a warehouse and 3,816 sf for a two story office space. All parking will be located in front of the building with 28 parking spaces on site. Currently there is a Right of Way for a future road and the property owner is working with the City to discontinue the easement. The lot coverage is less than the prior proposed site plan. The rear of the property consists of City owned land, wetlands, and a

cell tower with an access easement for the City. There is also a railroad. This is the last lot on this road. She continued to explain the phases of the project. Phase three involves discussions with Council regarding the existing "paper street". It is anticipated that the request for the discontinuance will be submitted to Council later in the month. The site has existing sewer, water, and drainage. The site is within the Industrial Zone and the Residential Open Space District; the residential zone is not be impacted. The property is proposed to be a distribution facility not a machine shop.

Ms. Weiss stated that the project is for the construction of a new 12,816 building, parking, and related site improvements for a 9,000 sf warehouse with a 3,800 sf two-story office space. She described the traffic pattern for deliveries and loading space. Drainage and lighting plans were explained for the site.

Ms. Weiss stated that they are requesting a waiver for bicycle parking, Section 30.03, as they do not have any bicycle traffic now at the site.

Mr. Halle explained that the building is proposed to be a 2-story gable end building and face the road with a 2,500 sf mezzanine. Solar panels are proposed to be attached to the building and the exterior is proposed to be vinyl sided with PVC trim.

Atty. Hastings spoke to the discontinuance of the paper street. H explained that since the original development, the city acquired the land and it is now in conservation easement. The applicant previously requested that the City relinquish rights to allow for the proposed configuration. Staff has recommended that the temporary turnaround that exists would remain in place as a part of the City right of way. He noted that there is an abutter who has expressed concern to keep the turnaround in the present location due to the language in the easement as it referred to it as a temporary turnaround; however, the City never had any obligation to accept this as a public street. The abutter has requested that this Board impose a condition that requires a site plan condition to relocate to the applicant's site. This is an unreasonable restriction of the development of the property and they request the Board not accept that as a condition.

Chairman Woodfin noted that these items were discussed previously; however, a plan was not approved for 52 Locke Road. Ms. Shank stated that there has been discussion on whether it is appropriate or not to shift the burden to the applicant and if the City would keep the turnaround where it is. Typically when roads are being discontinued the City does require the property owner to provide a turnaround in some form, which is not an unreasonable request. Chairman Woodfin stated that the turnaround was intended to be temporary as it was going to be further up the road and go through. It would then be more permanent now.

Atty. Hasting replied that there does need to be a turnaround and the abutter acquired the property; therefore, it would be on their property indefinitely. There is no benefit to maintaining the paper street. The applicant is requesting relief but is not causing any damage to the abutter and if the turnaround is required to be on 52 Locke Road it is unreasonable and creates a hardship to the applicant that does not presently exist. He added that there are a few options such as flipping it to the westerly side; however, that would affect the grading and elevations and require fill. Another option would be to move the turnaround to the interior of the site, which would require reworking the site. He added that the abutter will have the benefits and impose the costs to the applicant. He stated that his client would be willing to provide some accommodations but to the abutter's expense as they would be the entity benefitting from the change.

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Councilor Champlin commented that there appears to be an existing area that could be used. Atty. Hasting replied that using that area as a public turnaround would cause safety concerns. In addition, that area is needed for operation of the facility.

Ms. Shank explained that there is still the requirement for the request for the discontinuance to go to City Council. The abutter can request the conditions be placed by Council at that time. She recommended that if the Board does not place the condition for relocating the turnaround on the current application, that the application be conditioned on Council granting discontinuance of the paper street as is. This is so the Board would get a chance to see the plans again to review the grading of the turnaround if Council requires it to be relocated. She also noted that if the turnaround did not exist, the Board would require a cul-de-sac be provided on their property. For that reason, she does not see how it would be a hardship. The burden to the abutter is that the turnaround is on their property and they do not have the benefit of the land for development purposes. Atty. Hastings replied that a potential compromise would be to propose providing an easement to the abutter to construct an alternative turnaround on the site at the abutter's expense. The abutter can choose to agree or relocate.

Chairman Woodfin opened the public hearing.

Atty. Amy Manzelli of BCM Environmental was present representing the abutter, Laconia Best Warehousing and Distribution Corporation. She explained that the easement was anticipated to be temporary. If made permanent, it will prevent the property owner from building as permitted. The original intention was that it was a temporary cul-de-sac easement. The abutter supports the development of the lot; however, their burden is that they will not be able to expand their facility. They intended to build someday thinking that this easement would be temporary. She stated that the City has paper street rights and has valid temporary cul-de-sac easement rights. Once the rights to the roadway are released, the effect is to make the temporary easement permanent.

Councilor Champlin stated that this is an innocuous piece of property and added that the abutters hardship is not being able to expand for future development. He asked what kind of development there would be on this site. Atty. Manzelli explained the expansion area and noted that it is economically not viable for them to expand elsewhere on the lot.

Attorney Manzelli explained that the "easement" is temporary only if and when Phase 3 for Locke Road is released in effect it will make that cul-de-sac permanent. It will make it inevitable that nothing further will be developed further up Locke Rd that would ever cause there to be an occasion for this cul-de-sac to be relocated or removed. When the easement was granted it was intended to be temporary. Ms. Manzelli explained that her clients were in support of this proposed development and do not want to delay it. It is only this paper street burden that they are concerned with because they intend to bring their own development proposal forward. The City has no rights to unilaterally convert a temporary easement into a permanent easement. It's this development that would be the occasion for the City to be without the permanent rights to the cul-de-sac anymore. So there's the reasonable nexus between this development and requiring this developer to provide a permanent cul-de-sac easement.

There being no comments from members of the public, Chairman Woodfin closed the public hearing.

Atty. Hastings stated that he feels that there is some confusion of a hardship being caused by the applicant. He explained that if this project was not before the Board and if the abutter was to expand their property, the owner would need to accept the turnaround in its present location. He

stated that it is fortuitous that his client is here first. He added that temporary may have been unartfully used when the easement was created; it was an indefinite easement as the City has no obligation to ever accept a public street.

Chairman Woodfin asked why it needs to be reconfigured. Ms. Shank explained that the argument is that this was accepted as a temporary turnaround to be removed in the event a street is constructed. She restated that there is precedence for a property owner who requests this type of discontinuance to provide a turnaround at their own expense.

Ms. Rosenberger asked why the road needs to be discontinued. Ms. Weiss explained that the building is within the setback and the road needs to be discontinued from the property line back. Discussion ensued. Ms. Rosenberger stated that the roundabout is temporary and she does not see any need to move it. Ms. Shank stated that it would be there permanently and then be in perpetuity.

A discussion was held regarding eminent domain and other options.

Discussions were held regarding the other aspects of the plan. Ms. Smith-Meyer stated that she would not support the waiver for the bicycle rack as it is presumptuous to speak for employees as this is near a bike path. She stated that this is something that the city is trying to promote and is a small item that promotes and supports initiative that the city is encouraging.

Mr. Anderson stated that most comments can be addressed reasonably with no affects as discussed tonight. He added that engineering does not support removing the bicycle rack.

Ms. Shank noted that the Board has not received any referral from City Council yet regarding discontinuing the road and does not need to make a decision. She noted that the Board can ask the applicant to come back next month demonstrating how the turnaround could be provided on their lot. She stated that the Board can add a condition of approval to be subject on Council's approval of the discontinuance of the road.

Ms. Smith-Meyer asked if there would be another configuration of the existing turnaround that would be more conducive. Mr. Anderson replied that the existing turnaround does provide for the necessary space and it may not be conventional; however, it will continue to function as it does today. He stated that the development will not have any negative impact on the function of the turnaround. Ms. Smith-Meyer stated that she feels it is an issue for the abutter to address.

Ms. Rosenberger stated that she would prefer the status quo. Councilor Champlin stated that this will be a new business and add jobs. He expressed concerned with issues raised by the City Solicitor and City Council. Mr. Regan asked about the liability to the City. Ms. Shank replied that the City Solicitor expressed no concerns with the outcome.

Ms. Smith-Meyer stated that the Board should defer this to City Council as they will determine to discontinue the road and it is up to them to make the decision. Councilor Champlin stated that City Council expects the Board to provide feedback and comments as their role. Ms. Smith-Meyer stated that she feels it should be reconfigured wherever it is located as it does not seem like an ideal layout as is. Councilor Champlin stated that he is concerned with setting precedence and recommends the Board stay with the Staff's recommendation and put the burden onto the development.

On a motion made by Councilor Champlin, seconded by Ms. Smith–Meyer, to recommend that the approval process be contingent on the fact that the burden of the re-configuration of the turnaround is the responsibility of the applicant.

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Ms. Rosenberger expressed concern, due to her personal belief about private property rights, with the fact that the abutter knew that the turnaround was there, but they now want to place the burden on the property owner.

Roll Call Vote:

Councilor Champlin – in favor
Ms. Rosenberger – opposed
Ms. Smith-Meyer – in favor
Mr. West – in favor
Mr. Fox – opposed
Mr. Hicks – opposed
Mr. Regan – opposed

The motion failed; 3/4.

On a motion made by Ms. Rosenberger, seconded by Mr. Hicks, the board voted 4/3 to recommend leaving the turnaround as it exists.

On a motion made by Ms. Smith-Meyer, and seconded by Councilor Champlin, the Board voted unanimously to **deny the waiver request for bike parking, Section 30.03.**

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board unanimously **granted ADR approval** for the construction of a new 12,816 sf building, parking lot, and related site improvements.

On a motion made by Mr. West, and seconded by Mr. Hicks, the Board unanimously **granted Major Site Plan Approval** for the construction of a new 12,816 building, parking, and related site improvements at 52 Locke Road in the Industrial (IN) and Residential (RO) Open Space Districts, subject to the following precedent and subsequent conditions:

(a) **<u>Precedent</u> Conditions** - to be fulfilled within one (1) year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, and prior to the issuance of any building permits, or the commencement of site construction, unless otherwise specified:

(1) Address all items under Comments 1, 2, and 3 to the satisfaction of the Planning Division.

(2) Address all Engineering comments in the memo dated 5/5/17 and any subsequent revisions to the satisfaction of the Engineering Division.

(3) Submit three (3) copies of fully revised plans for sign off by the Clerk and Chair of the Planning Board.

(4) This application is approved with the condition that the City Council accepts the request by the applicant to discontinue the "paper street" shown as "Future Phase III Roadway Construction" most recently on the subdivision plan for Concord Business and Industrial Park, approved by the Planning Board on November 15, 1989.

(b) **<u>Subsequent Conditions</u>** - to be fulfilled as specified:

(1) Prior to commencement of construction activity, payment of inspection fees in an amount

approved by the City Engineer shall be made.

(2) A pre-construction meeting shall be required prior to the start of any construction activities onsite the applicant shall pick up one (1) set of signed plans at the Planning Office to make copies for the pre-construction meeting. A total of seven (7) copies of the signed plan set shall be provided by the applicant at the pre-construction meeting.

(3) At least two weeks in advance of the pre-construction meeting, provide financial guarantee for all public improvements on and off site and a guarantee for the site stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

(4) Prior to the issuance of a Certificate of Occupancy, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.

(5) Prior to the issuance of a Certificate of Occupancy, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88.

(6) Traffic impact fees shall be assessed by the Clerk prior to the issuance of a building permit. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The amount of the impact fees shall be determined using the information contained in the following tables in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees: Table 1, School Facilities Impact Fee; Table 2, Recreational Facilities Impact Fee and; Table 3, Transportation Facilities Impact Fee.

6H. Richard D. Bartlett & Associates, on behalf of Lee B. Marden Revocable Trust of 2001 requesting Major Site Plan approval for the construction of a 14,650 sf addition to an existing 50,500 sf building at 132-134 Hall Street in the Industrial (IN) and Residential Open Space (RO) Districts. MBL: 5/1/8, 5/1/9 (2016-58)

The applicant Lee Marden was accompanied and represented by Mark Sargent from Richard D. Bartlett & Associates. Mr. Marden provided a history of the lots and a brief overview of the project. The 5 acre property is located adjacent to the Concord Business Center, and abuts the Boston Main Railroad. Mr. Sargent stated that the applicant is requesting Major Site Plan approval to construct a 14,650 sf building addition with a new parking area, new access and circulation, and other related site improvements. The proposed addition will be a similar façade of the existing buildings in the Concord Business Center. They are proposing a caretaker unit on the mezzanine level, which will require a Special Exception; this space is currently being proposed to be used as an office until the approval is granted. He added that the addition be built off the front of the existing building and will contain three units for a total of 12 units in the entire building. A parking lot will be constructed in the front along Hall Street, with additional parking spaces added to the side of the building. The drainage will be shared with the abutting property to the north with a basin in between the two properties. Mr. Sargent added that there were some zoning compliance issues that have been addressed.

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Chairman Woodfin opened the public hearing and being no comments from members of the public, Chairman Woodfin closed the public hearing.

On a motion made by Councilor Champlin, and seconded by Mr. Regan, the Board voted unanimously to **grant the following waivers:**

- **Section 12.07 Wetlands Delineations** to not provide a wetland delineation stamped by a Certified Wetland Scientist since the proposed construction is limited to the eastern portion of the site is nor near a wetland area based on previous record plans.
- **Section 15.03(3) Topography** to not provide topography for the entire site since the proposed construction is limited to the eastern portion of the site.

On a motion made by Councilor Champlin, and seconded by Mr. Hicks, the Board voted unanimously to **grant Architectural Design Review (ADR) approval** for the architectural elevations, site design, landscaping and related site improvements.

On a motion made by Councilor Champlin, and seconded by Mr. West, the Board voted unanimously to **grant Conditional Major Site Plan approval** to construct a 14,650 sf building addition, a new parking area, new access and circulation, and related site improvements, subject to the precedent and subsequent conditions noted below:

(a) **Precedent Conditions** - to be fulfilled within one (1) year and prior to endorsement of the final plan by the Planning Board Chairman and Clerk, and prior to issuance of any building permits, or the commencement of site construction, unless otherwise specified:

(1) Address Technical Review Comments under Section (c) below to the satisfaction of the Planning Division.

(2) Address Engineering review comments in the memo dated May 30, 2017 (revised June 9. 2017) to the satisfaction of the Engineering Services Division.

(3) No building permits shall be issued until the existing development is brought into compliance with the Zoning Ordinance

(4) Any waiver(s) granted are to be noted and fully described on the plan including date granted and applicable Section number(s) of the Site Plan Regulations. Should the Board vote to deny the waiver request(s), applicant shall comply with said submission requirement(s).

(5) Submit three (3) copies of fully revised plans for sign off by the Clerk and Chair of the Planning Board.

(b) **Subsequent Conditions** - to be fulfilled as specified:

(1) Prior to commencement of construction activity, payment of inspection fees in an amount approved by the City Engineer shall be made.

(2) A pre-construction meeting shall be required prior to the start of any construction activities onsite. The applicant shall pick up one (1) set of signed plans at the Planning Office to make copies for the pre-construction meeting. A total of seven (7) copies of the signed plan set shall be provided by the applicant at the pre-construction meeting.

(3) At least two weeks in advance of the pre-construction meeting, provide financial guarantee for all public improvements on and off site and a guarantee for the site

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stabilization in an amount approved by the City Engineer, and in a form acceptable to the City Solicitor.

(4) Prior to the issuance of a Certificate of Occupancy, as-built drawings shall be provided to the City Engineer in accordance with Section 12.09 of the Site Plan Regulations. The as-built drawings shall be surveyed on NH State Plane coordinates and NAVD 88 Datum.

(5) Prior to the issuance of a Certificate of Occupancy, digital information shall be provided to the City Engineer for incorporation into the City of Concord Geographic Information System (GIS) and tax maps. The information shall be submitted in accordance with Section 12.08 of the Site Plan Review Regulations and all information shall be converted to a vertical datum of NAVD 88.

(6) Traffic impact fees shall be assessed by the Clerk prior to the issuance of a building permit. The impact fees and procedures shall be those in effect at the time of the issuance of a building permit as set forth in the City of Concord Code of Ordinances, Title IV, Subdivision Code: Chapter 29.2, Public Capital Facilities Impact Fee Ordinance. The amount of the impact fees shall be determined using the information contained in the following tables in Section 29.2.1-1 Assessment and Collection; subsection (b) Computation of the Amount of Impact Fees: Table 3, Transportation Facilities Impact Fee.

Mr. Marden thanked the board members for their time and all of the efforts they do to contribute to the City.

Other Business

8. Main Street Guide Update

Ms. Shank presented a rough draft of the Main Street Guide Table of Contents and noted that Work sessions will be scheduled soon. Board members requested to attend these work sessions.

9. Any other business which may legally come before the Board

Ms. Shank noted that a letter of interest was received from a resident for the Architectural Design Committee.

<u>Adjournment</u>

With no further business before the Board, Mr. Fox made a motion to adjourn at 9:47 p.m., seconded by Mr. Hicks. Motion carried unanimously.

A TRUE RECORD ATTEST:

Lisa Fellows-Weaver
Administrative Specialist

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