

CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

REGULAR MEMBERS PRESENT: Ron Cole, Marcia Colbath, Dean Trefethen, Frank Torr, John Swartzendruber, Doug Steele

MEMBERS ABSENT: Tony McManus, Perry Plummer, Donald Andolina

ALTERNATE MEMBERS PRESENT: Linda Merullo, Kirt Schuman, Ron Stock

STAFF PRESENT: Christopher Parker, Planning Director and Jacqueline Pease, Recording Secretary

Chairman Ron Cole brought the meeting to order at 7:00 pm.

1. Citizens' Forum

There were no speakers.

2. Approval of minutes of the minutes of March 11, 2008.

Frank Torr made the motion to approve the minutes.

Linda Merullo seconded.

VOTE U/A

Approval of the minutes of the workshop minutes of March 11, 2008.

Frank Torr made the motion to approve.

Linda Merullo seconded.

VOTE U/A

3. New Business

A. Consideration and acceptance of a minor subdivision of land for John Janetos, Assessor's Map N, Lot 13, zoned R-40, located on Gulf Road.*(P08-14)(1 lot)

Paul Connolly stated that this came before the Board one year ago requesting a 1 lot subdivision. They are requesting another lot be carved out of the mother parcel. The old homestead will be on the 2.2 acre parcel and the old barn will be on the 48 acres. They have applied for NH Subsurface Subdivision Approval for the 2.2 acre lot that is served by municipal water and an onsite septic system, therefore the need to apply for the NH DES approval.

Chris Parker asked what the intent was regarding the access driveway between the house and the barn.

Paul Connolly explained although the title may be held in different family names, the mother parcel is still farmed as a family. Several times per year the family members get together and hay all the fields. The intent is to continue that. The driveway is partially gravel but for the portion that runs up to and just



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

about the backside of the garage on the homestead parcel. There aren't any issues with regard to pavement setbacks.

Chris Parker said that it looks like it is asphalt coming from the barn.

Paul Connolly said that there is a line that shouldn't be there. They will fix that error.

Frank Torr made the motion to accept the application.

Doug Steele seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Chris Parker gave the recommended conditions of approval.

Kirt Schuman made the motion to approve with the following conditions of approval:

1. Add the owner's signature to the plat.
2. Add the surveyor's stamp and signature to the plat.
3. Provide the Planning Department with a digital version of the plat.
4. The applicant shall revise the plat to add the location of the existing septic system, existing municipal water line, and identify the paved and gravel portions of the driveway.
5. The applicant shall provide the Planning Department with a copy of the NH Department of Environmental Services Subdivision Permit and add the permit number to the plat, prior to signing the plat.
6. Any new dwelling unit shall be subject to any impact fees or water and sewer investment fees in place at the time of building permit application.

John Swartzendruber seconded.

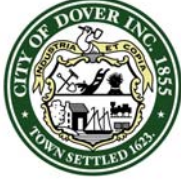
VOTE U/A

4. Old Business

- a. Discussion and possible vote on a site plan of land and Conditional Use Permit for Summit Land Development, (Owners: John & Mary Ann Reid) Assessor's Map 5, Lots 11 & 16, zoned B-2, located at 538 Central Ave. & 5 Fifth Street. (P08-10)**

Dean Trefethen made the motion to remove this item from the table.

Kirt Schuman seconded.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

VOTE U/A

The public hearing was opened.
There were no comments.
The public hearing was closed.

Chris Parker stated that the applicant has submitted a revised site plan. The applicant has applied for a Conditional Use Permit for reduced parking spaces per Chapter 170-44-I, and for a waiver to Chapter 149-15C, to allow parking and pavement within 5 feet of a side property line and within 10 feet of a front property line. The Planning Department supports the waiver request due to the fact that the parcel is in a B-2 District where buildings have no setback requirement and the small size of the lot makes compliance difficult. The Conditional Use Permit is also supported. The Planning Department recommends that the site plan be approved and he gave the recommended conditions.

Frank Torr stated that the utility pole on Fifth Street came up at the site walk. It is too bad to spoil the aspect of the building with that pole. Would it be possible to get that replaced or put underground?

Chad Kageleiry said they are negotiating with PSNH but it will be their call. He said that pole is terrible and they want it removed as much as Frank does, maybe more.

Ron Cole suggested writing a letter to PSNH from the Planning Board if it would help.

Ron Stock made the motion to approve with the following conditions:

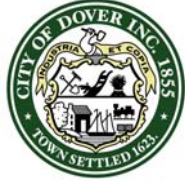
1. Add the owners' signature to the plan.
2. Add the surveyors and engineer's stamps and signatures to the appropriate sheets of the plan.
3. The approval includes the granting of the requested waiver.
4. The approval includes the granting of a Condition Use Permit for reduced parking spaces per Chapter 170-44-I.
5. The plan sheet no. EX-1 shall be recorded at the Strafford County Registry of Deeds to eliminate the boundary line between the two lots, prior to signing the site plan.

Dean Trefethen seconded.

VOTE U/A

b. Discussion and possible vote on a site plan of land and Conditional Use Permit for D.F. Richard Energy (Owners: NRBA Realty, Inc.) Assessor's Map 26, Lot 12, zoned B-3 & I-1, located at 81 Broadway. (P08-07)

Dean Trefethen made the motion to take this item off the table.
Ron Stock seconded.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

VOTE U/A

Paul Connolly said that there was a site walk on Saturday, March 15, 2008. He felt that there were no outstanding issues.

Chris Parker said that an item from TRC is the request by the Engineering Office for a contribution as they have done work and continue to do extensive work on the Broadway & Elea St. drainage area. They are looking to getting financial assistance from the projects that are going to have an impact.

Paul Connolly stated that the watershed that is contributory to that area is massive such as a couple hundred acres. They occupy about a minimal 3 acres of that overall watershed.

Chris Parker said that they will work with Engineering staff to determine an accurate number as a condition of approval.

Chris Parker stated the applicant appeared before the Conservation Commission on February 4, 2008. The Planning Board held a site walk on March 15, 2008. The Planning Department recommends that the site plan and Conditional Use Permit be approved and he read the recommended conditions.

Frank Torr made the motion to approve with the following conditions:

1. Add the owners' signature to the plan.
2. Add the surveyors and engineer's stamps and signatures to the appropriate sheets of the plan.
3. Approval includes the granting of a Conditional Use Permit subject to the submission of a soil erosion and sedimentation control plan that includes a contingency plan for the identification and proper management of any contaminated soils encountered during excavation for the building construction, prior to the signing of the site plan.
4. The applicant shall work with the Engineering Office and the Planning Department to determine a contribution towards the Broadway Drainage Project.

Linda Merullo seconded.

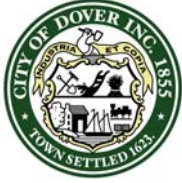
VOTE U/A

c. Discussion and possible vote on a site plan of land and Conditional Use Permit for Orchard Street Realty Investments, LLC Assessor's Map 16, Lots 32, 34 & 36A, zoned UMUD, located at 38 Mill Street. (P06-62)(64 units)

Dean Trefethen made the motion to take this off the table.

Ron Stock seconded.

VOTE U/A



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

Malcolm McNeill introduced Mike Garrepy, John Ring with Jones & Beach, Dan Bellfore, Jones & Beach, Mark West certified soil scientist. He said that Kevin McEneaney is the surveyor with regard to this project. He said there was a separate review by a geotechnical consultant at the expense of the applicant. The consultant was chosen by the City. Additionally, they brought in various experts regarding ledge removal. They are here seeking approval of the 64 unit project. They closely reviewed the memo of Chris Parker and the materials submitted by Atty. Pelech and Larry Morse of NH Soils and of some abutters. At the last meeting they provided specific responses to Chris Parker's memo. As it regards the city officials this is the only memo that they are aware of that takes issue with the project. It has been his experience in Dover that there is a basic rule, whether it is a lot line adjustment or a controversial project like this one, that when the applicant complies with the ordinance and he does what he is asked to do, then it has been the custom of this Board when there is compliance to grant approval. He is seeking approval because there has been compliance.

At the last meeting he handed out the timeline and passed out material on the issue of "may" and "shall" as to whether you could adopt a Conditional Use Permit. He showed the sections in the ordinance where may is used as it is a typical legal word enabling you to act with regard to compliance. From August of 2006 and every occasion since that time with regard to any technical request made by the City, there was a response from the applicant. All of it would indicate that the project has satisfied all of the criteria raise by staff and the technical experts such as Police, the Fire, Engineering, Bruce Woodruff and other members of the professional staff. To his knowledge there are no outstanding issues with regard to those departments. This application requires no variances or waivers but it does require a Conditional Use Permit which was unanimously recommended by the Conservation Commission on an evening chaired by Marcia Colbath. The fact that the application was accepted on June 1, 2007, indicates, based on sound legal and planning principals that the application was in compliance with the Zoning Ordinance. But for the necessity of the Conditional Use Permit, which was known and required, the application should not have been accepted if the project did not comply with zoning. The acceptance process of the project commenced on June 7, 2007. There has been some reference in the material submitted by Mr. Parker to the Master Plan and the late 2007 Master Plan. This application was accepted on June 1, 2007, months in advance of the acceptance of the Master Plan. Mr. McNeill stated this was important because the applicant takes his case and proceeds with his approval based on the law as it exists when the application is accepted. The Master Plan of the City is not the controlling document with regard to this process. The Master Plan is a visionary document. There are many components of any land use master plan that never get enacted. Any reliance on a master plan that post dates the acceptance of that document would not be consistent with the proper procedure for reviewing this plan. They have brought three professional engineers to this project. They presented Steve Pernaw a professional traffic engineer, who supplied material both to the City and to Bruce Woodruff. They presented testimony from an architect and submitted information from a blasting engineer and a blasting expert, also the applicant is a professional planner. Except for the issues raised by Chris Parker, they are not aware of any municipal regulation issues relating to this project. They believe there are no legal grounds to deny this project. The only evidence to confront is Mr. Parker's memo, as well as a necessary response to the materials raised by Atty. Pelech and Larry Morse.



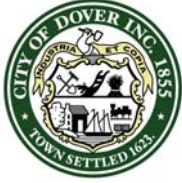
CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date:	Tuesday, March 25, 2008
Meeting Time:	7:00 pm

Mr. McNeill stated that this project is not Yellowstone National Park and is not a haven for wildlife. Sawyer Mills is an intense residentially developed area. The 10 Commandments is a very compact multi-family area. The Paolini project across the river is extremely dense and recently approved, as well as an elderly project that is in close proximity. This is an area of intense residential development that is entirely permitted by the zoning ordinance. This property will attract and house workforce housing people. He thinks that it is important that communities recognize that projects that are designed for this type of use may not appear on the cover of Architectural Digest but they do provide a valuable service in a community. The planner's complaint is the project is too big and doesn't fit. This is the UMUD zone whether the city wishes it to be something else or not. There has been plenty of opportunity to change the zoning. Under the UMUD zoning they could place 239 units and they are proposing 64 units which is 26% of the total units allowed as a matter of right. The project would come in as a matter of right as opposed to the two buildings presently on this site, which are non-conforming uses. The impervious surface of this lot is 35 % of the total lot or half of the 70% coverage permitted in the zone. With regard to the Shoreland Protection Act it has always been the practice of this Board to require applicants to go through the State process and if they don't get a State permit, they don't have a project. Customarily, an approval would be contingent upon getting State permits. They fully intend to get all their State permits and if they don't, they don't have a project. He also previously passed out the rule making procedures by the State of NH because of the extremely dramatic impact of the revisions of the Shoreland Protection Act. They have every reason to believe that the Legislature would find that this project is exempt because it was accepted and noticed by a Planning Board prior to July 1, 2007. If that isn't the case, they will get the permit and if they don't get the permit, there is no project. They are more than happy to have the Board condition their approval on any State permit. When the applicant met with the TRC in January of 2007, the TRC recommended many changes in the project, particularly the joining of two buildings into one, which they agreed to do. Engineering and others were concerned with the status of Mill Street. There is no suggestion that you do not approve of this project because of traffic issues, nor would you find anything from the Fire or Police or from Engineering suggesting that the road is inadequate and nor would you find it in Chris Parker's memo. There was a second TRC on March 22, 2007, where further comments were made and all of which were responded to by the applicant as part of the memo showing a line by line response to all of those materials.

The Planning Department suggested that they meet with the owner of the 10 unit facility to see if some kind of an agreement could be worked out. His client has attempted to do that and has been unsuccessful. He is not placing blame on either side; they just couldn't come to an agreement. After that the applicant had two meetings with the Conservation Commission, one in February and then in April. Issues discussed were slopes, how the water is going to be handled, how pet waste would be handled, how are the impacts on the river to be handled, and how is the matter to be considered in the context of its location. The records of the Conservation Commission make it clear that this was not a perfunctory review and they imposed conditions with regard to the project which would indicate the scope of their concern. They have agreed to comply with all of those conditions. The vote was unanimous. There has been a suggestion that this property is in the Land Conservation Plan for the NH



CITY OF DOVER

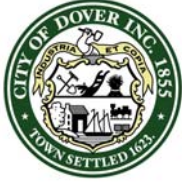
DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

Coastal Watershed. They don't believe that is irrelevant because it does not bear on the Board's ability to approve or disapprove this project. The Master Plan cannot control where there is a zoning ordinance that specifically addresses the issue. On Aug 14, 2007, at the request of the staff, the Planning Board required a City review by a qualified blasting or excavation expert. It took over 4 months to get a report from that person. They were not in control of the selection process but there is nothing in that report that indicates grounds to turn down this project. Every recommendation from that expert is included in the plan.

On November 19, 2007, Dave White indicated some minor problems that were attended to. Regarding further issues raised by the Planner, the staff was concerned that the project does not have adequate parking. Staff did not say they were in violation of the parking regulations. Is it really the desire of the City to have more impervious surface on this site or is it desirable for the City to request that parking be limited, most of it being underground or in a manner that decreases the environmental impact. There will be trees removed on the site, but the trees will be replaced by a building in terms issues as they relate to noise. Public health and safety - the Planning Director has indicated that Mill St. is an adequate roadway. Neighborhood Context – he said he looked for neighborhood context in the zoning ordinance and can't find it but this building is 20 feet shorter than the maximum allowed in the UMUD zone. The building is only 10' taller than the Sawyer Mill building and complies with all the requirements in the zone. Their obligation is to comply with the Site Review regulations and the Zoning Ordinance. What is the law and not the aspiration. NHDES is struggling with the Comprehensive Shoreland Protection Act and they believe they will be exempt from that issue. The Conditional Use Permit as well as the conditions that were imposed are important. The commission would like the stormwater outlet area monitored post construction, to insure that erosion is kept to a minimum. They agree to do all those things. The commission would like the developer to return with a plan for recreation alternatives and he will do that tonight. The commission recommends that a yearly stormwater management maintenance plan be done and they agree with that. With regard to the findings, the staff indicates without the benefit of any technical expertise to support conclusions, that somehow or other the slopes, which the Conservation Commission has approved, have an adverse effect as it relates to this project. That has not come from the Engineering Department or from the geotechnical expert or from any specially trained person. The committee that is in charge of recommending and advising you of the steep slopes have said that the steep slopes are ok unanimously.

The plan either complies or it doesn't with regard to the general recommendations and the proponents of the project's findings with regard to the ordinance. A blasting expert spoke to the safety of it. There was a request that they develop a storm water management system and they have agreed to do that. The stability of the Spaulding Turnpike is something that was addressed by the blasting expert. Screening from the turnpike and they did that. They will get an EPA Notice of Intent. They will do a lot merger form. They will install to the satisfaction of the staff, speed tables. The power lines will go underground and landscaping will be increased. Two letters were submitted at the last meeting, one from Larry Morse, dated February 7, 2008 stating there appears to be wetlands within the floodplains area and wetlands perhaps on the site. Mark West who will testify that he has inspected the site and he is a



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

certified wetlands scientist will put his stamp stating there no wetlands issue with this project. Mr. Morse made reference to the Shoreland Protection Act. If we are not grandfathered they don't get the permit and the project doesn't go anyplace. Regarding the conservation area, Mr. Morse noted that it appeared to him that there was grading in the area of the site within 100 feet and it should have had a Conditional Use Permit. The applicant, throughout this process, worked through the staff and the Conservation Commission to bring their whole file to the Conservation Commission. From the beginning of this project until Larry Morse's letter of February 7, 2008, it is over a year. No one from the City indicated that an additional Conditional Use Permit might be contemplated. They think that the approval from the Conservation Commission speaks for itself and that it considered all of the issues and the project have been approved because they would not have given a unanimous consent if they felt any other approval was required. If it's a determination of this Board that an additional permit is necessary, they will go back to the Conservation Commission for that limited reason. They have submitted materials indicating that they would be using porous type pavement, an improvement to the project as a result of the issues raised by Mr. Morse only. It was suggested by Larry Morse the survey be provided to verify the locations of the property lines, sewer and wetlands boundary. They believe they have done all of that but if they haven't, Kevin McEneaney will provide that. Atty. Pelech's letter speaks with concern that a certified wetlands scientist has not addressed the issue of wetlands on the site. Mr. West is prepared to do that. They agree that there needs to be a Terrain Alteration Permit and they will get one. With regard to drainage, there was some linkage between a possible need for a Dredge & Fill Permit because it was uncertain if there were wetlands on the site. If NHDES requires that there be a wetlands permit, they will get it. The Board should rely on the expertise of your own people and Steve Pernaw with regard to traffic. Their basic position is that there is no need to cut in half a project without it being a sustainable scientific or a legal basis compelling them to do that. That evidence doesn't exist. They believe that the application complies and that what they are proposing is lawful and reasonable. If the project is denied, they would request a specific listing of the grounds of denial. If the project is approved they are willing to accept reasonable conditions of approval as they have throughout this process, including State permitting.

Jonathan Ring, Jones & Beach Engineers, stated that they did receive a letter from the Site Specific review agency at NHDES, dated March 6, and they have responded to those comments by changing the design for the asphalt to pervious concrete. As a result, the concrete section will allow the stormwater to flow through it and it will be treated in the sub gravels underneath the concrete and then piped into an underdrain system that will then funnel it off the site. The down stream defender has been eliminated. This provides much better treatment than the other device.

Kirt Schuman said that it is his understanding that pervious concrete requires a deeper base and more excavation and asked what would that do to the blasting.

Dan Bell, Jones & Beech Engineering answered they would have to blast a bit deeper. He is working with someone at DES to provide them with stormwater regulations that are in the process of being updated. Currently, the porous concrete is something they are working on. They need to go about 50"



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

on the low side of the parking lot and 72”- 80” on the higher side. One of the requirements is going to be 36” of sand treatment prior to all that. You can be guaranteed that the water going in and the water coming out will be much cleaner.

Kirt Schuman said that it doesn’t seem feasible to do pervious.

Dan Bell said that it is kind of acting like a septic system.

Ron Cole asked if they are looking at a difference of three feet deeper.

Dan Bell stated that was correct. The regular asphalt is 1” top cote, 2” binder and then 18” bank run gravel and they will go an additional 3 feet on the low end.

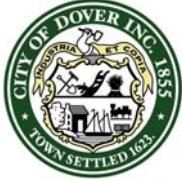
Mark West, West Environmental stated he first inspected this site in late spring of 2007 and he did not find any wetland. As a follow up to questions that were raise, he went back on the 13th of March and identified wetlands across Mills St from the where the building will be located. McEaney Survey picked up those wetlands to show they are not on the site but are off the site. There are wetlands associated with the River but they are not on the property. There are no proposed impacts.

Malcolm McNeill stated at the last meeting the Chairman decided not to proceed because of establishing a deadline date for the submission of documents. They submitted the documents proposing the change in the surface of the parking lot in compliance with that deadline. They had hoped that the City would have an opportunity to be able to respond to them but he has not received a response. He doesn’t know any concerns the City may have. He said there are choices, the first is to approve with conditions and the second is to turn it down and provide the reasons for denial and the third, although this project has been here for months, is to send this back to the Conservation Commission, which they don’t feel is necessary. As to the grading in the wetland area, you may wish to have some input from your Engineering Department with regard to the changes that were submitted a week ago. Their concern is to try to bring some closure to this with terms and conditions that everyone can live with.

Chris Parker stated that he did receive an e-mail at about 4:00 pm from the City Engineer saying that he did review the concrete. Tonight’s meeting is moving ahead faster than he had expected. He has been working to get the geotechnical engineer here. He said he should arrive about 8:30. He hoped he would be able to speak and accept questions from the Board prior to the public hearing.

The public hearing was opened.

Atty. Pelech, spoke on behalf of Mr. & Mrs. Grossman and Sawyer Mills Associates. He hoped that all Board members had an opportunity to review the 1 ½ pages of Conservation Commission minutes which are the minutes for two meetings. Atty. McNeill repeatedly told the Board that the Conservation Commission thoroughly examined all the issues and unanimously approved all of the environmental

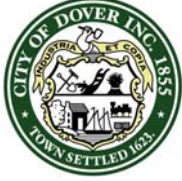


CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

issues. He begs to differ because from his reading of the minutes it does not appear that the Conservation Commission thoroughly reviewed the project. If they did, they have to review it again because the drainage plan has changed from the plan that they reviewed. The Zoning Ordinance which Atty. McNeill referred to and indicated to you that this complied, had a very important section called the Conservation District which requires the applicant that is doing work in an area that is more than 20% slopes to obtain a Conditional Use Permit. That is the crux of the entire application. It is not as much an issue of site plan review as it is whether or not a Conditional Use Permit should be granted. He had the areas of the slopes in excess of 20% highlighted on a board. Much of the areas are much in excess of 20% slopes such as 30 and 40% slopes. It is massive. The Conservation District Chapter 170-27, says that you may grant a Conditional Use Permit provided that a Soil Erosion & Sedimentation Control Plan is submitted to verify the planned erosion along bodies of water. The applicant has submitted something that would suffice. The second requirement is that necessary State and Federal approvals have been received. Atty. McNeill who is more familiar with the practices of this Board, indicated that it is normally the position of this Board to grant Conditional Use Permits and make them conditioned upon obtaining all the State permits in the future. That may well be this Board's policy, but it leads you to a slippery slope because if you approve a plan conditions upon the applicant getting their site alteration permit, then you run into the situation which just happened in this case. You had a plan that had been submitted to you and to TRC and Conservation Commission and that plan was sent to Concord to DES and DES said no way – it does not comply with the stormwater runoff for 2 or 10 year storms and the treatment doesn't meet their criteria. Yet that's the plan that was reviewed by the Conservations Commission and that's the plan that was reviewed by the TRC. As a result of Amy Clark's letter, we now have an entirely different drainage plan and a different outflow on a different side of Mill Street than we were before. It is an entirely new drainage study. It has not been review by the TRC or the Conservation Commission. That is what can happen if you approve things with a condition that they get their State approval at a later date. You may be approving a drainage plan and the State is approving a completely different plan. The makers of the zoning ordinance had a lot of foresight when they said that the State approval has to be received. He suggested that it is a good policy to follow with regard to this project. When they have their State and Federal approvals in hand, they can come to you for approval. The third criteria for a Conditional Use Permit requires a written review by the Conservation Commission of the environmental effects of the proposed use upon the area in question and that has to be submitted to you. What has been submitted is a 1 ½ pages of minutes of two Conservation Commission meetings which he implored the Board to read before making a decision. If you consider this to be a written review by the Conservation Commission of all the environmental issues on the effects of the proposed use upon that area, then he won't argue. There is nothing written other than the minutes. He submits that on the issue of the Conditional Use Permit, two of the three conditions have not been met. There are a number of choices. One of the choices is that you don't have, is to approve a 32 unit project when you haven't even seen the plan for such a project. That is something that would have to come back before this Board. The applicant is correct in saying that they would like the 64 unit project voted up or down. Because of the change in the drainage plan and now the outflow, the substitution of the pervious concrete, the fact that there is much more blasting being done to accommodate the pervious parking areas, this project is not ready for your final vote. This project



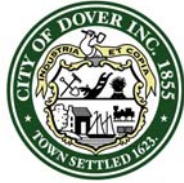
CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

should go back to the Conservation Commission with instructions that they be provided with a written review of the environmental effects of the proposed use. Also, this project should go back to the geotechnical engineer since there is now more blasting and more ledge and they are putting under drains between the ledge and the pervious pavement. He stated Mrs. Grossman was concerned that the outflow of all the under drainage is about 10 to 15 feet of her parking area. Atty. Pelech didn't think that this Board had enough information to actually make a decision on whether or not the Conditional Use Permit should be granted adding that he doesn't think that the requirements for granting the Conditional Use Permit have been met. The minutes of the two Conservation Commission meetings reflect that they did not discuss a lot of issues and they did not unanimously endorse this project, but they expressed concern with the stormwater outlet area. Mr. Dean was worried about the stability of the area. The discussions at that meeting regarding the 20% slopes, the drainage and the downstream defender, have all been changed. The master plan provides you with guidance, but it is the Zoning Ordinance that really has the teeth and it is the Zoning Ordinance that you have to adhere. 170-27 is the requirement for granting the Conditional Use Permit. He said that 2 of the 3 requirements have not been met. He went back to the old Master Plan of May 2000 and reviewed some of the goals of the Natural and Historic Resources goals and objectives. The first goal was to protect and enhance environmentally sensitive resource areas in order to protect their natural integrity and to promote health and safety. This is not Sherwood Forrest, but it is the only densely wooded green area in that neighborhood and it provides a wildlife corridor. He's sure when the UMUD zone was conceived the primary vision of the people who drafted it was not for very dense new construction, rather they probably were looking for an incentive for somebody to reuse the Sawyer Mills Building and the other mill buildings in the area. What better incentive is there than to allow greater density. As Atty. McNeill said the units that could be on this site is 260 but he doesn't think that was the intent. The ordinance says what it says and the density is what it is. Hopefully you have looked at the old master plan that advocates protecting and enhancing environmentally sensitive natural areas and protecting and maintaining the valuable functions of wetlands, increasing public awareness of Dover's unusual plant and animal species. It talks in great detail about the Bellamy River and how important it is. This is a part of the Bellamy River where there is tidal activity and it is in a very sensitive ecological area. The project will have severe environmental effects on the ecology. If you consider the amount of blasting and the change of grade and the amount of defoliation and the amount of green area that is going to be removed, he can't see how the Conservation Commission would find that there is minimal effect of this proposed use upon this area. Nobody knows what is happening in Concord with regard to the Shoreland Protection Act. He believes that the best course of action for this Board to take is to take no action and to refer this matter back to the geotechnical expert, drainage expert and to the Conservation Commission because they are looking at basically a new plan. The number of units has not been reduced, the parking lot size has not been reduced but the drainage system has been drastically altered. He hasn't seen Mr. West's delineation put onto a plan but he is glad to hear that he did find wetlands adjacent to the Bellamy. It is just a matter of how far the wetlands are from the property lines because of the 50' buffers from the wetlands.

Ken Grossman, owner of 25 – 34 Mills Street, stated that he was happy to hear from Chris Parker that the geotechnical expert that did the report and will be here. He said like a lot of people in the room he



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

was very happy to see the change in the plan in moving towards pervious surface. To him that change is an acknowledgement that there was something in the geotechnical report that was problematic. There were three problems about water in the original plan such as the numbers used about rainfall – they didn't use the more conservative number and they didn't take into consideration the climate change where we would have more rainfall. They didn't take into account the fact when you crack the rock open you will have water coming out adding even more water. He said with the stormwater treatment being so close to his property worries him. The stability of rock in the geotechnical report is a worry. The suggestion that that rock be monitored for stability forever is worrisome. The Shoreland Protection Act talks about protecting the Bellamy River and everything that is downstream of it, such as the City of Dover's conservation land, the estuary and everything downstream. The other thing we are protecting is the neighborhood from flooding.

Larry Morse, Environmental Consultant, wanted to clarify all the comments that he made. The inference of the potential wetlands and where the property boundary was on the floodplain next to the river really was in concert with the previous drainage plan where the outfall structure was. Any potentials ramification that it might have on the wetlands systems, whether that was on their property or not. New drainage plans make that issue moot. They have applied for an Alteration of Terrain Permit and his understanding is that they have a conceptual agreement which has been presented to you tonight. He knows that that conceptual agreement is allowed under the new rules. He knows that they have entertained that in the past because he has a project in Durham that has a similar type of treatment system that has been approved. It is significantly different in detail, however to his knowledge they haven't submitted an official response back to Alteration and Terrain at DES. As far as the Shoreland Protection Act, he thinks that information from Mr. McNeill is correct. Last Friday the Legislature did adopt rules proposed by the department which did have some vested rights language in it which would make this project vested under that language. There is an amendment on a Senate Bill that would include the same language. Everything is being juggled up in the air and they don't know what the outcome will be.

Chris Parker introduced Bob Stevens, Steven Associates, and explained that he is the consultant that the City obtained after he was selected by the applicant.

Chairman Cole allowed him to speak because he had a time constraint.

Bob Stevens, stated that their geotechnical review noted some things with regard to geologic stability. He said that the key factors that they would be concerned with and could be addressed in the design process is the consideration of some strikes and dips or orientations of joints in the rock that might affect stability. They are a little bit different from their field review than were provided to them by the applicant's geotechnical consultant. There is a joint in particular that they are concerned about that he is not sure it was noted in their study. Their analysis of their slope stability sited reference for seismic stability that assumed an acceleration factor for the ground which is 8% of the acceleration due to gravity. The higher that acceleration is the more force the slope is subjected to and in their opinion, the



CITY OF DOVER

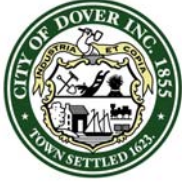
DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

value they used is too low and they should reanalyze the slope with a higher value. In their experience, interface between the soil and bedrock is typically highly weathered and that weathered zone can sometimes be problematic during and after excavation. The rock in that zone tends to be much more deteriorated and usually accompanied by soil during excavation, and the weathering process from runoff can cause some of that to be dislodged. The specifications were not included in the application. It varies from City to City what might be included. Those specifications might be submitted at a later time. Slope security at the top of the slope is discussed in the geotechnical report and was implemented in the design as a 6' fence on the drawing. Groundwater was not addressed. That is largely because it is unknown and that is not unusual for it to be unknown, but it is very important that it be looked at during construction and that the geotechnical consultant be on site to give some appraisal to what the groundwater conditions are as they are excavated. Most of the design recommendations from the geotechnical report have not been address by the applicant. That may not be unusual because of the process here in Dover. Recommendations would normally be incorporated into a specification and the specifications were not part of the application. Sub-grade reaction used in the evaluation of foundation reaction and slab reaction for the buildings may be a little bit low in the areas that were not underlain by rock. As the geotechnical consultant noted, part of the structure will be on rock and part will be on soil. That is probably appropriate or conservative for the rock but maybe not for the soil. The only way to evaluate that is to have information about the specifics of the structure. As far as he could tell those were not provided, yet and they should be looked at. He said that none of the things he mentioned are uneasily addressed, they just have not been addressed at this time. This report assigned a seismic Site Class of C, based on the 2000 International Building Code. Since the report was issued, the building code has been updated to IBC 2006. The occupancy correspondence seismic design category is not sited in the report and those should be accounted for. They believe that higher values of rainfall should be use to design the drainage system and that the drainage system should analytically address the size of the swale as well. The excavation will likely encounter groundwater but is unknown how much. Some assumption should be made in the design and analysis for the drainage system for some amount of groundwater and that should be verified in the field during construction by the applicant's geotechnical consultant. They spoke in their report about some other sources for rainfall. The Northeast Regional Climate Center is the source that they used and they are easily obtained just by contacting them and paying a small fee. They list a number of recommendations that should be addressed.

Linda Merullo asked how often he has encountered a residential unit of this size going into a hillside of this magnitude and if this is something that he doesn't foresee a problem with.

Mr. Stevens said that the financial aspect of the project is dynamic. The environment is becoming less and less favorable for development. As far as addressing the issue of stability, it is a simple engineering problem. Until the slope is excavated, he doesn't know and he would doubt if the applicant or his geotechnical engineer would know how much it will cost to stabilize the slope. It's doable and it is not unusual. The fact that the geotechnical engineer should be on site, as they recommend during the excavation, it will go a long way toward reducing the risks associated with unknown factors during



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

construction. They also recommended a plan be in place for mitigating measures in the event that something unstable is encountered during excavation. That should be addressed.

Linda Merullo asked if this is something that you regularly see.

Mr. Stevens answered that he does and they see them more and more because developable property has become scarcer and scarcer. The stronger the real estate market is, the more viable it is to develop sites that require more effort.

Dean Trefethen asked what action the on-site consultant would take during the blasting if the affect of the groundwater is more adverse than originally thought. He asked if there is a remedy that can be done and what would the outcome be.

Mr. Stevens said he envisions that the on-site consultant would make some judgment as to the amount of flow that the site is receiving from the uncovered rock. They would compare that amount with the assumptions made in the design process for the amount of water they anticipated. As he said before, he recommended that the analysis and design for the drainage be looked at again to include some amount of seepage from the excavated slope. The expert would make some judgment and they may have to reevaluate and might have to modify some sizes for drainage, catch basins and perhaps the swale. Those could be addressed at that time fairly easily.

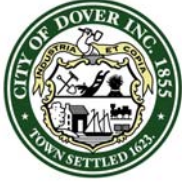
Dean Trefenthn asked if there is an excess of seepage does it indicate less stability of the rock surface.

Mr. Stevens said that it can, but it would need to be addressed by the consultant on site.

Dean Trefethen asked if that would be able to be determined as the excavation is occurring.

Mr. Stevens answered yes.

Tom Fargo, Chairman of the Conservation Commission, also one of nine State House of Representatives members from Dover, said that he was at home watching TV and his motivation to come to the meeting was to give context to the discussions that had happen previous to his arrival. Atty. McNeill had made some statements regarding the review of the Conservation Commission in April 2007, as being more that perfunctory. He did want to say what he felt the context of their review was. When the applicant came to them in February, they were informed by the applicant that the primary reason for them to be before them was the Conditional Use Permit requirement for work within an area that has a slope greater than 20%. There was a small amount of the other trigger that in the Conditional use Permit related to the disturbance of land surface within 100 feet of river and that was limited to the area around the downstream defender that was proposed at that time. The Commission typically reviews applications associated with work in the 20% slope area where the excavation is in soil materials and their review is often related to the stabilization of the excavated soil during construction and also making sure that they



CITY OF DOVER

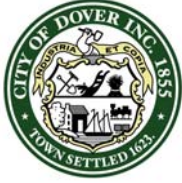
DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

feel the development plan includes proper stabilization will exist after the disturbance takes place. In his almost 10 years, they have never reviewed a project that has extensive rock removal as this project has. They depended a lot on the statements of the applicants with regard to the management of the rock; they didn't have the benefit of Mr. Steven's report. When they looked at this they felt out of their element because they don't have that expertise on the board. Regarding the downstream defender, they recognize that they were getting out on a limb in terms of the regulations that allow them to have input on that. As Atty. McNeill has indicated, there are no City regulations related to stormwater management that the State is now adopting. At the time they reviewed it, the State was in rule making and they are still in rule making. DES is still working on rules relating to management of excavating sites. That was not even on the radar screen back in February and April. There wasn't a definitive answerer to what the Shoreland Protection Act changes were going to be. They were not enacted until after they reviewed this project. He said that he remembers asking the applicant if he was within a 100 feet of the tidal range. He was assured that the project was not within a 100' of tidal water so there would be no Shoreland Permit required. Since then, one of the changes in the Shoreland Protection Act basically put the non-tidal portion into that regulatory system.

Tom Fargo said the applicants said they would comply with whatever the State requires. He said if we go back to the Master Plan, it has a specific recommendation that the Conservation Commission, Planning staff should review the City's regulations and make them consistent with the State. If we had made those changes in 2004-2005 we would be back here redoing those changes because of what is happening at the State level. The City doesn't have any stormwater ordinance but it is in the works. There seems to be a desire to send this back to the Conservation Commission, he pointed out that the Conservation Commission is advisory. Please don't look at this hot potato as something you can toss over the fence at them and that they are going to resolve those problems because they don't have the regulatory framework to really look at the issues of shoreland, stormwater and construction site management. They are still left with the same things they had on their agenda back in February and April of 2007. One thing that has changed and perhaps justifies sending it back to Conservation Commission and that is what they saw is not the same thing as you have in front of you. He has this constant problem with the Conservation Commission being the gatekeepers of what comes in. Atty. McNeill has used many words to explain how they bestowed upon this project their highest recommendations and blessings. He would not characterize it as that. They looked at it in the context of the regulations that they had available at that time. The project is different, the regulatory framework at the State level is different than it was back when they saw it the last time. Tom Fargo said if you want to send the hot potato back, he would implore them to give specific things to look at so they can answers those questions as best they can.

Linda Merullo is under the assumption that the City has a 20% slope rule in place. Here it is 28% for the parking lot area and most of the building is 38% and then it drops down to 24%. She asked Tom Fargo if the slopes were presented to the Commission or was it only presented for the drainage.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

Tom Fargo said that they had discussions on the slopes and they knew the slopes were over 20%. Their review was primarily aimed at areas where those excavations are taking place in unconsolidated soils. The concern would be where the rain events would wash the materials off the site into the water bodies. Where they had most of that excavation taking place in bedrock, they didn't have the expertise. They took the applicant on their word that their stormwater management plan that all the runoff that is coming off the site would be funneled to a downstream defender. Subsequent to that the State has pulled the plug on the downstream defenders. The DES said they don't like them at all and that is because of the dynamic situation that's happened over the pass year. The UNH Stormwater Center has been testing these defenders for 3 years and they found they don't perform like the manufacturer say they do. They took the information that the applicant provided and thought that is the best thing since sliced bread and now they know different.

Paul Dorazio, principal at Sawyers Mill, stated they have had a tough February and at the top of the hill between the two buildings that are close, it was one-way traffic. The applicant promised him a new scenario that would make some sense. The City of Dover, three years ago made them move curb cuts when they opened the last building of Sawyer Mills (the added 6 more apartments). And the road was not wide enough then. They were told to move the curbs and they would pave it for them. His concern is if they are going to add 130 more cars on that street, they will have a real problem unless something is done with that curve.

Holly Grossman, owns the 10 Commandments. She said that this area is a Historic and Conservation District. It is also a working class district. There are not a lot of people to speak up for it. She is thinking of the steep slopes and the downstream defender that is not adequate. If they are going to blast away the steep slopes and put in impervious pavement and that is not adequate, what will protect Mill St. and the estuary? She is hoping that the steep slopes are not going to be blasted. She did a petition on Mills Street of 100 names. The traffic was a major concern. The other concern was the environment. It is a wildlife corridor. They have moose, deer, turkey, a bald eagle and blue herons in that area. Some were concerned that it is a History District because it is basically the way it has been for 150 years.

Jim Simms, 32 Mill Street, said during February and March the corner is a one lane road. At times during the winter it is barely more than a single lane. During most of the winter the street is not passable for two cars at once. He disagreed with Atty. McNeill that it is not a special area. There is a lot of wildlife. Atty. McNeil suggested that because he feels that this project meets the requirements that it ought to be approved. He said that 64 units do not belong here. Just because technically it's possible, the road the environment and the nature do not make it a good idea.

Atty. Jim Schulte stated he is representing the owners Bob and Marion Walker. Donald Walker has lived on this land for 80 years. He remembers when the mills were actively running two shifts each, when you not only had all the workers but the truck traffic for the existing Sawyer Mills buildings, as well as the Holmwood Mill building. The road was a dirt road that was 8 feet wide. It was a single width road year around and not only when the city truck did not get down there to remove the snow in



CITY OF DOVER

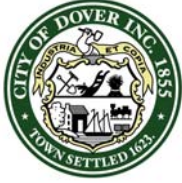
DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

February. The zone was rezoned UMUD and Mr. Pelech suggested that perhaps it was done so that the Mill Buildings could be reused and that is true. It would be easy if there was intent to distinguish the reuse of the mill buildings from the development of the open space. Those areas could have easily been dealt with. We've had the UMUD zone for decades. He was involved in the development of the Paolini project just across the river that is also in the UMUD zone and took advantage of the density. There are about 20 condo units and about 30 apartments on that property and not one word was suggested that UMUD didn't apply to that new development on the property that is smaller than this one. Mr. Walker remembers what those buildings along Mill Street and the 10 Commandments earned their name, which is now said with more affection. As the Sawyer Mills Building was improved, the Holmwood and the Grossman building was improved, there has been significant upgrades in the road. You will see significant improvements in the road that this developer is approving. In many senses that is for the good. You have heard endlessly that this property is zoned for much greater density than is being proposed. It is ironic, that a few years ago his clients came to the City and said there is a house on their land that used to be a duplex and it is now a single family residence and they wanted to put it back to a duplex. The City said that you can't do that because you have to have at least 5 units. It is ironic that the City would not allow the conversion of a single family residence back to a duplex. Now the serious discussion on not allowing a use that is specifically authorized by this zoning ordinance. His understanding has always been that the steep slopes of the Conservation District were concerned about erosion. If you were excavating into dirt you are likely to have erosion unless you do a lot of things to protect against that but that doesn't seem to apply when you are dealing with a rock face. For whatever it is worth, this represents his clients' retirement. They believe this project is consistent with the neighborhood. This is one the densest neighborhoods in the entire city and the next densest is probably all the senior citizens housing next to the post office. This a very dense and is consistent, given the slopes and the fact that this is somewhat down the hill, these buildings although taller by themselves, the top of them will not be higher than some of the Sawyer Mills buildings and the result of this will be further improvements to Mill Street, which it could use because you still have the Holmwood building down the street.

Ken Carter, 50 Mill Street, was concerned with the impact on the river. He believes that it is a wildlife haven. He has photographed a bald eagle, owls, hawk, and deer. It's a part of Great Bay. It's not just a corridor it is a home for all the animals. They are building a beautiful building but it is in the wrong place. It belongs in an area with all the other big square blocks are. He said that they want to make this square block fit. This building provides no positive impact for the residents. It doesn't belong and it sticks 10 feet above the turnpike. You don't see this sort of thing until you get practically into the City of Saugus. The Board's commitment should be what is in the best interest of the City, the river and the citizens. In his opinion, it doesn't belong here and the Board should vote it down.

Dean Town, 36 Mill Street stated their house will be on the other side of that monstrosity. He has many concerns. He's worried about the blasting 50 feet from his foundation that is 180 years old. He said he can attest that they will get groundwater there. This is not right. A child will be killed on that corner.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

Mr. Small, Mill Street he is a CDL Driver and he said that there is no way you will get a dump truck or a logging truck through there now or even in the summer. It's dangerous and there will be accidents. He sees blue herons in the summer. He has a degree in Forestry and feels that this project will mess with Great Bay and the ecology.

Holly Grossman, stated she forgot to mention an expert was hired to look at the safety of Mill Street because of the school buses won't go down there because there is no place to turn around. There is no way to get more space out of the street. With workforce housing we are talking about children. If you can't get a school bus down there you have to bring the kids to take the bus at Sullivan Tire. The geological study recommended an environmental study and she would like another traffic study

Atty. Malcolm McNeill stated this is a first where a chairman of a committee would come forward to underscore or undermine the approval that is on board. Should this be referred back to the Conservation Commission based on Tom Fargo's testimony? If he says that they do not have the expertise to deal with this type of a problem, then we should send it to the person who answered Ms. Merullo's question with regard to being able to do this project. He said it was doable and not unusual. This gentleman has no dog in the fight and is an outside consultant. If the Conservation Commission, by the testimony of the chairman does not have the ability to consider this kind of an impact, then it seems to him that the representation of the applicant that it will incorporate all of the provisions of your expert into its plan, should be enough. The Conservation Commission, at no time, said that they don't have inadequate information, that they don't have the skill to approve the project, that they want more information. If that had been the case, it would have been done. In terms of those comments, if it goes to the Commission they are saying that there are other people who know more. If you listen to Mr. Fargo, he said that there are two entities who know more, the State and the expert who spoke. It is clear that that it is a different project than what was considered before. Should it go there in light of the testimony? From the applicant's perspective, they have agreed to comply with every condition imposed by the City and the conditions imposed by the City's expert.

The public hearing was closed.

Ronald Cole read the letter from Chris Davies, Greatbridge Properties, to Christopher Parker dated 2/12/2008 into the record. He said that he is not opposed to the residential development of the site, but he felt that the unit number is too great a number due to the unique setting of Mill Street and the neighborhood. He felt that fewer units would be more appropriate. 32 units would be easier for the site and the neighborhood to handle. He was concerned with the safety of everyone during the construction process. He recommended that the workers park off site.

Chris Parker stated this project is similar to a perfect storm. It has so many pieces and so many aspects that it is hard to consider with a simple yes or no answer. This is one of the reasons why this project was presented to the Board eight months after the applicant brought the original concept to the Planning Department.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

We have worked with the applicant to review and revise the plan in hope of gaining a project that the staff and applicant could find reasonable and acceptable for the community. When he sits back and considers what his role in plan review is, he considers three areas:

- How does it conform with the Master Plan, and land use regulations
- How does it impact the surrounding properties; is it sensitive to the context surrounding it.
- How does it reflect this state's property rights philosophy

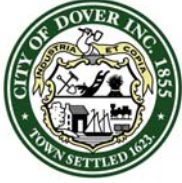
Additionally, when reviewing a project he looks at it and asks “what could you do with this piece of land?” An engineer will look at it and say “you can build a retaining wall, you can fill in that gap, you can do it all!” Conversely, a planner should look at that same project and have that same answer, but then should ask the clarifying question, “What should we do with the land?” In asking that question, we begin thinking about context, and abutters and about the environment.

All of these things come into play when he reviews a set of plans. We should not be engrained with saying “no” to applicants. We should work with an applicant so that they can realize added value to their property, and should work with them to avoid impacting their neighbors in an adverse way, and work to protect the environment, and build sensitively around it.

In August, the Board discussed the history of this zone. This area and the downtown UMUD zones were I-2 zones. In the early 80's, the City looked at economic development and documents said that the industrial uses within the UMUD zones were incompatible with where the economy was going. It was an adaptive re-use ordinance, and its intent was to give a second life to the mills. There was no antipulation that you couldn't put in any new construction but the intent in his eyes, was to promote the mill as a viable structure.

Over the past year, he said, whether in public meetings or one on one with the applicant, that he does not believe the planning department can support the conditional use permit. The amount of blasting requested as part of this project, is extensive, and a project can be done without such excavation. We have issued Conditional Use permits for steep slope in the past. Normally, they are single family house requests, and normally they are limited to areas just slightly over 20%. This project has areas ranging from 24 to 38% slope. I believe this is too much impact. Can it be done? Sure. Should it be done? No.

In regards to the Shoreland Protection Act, we know that RSA 483:B has been amended. This occurred in July of 2007. We know the amendments go into affect April 1, 2008. We also know that amendments have been proposed to this act. This Act is no different. Last week the Senate tabled the bill that the applicant supplied to the Board on March 11. This bill would have added vesting rights to projects like this one. Until any proposed amendment has been enacted into law, we must act in accordance with the existing law.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

He believes the Board should consider all the information it has. The Board should consider the applicants idea that the rules and Act itself might be changed. However, greater credence should be paid to the actual regulations in place. We know that come April 1, this project can not meet the standards of the Shoreland Act. Even with the move to porous concrete, which is laudable, the project exceeds the allowed level of 20% impervious surface (the porous concrete is considered impervious because it does not allow for infiltration). Additionally, any changes to the act that come will be in May or June and will be a roll back situation. That said the State has indicated that the Alteration of Terrain permit issues have probably been mitigated, except for those related to the Shoreland Act (if changes aren't made to the Shoreland Act, the Alteration of Terrain won't be issued).

Beyond environmental concerns, there are other issues with this project. Mill St is adequate; it is not good; or even fair. It is true that the traffic consultant prepared a report staff reviewed and agreed with, but that is based upon reviewing what can be done with the road. If this were a through street many of the traffic issues would be non-issues. Of concern is the fact that you are tripling the unit count on the road, but only able to widen the road by two feet.

The noise issues persist. Currently, the vegetation blocks the Turnpike noise from impacting to a great degree the residents living on the Grossman property. The noise would hit the building, and be funneled out a canyon like feature towards the two parking lots and will create a louder nuisance than exists today.

This project reflects an intense use of the land that is neither consistent with the abutting properties nor consistent with the rationale behind the granting of the Conditional Use permit for the excavation of the steep slopes. Furthermore, this project can not comply, as designed with the newly adopted Comprehensive Shore land Protection Act, and it would be disingenuous for the board to approve a project the applicant can not construct.

Staff recommends approval of a thirty-two (32) unit residential structure as designed on the plan located towards the southern end of the property where the existing two duplex structures are located. He estimate that this thirty-two (32) unit residential structure will comply with the Shoreland Act whereas any unit count above thirty-two may not. Furthermore, the associated parking shown on the plan for this unit is recommended to be approved. The parking is below the amount required by the site plan regulations, thus a Conditional Use permit may be required if the applicant does not relocate the building and associated parking, as 49 spaces are provided where are required.

Our recommendation allows the applicant to construct a residential structure which contains a density that is reasonable, but also reflects the ecological value of the land. The structure would not infringe upon the abutters property.

If minor blasting is required within the 20% slope area for grading, staff recommends approval of a Conditional Use permit.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

CONDITIONS OF APPROVAL

Conditions to Be Met Prior to Signing of Plans:

- A. The applicant shall revise the plan to eliminate the portions of the plan not approved by the Board. Portions of the project requiring new engineering drawings be completed, and a compliance hearing before the board shall be completed.
- B. The applicant shall provide \$7,000 towards offsite improvements corresponding to the 108 Corridor upgrade project.
- C. The applicant shall revise the plan to correct the applicant's address in the title blocks.
- D. Provide the Planning Department with proof that the applicant has filed a Notice of Intent with the Environmental Protection Agency.
- E. The applicant shall complete and submit a lot merger form.
- F. If the applicant chooses to provide less than parking spaces, a conditional use application for reduced parking shall be granted provided that supporting documentation and a narrative justification is submitted.
- G. Provide the Planning Department with proof that the applicant has received any necessary New Hampshire Department of Environmental Services shore land or alteration of terrain permits.

Conditions to Be Met Prior to Issuance of a Building Permit

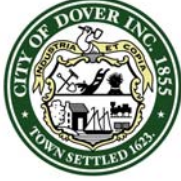
- H. The applicant shall coordinate with the contractor to provide an off-site parking area for the contractor's employees during construction.
- I. The storm water maintenance plan shall be provided to the Community Services Department and the Environmental Projects Manager shall review and approve.
- J. In lieu of providing on-site recreation facilities, the applicant shall contribute \$6,400 for improvements to the Community Trail project
- K. The dwelling units shall be subject to any impact fees or water and sewer investment fees in place at the time of building permit application.
- L. The applicant shall work with the property owner at 25-24 Mill Street to screen the existing dumpsters located within the parking easement.
- M. The applicant shall locate the lay down and staging area for work during construction to the satisfaction of the Planning department.

Conditions to Be Met Prior to Issuance of a Certificate of Occupancy

- N. All associated offsite roadway improvements are completed
- O. A pet waste program shall be provided to the Community Services Department and the Environmental Projects Manager shall review and approve.

Conditions That Apply to the Project:

- P. No processing of materials from any associated excavation/blasting shall occur onsite.
- Q. Hours of operation for the demolition and excavation/blasting work shall be no earlier than 8 am to no later than 4 pm.
- R. Approval includes the granting of the Conditional Use Permit for minor blasting/excavation of 20% slopes.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

- S. Prior to any blasting, if necessary, a pre-blast survey shall be conducted of all structures on abutting properties, and a plan shall be on file with the Fire Department outlining public education and outreach prior to any blasting.

Linda Merullo felt if they go further down on Mill St. the slope is 22% and will have less impact on the tree buffer to the 10 Commandments. Would it still overhang the turnpike?

Chris Parker stated that he believes that it would still overhang the turnpike but as part of the compliance hearing they would submit a revised site plan with an elevation addressed at that time. The structure before us is for double the amount of units and the 5 floors could change.

Kirt Schuman hoped that they would need a new site plan. He said that planning is about compromise between developers, abutters, between the land, environment and the neighborhood. He said that the Board decides if projects balance all of those conflicting priorities and he feels that it is the Board's job to look for things that benefit the community.

Kirt Schuman made the motion to approve with the conditions set forth by the Planning Director. John Swartzendruber seconded.

Frank Torr stated that he is uneasy with that because there are no specific plans for the 32 units. He would vote, no, because he would like to see a specific plan addressing all the issues. He said Atty. Pelech indicated that we probably should not accept it. We have before us the 64 units and unless something is submitted, he will not be voting for the 32 units. He has major concerns with the 64 units but that is not the motion on the floor.

Atty. McNeill wanted to make it clear that there is no 32 unit plan before the Board. You are denying a 64 unit plan.

Chairman Cole said that the Board is in a motion and there is no further input. He thanked Atty. McNeill for bringing this up earlier and advising the Board as to what has been usual and customary with the Board when dealing with applications. The Board is in a situation now where, like Mr. Stevens said, all the good land is gone and we are working with what is left over. He doesn't mean to discredit what we have done because it has worked, however he would like to applaud the Planning Director for thinking out of the box, which he does very well and giving the Board an alternative rather than a thumbs up or a thumb down. If the applicant chooses to work within a framework of understanding that would place them in the neighborhood and not substantially affect the neighborhood in a negative manner, which is what Chris is suggesting and he thinks it's an excellent idea. We are recommending the approval of 32 units.

Christopher Parker said that it would be an approval of half the project, that portion that does not require the conditional Use Permit would be approved.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

Marcia Colbath wanted the wording to be more specific with regards to the lesser units especially since it is not coming from the applicant. She is more comfortable with voting up or down on the 64 units. She understands and agrees with recommending the lesser amount, but she is just uncomfortable at this point with how to word the recommendation for the lesser units.

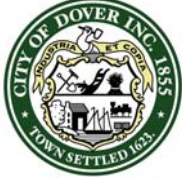
Christopher Parker asked if she was concerned with the wording of the recommendation for the lesser amount.

Christopher Parker stated his recommendation is to approve a 32 unit residential structure that is designed on the plan located on the southern end of the property where the two existing duplex units are built. He said there is a motion and a second. If you want it amended it is up to the Board. His idea is the portion of the project which does not require the Conditional Use Permit ie. the structure on the south end of the project, as well as the associated parking that does not require the massive blasting and excavation and the infringement on the 38% slope. That is what the Board should be granting.

Marcia Colbath asked if it would require them to come back. In the past we have not approved a project without having a building.

Christopher Parker said, as Ron alluded, we have not done this in the past but it doesn't mean we can do it. It is allowed by law and he sees this as a proper application. It is saying here is what you can do and now you need to come back and show the Board how you complied with that.

Dean Trefethen said he respects what Chris has done by giving the Board an alternative. He said that he is uncomfortable approving a plan that we don't have. The applicant is asking for the 64 units, he wishes they had agreed with the 32 but they are asking for the 64. He has concerns with the 64 units one of which is traffic. Atty. McNeill said that up to this point, all the issues have been addressed and there have been no issues. It is a true statement as far as it goes; the question is if the Board feels that the answers to the questions have been answered sufficiently and that there are no outstanding issues. The issues of traffic, in his opinion, are that the impact on Mill Street can not be resolved and specifically the pinch point. The additional traffic that this proposed project would create and force through this point is too much and will overwhelm it and create a safety breakdown. It is an unacceptable situation now and it will become more unacceptable. He has made a point of going out there twice a month since September and observed different things. When there is no snow there are often delivery trucks. There is a sign every 10 feet that says "no parking". It's not enforceable because the police cannot be there at all times. They want specific reasons why we may or may not approve this project. To him it is a specific reason that there is a point that can not be resolved and for that reason he would not be supporting either plan. If we go back to the 64 units he will have additional reason.



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type:	Regular Meeting
Meeting Location:	Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date:	Tuesday, March 25, 2008
Meeting Time:	7:00 pm

Linda Merullo stated the only chance that you have of widening the street is through this development. Some abutters were in favor of that and it may be sufficient for an additional 55 or 60 cars. That road will not be improved unless it is developed and Mr. Garrepy goes forth with his plans to widen it.

Ron Stock stated that the developer was given the opportunity to reduce the size of the plan and he chose not to and for us to approve the smaller plan doesn't make any sense to him. He said that he would not be able to approve this plan because it is not complete. There are a lot of issues regarding the geological stuff, the consequence of the traffic going beyond Mill Street. He is not sure if the \$7,000 for the offsite improvements for the corridor would be enough. He thinks there is a motion on the table and he can't see approving 32 units when that is not what the developer wants.

Doug Steele commended Chris Parker for making an effort for compromise but he sees a 64 unit building that is being voted on. It is his understanding of the UMUD created in 1983, was for adaptive reuse of existing structures. Just because a prior Planning Board may have approved a project on the opposite side of the river that was not an existing structure will not sway his vote. He said that two wrongs don't make a right. He would not be supportive of this tonight.

Marcia Colbath stated that the motion on the floor is the one with the 32 units but she is going back to the 64. She said she has many concerns and she agrees with what Doug Steele said about the project across the river. She lives in the area of the Paolini project and has heard nothing but negative comments. The overall impact to so many areas and the size and scope of this project does not fit with the neighborhood or what the City's vision is for that area of Dover and that is why she would not vote for the 64 unit development.

Ron Cole said that there is a motion on the floor on a 32 unit structure.

**VOTE 4 - 5 opposed - Ron Stock, Dean Trefethen, Marcia Colbath, Doug Steele, Frank Torr
Motion Defeated**

Marcia Colbath made the motion to approve the 64 unit building.
Ron Stock seconded.

Dean Trefethen said that they are voting on the 64 units and a Conditional Use Permit. This Board has been very consistent about the 20% slope. The Board, for small areas, may occasionally allow 21% or 22, 23% slopes but we are talking 38%. It's not just about soils as we have found out from our geological study that we have to worry about, it is groundwater seepage and the condition of the rock face for years to come. The Conditional Use is the one thing in this application that is not given by zoning right. Everything else that they asked for is entirely correct, the number of units is allowed and they are entitled to it if you meet all the regulations, but you are not automatically entitled to a Conditional Use Permit. This Board is allowed, and not "**may**", but "**shall**" use its best judgment in



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

whether we grant this or not. The second specific reason that he will be voting against this application is that granting the Conditional Use Permit under these conditions, would not be a wise thing to do.

Linda Merulla said that she is adamant in sticking to the 20% slope. Approving 38% would have every other developer holding the Board to that precedence. She will not approve any project where there is substantial percentage of slope. If you are creating jobs to Dover it is a different story. She will not set a precedent and she will not approve the 64 units.

Kirt Schuman said that he agrees with Atty. McNeill's point about the intensity of this area. If half of the hillside did not have to come down to do it he would be in favor of the density. Looking at the livability of the project, there would be apartments looking out at a rock face and the livability of the abutters would be impacted. For those reasons he can see approving the Conditional Use Permit.

Marcia Colbath will vote against this also because she wants to echo Tom Fargo's comments. She spoke about when it came to the Conservation Commission and said that they looked at it in a very narrow perspective. They looked at the drainage as presented and they didn't take into consideration any of the changes of the Shoreland Protection Act. They did not even take into consideration any of the effects of the blasting on the neighborhood. To think that in any shape or form the Conservation Commission endorsed this project, as a whole, is incorrect.

John Swartzendruber agrees with Kirt in that 32 units was a good compromise. Blasting and removing a large amount of stone is something that he can't support.

Ron Cole said that it is very unfortunate that the Planning Director and the applicant were not able to reach agreement on a reduced project. There would have been a great deal of support on the reduced project. He has chaired the Planning Board for 15 years and for 15 years he has been telling the Board members that if you vote a project down, whatever it happens to be, it will go to court and the City will lose. The law being what it is and he will quote Atty. McNeill in the fact that they have to do what the law says, not the aspirations. For the first time in 15 years he says, "Shame on the Board for those who are charged with Dover's future follow only the law and not our aspirations." He'll be voting against this project even though he knows where it is going.

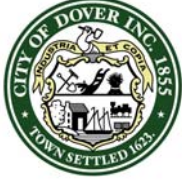
The motion is to approve the 64 unit plan as submitted.

VOTE 0 – 9 Opposed - U/A

Dean Trefethen made the motion to deny, specifically by not granting the Conditional Use Permit, but also deny because the traffic situation cannot be made acceptable.

Linda Merullo seconded.

VOTE U/A



CITY OF DOVER

DOVER PLANNING BOARD - MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Chambers – 288 Central Avenue, Dover, NH 03820
Meeting Date: Tuesday, March 25, 2008
Meeting Time: 7:00 pm

5. Committee Reports

6. Staff Communications

Chris Parker stated there would be a workshop at 6:30 before the meeting of April 8, 2008 on several amendments to the zoning ordinance.

Chris Parker explained that on March 15 we were supposed to have a site walk for Seacoast Geriatrics and it was cancelled because the engineer was under the weather. He said he would like to schedule it for April 1, Tuesday, at 5:30 pm for Seacoast Geriatrics. Parking will be in the Civilworks driveway.

7. Adjournment

Frank Torr made the motion to adjourn at 10:15 pm.

Linda Merullo seconded.

VOTE U/A