

**DOVER PLANNING BOARD
MINUTES OF MEETING
SEPTEMBER 25, 2001**

MEMBERS PRESENT: John Sullivan, Anthony McManus, Brenda Whitmore, Margaret Stevenson, Dennis Ciotti, Pete Lavoie, David Landry, Frank Torr, Ron Cole, Beth Thompson – Chuck Maglaras, late

MEMBERS ABSENT: Jerry Reese

STAFF PRESENT: Steven Stancel, Planning Director and Jacqueline Freeman, Recording Secretary

Alternate Dennis Ciotti, sat on the Board.

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

ITEM #1: Approval of the minutes of August 28, 2001 – The meeting of September 11, 2001 was cancelled.

Frank Torr made the motion to approve the minutes.

Beth Thompson seconded.

VOTE U/A

Abstained – Margaret Stevenson

ITEM#2: Consideration and acceptance of an application for a minor lot line adjustment of land for Francis Weeks and Alexander Croteau, Assessor's Map 32, Lots 6 & 7, zoned R-12, located at 100 & 102 Fourth Street.

Ray Croteau, of York Me, and son of Alexander Croteau, represented the applicants.

Dennis Ciotti made the motion to accept the application.

Beth Thompson seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Margaret Stevenson made the motion to approve with the following conditions:

1. Add both of the owners' signatures to the plat.
2. Revise the plat by adding the surveyor's signature to the plat.
3. Revise the plat by correcting the line bearing and distance table.

David Landry seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of an application for an Alternative Design Subdivision (ADS) of land for Raymond Vermette, Assessor's Map A, Lot 36, zoned R-40, located on Parsons Lane.

Kevin McEneaney represented the applicant and stated that it is a 3 lot subdivision on 46 acres. Lots one and two will be serviced by a 40-ft. wide common driveway. Lot 3 will have a conservation easement on the majority of the parcel. The Conservation Commission has approved and accepted the Conservation Easement. The applicants have been requested to put in a 30' wide utility easement for access to the City well site on the abutting Cotton property with the location being at the discretion of the Community Services Dept. Kevin submitted a letter from an abutter stating her position.

Frank Torr made the motion to accept the application.
Dennis Ciotti seconded.

VOTE U/A

Abstained – Pete Lavoie, Beth Thompson

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

Frank Torr motioned to approve with the following staff recommended conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with the NH Department of Environmental Services Subdivision Permit and add the permit number to the plat.
3. Revise the plat to add the proposed tax map and lot numbers as assigned by the Tax Assessor.
4. A conservation easement deed shall be approved and recorded prior to recording the subdivision plat.
5. The applicant shall grant a 30 foot wide utility easement across Lot 3 to the City. The exact location of said easement shall be approved by the Director of Community Services and depicted on the subdivision plat.

David Landry seconded.

VOTE U/A

Abstained – Pete Lavoie, Beth Thompson

ITEM #4: Consideration and acceptance of an application for a minor subdivision of land for Trella Associates & Daniel Gabriel, Assessor's Map E, Lot 32, zoned ETP, located on County Farm Road and Sixth Street.

Kevin McEneaney represented the applicant and explained that the lot is in the ETP Zone and the regulations allow the owners of an existing home to cut off their existing house to a one-acre lot. Kevin also explained that the newly created lot might have two accesses.

Beth Thompson motioned to accept the application.
David Landry seconded.

VOTE U/A

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

Margaret Stevenson motioned to approve with the following staff recommended conditions:

1. Add the owner's signature to the plat.
2. Revise the plat by amending note #11 to indicate if any of the wetlands shown on the plat are very poorly drained soils, and if they are, revise the plat to show the 75 foot wetlands buffer.

Dennis Ciotti seconded.

VOTE U/A

ITEM # 5: Consideration and acceptance of an application for a Conditional Use Permit for Albert & Dorothy Berthiaume, Assessor's Map 7, Lot 19A, zoned RM-12, located at 57 Boston Harbor Road.

Emile Boussier Jr., represented the applicants in the after-the-fact Conditional Use Permit. He explained how they installed a fence not realizing that they were in a conservation district. The fence complies with the zoning regulations and they have received unanimous Conservation Commission approval.

Margaret Stevenson motioned to accept the application.

David Landry seconded.

VOTE U/A

Abstained – Beth Thompson, Pete Lavoie

The public hearing was opened.

Carol Cartnick submitted a letter from herself and her neighbors asking that this application be rejected. She said that the structure violates several City regulations and has caused negative impact on their quality of the life and value of their property. She said that they are recommending a site walk. She showed pictures that were taken showing the affect that the fence had on the surrounding neighborhood.

Jane McMaster, 55 Boston Harbor Road, stated that the structure abuts her property. She stated that there is a safety concern, as cars cannot see anyone crossing the road and neighbors who once had a view now have no view. She asked the Board to follow the guidelines and to deny this permit.

Mr. Boussier, stated that the primary reason why this fence was put up was because Mrs. Cartnick went onto the Berthiaume's property and cut down part of a tree on their property. The Berthiaumes put up this fence to keep their neighbors off their property. He said that another unidentified member of the community also went onto their property and further cut down their tree. It should be noted that the reason Mrs. Cartnick cut down parts of their tree was to better improve her site lines of the bay. The purpose of the

zoning ordinance with respect to fences, is not to prohibit someone from building a fence to protect their property from people trespassing on it, it is not to deny someone that right, it is their private property and they have a legitimate need to keep people off their property. What the neighbors are really asking the Board to do is to grant them a site easement. If they wanted a site easement and if they had any reasonable expectation of a site easement being protected so they can see the water from their house, that would be done via purchasing a site easement. That is not something that they did. His clients are in compliance with the regulations. He said that the fence has now been trimmed down to 5 feet. The Planning Board should not be used as a subterfuge to grant somebody else personal property rights of somebody else's property. He asked the Board to take a ride on the road and look at the closeness of the Cartnick's property to that road. He said that there are other fences along that road that are 6' in height including fences that are within 75' of the water district. He added that some of the people who own those fences are some of the people who are complaining about fences right now.

Cody Cartnick, 53 Boston Harbor Road, stated that Mr. Berthiaume promised to maintain the tree and he did not do that. His wife made a mistake by cutting the suckers off the tree. He said that after that was done, a hideous structure was put up in the tree for the express reason as to block the view. He said that his wife went over and apologized and offered to replace the tree. Mr. Cartnick said that the zoning regulations said "No fences within 75 feet." He said that there are other fences but there are none above 3 feet.

Ron Cole left his seat as Chairman.
Tony McManus took over and chaired the meeting.

Mrs. Cartnick stated that she did apologize to Mr. Berthiaume for taking several very small branches at the bottom of his tree off and she offered to replace the tree. She urged the Board not to play into the hands of something that is being handled in another way.

Mr. Boussier explained that Mrs. Cartnick went onto private property and destroyed someone else's property and the fence has been put up for a very legitimate reason.

The public hearing was closed.

Steve Stancel stated that the tree cutting incident was unfortunate, however, he said that he doesn't believe that that is an issue that should come into play in the Board's decision this evening. This Board does not get into the middle of personal conflicts. This is a civil matter that can be taken to court if the parties deem to do so. The Planning staff has made its decision that despite the Conservation Commission's lack of concern for this project, the Planning staff recommends disapproval. He said if you take a look at the purpose of the Conservation District it very clearly lays out 7 different purposes and goals and one of those is to preserve and enhance those aesthetic values associated with waterways and the natural shoreline. He said that another is to preserve wetlands and other environmental sensitive areas for other ecological reasons including those sited in RSA 483.B The Comprehensive Shoreland Protection Act. They outline 16 different purposes for protection of shorelands within the State. Steve read three of them. One is

to preserve the State's lakes, rivers, estuaries and coastal waters in their natural state. Another is to promote wildlife habitat and scenic beauty and another is to conserve natural beauty and open spaces. He said that the placement of the fence that goes down to the high water mark does not meet the purpose and intent of the Conservation District. He said that he has a concern about the cumulative effect of more and more houses wishing to put fences down to the mean high water mark. He said that he believes that it is a detriment to the migration of certain types of wildlife. Steve said that we all have a right to travel down the river in a boat and expect a certain scenic quality of the shoreland.

David Landry stated that it strikes him as unfortunate that this didn't come in earlier because they may have been able to accomplish the same thing even with the 75' back from the waterway with a different style of fence that is lower and is not solid. There are many kinds of fences and it's unfortunate.

Tony McManus asked if this fence is a structure as defined by the ordinance.

Steve Stancel stated that the Building Inspector considers it a structure but the Conditional Use Permit is required for the undertaking of a use not otherwise permitted in the Conservation District which may include the erection of a structure, dredging, filling, draining or otherwise altering the surface configuration of the land.

Frank Torr made the motion to disapprove the application.
Margaret Stevenson seconded.

Steve Stancel stated that if you make a motion to disapprove you have to give specific reasons.

Frank Torr stated that the Planning Director's reasons for disapproving should be used for the purpose of the record.

The reasons for denial, as stated by the Planning Director, are that the proposed use is not consistent with the purpose of the Conservation District. The Conservation District clearly lays out 7 different purposes and goals and one of those is to preserve and enhance those aesthetic values associated with waterways and the natural shoreline. Another is to preserve wetlands and other environmentally sensitive areas for other ecological reasons including those cited in B483-B the Comprehensive Shoreline Protection Act as follows:

1. To preserve the state's lakes, rivers, estuaries and coastal waters in their natural state.
2. Promote wildlife habitat, scenic beauty, and scientific study
3. Conserve natural beauty and open spaces.

VOTE U/A

Abstained Pete Lavoie, Beth Thompson

Brenda Whitmore took the vacant seat at this point in the meeting.

**ITEM #6: Consideration and acceptance of an application for a Minor Lot Line
Adjustment of land for Anton & Karen Folger, Assessor's Map I, Lots 41
& 42, zoned R-12, located at 135 & 137 Back River Road.**

Anton Folger stated that he wanted to build a garage and needed more room.

Margaret Stevenson motioned to accept.

Frank Torr seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Margaret Stevenson motioned to approve with the staff recommended conditions as follows:

1. Add both the owners' signature to the plat.
2. Revise the plat by adding the surveyor's signature to his stamp.
3. Revise the plat to correct the map and lot numbers in note #4.

Brenda Whitmore seconded.

VOTE U/A

ITEM #7: Consideration and acceptance of an application for a Conditional Use Permit for Pickering Marine Corp. (Owner Herbert Levine) Assessor's Map 8, Lot 2, zoned B-1, located on 409 Dover Point Road.

ITEM #8: Consideration and acceptance of an application for a Conditional Use Permit for Pickering Marine Corp. (Owner Robert Rowe Rev. Trust) Assessor's Map 8, Lot 3, zoned B-1, located at 407 Dover Point Road.

Glen Normandeau represented both applicants. He said that last fall, heavy winds coinciding with high tides occurring at the same time caused sever erosion problems with the walls at the above referenced locations. He explained how the walls were constructed years ago. He said he applied to the NH Wetlands Bureau to rip rap the shoreline and it has been approved and is now pending before the governing council for approval. He said that he did not realize at the time that he would need a Conditional Use Permit. He said that he intends to plant a band of native beach roses and beach grass to act as a buffer.

Brenda Whitmore motioned to accept both items.

David Landry seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Frank Torr stated that the Theodores were turned down and he thought one of the reasons was because they might want to come in for a wall not to mention that they had an extremely large house on a small lot. His point is that he is looking for consistency.

David Landry stated that his recollection was that the structure was within the setback requirements and then the Board had the other issues

Frank Torr stated that he believes that it was David that raised the point that they would be coming back because the storm damage would be coming over the present seawall. He said that he admits that the major concern was the size of the structure and being in the Conservation District area, but also playing a roll was the seawall.

David Landry stated that he remembers that he was concerned with how the Board would respond when the Theodores coming back asking for a wall to protect their \$300,000 house from the water coming in.

Glen Normandeau stated that this is strictly to fix the shoreline that was damaged by the weather, not to prevent the further eating away of the applicants' properties. It is not to protect any structures that are on these lots. It is essentially a rebuild of what has been there for some 30-40 years.

Tony asked for a vote on **ITEM #7: Pickering Marine Corp. (Owner Herbert Levine). Located on 409 Dover Point Road.**

Brenda Whitmore made the motion to approve with the following staff recommended conditions:

1. The applicant shall provide a written erosion and sedimentation control to the Conservation Commission.
2. The applicant shall prepare and implement a plan for the re-establishment of a mixed vegetative buffer along the shorefront. The plan shall be approved by the Conservation Commission.

Beth Thompson seconded.

Steve Stancel stated that staff took the approach that they were merely replacing structures that were already there in order to protect their property. Going back to the Theodores, the concern was that by allowing them to build this huge new structure, they would come back in the future for a more extensive breakwall in order to protect the value of the structure. In that case, the breakwall would be doing more than protecting the shoreline from erosion, it would be protecting something beyond that.

Peg Stevenson stated that the breakwall that they had was quite old as well, and if they had come back to us and said that they wanted to replace it the same as these properties want to do now, she said that she doesn't think that the Board can approve this.

Brenda Whitmore said that she is well aware of the erosion that is taking place in this particular location, and if they are repairing existing conditions so that further erosion doesn't occur and the fact that they are willing to work with the Conservation Commission and Cooperative Extension and to plant native vegetation is a positive step in the right direction.

VOTE 6 – 1

Opposed – Margaret Stevenson

Tony McManus asked for the vote on **ITEM #8, Pickering Marine (Onwer Robert Rowe Rev. Trust) 407 Dover Point Road.**

Brenda Whitmore motioned to approve with the following conditions:

1. The applicant shall provide a written erosion and sedimentation control to the Conservation Commission.
2. The applicant shall prepare and implement a plan for the re-establishment of a mixed vegetative buffer along the shorefront. The plan shall be approved by the Conservation Commission.

Beth Thompson seconded.

VOTE 6 – 1

Opposed – Margaret Stevenson

ITEM#9: Consideration and acceptance of an application for a Minor Subdivision of land for Gaye & Mike Dean, Assessor's Map 8, Lot 95, zoned R-12, located on Florence/Pearl Streets. *(1 lot)

Beth Thompson motioned to accept the application.

Frank Torr seconded.

VOTE U/A

Kevin McEneaney represented the applicants and gave a brief history of the property. He said that on August 16th this went before the ZBA because there were two items that needed relief. One was creating a lot that is less than 12,000-sq. ft. and second was creating a lot line that was within 5 feet of an accessory structure where 10 is required. The Variance was approved with a condition that a setback of 30 feet from the barn would be placed on the lot #2 for the principal structure.

The public hearing was opened.

There were no comments.

The public hearing was closed.

Frank Torr motioned to approve with the staff recommended conditions:

1. Add both of the owner's signatures to the plat.
2. Revise the plat to add the Strafford County Registry of Deeds recording number to the reference plan #2
3. Revise the plat to add common Subdivision notes #3 and #25.

Dennis Ciotti seconded.

VOTE U/A

ITEM #10: Old Business

- a. **Discussion and possible vote for an ADS for Douglas Dodd, located on Washington Street.**

Frank Torr made the motion to remove this item from the table.
Beth Thompson seconded.

VOTE U/A

Kevin McEneaney represented the applicant and reviewed the application stating that there will be 12 duplexes for a total of 24 units. The units will be sold individually. He stated that they have no problems with the few minor conditions of approval that are left to address. He said they have received Conservation Commission approval for their wetland crossings and acceptance of the Conservation Easement on the 23 acres of open space. Kevin said that they have agreed to the contribution for a recreation fee for \$4,800 or \$200.00 per unit. He said that \$3,950.00 was agreed upon for the contribution for off-site improvements for Fourth Street. Kevin stated that with the vote the Board will be including a Conditional Use Permit for the wetlands crossing.

Margaret Stevenson motioned to approve the application and Conditional Use Permit with the following staff recommended conditions:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with a copy of the NH Wetlands Permit and add the permit number to the plat.
3. Provide the Planning Department with a copy of the NH Site Specific Permit and add the permit number to the plat.
4. Add the engineer's signature to sheets #1, 5-14 of the plan set.
5. Revise the plan to correct the inverts to the box culvert.
6. Provide a contribution for off-site recreational facilities in the amount of \$4,800, to be paid before the first building permit is issued.
7. Provide a contribution for off-site improvements for Fourth Street in the amount of \$3,950, to be paid before the first building permit is issued.
8. Grant a conservation easement for the common area to the conservation Commission prior to issuance of a building permit.
9. The applicant shall include in the deeds of lots 8 and 14 a notation regarding the presence of wetlands and refer to the commensurate use restrictions.

Brenda Whitmore seconded.

VOTE U/A

**b. Discussion and possible vote for Stable Homes of Dover, located on Tuttle Lane.
(28 lots)**

Beth Thompson motioned to take this item off the table.
Frank Torr seconded.

VOTE U/A

Kevin McEneaney went over the changes that were made to the roadway and the design of the sewer. He said that the revised plans denote a tot lot in the area between the lots 4

& 5 that will be conveyed to the City of Dover. He said there would be a recreation fee of \$5,600.00 or \$200,00 per lot. He said that there is a per lineal foot fee for roadways on new subdivisions in the order of \$2.90 per lineal foot, and that totals to \$13,550. He said that the applicant is going to design and construct sidewalk from the entrance of the project all the way to Dover Point Road.

Paul Connolly explained how they were going to reconstruct two lengths of sewer in Dover Point Road. He said that by doing this, it would bring the sewer into the project to accomplish their needs without going into the Conservation land without the need of a pump station.

Kevin McEneaney said that the Engineering Department has not had the time to review the changes. He said that Stabile Co. is under the deadline of November 15th from the City and the State. They would like to go ahead with a conditional approval based on getting the final review from Engineering at some point so they can get started in this construction season.

Pete Lavoie explained that he only has two engineers and a very heavy workload and they are in the process of moving to the new building.

Moe Paquette, Stabile Company, said they have agreed to clear and grade the tot lot and hope that the contribution that they are making will go for equipment. He said that the staff has been very patient with this and, if at all possible, they would like to get the work done because of the time constraints.

Pete Lavoie said that he understands where they are coming from. If you could just give them the right to go deal with the State and get the sewer line, but drainage calculations and other things have not been done and the project is all changed.

Moe Paquette stated that he sees where Pete is coming from and if that is the purview of the Board to have Engineering complete their review, then they will come back in two weeks for approval on the 9th.

Frank Torr stated that Stabile is willing to follow whatever recommendation of the Engineering Department. Wouldn't that satisfy the Board and Community Services?

Steve Stancel read off the staff recommended conditions as follows:

1. Add the owner's signature to the plat.
2. Provide the Planning Department with a copy of the NH Wetlands Permit and add the permit number to the plat.
3. Provide the Planning Department with a copy of the NH Site Specific Permit and add the permit number to the plat.
4. This approval includes the approval of the Conditional Use Permit.

5. The applicant shall grant a conservation easement to the Conservation Commission for Canney Brook and associated buffers. Said easement shall be granted prior to the issuance of the first building permit.
6. Revise the plat to resolve the issue of the reserve strip contained on lot #28 in a manner acceptable to the Planning Department.
7. Add the engineer's stamp and signature to sheets 10-23.
8. The applicant shall contribute \$13,550 to the Community Services Vehicle fund, payable prior to the first occupancy permit is issued.
9. The applicant shall contribute \$5,600 for recreation equipment, payable prior to the first building permit being issued.
10. The applicant shall deed the tot lot to the City of Dover for use as a neighborhood recreational area. The deed shall be executed and recorded prior to the issuance of the first occupancy permit.
11. Any additional conditions recommended by the City Engineer and Community Services prior to the meeting.
12. Extension of the proposed sidewalk to Doyer Point Road.

Pete Lavoie stated that he would not be able to vote in favor of this.

Frank Torr motioned to approve with the 12 recommended conditions.
Beth Thompson seconded.

Dennis Ciotti stated that he has concern about setting a precedence that would open the door for everyone. He said that he would rather err on the side of caution and wait two more weeks. He said that he would rather have it right the first time.

David Landry said that he had concerns also. He said that they have a pretty good project here. He said that he would suggest that we change the motion to table.

Frank Torr stated that he would like to make a point. In regard to the project at Weeks Crossing and the concern with the loading dock. He said there was approval of that project even though the loading dock situation had not been resolved which could have caused traffic circulation problems. He said that he thinks that the precedence has already been set. He said that the Board needs to be consistent.

David Landry made the motion to table.
Brenda Whitmore seconded.

VOTE 6 - 1

Opposed – Frank Torr

Tony McManus called a 5-minute break at 8:45 PM
Tony called the meeting back to order at 8:50 PM.

c. Discussion of Motiva, located on Silver Street.

Tony McManus explained that he would be taking comments but there would be no decisions made this evening.

Malcolm McNeill explained the history of the application and what has happened since they last were before the Board. He said that during processing of this application, some of the abutters took issue with some of the decisions made by the City as to whether the uses that were being proposed on the site were permitted from a zoning perspective. The Building Inspector rendered a decision saying that everything that they were doing was legal, then the Zoning Board reached the same decision. He said that the abutters appealed it to the Superior Court. The Superior Court supported Motiva's position. The decision of the Superior Court was in affirmance of the City's position, not a reversal in favor of Motiva.

He said the decision was rendered on June 13th, 2001. A motion for reconsideration was filed and denied. The abutters have taken an appeal to the NH Supreme Court, however, that appeal has not been accepted by the court. The difference between an appeal to the Supreme Court and an appeal to the Superior Court from a developer's perspective is that an appeal to the Superior Court has to be acted upon by the Superior Court. If the Superior Court had decided this case contrary to Dover's internal position, they could not do this project. It was prudent for Motiva to wait until a court decision. He said that that is the primary reason for the delay in processing this matter. He said that the Supreme Court is different, it takes less than 50% of the cases that come to it and it is within their preview whether to accept an appeal or not. He said that if for some reason the Supreme Court accepts this case and reverses this case, it will have an impact on the result. But if the Supreme Court does the same thing as all of the other bodies who have reviewed this case, then they will be permitted to come before you for site review.

Malcolm McNeill said that some of the other important things that happened is that the City of Dover, first at this level and then at the City Council level, reviewed proposed street changes in the context of the existing uses on the site. Not only did the Planning Board become involved in this process, but the City Council became involved as well. He said that there is a very viable argument on the part of this developer that the improvements that are there meet or exceed what is necessary to meet existing conditions or diminuous changes in existing conditions. Malcolm said that the changes almost exactly mimic the proposals that Motiva made a year ago for improvements.

The technical issues are what do you do under the circumstances under Site Review though all of those other zoning issues have been resolved. The first scenario is the Dunkin Donut scenario that has caused the most anxiety and concern. He said if you chose not to approve the Dunkin Donuts, there is an alternative that results in a different form of approval. That approval would be to condition the project on the Dunkin Donuts not being there, i.e. that the convenience store would not have a Dunkin Donuts in it. The issue is in the context of convenience store operations, if you conditioned the approval without a Dunkin Donuts what is the probable impact of their being a convenience store and a car wash at this site. He said that those items have not been specifically addressed by the City's traffic consultant. This Planning Board approved a Motiva sponsored site on the Dover/Somersworth line. It has a convenience store, a third larger than the one they are proposing, a car wash that has more fueling stations and is on a road that shares

similar traffic volumes. He said that there is also a facility on Route 108 which does not have a Dunkin Donuts but has a convenience store and has more fueling stations than they propose but the road has similar types of characteristics. Their review of this information is that if this project were permitted without the Dunkin Donuts, their estimation is that the maximum increase in traffic would be 10 to 15%. If that is the case, it is a diminuous increase and would work within the confines of the improvements that have been made by the City. This is a satellite Dunkin Donuts and has approximately 1/2 of the menu service and reduced cooking capacity. He said that based on their review, this would not result in unreasonable queuing onto the roadway. They believe that the site characteristics have improved in terms of their design. The City has not found itself in a position to make a recommendation. They would like the traffic consultant to review their materials. They also indicated that they would do anything that is reasonably appropriate in terms of responding to the issues that are presented.

Mr. McNeill stated that in the event that Dunkin Donuts was approved, they recognized that improvements would have to exceed what is there presently, although, if they were limited to the convenience store and the car wash, that no improvements would be necessary.

Tony McManus left the meeting at 9:15 PM.

Vice Chair Chuck Maglaras came out of the audience and chaired the meeting.

Malcolm McNeill stated that he was present at the hearings when this matter was being considered by the City Council with regard to the improvement. He said that some of the comments were that this was not a complete fix and there were other things that needed to be done. The legal requirement is to effect and improve what bears a reasonable rational nexus to the improvement that is being developed by the developer. He said in other words, if the developer makes a difference under NH law, they should be responsible to do something about it. They believe that if the Dunkin Donuts goes in, there are additional improvements that they would be responsible for that would go toward the fix. Malcolm explained how installing a left turn lane would facilitate access into McIntosh and the presently vacant gas station. He said that McIntosh has allocated 40 to \$45,000 to assist in upgrades. Motiva is asking the Board to, 1) complete the internal review, 2) to have the traffic issue reviewed by a professional and to consider these three options: 1. The Dunkin Donuts option with improvements that go to effectuating a significant improvement to the whole corridor. 2. A conditional approval that does not permit the Dunkin Donuts, but in their view does not require anything else. They believe that if the City's traffic expert reaches a conclusion of no significant increase in traffic that that would be the only reasonable result. 3. In the absence of there being sufficient evidence to support either position, the Board's position is to deny. He said that their goal is to achieve a result that permits the Dunkin Donut. Mr. McNeill stated that he is asking the Board for a 60-day extension.

Don Rhodes, Norway Plains, went over the details of the highway improvements. He said that they counted traffic at all of the places that Malcolm had previously mentioned and there was no difference in traffic, 10% one way or the other. He said that the City's

consultant had identified three sites where he had observed queues. He said that all three of those sites are Dunkin Donuts stores, which are different than what is being proposed by Motiva on Silver St. He said that of the three sites that were sited, only one had a queue that exceeded the storage length that is being provided at Silver St. That site is on Route 125 in Gonic. He said that back in August they sat at the site for the better part of the day and counted traffic and observed the queues. They do agree that the queues do extend back to Rt. 125, however, the situation is entirely different than the layout being proposed at Silver St. The store in Gonic is only about 40' from the road, and the drive through and the parking interact. The backup into the street is not a result of the back up of the drive through, it is the result of the congestion and interference of the vehicles pulling in and out of the parking spaces and the people using the drive through. Don went over to his plan and explained the widening of the left turn lane. He said that that would be the next logical step to make improvements to this corridor. Don Rhodes said that he understands that the City staff has had conversations with the State. He said that he had an initial meeting with the State with them over a year ago. He said that it is his understanding that they concur with the concept that they are presenting.

David Landry stated that he was concerned with the traffic that would be going to the car wash. He thought that the traffic pattern would be very confusing. He asked about the retention system vs. a detention system.

Discussion ensued.

John Christopher explained how the carwash worked and the difference between a retention system and a detention system, saying that a retention is underground.

The public hearing was opened.

Dawn Duffy, 163 Silver Street, said that she has not seen anything new. She is concerned that the City is depending on Dunkin Donuts to do street improvements.

Atty. Don Bryant stated that the issue before the Board is set forth in the Site Review Ordinance. The Site Review Ordinance says, "Only after the Planning Board is fully satisfied that a proposed application is in the best interest of the City that the application be approved." He said that he feels very strongly that application as it stands, or as it might be modified by removal of the Dunkin Donuts, is not in the best interest of the City of Dover. He said that this application has the possibility of changing the whole neighborhood that is now residential with a small amount of commercial activity. This expansion will greatly increase the intensity of the commercial activity and the very character of the neighborhood is threatened by this proposal. If this proposal goes through and this massive new development is allowed, it is likely to produce sales of buildings to commercial uses, which would never occur otherwise. Mr. Bryant stated that Preston Samuels had very serious concerns about the whole project. One of the concerns was the stacking at the Dunkin Donuts site, the curvature of the road and site lines. This matter violates the policies set forth in the Master Plan, which was adopted by this Planning Board and says, "Manage the gateways into the City such as Silver Street to

protect the historic character and insure that new development is consistent with its character." The School Department putting the driveway in for Woodman Park School now gives greater concerns than we had at the beginning. We now have school busses coming in there making left turns into Woodman Park School and we have school busses loaded with children every morning and every afternoon coming into this area. He said that we should not compromise the safety of the children. He went over the traffic pattern of the busses in the area and said that it will result in conflicting traffic. He said that even if the Dunkin Donuts is dropped, they still object to the project. Motiva keeps calling it a convenience store, it is a small grocery store. Motiva is making substantial investment in this project. He said that we all know that the traffic is increasing on Silver St. and in Dover, this development will be allowed for future increases in traffic, not only increases that would be generated by the developments on the property itself, but by increases which would naturally occur anyway. He can't see how it can be argued that such a proposition as is proposed here with future increases in traffic can be called in the best interest of the City. The neighborhood is 100% opposed to this and not only the neighborhood but also many people who have spoken to him and wishes that he wins this case. He said that he thinks that the City as a whole is opposed to this.

Marion Nossiff, 3 Towle Ave., stated that figures do not lie but liars figure. She said that she knows that there are more than 103 cars that pass by her driveway between the hours of 7:00 and 9:00 AM. She said that the survey was done in early June when there were no UNH students. She said that the Holiday Inn is now a dormitory with 67 students with 67 cars going in and out. She said that Dunkin Donuts is a notoriously bad neighbor, they are filthy, dirty and they don't pick up their trash. Even if this project is totally legal, that does not make it right. Abortions are legal but they are not right.

David Slater, 102 Silver St., said that the PB knows that among one of the essential elements of any vital town is a handsome gateway. Dover has one on Silver St. Motiva now calls it a corridor. One of the first indications that show that a city is struggling is when the homes on that gateway become funeral parlor, lawyer's offices, and real estate offices. He said that homes next to such commercial enterprises become less attractive. There are towns where the quality of life and the long-term vitality of the community are primary concerns. They do not let traffic departments put through a 5 lane highway. Those towns stay desirable and even become destinations. Two gas stations at the end of the street may have a little impact on the neighborhood, but a donut shop, a car wash, an oversized convenience store all send signals to everyone who drives into town that the attitude is changed and the street is in danger of no longer being a charming entrance. He said that they are simple citizens pitted against a very large wealthy corporation. He appealed to the Planning Board to make the full use of the powers given to help shape the community for its long-term loveliness and vitality and to stop the erosion that this application engenders. He said that he realizes that you may not have any choice and you and the neighbors will be held captive by Motiva but the City will be the looser.

Gale Moore, 30 Silver Street, spoke about the safety of the children. She spoke on the fast food sprawl that has overtaken the Seacoast should characterize Dover as well and change the graceful entry of the City. She spoke on the architectural treasures that line

Gale Moore, 30 Silver Street, spoke about the safety of the children. She spoke on the fast food sprawl that has overtaken the Seacoast should characterize Dover as well and change the graceful entry of the City. She spoke on the architectural treasures that line Silver Street. She said that Woodman Park begins the year with a more viable traffic pattern and safer walkways. She said that the McIntosh dormitories will be an added pressure on Silver St. She spoke of taking I-95 to Seabrook and found an unrecognizable Route 1 where one lovely house after another has yielded to a fast food industrial way. Motiva's purpose is to create more traffic. The constant stop and go traffic is not a safe environment for an elementary school and creates a snarl and potential traffic hazard to and from work. She urges the Board to say no.

Sheila Duffy Mone, formerly of Silver St. stated that they don't need to have a professional traffic consultant to tell them about the traffic because they cannot get out of their driveway. They have to cross a double lane. She asked that the Board listen to all the people.

Dennis Duffy, 163 Silver Street, stated that the traffic reports have not been in and this has been a drawn out application. He said that he didn't hear anything new tonight except that Dunkin Donuts might not go in. He said that they couldn't get in or out of their driveway. He said that the busses couldn't make the turn because it is too narrow. They are concerned with the motel and if they went to the Planning Board to change the use from a motel to a dormitory.

Scott Stone, 5 Towle Avenue, concerned with the hours of the current Texaco Station which having gone to 24 hours a day has created a lot of intrusion into a very nice, otherwise quiet neighborhood. The lighting is grossly excessive and it is starting to become a hangout for local youths that like to keep their stereos blaring, sufficient to vibrate the windows in the house. He said that the gateway into the City has been harmed by the inclusion of the bus loop, now that most of the lawn has been taken away.

Bernard Duffy, 161 Silver St., stated that there is a serious gas leak coming over onto his property. He was concerned with the traffic of trucks carrying junk cars that are coming through Silver Street to avoid the scales in Kittery. He spoke of the students using the dormitories going to the store 24 hours a day.

Berrien Moore, 30 Silver Street, stated that we try to make the best judgments about how we see the future. The Planning Board would try to move the City in the right directions, but would also try to move the City away from the wrong directions. He said that it is the mistakes that you make that really influences the future. He said that we need to increase the safety of our children at Woodman Park. He said that the confusing traffic pattern does not do that. This is a prescription for disaster. He asked if this enhances the cultural value of the City. This goes into the wrong direction. He can't see why in the world the Board would want to go in this direction.

Brenda Whitmore motioned to give the applicant a 60-day extension so the City can review the traffic study that has just come in.
Margaret Stevenson seconded.

Frank Torr stated that he would like to have Bruce Woodruff, and the consultant, the ZBA opinion and minutes of that meeting.

VOTE U/A

ITEM #11: New Business

Steve Stancel reminded the Board the Natural Resources Outreach Coalition was have their second lecture on the 26th. Also the Smart Growth workshop is scheduled for October 3rd.

Beth Thompson asked Chuck for a clarification on whether he closed or recessed the public hearing.

Chuck Maglaras stated that he did not close the public hearing he recessed the hearing.

ITEM #12: Adjournment

Brenda motioned to adjourn.
Margaret Stevenson seconded.

VOTE U/A