

**DOVER PLANNING BOARD
MINUTES OF MEETING
DECEMBER 11, 2001**

MEMBERS PRESENT: Pete Lavoie, Frank Torr, Margaret Stevenson, Tony McManus, David Landry, Jerry Reese, Beth Thompson, Ron Cole, Brenda Whitmore, Dennis Ciotti, Chuck Maglaras

MEMBERS ABSENT: John Sullivan

Alternates Dennis Ciotti and Brenda Whitmore did not sit on the Board.

Chairman Cole brought the meeting to order at 7:00 PM

ITEM #1: Citizens' Forum

No one spoke for the forum.

ITEM #2: Approval of the minutes of the previous meeting.

Beth Thompson made the motion to approve.
Frank Torr seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of an application for a minor subdivision of land for William & Lisa Huml, Assessor's Map I, Lot 18, zoned R-20 & RM-20, located on Durham Road. P01-63)

Don Rhodes, Norway Plains, represented the applicants. He stated that they are separating a one acre lot from their 11 acres so that Mr. Huml's father will be able to build a single family home. There is about 28,000 feet of upland area, which is 8,000-sq. ft. more than required by the Zoning Ordinance.

Beth Thompson made the motion to accept.
Peg Stevenson seconded.

VOTE U/A

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

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

1. Add both of the owner's signatures to the plat.

2. Revise the plat to indicate the amount of non-wetland area for each lot. A minimum of 20,000 sq. ft. is required.
3. Revise Note #4 to indicate that the property is in the Groundwater Protection District and show the district boundary.
4. Revise the plat by adding the minimum building setback lines.

Chuck Maglaras seconded.

VOTE U/A

ITEM #4: Consideration and acceptance of an application for a minor lot line adjustment for Deerfield Pilgrim Construction Co., LLC, (Owners Michael Joyal, Jr. & Kathleen Gadarowski) Assessor's Map E, Lots 38-3 & 38-2, zoned R-40, located on Watson Road.* (P01-64)

Beth Thompson and Pete Lavoie stated that they were abstaining.

Don Rhodes, Norway Plains, represented the applicants. He said that the house and the driveway were placed too close to the side setback. The line is being shifted 26 feet to meet all of the setback issues.

Chuck Maglaras made the motion to accept the application.

Tony McManus seconded.

VOTE U/A

Abstained – Beth Thompson, Pete Lavoie

The public hearing was opened.

There were no comments.

The public hearing was closed.

Peg Stevenson made the motion to approve with the condition that the owner's signatures be added to the plat.

Chuck Maglaras seconded.

VOTE U/A

Abstained – Beth Thompson, Pete Lavoie

ITEM #5: Public hearing and discussion and vote on Motiva Enterprises, Assessor's Map 11, Lot 4, zoned B-3/RM-10, located at 169 Silver Street.* (P00-20)

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

Beth Thompson seconded.

VOTE 7 – 1

Opposed – Tony Maglaras

Atty. Malcolm McNeill represented the applicant. He introduced John Christopher representing Motiva, Anthony Guba with Ayoub Engineering and Don Rhodes the traffic consultant. He said that they felt that the changes in the plan were diminimus as the result of Dunkin' Donuts leaving, the removal of the drive-up window and the modification of the rear access road. He said that the plan and the traffic studies have

been revised and delivered to Planning on November 15th. He said that he received the Planning Department's comments at about 2:00 PM this afternoon. This site has been used as a gas station for 35 years. The applicant proposes no changes in the gasoline dispensing area and the canopy area. What is being proposed is the elimination of the existing convenience store, which in the past was also used as a service station, and replacing it with a 3,416 sq. ft. convenience store. He brought some photos of the site. He said that the facility that they are building has already been approved at the Dover/Somersworth line except that this building is smaller. They are not building the Texaco national design because of their concern for aesthetics. He had pictures showing that the closest residential property is a barn and that it has a very similar design as their convenience store. He handed the photos to the Board and asked them to note the scarcity of signage, and the architectural features at the side of the building that is the closest to the Duffys'. Mr. McNeill indicated that the front of the store is barn-like in its appearance except for the glass windows in the front. He said that the new structure that is being proposed is 14 feet further away from the Duffy property than the existing building. The front of the new building is 56 feet further back from the roadway than the existing building and is 11 feet shorter than the building on the Somersworth property. This is a store that will dispense bread, milk, beer, sundries, and coffee. Mr. McNeill stated that it is not, as portrayed, a supermarket. The building is 3,416 sq. ft. and is smaller than most of the convenience stores that are being placed in 21st Century gas stations in zones where they are allowed, as it is allowed here. The carwash facility is 227 feet away from the Duffy property and is totally located in a commercial zone. He said that with the addition of vinyl curtains to this carwash facility there will be no sound transmitted to adjoining properties. He pointed out the enhanced landscaping and green space. There will no longer be a need for a detention pond in the area of the rear of the site where it was previously planned.

Malcolm McNeill stated that there are no waivers or variances requested and all of the uses in their existing location has been approved by the Building Inspector, the Zoning Board of Adjustment and the Strafford County Superior Court in terms of the locations and permissibility of these structures. He said that the abutters have appealed this issue and it will be decided by the Supreme Court. Malcolm said that three of the jurisdictions that have considered this case have all decided that this proposal is appropriate. He said that they have no objections to the vinyl curtains at the carwash. The Planning Department is also recommending that the design of this building be submitted to a historic architect for review. They object to that because they are not in a Historic District. They will have a microwave oven for warming up food. They will not be any preparing of food on this site. He added that the lighting at the site would be dramatically reduced. The canopy exists as a permitted use, however, a request has been made because of the allegations of glare, to change the lights and they will completely comply with the regulations with regard to lighting. They will insert the lights into the canopy so they are recessed and they will supply all of the footcandles that are necessary for safety. They are not going to agree to a circumstance where someone comes out and subjectively says, "the lights are too bright." They will comply with the regulations.

Tony Guba, Ayoub Engineering, explained the changes made to the landscaping and the divider that went around the building. He said that that has been removed and replaced with a small retaining wall to allow for the grade change. He said that they are reducing the amount of asphalt. He said that the detention areas have been combined and overflow will be tied into the municipal system. He checked with the City Engineer and he believes that everything is to his satisfaction. Tony said that it is not their intent to show the striping in the street as a recommendation for any changes or any kind of work that needs to be done in the street. They took the information that they got from the school and simply put it on the plan. They are proposing reducing the foot-candles to nothing exceeding 25 foot-candles, which will make them significantly dimmer than the existing gas station.

Tony Guba stated that they had calculated 15 parking spaces and their understanding is that it is 1 parking space for every 200 ft. retail. The store is 3,416 sq. ft. and they have calculated it to be 17 parking spaces. The Planning staff would like them to put 22 on the site. He said that they probably can put them on but they believe that 17 parking spaces will be more than ample but they will be happy to add them to the site.

Malcolm McNeill stated that in some communities parking is also considered at the gas pumps because on many occasions that's where people park. Their calculations are separate from that. He said that they believe from their traffic study that without putting in a Dunkin' Donuts, they are basically generating two new customers per peak hour. In terms of the study that Mr. Samuels has conducted with regard to his examination, there may be a bit higher number but there is not a significant increase in traffic at this site that is generated by their improvements. They seek to serve pass-by traffic. Since this project has started, the School Dept. has made significant improvements, some of which the abutters opposed and were skeptical of, but yet some of those critics have now praised the improvements in safety. Malcolm stated that this gas station, the gas station next door and McIntosh College are all permitted uses and businesses in this zone. The Planning Department has recommended that Motiva pay an impact fee of \$11,900. They believe that that number is grossly excessive as it relates to their impacts of this site. In the context of the entirety of this case, this is just one component and if it were the only component, the view of Motiva may be different but it is part of a long list. Mr. Rhodes will speak to the issue of what number they feel is appropriate and also speak to the issue of the hedge that has existed in the vicinity of this site for many years and for many years without any significant accident history. In terms of the new traffic that they are generating, they believe everything that they are proposing is safe even with the existence of that hedge.

Don Rhodes stated that since the last meeting they have prepared and completed a new traffic study. That included new data collection and calculation of LOS, all of which has been reviewed by the City's consultant. He said that the work that they did regarding trip generation determined that the revised site might add 20 to 28 peak hour trips. 28 in the morning and 28 in the afternoon that translates to 10 in and 10 out – 14 in and 14 out. All of those trips are going to be drawn from the existing traffic. The NH DOT considers that gas stations/convenience stores essentially draw 100% of their traffic from the traffic

passing the site. When they were evaluating the site with the Dunkin' Donuts, clearly, that was a new use and would draw some traffic to the neighborhood. At that time they were using a new trip percentage of 30%. That number was reviewed and approved by everybody. In the report they just submitted, they assumed one new customer per direction on Silver St. One trip in and one trip out per direction. It is not a noticeable impact to the traffic on Silver Street. The calculations that Malcolm referred to that were prepared for the cost estimate were based on the total number of additional turns that they estimated turned into the site. 20 in the morning and 28 in the afternoon. They don't feel that that's a reasonable or fair basis to determine a fair share at all because those 28 trips will be felt at the intersection (there is no debate there), however, when you get any distance from these driveway intersections, those numbers aren't reflected in any increase in the traffic. The increase either side of the site is 2 trips during the peak hour. They feel that that is a more realistic number to describe the impact of this proposal to the corridor. The 28 number applies at the driveway intersection, it does not apply throughout the corridor. The other issue is regarding the hedge on the inside of the curve. It's just about on the property line. From the Motiva westerly driveway the measured site distance is about 325 feet. The stopping site distance at 30 miles per hour is something under 200 feet. The ASHTO recommended ideal site distance is around 360. They recognize that the site distance is less than the ASHTO ideal standard, however, that is a standard that is applied where it is possible, it is not necessarily an indication as to whether or not a situation is safe. In this case a much better indication of whether or not this situation is safe is that the Motiva driveway has been in existence for decades. They collected over 5 years of accident data from the Dover Police Department. There is not a single accident through that 5-year period that in any way, as near as they can tell, was affected by that the hedge. Mr. Rhodes stated that hedge does make the site distance less than the ideal standard, but as to creating a safety issue, the data says otherwise.

Atty. McNeill stated that McIntosh College put up \$40,000 based on their generation of traffic. Their traffic is all destination traffic in terms of going to that site for a particular reason. In terms of total trips in terms of their calculations, Motiva's were 14 and McIntosh's were 56. MacIntosh was required to pay \$40,000 and Motiva is being asked to pay \$11,900 for a very significant difference in trip generation. They believe that a generous number would be 5 to \$6,000. He said that they believe that their site design is sensitive and does take into account the neighborhood, but the neighborhood is not just the Duffy property and it's not just the houses on the Duffy side, it's this business zone as well. He said that they are compatible with pitch roofs, clapboards, and minimal signage on the building. They have complied and will comply with all of the City's regulations with regard to lighting. They believe that the number of parking spaces should be at a maximum of 20 and not 22, however, they believe that they can accommodate both. He said that the condition related to hedge is a safe one. One can go to most every offsite of a highway and find exactly what they are planning to do, but worse. In driving up the Spaulding and getting off on off ramps, you would see facilities like this at practically every one, but with much greater affect than what they are proposing. They have attempted, despite their permitted use, and despite the diminimous change that they are making, to work into this the concerns of an extremely aggressive and active neighborhood that has lived next to commercial activities for at least 35 to 36 years. As

much as the abutters have the right to rely on their zoning, Motiva does as well and that is what they are doing here. They are asking for approval of this project tonight with most of the conditions that Mr. Stancel has recommended subject to the caveats that he has suggested with regard to a historical architect, the amount of the contribution, and the hedge. He thanked everyone for their patience.

David Landry asked if the lighting is presently in compliance with the regulations.

Malcolm stated that it is not because they are grandfathered. He said that they are an existing use and they have the right to continue that use in its present form.

David Landry asked if there weren't any changes being made and they weren't doing this development, would there be any need for the owners of the property to change the lights.

Steve Stancel stated that they were grandfathered in. He said that about a year ago the Planning Board revised the Site Review Regulations to established new footcandle requirements as a result of a situation such as this.

Chuck Maglaras asked why the detention pond was removed.

Tony Guba explained that Dave White asked them to re-evaluate the design. They found that they could reduce the impact by combining the two systems into one area rather than having two separate systems.

The public hearing was opened.

Don Bryant, lives at the corner of Silver and Arch Streets, stated that he is speaking in direct opposition because he feels that it will be a great detriment to the neighborhood and is a major change to what they have now. He referred to the Site Review Ordinance 149-5. The standards contained in this Chapter shall be interpreted as minimum requirements. Compliance for said minimum requirements shall in no instance obligate the Planning Board to approve any particular application solely on these basis. Only after the Planning Board is fully satisfied that the proposed application is in the best interest of the City will the application be approved. His argument is that this application is not in the best interest of the City of Dover and, therefore, it should be rejected. This proposal is a very radical change in the existing structure. All that we have there now is a small convenience store and a gas station occupying a portion of the lot. This proposition will expand the operation by at least double and create a new store that is not a convenience store at all and is called a food mart and will be 2 1/2 times as big as the existing convenience store. He said that Motiva is not going to go to the expense involved unless they expect to make some money on it. He said that it is logical that they expect to get a significant amount of business out of this new store and the carwash. There is no supermarket on the south side of Dover and it seems logical to him to assume that by putting in a store of this size that there would be a significant amount of business and a significant amount of traffic. He said that traffic is a big element with regard to this proposition and is complicated by the fact that there is the school entrance opposite to the

entrance to the Motiva station. This brings into question whether or not this will have some affect on the safety of school children. He asked if that would be increasing the traffic and endangering the safety of school children and that puts a very heavy responsibility on the Planning Board. He said that Mr. Samuels has written the report in which he has questioned some of the affects of the safety of traffic and previous to this meeting, there was a point where he strongly disapproved. Mr. Bryant said that he has modified his views somewhat on account of the Dunkin' Donuts being eliminated, but he still has enough reservations to indicate that this raises very serious traffic concerns in the light of the entrance to the school being right opposite the entrance to Motiva. He said that Mr. McNeill already mentioned the fact that Motiva has a Shell station on the north side of Dover, on Route 108. He said that he went to the Assessor's Office and found out that it is comparable to what Motiva is proposing here only a little bit larger. He presented some pictures that show the type of operation that Motiva would have you approve in this operation. He said that just a bit north of that, into Somersworth, there is another filling station with a store called Mr. Mikes which is a little bit smaller than the store that Motiva proposes on this property on Silver St. He asked the Board to compare these developments with the size of the convenience store that Motiva has on this lot now and whether it's obvious that we have a much larger development than what Motiva has at the present time. Mr. Bryant said that this makes a very major change for the neighborhood and for Silver St. He also handed out some pictures of the existing 724 Stores on Back River Road and Central Ave. He said that these stores are all smaller than the store that Motiva proposes to erect on Silver St. What we have here is a proposed store which is halfway between the Shell Station on Rt. 108 and the Texaco station on Route 108, which is larger than any 724 store that we have in Dover at the present time. He said that Mr. McNeill said that this is only opposite a barn on the Duffy side but it is more than that, it can be seen all over the neighborhood and it will have a very dramatic affect on the neighborhood. Mr. Bryant said that we are not dealing with Route 108 which is a heavily traveled highway and which is a commercial area. If you ride up and down Rt. 108 in the area of Motiva's Shell station, you'll see commercial activities on both sides. There are professional offices, medical offices, car lots, etc. The fact that the Shell station is permitted there, is no way an indication that similar operations should be permitted in an area like Silver St. The very area where Motiva is proposing to erect this structure is partly residential and partly thoroughfare business district. The whole project would not be possible if Motiva was not permitted by the Zoning Ordinance to extend 50 feet into the residential area. Motiva is using a substantial part of the residential area in putting this operation in. To allow this project to go through in this neighborhood will be a hardship in the neighborhood. To deny this application will be no hardship on Motiva. Motiva has its big shell station in the north end of Dover, it has another big gasoline station opposite Burger King, on Central Avenue in the south end of Dover, and the Assessor's Office indicated they paid over a million dollars for that lot. There is no hardship in denying this application for Motiva, but there will be a very severe detriment to the residents of this area. He said that you have to look at the Master Plan. The Natural and Historic Resources Chapter states: It shall manage the gateways into the City such as Silver Street to protect the historic character and insure that new development is consistent with this development. He passed out copies of this Master Plan resolution.

Atty. Bryant stated that this proposed development would require 22 spaces. To build this huge building will produce a lot of business to require 22 parking space. He said that it's true that Dunkin' Donuts was a huge issue, and that doesn't mean that it is gone forever. He said if Motiva is allowed to build the store it wants to build, he can visualize that 6 mos. to a year from now they will be coming back with a Dunkin' Donuts. Once these uses are permitted, others are likely to follow and the pressure will be on for more commercial activity to come in and to buy up property in the area to increase the commercial activity. It will likely result in rezoning the area so that the area becomes a commercial area like Route 108. This will be very highly detrimental to the residential people who live in this area. It will not only reduce property value but it will lead to a very detrimental increase in commercial activity and will become an undesirable place to live. He said that Motiva is Shell and Texaco and Saudi Aranco, that is big oil. He said that he thinks that it is important for the Planning Board to realize that Saudi Aranco is the government of Saudi Arabia. He said that he is speaking for the residents of the area on Silver Street. The people who reside there and wish to have the provisions of the Master Plan observed and followed and have this remain as a residential area, in accordance with the provisions of the Planning Board. He requests respectfully that the Planning Board deny the application.

Kathleen McKenney, 170 Silver Street, the house with the hedge, stated that it's been there for years and it's never been a problem. She stated that she doesn't know how a big oil company can come in and take their property. She objects to this proposal.

Berrien Moore, 30 Silver Street, stated that his wife could not be present tonight but has submitted a written statement. He said that it was stated that the type of development seen next to a major highway is typical. He said that he agrees, but they have an untypical situation of a school located there and that is a very central issue. He said that there are projections of the nature of the traffic that might or might not increase. Mr. Moore said that it seems likely that if you have a significantly larger commercial enterprise the traffic will increase, not decrease. He suggests that the Planning Board consider very carefully the precautionary principle. He said that we need to be very, very cautious in this situation because of the combination of the school, major highway and the significant expansion in the commercial enterprise. His final judgment is that he would err on the side of caution.

Jim Schulte, 2 Towle Avenue, stated that at the last meeting Mr. McNeill stated that given that the buildings are going to be located within the business zone and given the improvements that were made to Silver Street as a result of the work done by the School Department, that if the changes to the Motiva site were diminimous, this Board really could not do anything but to approve it. He said that he would speak to the question as to whether it is diminimous. The new traffic study that was delivered by Mr. Rhodes some weeks ago had a couple of very interesting features. First is that the traffic count on Silver Street is very substantially greater than what had been previously estimated. The last information that was given to you was that in the morning during the peak hour, they had 1466 vehicle trips on Silver St. At the counts that they did in October and November, traffic studies that were done in the summer show low counts but when you

do a traffic study in the fall when the UNH students are back and school is in session, the traffic counts in the morning are now 1641, which is 175 more vehicles in the peak hour in the morning than they had previously represented to you. That is a 12% greater number. The afternoon counts have gone up by 89 compared to the previous counts. We start with a higher level of traffic than the Motiva experts have been presenting to you for a year and a half. He said that he then looked at their conservative estimates as to what is going to happen without the Dunkin Donut, but with the carwash and with the increased convenience store. He said that they say that 3.3% of the people that go there will go just for the carwash, another 9% will go there for the carwash and gasoline, and 10 to 15% will go there for the convenience store because it's a bigger store than what currently exists. If we accept their numbers, knowing that they have underestimated on every other traffic estimate that they have given you, we are looking at a 27% increase in the volume of traffic to and from that site. He said that that is not a diminimous increase. He said that you need to recognize that that is going to be a substantial impact to this area. The building size is going to increase from about 1200 sq. ft. to 3400 sq. ft. The building that is there now was built as a service station with two full service bays when he first moved to the neighborhood. Of the building that is there with 1200 sq. ft., if you have ever been inside the convenience store, the retail part of that building can't be more than 250 sq. ft. That is a tiny room where they actually sell things. Now they are going to a retail store of 3400 sq. ft. Even allowing for storage, you are looking for an increase in retail space of 7 to 10 times the floor space that is currently there. Preston Samuels has responded to the traffic study that was done by Mr. Rhodes and indicates that at the present time, if this development is allowed, the waiting time for people trying to come out and turn left onto Silver Street will be a minute. The previous traffic study that he's done tells you that the current wait for people coming out and turning left on Silver St. during peak hours, is 40 seconds. The improvement that they are making will currently double the waiting time and take it to a minute. He said that that is an acceptable level but he also says that within ten years, that waiting time is going to expand to 2 ½ minutes for every vehicle that wants to come out during peak hours and turn left and he says that that is unacceptable and dangerous. He said there might be nothing the owner of this site can do commercially to develop his site and preserve the safety. He said that there is something that you can do about it, you can make sure that the development that they are proposing which will lead to a condition that he describes as dangerous will not occur. We are concerned about the site distance. Preston Samuels continues to say that that is a problem and stated that if you are going to approve this you need to do something to make sure that the site distance to the west is more than 325 feet. Mr. Schulte stated that the Planning staff is going to recommend that this will not be a safe site unless the hedge can be eliminated and we've heard tonight that that hedge is not going to be eliminated. Mr. Schulte stated that Mr. Rhodes stated that there aren't any accidents connected with this site, but in his written report he said that within the last 5 years there have been 8 accidents – 4 on the property but 4 from people who are trying to get into the site. He said that the added volume of traffic that this project will generate would compound the problem.

Tessa McDonald, 136 Silver Street, and Vice President of the Dover Historic Society, stated that she concurs with the comments with regard to traffic and safety. She said that

she has another issue and that is quality of life. She said that they are more than an off-ramp off of the highway, this neighborhood is a portal to the City that looks and feels welcoming to people coming in. It is a different feel than getting off at the Weeks's off-ramp where it is very commercial. They are a neighborhood that is a mixture of some commercial and some residential zoning. She stated that she supports maintaining the integrity of the area. She said that they don't need an expansion of the services and she is opposed to this.

Sheila Mone, 46 Spruce Lane, and a former resident of Silver St. said that it is very apparent that the citizens of Dover are here to voice their concerns. She spoke of tractor-trailers parked on both sides of the street to go to the mini-mart and the increase of college and restaurant traffic. She asked people who do not think that Silver St. is historical to attend a one of the historic walks, it includes the Silver St. area. She said that the gateway to the City has now become a gridlock to the City. She asked the Board to consider the people.

Carol Foley, 129 Silver Street, stated that she is opposed to the plan. She spoke about the difficulty of getting out of her driveway. She said that they didn't want the gas station 35 years ago and they don't want it now. She said that they are afraid that the commercial use will go down Silver Street.

Dennis Duffy, 163 Silver Street, stated that he is opposed to this plan. He said that he resents the fact that he didn't get to speak at the last meeting. He said this plan is not safe. He said that he feels that anything that slows the traffic down, stopping or turning is not a good idea for Silver Street. He said that the middle lane is hard to cross when exiting his driveway and will be more difficult to cross for the people exiting the Texaco. He said that the argument of the middle lane helping to get out of his driveway doesn't work because there are people using it as through lane. He said that the lane that goes around the building is totally uncalled for. He said that the canopy is not in compliance and it is right on the road. He personally sees what goes on at the station and there are boom boxes and kids getting in and out of their cars. He added that they will encourage people to come in to buy beer. He said that with UNH close by, he is sure that there will plenty of customers. He said he agrees with Mr. Bryant and Mr. Schulte. He urged the Board to vote in the best interest of the people of the City of Dover and to vote this down.

Scott Stone, 5 Towle Avenue, stated that Motiva's concern is profit and their concern for the neighborhood is minimal. If they had any concern for the neighborhood the current eyesore of a structure would not have been built. The current lighting which was put in and which now glares into all the abutting properties so that you can read a book in your back yard would not have been put in. They would not have increased their hours to 24 hours per day.

Bernard Duffy, 161 Silver Street, stated that he hopes that the Board turns this project down. He said that McIntosh College is a filthy rotten mess as there are beer bottles, cans and cigarette butts everywhere and no one is policing that place at all. He said that people won't pay \$1.06 per gallon for gas somewhere else when they can get gas here for

\$.99. He said that he has been arguing with the City of Dover for 53 years and he hasn't gotten anything yet.

Dawn Duffy, 163 Silver St., asked the Board to vote this down. She said that a large food mart that is open 24 hours per day will naturally generate a tremendous amount of traffic in an area that has already been written up as overburdened. The middle lanes are very confusing. She said that they do not need another Miracle Mile. She said that the whole plan is a tremendous change to the neighborhood. The children at the school may not come across that street during the day, but when school is out, those kids are going to try to cross that street.

Eleanor Duffy, 161 Silver Street, stated that she has to wait for two light changes in order to get out to head toward town. There are 13 entrances and exits from the light to the corner. She spoke about the danger of the lanes. She is against the proposal.

Marion Nossif, 3 Towle Avenue, stated that things that are legal are not necessarily right. This project is legal but it is wrong. Smoking is legal but it is wrong.

The public hearing was closed.

Steve Stancel stated that Preston Samuels, from C& C Consulting Services, who is the City's independent traffic consultant regarding this project is in the audience. Steve Pesci, who is working a few hours a week with us, formerly with Strafford Regional Planning and now at UNH, is here to answer questions regarding traffic analyses and safety issues, as well as, how we came up with the off-site improvement fees if there are any questions. Steve said that they have discussed the offsite improvement fees of \$11,900 with Atty. McNeill yesterday and today.

Steve Stancel stated that this project is a very difficult one to review. It has been before the Board for a year and a half and there have been several points where the Department, as well as the Planning Board, has been accused of being in the developer's pocket. There have been points where we were accused by the developer of continually requesting additional information and dragging our feet. He said what he attempted to do during this entire process was to get the facts so that the Board could make a logical and educated conclusion regarding this particular project. He said that he feels that they were successful in many respects in that we are sitting here today reviewing a convenience store and carwash as opposed to a convenience store, carwash and Dunkin' Donuts facility with a drive up window. This is a small victory but not insignificant. He said that they listened to a lot of eloquent and impassioned speeches made by both sides regarding this issue. We have listened to and understand the neighborhood's concerns regarding this project. He said that he feels that it is important to explain about the land use system in the State of NH. Unfortunately, unlike many states, land use regulation and protection in the State of NH tends to be stronger. Communities are bound by their regulations and ordinances and by what is in the Master Plan. The recommendations in the Master Plan are merely meant to be policy and until they are turned into regulations and ordinances they cannot be held to regulate. These ordinances and regulations protect

not only the surrounding properties to a project, but also the individual property rights of the developer. The Planning Board should follow these regulations. The Planning Board must review an application based on the regulations that it has before it. It can further ask itself if there are any life safety issues directly related to any project. If a project meets the regulations and there are no life safety issues, then the Planning Board should and must approve a project. We might not personally like a project, but it is the job of the Planning Department to review a plan and make recommendations based on regulations and life safety codes. He said that we have reviewed this plan extensively and recognize the fact that this area is zoned B-3, which is a thoroughfare business district. We believe that this plan does meet with regulations as outlined and adopted by the City. This plan and the traffic analysis, further reviewed by an independent traffic consultant with specific recommendations, stated that this project is safe. Steve said that the Department believes that with the recommended conditions before you, the site development will be safe and should be approved. He said that he wants to preface that with the fact that they believe that every one of these conditions is important that they would not recommend approval without any of these conditions.

1. Add owner's signature to the plan.
2. Revise car wash detail to add vinyl curtains to reduce noise.
3. The canopy and building design to be reviewed by a historic architect and reasonable recommendations to be instituted.
4. Light fixtures under the canopy must be changed to be flush with the canopy ceiling.
5. Revise plan to show "Do Not Enter" and "Enter Only" signs at the driveways.
6. Revise plan to provide 22 parking spaces on site.
7. Applicant shall be responsible to arrange for the removal of the hedge row located on or adjacent to Map 13, lot 5 to provide safe sight distance.
8. Revise Sheet C-1 to correct the Silver Street turning lane configuration to show current conditions.
9. Revise the plan to show inverts on the plan view for the proposed catchbasins and the new drain manhole.
10. Revise the detail on the drain manhole to show a 30" opening and a 30" frame and cover.
11. Revise the plan to show the type of guardrail.
12. Revise the plan to add a detail of the proposed concrete retaining wall.
13. The applicant agrees to contribute \$11,900 to the Silver Street Corridor Improvement Fund. The payment is due prior to the issuance of a building permit.
14. The applicant shall pay any outstanding Traffic consultant fees.
15. Any change of use resulting in additional food preparation shall trigger site review and coming back before the Planning Board.

Ron Cole asked for clarification of item #7 regarding the removal of the hedge.

Steve Stancel stated the Planning staff is saying they feel that the hedge is an unsafe situation and they would not recommend approval of the project without that condition.

David Landry stated that the applicant clearly stated that they reject a number of these conditions and that the person who owns the shrubs clearly said that they have no intention of cutting down their shrubs. He said that these are the issues that he has that tend to stand out.

Steve Stancel stated that the shrub removal is a pivotal issue with the Department. If the applicant is unable to remove the shrubs, then the project does not receive final approval because that is a condition of the approval.

David Landry stated that condition #3 has been an issue for him and for other people on the Board.

Steve Stancel stated that he would recommend that the City hire a historical architect to review the plans and make recommendations and then sit down with the developer and define what is reasonable. There may or may not be a problem. If we do not come to an agreement, then it comes back to Planning Board.

David Landry stated that he could not imagine that a historic architect would come back and find that acceptable where it's located. He said that Motiva feels that their building fits in but he can't see that. He felt that this is a very important item.

Beth Thompson said that she truly understands that the owner of the shrubs would want them there for a buffer. She asked if there had been any discussion on if there is anything else that could be put in place of the shrubs to provide the buffer and still provide the site distance for this project.

Steve Stancel stated that he is not sure what the owner's response has been to the applicant's inquiries. He said that he suggests that this is a condition of approval that the applicant needs to go back and try harder. He said that he prefers to be positive about this and put the ball in the developer's court if this potential issue gets moved on to litigation.

Ron Cole asked if the hedgerow is on private property.

Steve Stancel stated that the immediate question is that without a survey, it's not completely certain whether it is or not. That's why it is written to say, located on or adjacent to the.... The applicant hasn't done that homework yet. He said that he would like to point out that Preston Samuels has been consistent with that hedgerow issue throughout the review process.

Peg Stevenson stated that the hedge would constitute a life safety issue because of the sight distance. She said that there are other things that would also constitute a life safety issue. She had several pictures showing 16 cars in a period of ½ hour using the wrong lanes. She said that she knows that some of the problem is for Police enforcement, but it is a safety issue. She said that the eastbound lane seems to be the biggest part of the violation. She said that she understands that the improvements for the bus loop may have helped a lot with the school and she is sure that there were of positive remarks about

it. The right hand turn into the Woodman Park School has some safety issues because of that lane has a telephone pole that stands in the middle taking up 14 inches of the road. She said that snow would be a problem. She said that observing for a half-hour at 1:15 to 1:45 PM on the 8th of November, there were people using all the lanes, including the ones turning into Woodman Park. She said that she could only image what it is like at the busiest times of the day. She said that the sidewalk is an issue. She said that the motel is no longer in existence and we have dormitories with a lot of students coming and going all day long. Without a sidewalk to accommodate the students that are walking back and forth creates another safety issue. She said that the enrollment seems to be going up at the school. She said if we go forth with this project, we are turning Silver St. into a major highway and she cannot support this project. She said that safety is the biggest concern here.

Malcolm McNeill asked if this investigation has been shared with the City's experts. He said that the reason he is asking is because the City's experts don't raise any of these issues.

Ron Cole answered that this is an individual examination on the part of one Board member.

Beth Thompson stated that if the City's expert and the Planning staff don't see this as a life safety issue, then she doesn't think that she is going to judge a project on bad driving. She said that it is an enforcement issue. She said that she would like to hear from Preston Samuels and his comments on Peg's issues and the other issues that were brought up by the audience.

Preston Samuels from C & C Consulting stated that they are aware of the substandard condition with the three-lane section that exists. The lanes are not wide enough to meet the best standards and some of the striping is not in total conformance with the manual on traffic control devices. He said that those two issues put together probably do contribute to some of the traffic problems that you see out there. He said that earlier on in this review, they had some very serious concerns about the issue of the three-lane section and its operation and voiced that in several reports. With the downsizing of the project, the removal of the Dunkin Donuts portion, these problems don't go away entirely but their concern for them as immediate problems does somewhat diminish. He said that in his most recent review dated November 27th, he did make it very clear that there is a need to improve the three-lane section in this area and that this developer should take initiatives to support the redevelopment of that roadway.

Frank Torr asked Preston of his observation of coming out of the Texaco station to make a left hand turn if he sees the maple tree as an obstacle.

Preston Samuels stated that it is a marginal obstacle. He said that his observation is that the tree does somewhat hinder sight to the east. However, in his experience it does not completely obliterate a normal size vehicle at any point in time and he feels that it is a partial impediment and one that he thinks that he could live with for the present time.

Frank Torr asked Preston if crossing two lanes to get to the straight through lane is a safety problem.

Preston Samuels said that the westbound traffic is the first lane that you cross and he doesn't see much of a problem there because you have some sight and it's not wholly blocked. In his opinion it is suitable. But when you make that left hand turn you also have to deal with the traffic coming from the west in an eastbound direction and there you have a blockage of sight and it's not at all a partial blockage, it's a total blocking.

David Landry asked that assuming that the Texaco is not an actual destination and it will be strictly people driving by using it on their way to somewhere else, how many additional trips could we reasonably expect from what we've heard.

Preston Samuels stated that they did take exception to several of the points of methodology or the way in which the traffic study was prepared. Particularly when you get into the trip generation and the idea of pass-by traffic. This type of project requires the exercise of engineering judgement more than some others which have been very well documented for trip generation from coast to coast and the information has been published by the ITE. In this case, we have to make some judgement on the light side. He said that they concentrated on safety and they made three significant points of traffic safety. One is the site distance looking to the west, which is hindered by the hedge. He said that the potential for safety is recognized across the nation by traffic engineers as something that should be addressed. He said that those standards are published in the bible of their business. He said that he would be very remised if he didn't bring that to your attention. The fact that the hedge has existed for a long time is certainly a fact but the process of site plan review gives the opportunity to bring things up to standards which have been substandard for a long period of time. Earlier this evening we talked about the lighting situation that the lights under the canopy currently do not meet the standards and you recognized your opportunity to bring this into conformance with the current standards and the developer has agreed to do that. He said that this traffic safety issue of stopping site distance is a very similar situation. He said that they recognize that it's existed for a long time, but they also recognize it as a serious safety flaw and have put that responsibility on the developer to correct the situation in exchange for your approval.

Tony McManus made the motion to deny the application.
Peg Stevenson seconded.

Tony stated that his reason why this should be denied is that in looking at this proposal and anything that comes before the Board, and as a member of the Planning Board, he tries to look at the issues as a planner. That means to decide what kind of development should be in the best interest of the City and he feels that the Board is bound by that in the Site Review Regulations. Somebody could do something with a piece of property, but the question is, as a planner, is should it be done. If we don't begin to review site plans on that basis, we are allowing the Motivias of the world and the Brooks Pharmacies of the world to do our planning for us and decide what's going to be best for the City.

From a planning aspect, he said that he doesn't believe that the City needs a carwash at that location or a 24 hour food mart at that location. One thing that struck him is the supposedly low impact traffic figures that were quoted, convincing him that they don't anticipate any particular need for these services and if that is the case, then he doesn't see that Planning Board should take any other position. Tony said that just because the Planning Board made a mistake years ago in allowing this station in that location, doesn't mean that we have to allow that mistake to be compounded and enlarged to what he sees as a detriment to the neighborhood and the community. He said that he knows that the Master Plan is not binding on us, but we went through the process and adopted it about a year and a half ago and it says that we have an obligation to preserve the character of the City. He said that the response of the citizen survey overwhelmingly supported that view. The Master Plan says that we need to preserve the character of the entranceways to the City and specifically mentions Silver Street. Tony said that he finds that Atty. McNeill's comment dissenting, about every off-ramp looking like this because he doesn't want every off-ramp to look like this, particularly Silver Street. Silver Street has a unique character and a unique roll to play in the history of the City and everyone's introduction to the City coming in that exit. The proposal, in his judgment, violates the spirit and the wording of the Master Plan. He said that he believes that there are safety factors and he has never been impressed with computer models or national standards that defy common sense in the actual experience of people who drive out there six days a week and know that the present situation is dangerous. He said that he thinks that it has been complicated by the turning schedule and has displayed the problems that he expected to occur because of that. He said that Mr. Samuels is telling us in a low-key way, that this is not a safe project, as presently proposed. The thing that really bothers him are the figures for ten years from now and we need to consider that on any project that we are looking at. If the wait is going to be 2 minutes in 10 years, based on these models that they work with, which is totally unacceptable, then we should not approve a plan today that we know is going to cause a problem in the future. Finally, he said that he believes that putting a store in there is going to be a magnet for the children of the school. They will attempt to cross Silver St. to get there. There is no safe way for them to do that and he doesn't believe that a proposal should be approved that will create a pedestrian problem and a problem for students that doesn't exist at this time. Those are the reasons that he feels that it is an inappropriate proposal and we should not approve it.

Beth Thompson stated that she wanted to rebut that and say why she can't support denying this motion. As much as she personally has her reservations, she said that she is on the Board to uphold the regulations of the City of Dover and to make sure that there are no life safety issues. She said that she sat here for many months listening to both sides of the issue. Beth stated that her interpretation of "in the best interest of the City" is the fact that it was determined by the City that it was in the best interest to have a B-3 zone there with the various uses allowed, or it would have been changed in the last round of rezoning. Anyone of us would be appalled to come before this Board and have everyone tell us that we cannot expand our property and make our house bigger so that we could reap the benefits of selling it down the road and businesses should also have that right. She said that she doesn't care if anyone makes a profit on his or her land.

With regard to the life safe issues, she stated that she feels very comfortable with what Mr. Samuels has told us.

Ron Cole stated that there are significant differences in interpretation. Growth doesn't come without pain.

Beth Thompson clarified that she personally doesn't think that this project is the greatest project since sliced bread. She said that she doesn't use these types of facilities but people have a right to do that.

Pete Lavoie stated that he looked at Silver Street and there is no way that it can be widened in the future. It can't be widened because of the historical homes, curbing and sidewalks. He said that a resident came to him with an idea that maybe Washington St. should be looked at as an entrance to the City because it is wider. Pete said that he came before the Board, in the CIP, with a proposal of making a study for \$30,000. It was later put into the operational budget and then it had to be eliminated and the same thing happened this year. The tractor-trailers go down Silver St. now and it just can't handle it. He said that he is very concerned with the arrows that were put in the suicide lane also. These are very difficult recommendations and this is not the best thing to happen to the City of Dover but with the rules and regulations that we have to follow, he feels that he has to vote yes.

Ron Cole stated that the motion is to turn down the application.

Tony McManus stated that the record speaks for itself in the three of the members who have spoken and talked about different reasons for turning it down. It is all part of the record.

Malcolm McNeill stated that there has to be specific reasons for turning it down.

Tony McManus stated that his motion is based on the reasons that he gave in his statement.

Ron Cole stated that Tony's reasons were as follows: That it is not in the best interest of the City, it violates the spirit of the letter of the Master Plan, and the Board has a concern for the safety of the children crossing the street.

Tony McManus stated that he feels that the Board has the authority under the site review regulations to consider all of the aspects of the proposal and determine whether or not, in the long run, if it's in the best interest of the City and he said that he doesn't believe that it is. He said that from a Planning standpoint, he doesn't believe that these are needed uses or appropriate uses for that area and it will have a negative impact on the neighborhood. Tony said that this proposal is a violation of the Master Plan and that there are numerous traffic concerns that have been expressed.

Frank Torr stated that he thinks that it is fair to say that life safety is the key issue.

Ron Cole stated that the way that the site plan regulations read, if the Board feels that it would cause major injury to health, safety and prosperity of the community it can be denied. He said that he would interject that into the conditions if that were ok with Tony.

Chairman Cole called the motion to deny the application.

VOTE 5 – 3 Opposed – Beth Thompson, Chuck Maglaras, Pete Lavoie

b. Steve Stancel stated that he received a letter late this afternoon regarding a 60-day extension for Overlook at Dover Point from Stabile Homes.

Jerry Reese made the motion to approve a 60-day extension.

Peg Stevenson seconded.

VOTE U/A

Ron Cole announced that there would be no second meeting in December.

Ron Cole stated that David and Peg are both up for reappointment in February. He said that he is hopeful that they will stay on the Board. Ron added that Brenda Whitmore was a terrific addition to the Planing Board and he wished her well on the Council.

Chuck Maglaras stated that Steve went before the Chamber of Commerce and talked about some areas that were identified for possible rezoning for Economic Development. He asked when they would be coming before the Board.

Steve Stancel stated that a determination has to be made as to priorities and perhaps, a discussion should take place before Planning Board in January as to what those priorities should be for the year.

ITEM # 8: Adjournment

Jerry Reese made the motion to adjourn.

Tony McManus seconded.

VOTE U/A