

**City of Concord Planning Board**  
**September 18, 2019**  
**Minutes**

The regular monthly meeting of the City Planning Board was held on September 18, 2019, in City Council Chambers, in the Municipal Complex, at 37 Green Street, at 7:00 p.m.

Attendees: Chairman Richard Woodfin, Vice-Chair Carol Foss, Councilor Byron Champlin, Teresa Rosenberger (Ex-Officio for City Manager), Members, Susanne Smith-Meyer, Matthew Hicks, Erle Pierce, and John Regan.

Absent: David Fox, Alternate Chiara Dolcino, and Alternate Frank Kenison.

Staff: Heather Shank (City Planner), Sam Durfee (Senior Planner), Lisa Fellows-Weaver (Administrative Specialist), and Bryant Anderson (Associate Engineer).

**1. Call to Order**

Chairman Woodfin called the meeting to order at 7:09 pm.

**2. Roll Call**

Chairman Richard Woodfin, Vice-Chair Carol Foss, Councilor Byron Champlin, Teresa Rosenberger (Ex-Officio for City Manager), Members, Susanne Smith-Meyer, Matthew Hicks, Erle Pierce, and John Regan.

**3. Approval of September 18, 2019 Planning Board Meeting Minutes**

On a motion made by Mr. Pierce, and seconded by Mr. Fox, the Board voted unanimously to approve the September 18, 2019 Planning Board Meeting Minutes, as written.

**4. Planning Board Chair Overview**

Chairman Woodfin announced that item 6B, 6F, 6G, and 6H have all been requested to be postponed to the October 16, 2019, meeting.

- 6B. S&H Land Surveying, LLC, on behalf of MDR Rehab & Development, LLC requests Minor Subdivision approval for a 2 lot subdivision at 64 Elm Street in the Neighborhood Residential (RN) District.
- 6F. The Dubai Group Inc., on behalf of Strategic Contracting Company LLC, requesting Major Subdivision approval and Major Site Plan approval for construction of a 13-unit condominium development and associated site improvements, Phase 2 of the Glen Ellen housing project off of Hoit Road in the Residential Open Space (RO) District.
- 6G. Erin Lambert, on behalf of Havenwood-Heritage Heights, requests Minor Site Plan and Conditional Use Permit approval for the demolition and reconstruction of three buildings totaling nine units at 149 East Side Drive in the Medium Density Residential (RM) District.
- 6H. Liberty Utilities requesting Major Site Plan approval for construction of a new 15,000 sf structure for the purpose of warehouse and office uses and associated site improvements at 14 Broken Bridge in the Industrial (IN) District.

On a motion made by Ms. Foss, and seconded by Ms. Smith-Meyer, the Board voted unanimously to reschedule the public hearings for the above referenced items, to the October 16, 2019 Planning Board meeting.

**Public Hearings**

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**5. Design Review Applications**

- 5A. Paulette Boghosian, on behalf of Alexander Constant, requests ADR approval to install a new wall sign and a new panel on an existing freestanding sign post at 35 South Main Street in the Central Business Performance (CBP) District.

No one was present to represent the application.

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

On a motion made by Ms. Smith-Meyer, and second by Mr. Pierce, the Board voted unanimously to approve the design as submitted, subject to the ADR recommendation that a border be added to the sign.

- 5B. Lui Vaine, on behalf of Ciborowski Jacob S. Family Trust, request ADR approval for a new storage structure at 90 Low Avenue in the Central Business Performance (CBP) District.

Ms. Shank stated that the application had been tabled.

On a motion made by Ms. Foss, and second by Mr. Hicks, the Board voted unanimously to remove the application off the table.

No one was present to represent the application.

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

On a motion made by Councilor Champlin, and second by Ms. Foss, the Board voted unanimously to approve the design as submitted, subject to the ADR recommendations that the shed door be changes to a solid panel, the shed have a board and baton look, and that the fencing between the kitchen and the shed be the same height of the shed with the same trim.

**6. Site Plan, Subdivision, and Conditional Use Permit Applications**

- 6A. Wilcox & Barton, Inc., on behalf of Kate Nadler, requests a Conditional Use Permit (CUP) for disturbance of a wetland buffer at 89 District 5 Road in the Open Space Residential (OS) District.

On a motion made by Mr. Hicks, and seconded by Mr. Pierce, the Board voted unanimously to determine that this application does not meet the criteria for a Development of Regional Impact, determine the application complete, and open the public hearing.

Erin Lambert of Wilcox & Barton, Inc., represented the application along with Kate Nadler.

Ms. Lambert stated that the Conditional Use Permit (CUP) is being applied for due to the construction of a driveway to provide access to a proposed single family residence. The lot was created in 2006 as a part of a subdivision. Frontage of the lot frontage is encumbered with either wetlands or wetland buffer. The approved subdivision plan depicted a proposed driveway that would require a CUP for wetland buffer disturbance at the time of construction. The CUP application shows the driveway further west than the original location to reduce impacts to the historic stone wall; however, the total wetland buffer impacts do not appear to be any more significant. She noted that the area is a forested wetland.

Abutter Don Ross, of District 5 Road, stated that the area is very important as it is east of Ash Brook. He stated that the City is an executor to the Rossvie Farm and he uses the water from Ash Brook for irrigation. He stated that he has no problem with the relocation of the driveway; however, at the same time, he requests that they be aware and cautious and protect the water quality and slow the water down before it gets into the east branch of the water supply. Mr. Ross asked that a berm

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be installed to slow the water.

Ms. Lambert explained that they have looked at the location on the western side and there may be a potential drainage issue that could possibly cause some icing issues; it may be necessary to raise it up. She stated that there are no trees to be removed; the grade is a minimal disturbance. Storm water will go to the road side swale. There is significant sediment from District 5 Road. The lot is heavily wooded wetlands and will remain undisturbed. They are only putting the driveway in and everything else will remain in its vegetated state. Ms. Lambert pointed out that the wetland will continue to act as a vegetated buffer.

Additional discussion was held regarding slope and flowage in relation to the driveway. Ms. Lambert explained that the contours run almost perpendicular to the existing wall so there is a 2 % slope; it runs down the side and into the wooded buffer. She noted that the width of the property is 120 feet wide with 200 feet of frontage.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Mr. Regan, and seconded by Mr. Pierce, the Board voted unanimously to grant Conditional Use Permit approval to allow for the disturbance of the 50-foot wetland buffer for the construction of a driveway at 98 District No. 5 Road, subject to the following precedent and subsequent conditions noted below:

- (a) Precedent Conditions – to be fulfilled within one (1) year and prior to sign off by the Clerk and Chair of the Planning Board and the commencement of site construction, unless otherwise specified:
  - (1) Address Staff review comments to the satisfaction of the Planning Division.
  - (2) Provide a copy of the wetland permit approval.
  - (3) Submit two (2) 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, the limits of clearing shall be flagged and approved by City staff.
  - (2) Per Section 28.07 of the Subdivision Regulations, the wetland buffers shall be clearly and permanently marked before, during, and after construction, with the exception of the existing buffer proposed to be impacted. Building permits shall not be issued until the wetland buffer is marked.
  - (3) A Driveway Permit will need to be obtained from the Engineering Services Division.
  - (4) Prior to final construction sign-off, staff shall be contacted to inspect the wetland area.

6E. Abbott Farm LLC, requesting an amendment to a previously approved subdivision plan to amend the condition regarding phasing for the Abbott House restoration, for the property at 282 N. State Street in the Neighborhood Residential (RN) District.

Developer Jason Garland of Abbott Farms, LLC, and Attorney Elizabeth Nolin of Alfonso Law Office representing the developer, and Preservation Specialist Stephen Bedard were present.

Atty. Nolin thanked the Board for their consideration and the time of City staff dedicated to this project. She stated that they are present to continue discussions relative to the status of the refurbishment to the Abbott House and to obtain the certificate of occupancy (CO) for the units

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currently under construction. At the March 20, 2019 Planning Board meeting, the Board approved the issuance of 16 building permits with the condition that the Planning Board would review and vote on a proposal to complete improvements to the Abbott House submitted by the applicant, and that a second opinion on the structural integrity of the Abbott House would be obtained. Stephen Bedard of Bedard Preservation & Restoration, LLC was hired to conduct an assessment on the structural integrity of the Abbott House. A plan has been submitted to the Board as to what they would like to do the exterior, all taken from the report from Mr. Bedard. They believe that they have met the conditions of the Board from March 20, 2019 and are requesting the authorization of 8 CO's for the units under construction.

Chairman Woodfin stated that the Board's goal is to move forward and protect the City's interest. He noted that the Board requested a plan depicting what would be happening to the exterior of the building.

Mr. Garland stated that the 2006 approvals only require improvements to the exterior of the Abbott House. They have taken the recommendations provided by Mr. Bedard and reviewed minutes and letters from City Staff along with the Board and Heritage Commission all providing what they would like to see on the exterior of the Abbott House. He stated that they are in agreement to do the exterior renovations, repairs, and replacements. He noted that Mr. Bedard's opinion is that the ell is not salvageable; however, they are willing to leave the ell open for further discussions.

Mr. Bedard stated that anything is salvageable; it depends on the cost and if it makes sense to save a structure. He stated that he recommended that the ell be demolished to make the other buildings more attractive to a potential buyer for renovations.

Councilor Champlin asked what has contributed to the decrepitude of the ell. Mr. Bedard replied that it is due to the lack of proper roof coverage.

Mr. Rosenberger asked if it is the decision to not move forward with the ell due to financial cost. Mr. Bedard replied yes; however, it is also in rough shape. Councilor Champlin recalled that the cost of repairs for the ell was previously stated at \$100,000 and asked if that was for the interior and exterior. Mr. Bedard replied that he believe \$100,000 would be sufficient to repair the interior and exterior; only the exterior and fixing the structural integrity of the building would be less at around \$75,000.

Chairman Woodfin stated that the applicant has requested that the Planning Board authorize the issuance of eight (8) COs in Phase 5 when it has defaulted on its obligation to rehabilitate the exterior of the Abbott House in Phase 4. He stated that City Staff has recommended that the Planning Board authorize the issuance of the 8 COs, subject to conditions. He asked for the applicant's response to the following conditions:

- (1) The applicant provides a financial surety be issued to the City to ensure completion of the exterior improvements to the entire Abbott House, including the ell and its roof, prior to the issuance of the 8 COs for any unit in the development. The exterior improvements shall be in accordance with the August 4, 2005 Heritage Commission recommendations and the applicant's March 16, 2005 proposal. The financial surety shall also require that the exterior roof improvements shall be completed on or before December 2019 with the remainder of the exterior improvements be completed on or before August 2020. The financial surety shall be subject to City staff approval.

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Atty. Nolin stated that they are willing to give the City financial surety. Steps have been taken to get the financial surety to the City within the next few weeks. Regarding the exterior, she deferred to Mr. Bedard's recommendations relative to the ell and as Mr. Garland had mentioned, having the ell included is not necessarily something they would not be able to accommodate. They would prefer to exclude the ell. She added that due to the deterioration of the ell there would need to be new construction to that part of the structure; it would not look identical to what it was.

- (2) No additional COs shall be issued for any units in the development until exterior improvements to the entire Abbott House, including the ell, are complete to the satisfaction of a third party agreeable to the City.

Atty. Nolin stated that the real issue was that there would need to be a CO issued for the Abbott House, and an interior in refurbishment or construction. If this is solely for the exterior, she does not believe that there are any fundamental issues; however, it depends on what the Planning Board does with the ell, either restored with new construction or demolished. She added that it may be appropriate to work with the Board to specify a plan. She feels that there are ambiguous terms and there needs to be a clear path identified to follow. She added that she believes that the applicant would go along with that and fulfill all of the conditions if there is a good plan.

- (3) In addition, no additional building permits shall be issued until a CO is issued for the Abbott House or until the applicant reaches an agreement with a third party to complete the process for a CO to be issued for the Abbott House.

Atty. Nolan stated that the applicant disagrees with this condition since a CO being issued for the Abbott House is outside the original approvals. She stated that the applicant is sticking to the exterior refurbishment of the House. With regards to a third party agreement, her request would be that the applicant shows a good faith effort to find a third party to take the house over. They have been in contact with a third party. She explained another option would be to propose a subdivision of the Abbott House from the condos.

Chairman Woodfin read another option for a condition as follows:

- (4) In addition, no additional COs or building permits shall be issued in the development until the applicant submits a plan agreeable to the Planning Board for the future development of the Abbott House.

Mr. Garland stated that once they have completed the exterior renovations they have met all of the conditions; they are not here to add additional conditions to the approval. Atty. Nolin asked whether they are being requested to come up with a plan and work with the City to find a third party. Chairman Woodfin replied that the plan would be for the building and what they see as a long term goal. He added that the homeowners would also like to see a plan.

Atty. Nolin replied that they would reserve their legal stance that the conditions are exclusive to the exterior; however, they would be willing to create a plan of what they intend to happen to the Abbott House going forward. She stated that the ideal is to have a third party take over the property and would be looking to subdivide the Abbott House as a separate parcel. Mr. Garland agreed with the condition with the exception that the plan must be agreeable to the Board. He noted that the Board could find the plan not acceptable and still withhold the CO's. He does not agree with that and stated that once the exterior is renovated, he has met all of the conditions of the approvals.

Councilor Champlin stated that the track record of the applicant is not good. The ell is in decrepitude because the roof was not put on. Mr. Garland indicated at the last meeting that a roof was not put on the ell because it was not required until the 30<sup>th</sup> unit was completed. Councilor Champlain stated that to act in good faith, the roof should have been done. This building is an

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important historical asset and there needs to be a positive resolution. There needs to be an agreement in collaboration and compromise; however, so far things are only completed if it is required. Mr. Garland replied that the good will or leverage will be the surety bond and he must complete the conditions. Beyond that, there are no further conditions relative to the residence.

Mr. Pierce stated that this has been the obligation since 2011. He expressed concern with another winter coming and there is still no roof. Mr. Garland stated that the roof is being done now. Mr. Pierce asked for an example of a good faith effort that has occurred since 2011 when this became his obligation. Mr. Garland replied that he cannot.

Ms. Smith-Meyer stated that the most important item is the building does not deteriorate any further. She stated the use is not the responsibility of the Board, however, the preservation is. Any effort for a third party would be a huge burden off of the owner and would be their goal. She stated that it would be better to have the building and leave the option for interior renovations available for someone else to address. Preserving would be the best option. She explained that she is not convinced at this time relative to the Board basing a condition for any future CO's on a plan. She does not see the benefits.

Ms. Foss stated that she is concerned with the use; it is actually to be determined by the third party. This complicates the issue. She supports a third party that would have some experience and expertise in the rehabilitation of historic buildings. It is an appropriate way to move forward; however, she is concerned with the plan determining a use. Chairman Woodfin explained that the plan would not need to define a use, it would be for the future development of the Abbott House.

Ms. Rosenberger asked if there has been any work done with the homeowners association (HOA) and what is the effect on them should the property be subdivided. Mr. Garland replied he has had several meetings with the HOA and they strongly support the subdivision. They do not want the burden of the building, including the higher maintenance costs related to it. He added that he believes HOA would support the subdivision.

Discussion ensued as to the costs associated with the subdivision and costs to the association relative to changes in documentation. Mr. Garland stated that he does not believe that there would be any costs to the HOA relative to the subdivision.

Councilor Champlin asked if there would be a right of way. Mr. Garland stated that there would be an easement needed to share the entrance so there would not be an additional curb cut.

Ms. Rosenberger asked why the applicant is objecting to the newly read proposal if there have been discussions with the HOA. Mr. Garland stated that once they have completed the exterior renovations they have met all of the conditions of approval and there is no reason to withhold CO's. Ms. Rosenberger stated that the request is relatively easy to do. She does not see that requesting a plan would be too difficult to accomplish. Mr. Garland agreed and added that he is not allowing the CO's and building permits to be used as leverage. This has been debated on for six months and he does not see that there is a condition requiring the Abbott House to need a CO.

Ms. Shank stated that it is the purview of the Board to add additional conditions. She added that throughout the project there have been deadlines missed and many requests for extensions and changes, and that it has not been clear until now that the interior wasn't already included.

Councilor Champlin referred back to when the applicant met with the Board in March and the Board was asked for building permits for the next phase with the requirement of restoration of the Abbott House. This Board has been very flexible with the project, and has shown a desire for the project to continue to move forward. He added that the HOA has also been flexible but has

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expressed concern with the continuation of living in a construction site. Councilor Champlin stated that he would like the Board to continue to be flexible but not be penalized for being understanding.

Chairman Woodfin stated that the Board has been very flexible for many years and yet the project keeps being continued. He stated that the Board wants a plan for the Abbott House and will not move forward until that occurs. At the March meeting it was stated that there will be no more CO's until it is done. The surety and approval items should now be required.

Mr. Garland replied that a plan has been provided, to restore the roof and exterior, consistent with the recommendations from the Heritage Commission from 2005. The subdivision and handing the house to a third party are in addition to what the approvals state.

Mr. Pierce recalls that at the March meeting the Board granted the building permits and stated that once the work was completed the CO's would be issued. Mr. Garland stated that the Board's condition was that they would hire a third party to get a second opinion and return to the Board with a plan, which has been done and is complete.

Chairman Woodfin asked if there was anyone who wanted to provide public comment.

Allen Herschlag read a disclaimer indicating that he is speaking as a citizen of Concord and is not representing any Board or Commission. Mr. Herschlag referenced the October 2016 Planning Board and noted that Ms. Smith-Meyer had recused herself as she was the landscape architect for this project. Chairman Woodfin stated that the question was raised at a non-public session and it was determined the Ms. Smith-Meyer could continue as a Planning Board member for this project; there is no need for a recusal.

Mr. Herschlag referenced two newspaper articles from prior years meetings that mention the restoration of the Abbott House when Mr. Tanguay owned the project as well as the new owner Mr. Garland. Mr. Herschlag stated that one article indicates that Mr. Tanguay had no intention to renovate the building and Mr. Garland understood that he was obligated to renovate the house but was talking to the City for flexibility in how and for what purpose the interior would be renovated in order to receive a CO. The plan being presented still does not meet the requirements of the conditions of approval. He added that the ell's condition is due to the owner's neglect which will not be replaced or repaired. Mr. Garland has stated that replacing the interior is not his responsibility. Mr. Herschlag stated that the Abbott Farm, LLC plans and timeline indicate that the project is an 80 unit development. He believes that the ell needs to be replaced in order for the house to be in compliance to be granted a CO. Staff's recommendation is that a CO be granted for eight units with a surety bond provided is still no guarantee that the Abbott House will be renovated. Mr. Garland has returned to the Planning Board and the Heritage Commission first to have the buildings demolished as they were determined to be beyond repair. It has since been determined that the buildings can be renovated. All actions have been a result of Mr. Garland. Mr. Herschlag mentioned that it would be a hardship for the HOA should the buildings not have the interiors addressed. He added that should the 8 CO's that are currently requested be granted, an additional extension could be submitted again. A surety bond may not be sufficient for completion after the CO's have been received. He added that in the original minutes from 2005, a former City Planner described the project as a 79 unit townhouse/condominium project and to preserve the historic Abbott House as the 80<sup>th</sup> unit. He expressed concern with the third party and if the Abbott House should be separated, the current approval is for an 80 unit development with the Abbott House as the 80<sup>th</sup> unit. A revision would need to be done for the project. He stated that he does not understand how a subdivision could occur and the applicant be able to move forward with the 6<sup>th</sup> phase. One other point he mentioned was relative to Mr. Garland not being a good steward for the property and neighbors. There is an existing buffer that separates the units from the houses on

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Hillcrest Avenue. The landscape plan shows that there needs to be shrubs and trees planted on the buffer. To date nothing has been planted on the buffer. It has also been indicated by residents that it has been very difficult to have the owner maintain the growth on the buffer until very recently.

Atty. Ethan Wood was present representing the Abbott Village Owners Association along with Ann Hamilton, President of the Abbott Village Owners Association Board of Directors. Atty. Wood stated that the HOA has a number of concerns with the proposal, beginning with the issuance of CO's. The HOA supports the recommendation from Staff and agree there is no issue with the issuance of the eight CO's. It is the prerogative of the Planning Board to require an additional assurance as well. With regard to the subdivision of the Abbott House from the rest of the development, that is a preferred option of the HOA; however, it may not be as simple as it was portrayed to be. He explained that the mortgage holder may need to release the parcel from the plan. The HOA is concerned as that will be a burden that will fall on the home owners and it also may be in violation of the mortgages. He stated that there needs to be additional thought and review of this option. The HOA is not in favor of an empty shell where they would be responsible for the maintenance in the future. This is not in line with the other units, there are different materials being proposed. There is no ability for a special assessment to cover additional costs. The HOA strongly encourages the Board to ensure that the interior be renovated regardless if the property is subdivided. Additional concerns were noted with the access if there were a subdivision as the access would be through the association. Atty. Wood referenced the conditions as noted, the HOA is aware of changes that have been made to other units to date, including that the units are different heights with different materials being used on the roofs. He stated that he is not sure that the requirement to renovate the interior is out of line or as onerous as prior changes to the subdivision plan. With regard to future CO's after these eight, the HOA would like to have the Board exercise additional oversight over the development to ensure that things are occurring correctly and as required. In addition, he requested that if there are non-public meetings held with the developer, the HOA Board of Directors requests to be present as there will be impacts to the HOA, residents, and property.

Chairman Woodfin stated that the non-public meeting that occurred prior to the Planning Board meeting was held with the City Solicitor and Planning Board members only, the developer was not in attendance.

Chairman Woodfin asked how the HOA feels as to the totality of the development at this time. Ms. Hamilton stated that relative to the roadwork there has been no top paving over any roads in the development. There may be a date certain; however, it has been 5 to 6 years with no paving. The first homeowner moved there in 2013.

Chairman Woodfin reviewed the timeline as noted in the Staff report for completion of paving and landscaping for each phase of the development. Discussion ensued as to the status. Atty. Wood stated that he is not familiar with the conditions imposed. He will follow up prior to the next Planning Board meeting. Ms. Hamilton stated that there has not been enough communication from the developer. She stated that she is very shocked and confused relative to the lack of clarity and how the HOA can take ownership of another unit in its current condition.

Ms. Shank asked if there has been any discussion with Atty. Nolin relative to the mortgages. Atty. Wood stated that there had not been but that he will be following up with Atty. Nolin to address the HOA concerns.

Mr. Hicks asked whether the HOA hired their own counsel out of concern that their interests are not being addressed by the developer. Ms. Hamilton replied yes.

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Ms. Chicidaris, a neighbor, not an abutter, stated that she has watched the decay and deterioration for years. She referred to a letter to the editor by Mark Hopkins asking what message the City is sending to developers. She stated that the City required conditions and then they are not being met; why bother. This project began in 2005. She referenced various documentation, planning board minutes, decision letters, various letters, throughout the life of the project. She stated that the developer continues to get away with so much; City and Planning Board, and developer should be ashamed of themselves. This would not be an issue had the conditions been followed and the project would have been completed. Someone needs to take action to make sure that what was approved is done.

Chairman Woodfin mentioned the economic environment of 2006-2008. He stated that he agreed and added that there are reasons for the Board to require conditions and the conditions do need to be adhered to.

Ms. Shank stated that the conditions have been superseded, the phasing changed after 2010 when Tanguay went bankrupt, and again in 2016 when they asked for extensions to complete the phases. She stated that it is not the case that conditions have been ignored or violated. There have been subsequent changes through the Planning Board process and the approvals have changed.

Ms. Chicidaris asked if there was ever a change where the exterior was addressed. Chairman Woodfin replied that there are many comments and recommendations that the Planning Board has considered.

Ms. Shank added that the site plan references the roof and exterior. She noted that the language from Mr. Tanguay pertaining to work done on the interior in order to receive a CO is true for any CO issued by the City. Ms. Chicadaris stated that Mr. Tanguay indicated that there should be a CO issued for the Abbott House as well. Ms. Shank pointed out that obtaining a CO for the Abbott House was not stated as a requirement in previous approvals for any specific phase of the project.

Councilor Champlin thanked Ms. Chicadaris for her testimony and appreciation of the building. He referenced the minutes from March 2, 2005, where the Assistant City Planner at that time expressed concern that the Abbott House would deteriorate and the restoration would not occur until the end of the project.

Mr. Herschlag stated that regardless of the fact that the Planning Board or Heritage Commission do not have purview over the interior, the interior will still need to meet Code requirements in order to obtain a CO. The fact that there are limitations with the Heritage Commission and Planning Board and there is not an opportunity have input on the interior does not remove the obligation or intent. He believes that it was clear in the beginning that the interior would also be completed, although there was no ability of the Board to have any input on how or for what the use it would be completed.

Atty. Nolin stated that Mr. Garland would be open to any discussions with the HOA as to how to provide fees or legal support should they need to notify the mortgage holders so that there would not be a financial burden if the subdivision should occur. Mr. Garland added that the discussions have not occurred with the HOA yet as they are premature.

Atty. Nolin stated that efforts in good faith have occurred as Mr. Garland has hired professionals to assist him through this process. She stated that in regards to paving, no top paving has occurred until the construction is completed. Mr. Garland is aware of the issue and is prepared to complete that when able to. Mr. Garland added that they are finishing building one and that area will be top coated October 3.

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Atty. Nolin noted the recovering economy of 2008 which has caused delays and they are working as quickly as possible to finish the project. They are looking forward to working to a resolution. One item that would be helpful is to more clearly define what is satisfactory and what the criteria is that the Board would be looking for in a plan so that it is acceptable.

Discussion ensued regarding a plan. Ms. Shank stated that the recommendations from staff would be for documentation of an agreement from a third party to rehabilitate the interior.

With no further comments, Chairman Woodfin closed the public hearing.

Ms. Shank stated that the applicant appeared to be satisfied with conditions 1 and 2, as they were read and until there is an alternative agreement she suggested the Board keep them as read. Although the applicant was not in favor of 3, it is the purview of the Board to set that as a condition and Staff still recommends condition 3. Regarding the roof, she pointed out that the applicant could obtain their CO's if the surety is provided without actually completing the roof based on the current wording of the conditions. She noted that the Board could add into the conditions that the roof would need to be completed prior to the issuance of any CO's.

Chairman Woodfin noted the comments from the HOA regarding a potential empty shell that they would be responsible for. Mr. Hicks asked if the applicant were to satisfy the Board's conditions and leave an empty shell, which is not in the Board's purview that would be a matter for the developer and the HOA.

Councilor Champlin referred to Mr. Bedard's comment to find a pathway to move the property out of the hands of the developer and into a third party to restore it and make it a viable entity. He asked how the Board ensures that without some leverage or incentive?

Discussion ensued relative to the completeness of the roof and ell, considering the possibility that the applicant could default on the project. Ms. Rosenberger pointed out that the applicant could default and would still obtain the CO's.

City Solicitor Jim Kennedy approached the Board. He agreed with the City Planner that the roof is an immediate concern. Atty. Kennedy provided a list of revised conditions for the Board.

Ms. Foss made a motion, second by Ms. Smith-Meyer, that the applicant completes the restoration of the main Abbott House roof prior to the issuance of the 8 COs completed to the satisfaction of a third party agreeable to the City. Additional discussion was held regarding the cost of types of repairs that could be made to the ell and the roof to secure it immediately.

Chairman Woodfin reopened the public hearing to hear from Mr. Bedard.

Ms. Foss asked if there is utility to making the roof secure from the elements on the ell immediately to prevent further deterioration. Mr. Bedard replied yes and it will make a difference. If the decision is not to allow the ell to be demolished then it will require more work so that it can be structurally viable to obtain the roof. He explained that the existing roof would be removed; structural repairs would need to be made to the framing and add a new roof constructed. It would take approximately three to four 4 weeks to complete. Another alternative would be to do a temporary metal roof, which would shed water until other issues could be addressed. The cost for the temporary roof is approximately \$5000. Ms. Shank asked about the barn roof.

Mr. Bedard stated that the roof of the barn would need to be repaired at some point in the future, as stated in his report, but that it is currently fine with no signs of leaking.

Councilor Champlin asked for clarification on whether the reason for the deterioration of the roof on the ell was due to the character of the roof on the main house where a cistern was not in place

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and the water was flowing into the foundation. Mr. Bedard replied that is not the case. The main house roof was a butterfly system but did not affect the ell roof, which was a standalone roof.

Chairman Woodfin closed the public hearing.

Ms. Foss amended the motion, that the applicant completes the restoration of the main Abbott House roof, and the ell with a temporary metal roof to prevent further water damage, prior to the issuance of the currently requested 8 COs, and completed to the satisfaction of a third party agreeable to the City. Ms. Smith-Meyer seconded the motion. The motion passed unanimously.

Councilor Champlin made a motion, seconded by Ms. Foss, for the applicant to provide a financial surety issued to the City to ensure completion of the exterior improvements to the entire Abbott House, including the ell and its roof, prior to the issuance of 8 additional COs for any unit in the development. The exterior improvements shall be in accordance with the August 4, 2005 Heritage Commission recommendations and the applicant's March 16, 2005 proposal. The exterior improvements shall be completed on or before August 2020. The financial surety shall be subject to City staff approval. The motion passed unanimously.

Councilor Champlin made a motion, seconded by Mr. Pierce, no additional COs or building permits shall be issued for any units in the development until exterior improvements to the entire Abbott House, including the ell, are complete to the satisfaction of a third party agreeable to the City. The motion passed unanimously.

Mr. Pierce made a motion, seconded by Mr. Regan, that no additional COs or building permits shall be issued in the development until the applicant submits a plan agreeable to the Planning Board for the future development of the Abbott House. The motion passed 7/1. Ms. Rosenberger was opposed.

Ms. Rosenberger expressed concern for the HOA. She stated that there needs to be a plan and asked how the City can get this worked out. Ms. Shank noted that requiring documentation of an agreement with a third party is one way that could occur.

6C. Tim Blagden, on behalf of the Friends of the Concord-Lake Sunapee Rail Trail, requests Minor Site Plan and Conditional Use Permit approval for the construction of a seasonal, 7-space parking lot at 25 Fisherville Road in the General Commercial (CG) District.

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

On a motion made by Mr. Hicks, and seconded by Mr. Pierce, the Board voted unanimously to determine that this application does not meet the criteria for a Development of Regional Impact.

Mr. Durfee provided an overview of the project. He stated that the parking lot will serve the trail and is proposed to be seasonal. He noted that most of the City of Concord's trail head parking areas are gravel therefore this is consistent within the City. In addition, revised site plans were provided today and all outstanding conditions have been met.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

On a motion made by Ms. Smith-Meyer, and seconded by Mr. Hicks, the Board voted unanimously to grant a Conditional Use Permit per Article 28-7-11(e) - *Alternative Surfacing* to allow for a gravel parking lot.

On a motion made by Councilor Champlin, and seconded by Ms. Smith-Meyer, the Board voted unanimously to grant Minor Site Plan approval for the construction of a parking lot for a seasonal

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use at 25 Fisherville Road, 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 (1) year and prior to issuance of any building permits, or the commencement of site construction, unless otherwise specified:
- (1) Address Technical Review Comments, noted in Section 2 above, to the satisfaction of the Planning Division.
  - (2) Address Engineering Division comments in the memo from Bryant Anderson.
  - (3) Any CUP(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 CUP request(s), applicant shall comply with said submission requirement(s).
  - (4) A Professional Engineer shall sign and seal final plans.
  - (5) A New Hampshire Licensed Land Surveyor will sign and seal the Existing Conditions Plan.
  - (6) Submit 3 sets of final plans to be signed by the Clerk and Chair of the Planning Board, prior to issuance of any permits or commencement of construction activities.
- b) **Subsequent Conditions** – to be fulfilled as specified:
- (1) Prior to commencement of construction activity, payment of any required 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 if requested by the City Engineer.
  - (3) Prior to the issuance of a Certificate of Occupancy or final construction sign-off, 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.

- 6D. T.F. Bernier, Inc., on behalf of Harold & Judith Ekstrom, request a rehearing on their request for a one year extension of the Planning Board conditional approval. If the rehearing is granted, it will be held and a decision issued at this meeting.

On a motion made by Mr. Hicks, and seconded by Mr. Pierce, the board voted to grant the rehearing request. The motion passed 7/0/1. Councilor Champlin was unavailable for the vote.

Tim Bernier of T.F. Bernier, Inc., and Harold Ekstrom represented the application.

Mr. Ekstrom gave an overview of the approved project explaining that the project is for a 38 unit apartment building. The area consists of properties that he has accumulated over the past 50 years consisting of seven lots and one-half of another lot on Warren Street. The lots meet all requirements of the district in the sense that it has the permitted uses and meets the full parking requirement. The tenants proposed for the units are people that are looking to downsize and are close to retiring and would like to remain in Concord, in the proximity of downtown. The location meets the age bracket designed for the age group that may have been ignored by developers. The location is the major attraction as it is close to facilities and the downtown attractions.

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Mr. Exstrom stated that there is an advantage to the City for this type of project. It will add to the tax base, reduce motor vehicle traffic on Warren Street with two curb cuts being illuminated. It will eliminate the requirement for the City to maintain Greenwood Ave., a private way. The lots in the district are 50 to 55 feet of frontage and 100 feet in depth. Six buildings were demolished that were all wood-framed structures ranging from 130 to 150 years old and were not code compliant. There was a serious issue of congestion and fire hazards due to the close proximity. Parking was an issue and the safety of backing up onto the street. All parking for the proposed building will be in the rear and will alleviate local traffic issues on neighboring streets.

Chairman Woodfin stated that the Board is looking for clarification as to what the reason for the delay is and the current status of the lots. Mr. Ekstrom replied that the seven lots were not demolished until the middle of April. Once demolished the lots were filled in and fenced to make the area secure and safe. The area that abuts Warren Street was grassed and seeded. The reason that they have not done anything else is that they are trying to determine if the project will go forward. He explained that the costs are higher than previous estimates and they are trying to determine what they can do to make the project financially viable. They are considering diminishing the size, reducing the number of units and/or amenities, and/or increasing the rent of the units. He stated that 7½ lots were consolidated, new deeds have been done, and the mylar was just recently recorded. Site work is currently being done; however, the construction work is on hold. At this time, he is unsure as to a timeline. He hopes it will be this year but it may not happen at all.

Mr. Bernier stated that the construction of the project has never stopped. Over the past 11 months there have been some unique issues. At the time of approval, there were 25 commercial and residential tenants throughout the 7½ lots. It has been a challenge. He mentioned that there are still some demolition issues that need to get resolved. Water lines have been completed. The curb lines have been marked. A contractor will loam and seed the area. The old driveways still need to be removed and the sidewalk still needs to be rebuilt. He explained that the process never stopped; however, with the increasing costs have caused delays. Meetings have been held with staff to see if there are other options that may alleviate some of the cost but were not successful. He stated that the development is \$15,000,000 and is privately funded. Overall, it is a great project for downtown and utilizes the area of the community.

Mr. Bernier stated that there have been no issues with the area or abutters until last month. They were very surprised as the comments and results of last month's Planning Board meeting. Mr. Exstrom commented that he would have liked for people to reach out to him if there was a problem to try to address it and work through it.

Mr. Bernier stated that as an abutter of the project he has done renovations into the property and does not have any issues with the lots. He is impressed with what Mr. Exstrom has done in that area and adding the nice fence and loamed and seeded. He enjoys the sun coming through and made that area more pleasing. He noted that he would prefer the sand over wild flowers.

Paige Cannon, 41 Warren Street, stated that she submitted a letter prior to the meeting. She stated that she hopes that we are not sitting here 5 to 10 years from now continuing to discuss this project. She explained that she has been supportive of the project and what the applicant has tried to do for this area. There was support from the City as well. Now that the vastness of the area to be developed and the proximity of the proposed building to the road is more clear, she is now able to see how close it will be to her home. Just because it is allowed, doesn't mean it fits. Regardless of what was there, it was a part of the community. She wanted to encourage thoughtfulness in terms of how to assist the applicant, the neighbors, and community at large. Figure out what can be done, set some timelines, expectations, and continue to follow up on these items.

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Chairman Woodfin stated that the request is to extend the approval for one year. The Board cannot make any changes at this time; it can only grant the extension or deny it. If denied, a new process begins with a new application, new permitting, new plan, etc. It could be a year or more before anything happens. If the extension is approved, the applicant will have a year to complete the approved project.

Ms. Cannon stated that part of problem is getting the residents to the meetings. Many are not aware of the Planning Board process, most are renters. There is a problem with the notification system as only property owners are notified. She added that she agrees with Mr. Bernier that there are things ongoing on the property; however, it has been random and yet they have indicated they are moving forward. It is incumbent on the Board to resolve this. She requested that the Board members visit the site and look at the existing lot, knowing it could be a year or never, before anything is done, which is troubling.

Ms. Smith-Meyer stated that one reason why the request was denied was because there was no one present at the meeting last month to provide any answers and it would have been irresponsible for the Board to act on the request without a representative present. She added that it is a sandbox and asked Ms. Cannon how she would feel if the lot was covered and was not just blowing sand. It would be at a limited cost to the applicant and could be seen as an improvement in the short term.

Ms. Cannon stated that approach would be preferable in the short term; however, she would like to know what is going to happen in the long term.

There being no comments from staff or members of the public, Chair Woodfin closed the public hearing.

Councilor Champlin expressed concern with the fact that there doesn't seem to be a plan. Although he understands the challenges, it may be appropriate for the applicant to continue working and then return to the Board with a coherent plan. He stated that the structures were taken down before everything was in line and now there is a huge hole in what used to be a neighborhood. This is a terrible precedent for the City.

Mr. Peirce confirmed that should the Board deny the request to continue, the applicant would need to reapply and then the City is left with an empty lot. Chairman Woodfin replied that is correct.

Ms. Rosenberger stated that the plan that was approved does not seem to be viable anymore and they will need to reapply. She expressed concern with the fact that the applicant knew this prior to the demolition of the neighborhood.

Ms. Shank stated that Planning always tries to give projects a fighting chance, and that a denial may send the wrong message. Granting an extension gives a better chance for the project to move forward and allows the Board to place a condition that the lot is seeded immediately. Wild flower meadows take time to develop. She added that if the applicant comes back in a few months, there is nothing different about the regulations that would preclude the project. Should they not come back, there is an empty lot with no requirement that it gets seeded.

Councilor Champlin asked about site stabilization. Ms. Shank replied that there is a requirement in the site plan regulations relative to site stabilization; however, there is nothing required for demolition. There are AOT requirements for erosion and wind.

Carlos Baia stated that whether the Board grants the extension or not, there are remedies that could be approached should the extension not be granted. He explained that an argument could be made due to dust, sand blowing off the site, until a new or changed plan comes before the Board.

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On a motion made by Councilor Champlin, second by Ms. Rosenberger, to deny the request for a one year extension of the Planning Board's conditional approval from October 2018. In Favor: Councilor Champlin, Ms. Rosenberger, and Ms. Smith-Meyer. Opposed: Chairman Woodfin, Ms. Foss, Mr. Hicks, Mr. Peirce, and Mr. Regan. Motion failed, 3/5.

On a motion made by Mr. Hicks, second by Mr. Pierce, the Board voted unanimously to grant the request for a one year extension with the condition that the applicant loam and seed the lot and provide an acceptable plan to Staff.

Mr. Anderson stated that permits are required for the driveways and to remove any curb cuts along Warren Street, and the sidewalks must be restored.

**8. Other Business**

8A. Letter from Penacook Historical Society

Chairman Woodfin said he would share the letter with the Heritage Commission for discussion.

**Adjournment**

At the request of Chair Woodfin, Ms. Smith-Meyer made a motion to adjourn at 10:15 PM, seconded by Ms. Foss. The motion carried unanimously.

A TRUE RECORD ATTEST:

Lisa Fellows-Weaver,  
Administrative Specialist