

**PLANNING BOARD
MINUTES OF MEETING
OCTOBER 22, 1996**

MEMBERS PRESENT: Martin Smith, Reuben Hull, Ronald Cole, Otis Perry, Brian Preston,
Jerry Reese, Dennis Ciotti, Charles Maglaras, Mike Bobinsky (late)

MEMBERS ABSENT: Paul Beecher, Lionel Martel

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

The meeting was brought to order at 7:04 PM.

ITEM #1: Approval of minutes.

Jerry Reese made the motion to approve the minutes of the last meeting.
Dennis Ciotti seconded.

VOTE U/A

**ITEM #2: Consideration and acceptance of a site review of land for Prime Circle, LLC,
(Boston Market Restaurant) Assessor's Map C, Lot 2A, zoned B-3, located at 1
Plaza Drive.**

Malcolm McNeill, attorney for Prime Circle, LLC, introduced Ken Linsman, Michael Kane, Joe Kane, Dave Sanderson and Bob Stowell. He stated that Boston Markets are known for cooking fresh foods that can be eaten in or taken out. He said this plan is a 3,000 sq. ft. addition to Block Buster Video and is a permitted use. He said a Variance was attained to permit a 20 foot distance from the building to the connector road. He stated that before the change in the Weeks Traffic Circle, Plaza Drive provided access to the area. He said it was basically a driveway and with the revision of the Circle, Plaza Drive was eliminated. As a result, a new road, Captain Hook Road was put in to accommodate the existing uses. Malcolm explained where the road used to come in. He said it appears that Old Rochester Road is under the control of the City of Dover. He added there are portions of the State's property that have been paved over. He stated that upon filing the plan, NH DOT received notice and wrote a letter stating they own some of the area and will not allow parking. Malcolm stated that upon receipt of the letter from DOT, they have taken out all of the proposed use from the State-owned land.

Atty. McNeill said there will be 8 employees and the store will be open from 11:00 AM - 10:00 PM. He said they will not serve breakfast and the building will contain 60 seats. He said that 25 - 40% of their business will be for lunch and the remainder will be in the evening. Malcolm showed the traffic pattern for the drive up window. He said the total spaces are as follows: Boston Market 39 parking spaces; Block Buster Video 28 parking spaces; Employment Service 23 parking spaces for a total of 100 spaces where 90 are required. He stated that the employees will park to the rear, which will leave 52 spaces for patrons. Atty. McNeill stated that no waivers

are being requested. He said when leaving the parking area they are providing 30 feet and a stop sign. He added that a speed bump could also be put in. He said he would leave any additional landscaping to Steve Stancel and the Planning Department. Malcolm ended by saying that Boston Market will be a good addition to the City of Dover.

Mike Bobinsky arrived and took his seat.

Bob Stowell stated that they are trying to maintain the existing flow of traffic on a triangular shaped lot.

Reuben Hull asked about the handicap parking and said he thought the parking lot should go counter clockwise rather than clockwise and asked about providing a handicap parking space.

Atty. McNeill stated that this site is affected by things far beyond anyone's control. He said they have an existing building with a tenant in the rear with a long-term lease. He said he feels it is the best that can be done with the site. He said the State clearly owns the land on the other side. He said if the City gives Boston Market the disposition to park there, then the Board can approve this site plan, and if they cannot acquire the rights, they will have to come back to the Board. Malcolm McNeill added they can accommodate the handicap parking space that Reuben was asking for.

Dave Sanderson stated that a good store will get people through in 4 to 5 minutes maximum.

Bob Stowell stated there is room to stack 7 cars at the drive-thru.

Jerry Reese made the motion to accept.

Charles Maglaras seconded.

VOTE U/A

The public hearing was opened.

Ron Cole read the letter from Mr. Leon Kenison, Commissioner, of NH DOT, stating that the encroachment in the Limited Access Right Of Way (LAROW) cannot be permitted.

There were no comments.

The public hearing was closed.

Steve Stancel stated that the site is a very difficult site to work with. He said by shifting traffic in any other way, parking would be lost. He stated the Planning staff recommends approval with a few conditions.

Otis Perry made the motion to approved with the following conditions:

1. Add the owner's signature to the site plan.

2. Provide agreements from the City for the paved parking and aisleways located on the Old Rochester road right-of-way.
3. Applicant continue to work with DOT on the usage of the State limited access right-of-way.
4. Parking for employees be located behind the building.
5. Landscaping plan be modified to meet eventual parking plan.
6. Change one space to a handicapped.

Jerry Reese seconded.

VOTE U/A

ITEM #3: Consideration and acceptance of a lot line adjustment of land for Richard & Bertha Lord, William Simons and Joanne Resnick, Assessor's Map I, Lots 3A & 69C, zoned RM-12, located on Mast Road Extension.

Kevin McEneaney represented the applicants. He said the Lords are transferring a triangular parcel of 3,175 sq. ft. to the Simons. He stated the reason for that is an anticipated addition to the Simons home. He said the lots meet all the requirements.

Otis Perry made the motion to accept the application.

Brian Preston seconded.

VOTE U/A

The public hearing was opened.

There were no comments.

The public hearing was closed.

Jerry Reese made the motion to approve with the condition that the owners' signatures be added to the plat.

Dennis Ciotti seconded.

VOTE U/A

ITEM #4: Old Business

a. Discussion and possible vote on a site review of land for Charles Kageleiry, Woodland Crossing, located on Fourth/Fifth Street. (26 Units)

Martin Smith and Otis Perry stepped down.

Scott Rawding sat in for Otis.

Dennis Ciotti made the motion to take the item off the table.

Jerry Reese seconded.

VOTE U/A

Bob Stowell, Trittech Engineering, stated he has worked with Planning and Engineering for the locations of the speed bumps and the recreation areas. He said they have added additional guard

rails per the request of engineering. He said they have added stockade fences between both abutters. He said the repair and extension of the chain link fence along Lord & Keenan will be incorporated into the final changes. He said all has been addressed on the current plans.

Mike Bobinsky asked how the City receives the Fair Share money.

Steve Stancel stated it is at the time of the building permit.

Jerry Reese asked about the memo from the Building Inspector regarding the closeness of the combustibles to Unit #1. He asked if that unit is within the area where it should not be built.

Steve Stancel answered yes. He stated that on Oct. 2, 1996, the staff went to a workshop on environmental assessment of HUD federally funded projects and found they require higher standards. He said that the Planning Department recently received a memo from Ron Clymer stating that the project does meet the setbacks but according to the State standards for Federal housing projects, it does not. Steve stated that he has spoken to Chief Bibber and he indicates he does not feel it is unsafe.

Scott Rawding stated this could put the City in a quandary knowing its codes do not meet the Federal codes. He said this needs analysis to protect the City. He said we should require the developer to have an independent analysis study done to back up the City in terms of future litigation and to show the Federal Government that we have gone above and beyond to try find out what the safest avenue to pursue would be.

Steve Stancel explained the fair share cost allocation. He said the latest CIP's estimated cost for the reconstruction of Fourth Street is \$900,000. He stated that based on the development's traffic impact to Fourth Street, the developer's cost is set at 3.7% which is \$33,300.00 or \$1,280.77 per unit for 26 residential units.

Brian Preston made the motion to suspend the rules and open a public hearing.

Jerry Reese seconded.

VOTE U/A

The public hearing was opened.

Atty. John Ryan, stated he represents the applicant. He said this project will abide with all State and Federal regulations if those regulations become applicable. He said those regulations contain provisions for waivers or step downs for modifications of that requirement and in his understanding, are not hard and fast. He said they are not applicable to this project now. He added that how this project gets funded has not been decided but if Federal funds come into play, they have agreed to abide by whatever Federal regulations apply. He said he did some investigation into the types of codes that apply to this sort of a project and there is no Federal Fire Safety Code. Mr. Ryan said the code that is applicable to all states of the union is NFPA, which is the fire code that the fire department uses and the code the State uses. He said there is no Congressionally mandated Federal Fire or Life Safety Code, just as there is no Federal

Building Code. Atty. Ryan stated that in 1971, this area was rezoned from industrial to a residential zone. He said the fuel storage facility existed as of that time. He said when the City rezoned, it must have considered that the storage facility was there and must have determined that no present danger would occur to residential development. He added that otherwise, it would have made no sense to take an area that was industrially zoned, and rezone it for residential availability and leave the fuel oil storage facility as a non-conforming use. He said the reference the Board should have is the Fire Chief's memo. He stated the distance they have provided from the tanks is almost twice the distance required by the fire codes that the Fire Chief and the State uses. He said the Chief is responsible for the activities that would occur in the event of a fire or casualty and makes the judgment as to whether he can handle it. He said the experts are the people who have put together the codes which the Fire Department already uses. He said the codes are the result of nationwide studies as to how certain situations should be handled and they directly deal with distances from residences to these sorts of oil storage facilities. He suggested that there is no need to go further than to satisfy your local Fire Chief. Mr. Ryan said if Federal regulations do come into play by reason of federal financing, they would be subject to those regulations. Atty. Ryan said this project has been before the Planning Board for months and he is somewhat at a loss to understand how this can suddenly become an issue. He stated his address as 459 Lafayette Road, Hampton, NH, firm of Kazas and Ryan.

Peter Schmidt, 53 Fourth Street, stated that the neighborhood was initially concerned with the fire aspect. He said they feel that Councilor Rawding and the Planning staff have raised an issue that might be worth further study. He stated he is concerned with the failure of the tanks. He said it is clear that there would be contamination of the Housing Partnership premises by any spillage of fuel oil or kerosene. He said the neighborhood feels that this project is not in the best interest of the community or the neighborhood. Mr. Schmidt said the neighbors being opposed should be the higher standards, not the narrow specifications which the Planning Board must adhere to. He said that there is nearly unanimous opposition to this project.

Alan Avery, 49 Fifth Street, stated he knows what the NFPA is and it is the driving force behind the National Electric Code. He said since federal monies are involved in this, the Federal statutes should probably apply. He said the Congress of the United States does not care what goes on in Dover, NH, but they probably have some federal guidelines somewhere. He said he wants to know if there is any consideration being made for speed bumps.

Peter Schmidt, said in regard to the 1971 rezoning, that it might have been in the anticipation that at some future time those enterprises might leave and it would be all residential development.

The public hearing was closed.

Steve Stancel stated he feels the Planning Board has a right to look beyond their own regulations when it comes to life safety issues. He said if that were not the case, we would not need a Planning Board we would just have the zoning police. He read from the Site Review Regulations 149-5 Interpretation, and 149-7d.

Scott Rawding stated he did not feel comfortable with the increase in density, children out in the street with oil trucks passing by, and the traffic studies. He stated that it is also the prime location for the district courthouse. He said the parking in the area is atrocious on Sundays. He said it meets City code and not Federal. He stated the Board could vote on this tonight, but it might be putting the City at risk for not pursuing further analysis on the NFPA standards. He said he has not heard one neighbor speak in favor of this. He said this project cries out for further analysis. He said it is a question on jamming as many residential apartments in this residential spot as you can get in.

Scott Rawding made the motion to require the developer to have an independent analysis by a fire engineer or the equivalent, to review the NFPA standards and the Federal regulation regarding the siting of HUD assisted projects near hazardous facilities and determine the safety of this project in relation to the abutting fuel storage tanks.

Brian Preston seconded.

Jerry Reese said the motion should be to table pending the analysis.

Brian Preston agreed.

Scott Rawding stated it will show the regulators that we have gone above and beyond our own codes.

VOTE 5 - 2

Opposed - Charles Maglaras and Reuben Hull

Atty. Bryant asked how they can satisfy the Board that they have hired the right person.

Steve Stancel stated that it would be someone that is mutually agreed upon between the applicant and the Planning Department if the Board so wishes.

Ron Cole stated that we are not here to address a Federally funded project.

Chad Kageleiry stated that he is hoping the analysis comes out favorably and everyone will approve so the project will go through as it has been designed. He asked who will pay the cost, if the study should come out that there should not be any residential buildings allowed within 1000 feet of the oil tanks and the abutters are all evicted.

Brian Preston said it has been in the newspapers that the Housing Partnership is on record saying they will buy this development. He said he would like to see something from HUD in Manchester. He said it is better to err on the side of caution for the safety of everyone.

b. Discussion and possible vote on a site review of land for Sprint Spectrum, located off Parsons Lane. (Communications tower)

Martin Smith took his seat.

Ron Cole stated that the applicant requested that this remain on the table.

c. Discussion and possible vote on a site review of land for Sprint Spectrum, located off Abbey Sawyer Memorial Drive (Garrison Hill). (Communications tower)

Steve Stancel stated that a memo received from Atty. Wattendorf stated that Mr. Andrews has a lease that has been extended to the year 2005 by the City Manager. Steve Stancel stated that land owned by the City and a tenant who is furnishing municipal services can be exempt from planning review. Steve stated that the staff recommends withdrawal of the original application.

Jerry Reese made the motion to take it off the table.

Dennis Ciotti seconded.

VOTE U/A

Jerry Reese made the motion to withdraw the application.

Chuck Maglaras seconded.

VOTE U/A

c. Discussion and possible vote on a request for a change to their original building plan for Domino's Pizza, located on Kirkland Street.

Steve Gallop, owner of Dominos, stated that Dominos decided to change their logo possibly by the end of 1997. He said he would rather not have a canopy if he isn't sure what is going to happen.

Steve Stancel said he doesn't feel strongly either way. He said he thinks the building is attractive without a canopy.

Charles Maglaras made the motion to do away with the canopy and to return the applicant's money.

Brian Preston seconded.

VOTE U/A

ITEM #5: New Business

a. Ron Cole stated that he will not be at the Meeting of November 12, 1996 and the Board needs to name a Vice-Chair for that meeting.

Brian Preston made the motion to nominate Reuben Hull.

Dennis Ciotti seconded.

VOTE U/A

- b. Steve Stancel stated that on November 6th there will be a joint workshop between the DEDC, Planning Staff, and City Council along with Russ Thibeault of Applied Economics to discuss the Economic Section of the Master Plan at 7:00 PM at City Hall.
- c. Steve Stancel stated that Kevin McEneaney is seeking an extension of approval for Jackson Investment Trust.

Kevin McEneaney stated that they resubdivided 8 lots into 6 lots. He said they now have all the Wetlands approvals for the wetland crossings. He said they would like the extension until November 15, 1996 so he can get the signatures.

Jerry Reese made the motion to approve.
Mike Bobinsky seconded.

VOTE U/A

Jerry Reese made the motion to adjourn.
Dennis Ciotti seconded.

VOTE U/A