

**SOMERSWORTH PLANNING BOARD
MINUTES OF MEETING
February 19, 2020**

MEMBERS PRESENT: Ron LeHoullier, Chair, Jason Barry, Jeremy Rhodes, Bob Belmore-City Manager, Harold Guptill-Vice Chair, Keith Perkins, Alternate, David Witham, City Council Representative and Mark Richardson, Alternate

MEMBERS ABSENT: Paul Robidas and Chris Horton

STAFF PRESENT: Shanna B. Saunders, Director Development Services, Dana Crossley Planning Secretary

The Meeting was called to order at 6:30 PM.

LeHoullier appointed Perkins and Richardson as full voting members for the meeting

1) **Approval of the minutes of the meeting of January 15, 2020.**

Motion: Guptill MOVED to accept the minutes as presented.

Seconded by Barry.

The MOTION CARRIED by an 8-0 vote.

2) **COMMITTEE REPORTS**

Land Use Board Reports (ZBA, HDC, Conservation Commission, SRTC): LeHoullier stated the reports are in the board's packet if they have additional comments to add. No additional comments.

City Council Report: Witham stated the new Veteran's Park project, which will be where Stien Park is currently located, is progressing from private fundraising to Council funding the remaining balance. He stated they expect to have that project start in the upcoming construction season. He stated they are looking into improving the sidewalks in front of this park, as well, and it will tie in with the Complete Streets projects on High St.

Witham stated the final construction documents for the Wastewater Treatment Plant upgrade have been completed. He stated the project is currently out to bid and they have received some bids.

Witham stated they are looking to finalize the construction plans for the Complete Streets project for Cemetery Road. He stated this will be funded with a bond. He stated they expect to start the bid process in the fall of 2020.

Witham stated staff has been requested to put together a bond resolution for the Fire Station. He stated if that passes the project will start moving forward to final construction documents.

Witham reported that Ken Vincent has been appointed as an alternate to the ZBA.

Minor Field Modifications Report: No additional comments.

Strafford Regional Planning Commission (SRPC) Update: LeHoullier stated the Board continues to receive the updates via email. He noted that Richardson has been appointed as a representative to SRPC.

3) **OLD BUSINESS**

A) Reddy Info Sys Inc., is seeking site plan approval to add two (2) residential units in the basement of a mixed use building on a property located at 66-70 High Street, in the Business with Historic Overlay (BH) District, Assessor's Map 11 Lot 215, SITE#18-2019

Saunders stated the application was continued from 1-15-20 Meeting to confirm of the ownership of the parking lot lights and the Board is requiring a dumpster on site. The applicant was urged to reach out to the neighbors to discuss cost sharing the dumpster. She stated the applicant has agreed to put a dumpster on site. She stated there is an email in the packet and one neighbor has agreed to share the dumpster. She stated the dumpster will be a condition of approval.

Saunders stated the parking lot light is owned by the City. The applicant has agreed to take over the light. She stated Eversource will only allow Municipalities to have LED lights on the poles and therefore the existing light fixture will need to be removed. She stated the account cannot be simply transferred over and a request to remove the LED fixture will have to be submitted. She stated the Board will need to determine if they want the applicant to replace the light on this pole or put up new pedestrian scale parking lot lighting. She stated the applicant is aware of all of this.

MOTION: Witham stated I move to remove the request of Reddy Info Sys. Inc. from the table for discussion.

The MOTION is SECONDED by Guptill.

The MOTION CARRIES by an 8-0 vote.

Applicant Statement: **Anji Reddy**, of Reddy Info Sys. Inc. was in attendance to represent the application.

Reddy stated the Director described the situation very profoundly.

Belmore asked which lighting option the applicant would prefer. Reddy stated he is open to do either option.

Saunders stated they are not sure if the pole can come down. She stated the pole will likely need to remain.

LeHoullier opened the public hearing at 6:42 pm

No public comment.

LeHoullier closed the public hearing.

Board Discussion: Witham stated he appreciates the applicant's responsiveness to questions from the last meeting. He stated the dumpster issue seems resolved. He stated the lighting situation is at the point for the Board to decide if they want a replacement light put on the pole done at the applicant's expense or an alternate lighting strategy. He stated to install a light in replacement of the existing cobra style light it would not comply with the site plan requirements for site lighting. He stated a waiver would need to be granted for that if that is the course the Board wants to go. He stated

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previously he thought of building mounted lighting but the applicant only owns a small portion of building. He stated the pole light would be his current choice. He stated a replacement light would not be radically different than what exists now. He stated the applicant would need to be mindful of ensuring the light is mostly directed to the parking lot and not the building.

Guptill stated he would echo Witham's comments. He stated in terms of the dumpster, the applicant is accountable and any agreements with the neighbors would be a private matter. He asked if he has to have a light.

Saunders stated no, he does not. She stated new lighting by regulation would have to be down lit and shielded to not spill onto abutting properties. She stated her understanding from the last meeting the Board was looking to have the parking lot lit.

Belmore stated he would suggest requiring the light to be switched out. He stated if a waiver is needed they could grant it.

Saunders stated she is unsure of the alternate lighting options available through Eversource.

Witham stated there are surrounding lights in the downtown that would be similar in kind to the light proposed to be replaced at this property. He stated a condition of approval would be to remove the City light and replace with a light for the parking lot at the applicant's expense.

MOTION: Witham stated, I move to grant a waiver from Section 11.8.a Site Lighting of the Site Plan Regulations to allow the applicant flexibility to work with Eversource for parking lot lighting.

The MOTION is SECONDED by Barry.

The MOTION CARRIES by an 8-0 vote.

Saunders reviewed the conditions of approval. She stated they have added the condition that the applicant shall work with the City to remove the parking lot light and replace with his own at the applicant's expense to light the parking lot.

Witham stated there was a long discussion at the last meeting about the pavement moratoriums. He stated Constitutional and High St. are both under pavement moratoriums and would like to add a waiver in regards to that topic. He stated it would be for the water line for the fire suppression system.

Motion Guptill stated, I move that the request of Reddy Info Sys Inc. to add two (2) residential units in the basement of a mixed use building be APPROVED WITH THE FOLLOWING CONDITIONS:

1. PLAN REVISIONS: None.
2. CONDITIONS THAT MUST BE MET PRIOR TO FINAL APPROVAL
 - a. The final plans shall bear the stamp and signature of the engineer, or the architect. Please submit five folded 24" x 36" paper copies of the final set of plans to the Office of Development Services for final endorsement.
3. CONDITIONS TO BE COMPLETED PRIOR TO THE START OF SITE WORK:
 - a. The applicant will be required to pay standard water and sewer connection fees assessed on new properties connecting to the water and sewer system. Water fees will be based on the size of water

meter needed and the sewer connection fees will be based on estimate of water used and equivalent number of bedrooms; and,

- b. The units in this proposal require a new address. Please submit a request for a hearing before the E-911 Committee to the Police Chief. This hearing must occur prior to the issuance of a CO.
- c. A dumpster that meets the city requirement for placement and screening shall be installed by the applicant. The City encourages the applicant to share the cost with other property owners that have residential units in their buildings but that is not a requirement. Applicant is fully responsible for having a dumpster for this property.
- d. The parking lot light that currently exists on telephone pole #16/6 shall be removed and replaced to light the parking lot area at the expense of the applicant; and
- e. The property owner shall receive Authorization from the City Council for a waiver of the High Street, Constitutional Ave and/or Winter Pavement moratoriums for any work within the street right-of-way (for example when the sprinkler is hooked up).

4. CONDITIONS APPLICABLE DURING AND AFTER CONSTRUCTION:

The MOTION is SECONDED by Rhodes.

The MOTION CARRIES by an 8-0 vote.

B) SNTG, LLC (Green Collar Laundry), is seeking site plan approval with waivers, to add a 4,500 sq. ft. commercial building and associated parking and infrastructure to the existing commercial site on property located at 472 High Street, in the Residential Commercial (RC) District, Assessor's Map 40 Lots 4-A & 4-B, SITE#19-2019

Saunders stated the money from the applicant for the third party review came in late and therefore the third party review of the traffic memo report came in last minute as well. She reviewed the staff report and changes from the last meeting. She stated the applicant has paid the application fees now, as the waiver from that requirement was denied at the last meeting.

She stated the landscaping plan waiver was tabled at the last meeting. The applicant has supplied a landscaping plan that has landscaped islands, planters and hanging planters. She stated the packet includes a history of the traffic reports. She noted that Matt Skelly of Fuss & O'Neil is in attendance tonight if the Board has any questions or explanations.

MOTION: Guptill stated I move to remove the request of SNTG, LLC (Green Collar Laundry) from the table.

The MOTION is SECONDED by Barry.

The MOTION CARRIES by an 8-0 vote.

Applicant Statement: **Bob Stowell**, of Trittech Engineering and **Allen Grinnell** of SNTG, LLC attended the meeting to represent the application. **Kim Hazarvartian** of TEPP LLC was also in attendance for representation of the traffic memorandum.

Stowell stated they readdressed the landscape plan. He stated there are now hanging plants and box planters. He stated with the islands they have doubled the amount of plantings on site. He stated they will still need a waiver for the landscaping but made an effort to incorporate Board comments.

Stowell stated at the last meeting they had supplied their traffic engineer's response to the traffic study review, but it hadn't been reviewed yet. He stated at this point they have been reviewed and

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they are in agreement with the results of the traffic response from Fuss & O'Neil. He stated it was mentioned in the report that plan number SK1 was not part of the packet for the Fuss & O'Neil review but it could be discussed tonight.

Stowell stated there was discussion at the last meeting in regards to retail as a use for the 1,000 sf unit. The applicant was under the impression that historically he had agreed there would be no restaurant use but retail would be allowed. He stated he reviewed the ordinance and feels it is fuzzy on the description if it is retail or service. He stated the dominate use is the laundry mat. He stated they are limited to a tenant that would need only a 1,000 sf. Stowell reviewed different uses that would possibly fit in a 1,000 sf. space. Stowell stated they understand the traffic concern but feel that with the limited space and the primary use of the building being the laundry mat, the 1,000 sf use would not generate significant traffic.

LeHoullier opened the public hearing at 7:00PM

Bill Stowell, 470 High St., stated at the last meeting he had spoken of his concern for the trees along the property line. He stated at that time he had had discussion with the applicant to escrow funds to take care of any future tree issues. He stated at this point he and the applicant have come to the decision they will remove the trees prior to construction. He stated the trees would die anyways and it will allow the applicant to install the utilities.

LeHoullier closed the public hearing at 7:01 PM.

Saunders stated she reviewed the 2013 approval and the CLD concern of retail was that it could have a higher traffic impact than they expect. She stated the applicant makes a good point that a 1,000 sf space is very small. She stated a small retail space would not impact traffic significantly. She stated it is up to the Board to make that decision though.

Matthew Skelly, Engineer of Fuss & O'Neil, stated he reviewed the most recent traffic memo. He reviewed the main points of the memo. He stated the parking lot layout was addressed; there are two fewer spaces which is going back to a previous rendition of the plan. He stated there is parking lot signage. He stated a laundry mat is not a typically intense trip generator. He stated he spoke with the applicant's traffic engineer and they were in agreement that if the site was to generate 20 peak hour trips for the entire site, it would be a reasonable estimate. He stated if the 1,000 sf space became something like a Dunkin Donuts it would be a different story. Skelly stated that the intersection of Tri City Road and High St. is close to needing traffic signal warrants. He stated that intersection is close to the Tri City Plaza signaled intersection. He stated he did have sheet SK1 and he has reviewed it, it is ultimately not a deal breaker. Skelly reviewed the ways a traffic signal can be warranted. He stated the analysis for the traffic signal was based on the 100 Tri City Road traffic analysis. He stated from his review of that it did seem accurate. He stated they concur that the traffic generated from this use would not warrant a contribution to a signal.

Witham stated this lot is also utilized by an accountant's office. He stated his thought is it would be a very minimal traffic flow and asked if Skelly thought it had an impact on the traffic.

Skelly stated the layout of the parking lot is done in a way to accommodate both uses. He stated the trips for the existing use are on the network making it an existing use that will remain.

Witham asked if the Pernaw report for 100 Tri City Road took into consideration the Tara Fields traffic. Saunders stated yes each report has cumulatively added on to the last report.

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Witham stated he has no issue with the traffic, the explanations provided by the applicant's engineer and Fuss & O'Neil address that the impact is minimal. He asked if there needs to be crosswalks at the driveway locations where there are sidewalks adjacent to that. Skelly stated in this situation he would find it to be overkill.

Skelly stated his final comment is that the intersection of Tri City Road and High Street, the City should keep a close eye on it.

Rhodes asked if the utilities on site are overhead or underground. Stowell stated underground.

Rhodes stated there are fair number of annuals in the landscape plan and wants to make sure the applicant is aware of the maintenance that will be required with those. Stowell stated yes.

Witham stated he appreciates the effort put forward on the new landscape plan. He stated after review of the new plan he is fine with the landscape waiver. He asked if the tree removal needs to be a condition of approval.

Saunders stated yes and that it was the first time she was hearing that they intend to remove the trees. She asked how many trees along the property line will be removed.

Stowell stated 8 trees. He stated the trees are on the abutter's property.

Saunders stated if the Board finds that to be important and addresses the abutter's concerns, yes it should become a condition of approval.

Witham asked if the applicant needs to make a plan amendment to show the sidewalk. Saunders stated it can be addressed on the as-built plan.

Witham clarified the applicant will have the appropriate tip downs installed. Stowell stated yes.

Saunders asked how the trees will be accessed to be cut down. Stowell stated with the cooperation of the abutter. Saunders clarified they would access through 40-03, 470 High Street. Stowell stated yes the abutter is on board.

Saunders reviewed the proposed conditions of approval. She stated the dogwood condition has been removed from plan changes. She stated condition 1b. is in regards to allowing retail and that will need to be a Board decision to what to do with that.

Belmore requested that it be clarified in the condition for legal review that the escrow is to be set up prior to the review process.

Witham asked if they should add a condition in regards to the Council and pavement moratorium for consistency. Saunders stated yes.

Guptill asked for clarification of 'timely manner' for replacement of dead or dying landscaping. Saunders explained how it is typically handled.

Saunders stated the last outstanding item for discussion is the issue of retail or restaurant use.

Witham stated he does not have an issue with the retail use in the 1,000 sf space because any business that goes in and is viable in that small space would have a limited impact on the traffic. He stated he thinks it is unlikely that space would be used for a restaurant. He stated his bigger concern

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is if someone changes the use from a laundry mat to something else. He stated because of the nature of traffic and tight confines of the lot if the use changes from laundry mat to something else it would need Planning Board review.

Saunders stated that can be a plan change condition that adds a note to the plan and add it also to condition applicable during and after construction.

MOTION: Rhodes stated, I move that the request of SNTG, LLC for a waiver from 22A.11.6.b, 22A.11.6.e and 22A.11.4.b.viii of the Site Plan Review Regulations requiring general landscape requirements, landscape plan and mitigation for impact of parking be APPROVED WITH CONDITIONS as outlined by Staff.

The MOTION is SECONDED by Witham.

The MOTION CARRIES by an 8-0 vote.

Belmore asked for clarification on the status of the plan changes for 1b. He stated he has some concern of a use going in that will generate a lot of traffic.

Saunders stated she had to delete condition 1.b and in its place the condition of if the use changes from a laundry mat to anything else the applicant shall return to the Planning Board.

Witham stated to try to foreshadow what will go into the 1,000 sf space is difficult. He stated he hears the concern but does not know how to wordsmith that.

Saunders stated there can be two conditions, one that requires whatever goes into the 1,000 sf be required to come back before the Planning Board for approval.

Guptill inquired if they could say 'something like the traffic flow of'.

Saunders stated it would go through City staff first and if the staff felt it was more intense than what the Planning Board had originally approved require the applicant to come before the Board.

Witham stated he is in favor of that.

Motion: Guptill stated, I move that the request of SNTG, LLC to add a 4,500 sq ft. commercial building and associated parking and infrastructure to the existing commercial site be APPROVED WITH THE FOLLOWING CONDITIONS:

1. PLAN CHANGES
 - a. The use of the 1000 sf "other" commercial space was not determined by Planning Board approval. If the use proposed is a use that creates more intense traffic numbers or pattern, the property owner shall return to the Planning Board for approval. Please add a note to the plan.
 - b. If the use of the 3500sf laundry and/or the entire building use (3500sf + 1000sf) changes to anything with more intense traffic numbers or pattern, the property owner shall return to the Planning Board for approval. Please add a note to the plan.
 - c. The trees along the boundary with the abutter at lot 40-03, 470 High Street LLC shall be removed by the applicant. The trees to be removed along the boundary with the abutter at lot 40-03, 470 High Street LLC shall be removed via access through lot 40-03 and not by blocking High Street travel lanes.
 - d. Please show this on the Landscape Plan.

2. CONDITIONS THAT MUST BE MET PRIOR TO FINAL APPROVAL:
 - a. Construction Cost estimate for this project shall be submitted to the Department of Development Services
 - b. The final plans shall bear the stamp and signature of the engineer, licensed land surveyor, and the landscape architect. Please submit five folded 24" x 36" paper copies of the full set of plans to the Office of Development Services for final endorsement.
 - c. FEDERAL AND STATE PERMITS - All Federal and State permits shall be in place before plan signing and recording, including NHDES Alteration of Terrain, and NHDES Shoreland Permit, NHDES Wetlands permit and NHDOT driveway permit.
3. CONDITIONS TO BE COMPLETED PRIOR TO THE START OF SITE WORK:
 - a. A preconstruction meeting is required prior to the start of work. Please contact the Department of Development Services to schedule this at least 1 week prior to breaking ground;
 - b. An escrow account, in an amount set by the City's contract Engineer and agreeable to the Department of Community Development, will be established for site construction inspections prior to any site work;
 - c. A performance surety, in an amount agreeable to the Department of Development Services, but no less than 25% of the cost of site construction determined by the engineer's estimate of construction value, will be established for on-site erosion control and site restoration prior to any site work. If all site work is completed as proposed this account will be refunded;
 - d. The applicant will be required to pay standard water and sewer connection fees assessed on new properties connecting to the water and sewer system PRIOR to the issuance of a building permit. Water fees will be based on the size of water meter needed and the sewer connection fees will be based on estimate of water used and equivalent number of bedrooms;
 - e. Erosion control shall be properly installed on site PRIOR to any construction. Erosion control shall be properly maintained throughout construction; any breaks or breeches shall be repaired within 48 hours of the storm event.
 - f. Condo documents for the two commercial operations on this property and the shared parking and utility easements shall be submitted to the City for legal review and approval. A legal review escrow account shall be established in the amount of \$500 prior to the review of the Condo Docs. These Condo Docs and easements shall be reviewed and approved by the City and their attorney at the applicant's expense and recorded at the Registry of Deeds prior to the issuance of a C/O;
 - g. This property requires a new address. Please submit a request for a hearing before the E-911 Committee to the Police Chief. This hearing must occur prior to the issuance of a CO.
 - h. A trench permit is required for all trenches across City Streets. Please be aware that both High Street and Tri-City Road are in pavement Winter Moratorium from November 15th through April 15th each year and the newly constructed sidewalk along tri-City Road will be in a 5 year, new-construction moratorium as soon as it is accepted by the City.
 - i. Ten percent (10%) of the total cost of landscaping or a minimum of five hundred (\$500) dollars, whichever is greater, shall be held for a period of 2 growing seasons to guarantee the survival of the landscaping installation.
4. CONDITIONS APPLICABLE DURING AND AFTER CONSTRUCTION:
 - a. This proposed use does not include on-site dry cleaning. Should the use changed to include dry cleaning; a sprinkler system shall be installed.
 - b. A copy of the completed Stormwater Inspection & Maintenance Log shall be provided to the Department of Development annually on or before January 1st. This requirement shall be an ongoing condition of approval and noted on the final plans;

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- c. All landscaping shown on plans shall be maintained and any dead or dying vegetation shall be replaced in a timely manner as long as this site plan remains valid;
 - d. All outdoor lighting (including security lights) shall be down lit and shielded so no direct light is visible from adjacent properties and roadways; and,
5. AS-BUILT PLANS.
- a. Within thirty days of the completion of the project and prior to the issuance of an occupancy permit an electronic As-Built Plan of the proposed development with details acceptable to the Development Services Department shall be provided on paper and on CD prior to the issuance of a Certificate of Occupancy (CO). This plan must be in a dwg or dxf file format and in NAD 1983 State Plane New Hampshire FIPS 2800 Feet coordinates.

The MOTION is SECONDED by Witham

Discussion: Rhodes clarified there was a condition in regards to the 8 trees that are being removed.

Saunders stated that condition will be added to plan changes to be reflected on the landscape plan with a note that access shall be from the neighbor's property.

Belmore clarified that there will be a note on the plans that if the use changes from the laundry mat it will require the applicant to come before the Board.

Saunders stated yes, COA 1a. is for the change from a laundry mat, 1b. is to be staff to review the 1,000 sf and if more intense shall return to the Board, and 1c. will be the trees.

The MOTION CARRIES by an 8-0 vote.

- C) Any old business that may come before the Board.
No old business.

4) **NEW BUSINESS**

- A) **Thomas Gagnon, is seeking site plan approval to convert a duplex into a 3 unit multi-family on a property located at 10 Depot Street, in the Residential Multi-Family (R3) District, Assessor's Map 09 Lot 208, SITE#17-2019 PUBLIC HEARING**

Saunders stated the applicant has an existing duplex and would like to add a third unit which bumps the property into a "multifamily" classification. Multifamily is then subject to site plan regulations. She stated the biggest issue was the sprinkler system requirement, the report has been supplied and final determination will be under the building permit. She stated the water line will need to be a separate tap. She stated the applicant has existing parking and is aware of the winter moratorium. She stated she recommends waiving 3rd party review for this proposal and accepting the application as complete.

MOTION: Belmore stated, I move to waive the requirement of third party review for the application of Thomas Gagnon.

The MOTION is SECONDED by Guptill.

The MOTION CARRIES by an 8-0 vote.

MOTION: Belmore stated, I move to accept the application of Thomas Gagnon as complete to begin the review process.

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The MOTION is SECONDED by Rhodes.

Discussion: Witham asked if this property requires elevations to be submitted. Saunders stated they had not required them because the actual structure is existing and will not be changing. She stated the third floor will become a legal unit.

The MOTION CARRIES by a 7-1 vote.

Applicant Statement: **Thomas Gagnon**, property owner, was in attendance to represent the application.

Gagnon stated he purchased this property in the mid 80's with his parents. He stated when they purchased the house there was 3 units, 3 kitchens, and 3 bathrooms. He stated the property had not received the appropriate permits to be a three unit and he is seeking that approval now for how it is currently built. He stated they will have a sprinkler system and there is ample parking with the garage and driveway.

LeHoullier opened the public hearing at 7:34PM.

No public comment.

LeHoullier closed the public hearing at 7:34pm.

Board Discussion: Witham asked where the access to the water line for the sprinkler system would be. Gagnon stated Depot Street.

Witham asked for clarification on the parking to ensure all of the cars do not have to move to allow the car in spot '1' to leave.

Gagnon explained the parking layout. He stated each unit would be allocated 2 parking spaces that stack together. He stated parking spot '6' could be on either side of the driveway.

Saunders stated it will only be a three unit building and two parking spaces per unit are required.

Witham asked about the snow removal plan. Gagnon stated it will be contracted out and they normally back-drag or snow blow the snow to the front of the lot. He stated they then move it by snowblower to the rear of the lot.

Witham asked if they normally require the snow storage to be shown. Saunders stated yes for larger projects. She stated with this being a driveway that is in typical size of the surrounding driveways it is not a larger snow storage requirement than surrounding properties.

Witham clarified it is a site plan approval. He stated he feels this site plan is scaled back to the bare minimum.

Saunders stated yes it is a site plan approval. She stated they have scaled it back because it is an already existing use, no additions are being requested, and it is a conversion of use. She stated they are not looking at drainage. She stated they scale the plans back based on the scale of the project. She stated due to the scale of the project a lot of the requirements are not applicable. She stated it is the minimum of the threshold of the Planning Board's jurisdiction. Similar to what they had just approved on High Street at the GAR building.

LeHoullier asked if this property was outside the special parking overlay. Saunders stated yes.

Belmore stated in review of the property record card, there is note of a ZBA triplex denial. He asked if that had any bearing on this application. Saunders stated that she was unaware of that application. She stated she can review it.

Belmore asked if the driveway was paved. Saunders stated yes. Belmore stated there is a habitual property maintenance violation on Indigo Hill of a lot of cars and junk, he asked if there was a condition they could place on an approval to ensure that does not happen.

Saunders stated yes, they can require the driveway to be paved and maintained over time.

Belmore asked if they could limit the number of cars allowed on site.

Saunders stated yes, the Board can state there is a maximum of 6 cars allowed on site and they shall follow the supplied parking plan.

Belmore asked if they should table to allow time for review of the ZBA file. Saunders stated yes she would need the time tabling would allow to review that application. Belmore stated he would be in favor of that.

Witham stated there appears to be a concrete retaining wall on the property that controls cars to be within the driveway. He stated he is in support of Belmore's condition to restrict the amount of cars.

Witham asked if the applicant had reached out to the neighbors at all. Gagnon stated he has owned the property for many years and never had issues with the neighbors. He stated they have not had any snow issues, typically snow blow and sometimes have the driveway plowed.

Witham stated he would like to have the ZBA issue clarified but is fine with the proposal. He stated it does need to follow the parking plan as submitted.

Motion: Belmore stated, I move that the request of Thomas Gagnon to convert a duplex into a 3 unit multi-family at 10 Depot Street be TABLED to the March 18, 2020 meeting for the following reasons:

1. To allow staff time to research the ZBA denial cited on the property assessment card.

The MOTION is SECONDED by Witham.

The MOTION CARRIES by a 7-1 vote.

B) Steven E. Brown, is seeking an After the Fact Conditional Use Permit to allow earthwork activities within the 100' wetland buffer on properties located at Commercial and Willand Drive, in the Commercial Industrial (C/I) District, Assessor's Map 43 Lots 1-G, 1-I & 1-K, CUP#05-2019 PUBLIC HEARING

Saunders stated this application is an after-the-fact Conditional Use Permit for illegal filling of the wetland buffer on 3 different lots. She reviewed the timeline of the illegal fill, violation and application process.

April 23, 2019 – Zoning Violations were sent out.

May 7 – Applicants Engineer, Bob Stowell responded.

May 9 – Applicant, Steven Brown responded

May 31 – Saunders emailed and reminded applicant's engineer that we still require a CUP.

July 31 – Planning Office received the CUP

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August 14 – Application was heard before Con Com (Applicant and Engineer present)
August 22 - Con Com conducted a site walk at the property
September 11 – Con Com requires Brown to fix the siltfence and draft a restoration plan with some criteria.
November 13 – Applicant does not show to Con Com Meeting. Con Com continues the item with the caveat that the applicant must submit by December or the application will be denied.
December Meeting – cancelled due to no quorum (sick)
December 27 - Planning Office emails Applicants engineer to remind them to submit plans
January Meeting – cancelled due inauguration
January 31 - Planning Office emails Applicants engineer to remind them to submit plans
February 4 - Planning Office emails Applicants office to remind them to submit plans
February 13 - Applicant does not show to Con Com Meeting. Con Com recommends denial of application.

Saunders stated CUP's are reviewed first by the Conservation Commission. She stated the applicant did attend a couple of the Conservation meetings. She stated after the Conservation Commission's site walk of the property, they determined they would be looking to have the fill removed (Saunders explained the two sections of the local wetland buffer.) from the 0-50' buffer. She stated that would be the area closest to the wetland it was about 3-4' of fill. The Con. Com had requested a mitigation plan to show the removal of the fill and reestablishment of the plantings. Saunders stated there were numerous attempts to get the information from the applicant and there was no communication or submission of the remediation plan. She stated the Conservation Commission ultimately recommended denial of the CUP.

Saunders stated she had communication for the first time since November with the applicant today. She stated he informed her he would not be attending the meeting tonight. She stated she warned the applicant it may mean a denial of the application and potential further court action to require the applicant to remove the fill. She stated he understood that possibility. She stated she recommends denial of the CUP and enforcement of the illegal fill in the wetland buffer.

Applicant Statement: There was no applicant or agent in attendance to represent the application.

LeHoullier opened the public hearing at 7:48 PM.

Gerard Corr, 63 Crest Dr., stated he has lived in the area for 30 years. He stated he used to be able to snow shoe across the subject property. Stated he is unable to snow shoe on it now because it is too wet. He stated even in the summer months it remains very wet. He stated it has become swampy. He stated he is very concerned that this request is 'after-the-fact' and that there was a total disregard of the regulations. He stated the wet areas have moved towards his home and trees have been falling down. He inquired how the damage to his property can be assessed.

LeHoullier closed the public hearing.

MOTION: Witham stated, I move to accept the application and related materials as complete for review.

The MOTION is SECONDED by Rhodes.

Discussion Belmore asked if third party review has been waived.

Witham stated he would handle that as a separate motion.

The MOTION CARRIES by an 8-0 vote.

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MOTION: Witham stated, I move to waive the requirement for third party review for CUP#05-2019.

The MOTION is SECONDED by Guptill.

The MOTION CARRIES by an 8-0 vote.

Board Discussion: Rhodes stated the City has been chasing the applicant for up to 10 months on this issue. He stated he has been involved with the issue in his capacity as a Conservation Commission member. He stated they have had many people come forward with complaints of impact to their private property. He stated the applicant has been uncooperative and the work done on this site was reckless. He stated the applicant piled fill without regard to downstream impacts. He stated the siltfence along the wetland line has not been maintained in anyway and there has been erosion into designated wetland areas. He stated the actions have spread invasive plant species on the site and into the wetlands.

Rhodes stated the applicant's actions and inactions in mitigating the issue is a considerable threat to maintain a healthy Willand Pond area. He stated the applicant's continued unwillingness to address the consequences to his disregard of the law in the State and the Environmental Regulations in the State is causing a significant effect on the community. He stated he would strongly recommend denying the Conditional Use Permit and for the City to address the applicant's actions. He stated he would also encourage the involvement of NHDES because the applicant's action of pilling fill has caused wetland impact.

Witham stated he agrees with Rhodes' statement. He asked if they are aware of the applicant's intent behind filling the property.

Saunders stated she was told when the applicant purchased the property it was previously used for the gravel on the lot. She stated because the lot was lumpy from the removal of gravel the applicant thought filling in the lot to make it level would make the lots more marketable.

Witham stated in terms of denying the CUP, if legal action is taken, he would echo to get NHDES involved, are they hopeful that the property will be restored to its pre-impact state and not just the wetland buffer.

Rhodes stated regarding the actions of the applicant it is reasonable to expect the applicant was looking to market this property for commercial development. He stated the lot appears to be a storage area for other construction projects. He stated from the discussion with the applicant at the Conservation Commission meeting in October they had considered allowing some impact in the 50'-100' buffer. He stated it was predicated on the concept that the applicant cooperate and since the applicant has not supplied plans as requested he would recommend the property be restored fully.

Richardson noted that the applicant's agent was here to represent a different project earlier in the meeting and it appears they have lost contact again since he did not remain to represent this application. He stated it would have been nice to have a discussion with him about the project.

Belmore stated he respects everyone's opinion but does not care what the applicant's intent was. He stated the applicant has violated the law and would recommend denial of the CUP, reaching out to NHDES and legal action from the City.

Motion: Rhodes, stated I move that the request of Steven E. Brown, is seeking an After the Fact Conditional Use Permit to allow earthwork activities within the 100' wetland buffer on properties located at Map 43 Lots 1-G, 1-I & 1-K Commercial and Willand Drive be DENIED for the following reasons:

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1. Continued inaccessibility (lack of attendance to meetings and submission of requested plans)
2. The applicant's disregard law, regulation and endangerment of Willand Pond; and
3. Continued damage to the surrounding portions of the City.

The MOTION is SECONDED by Witham.

Discussion: Witham stated it has been made clear through discussion, through action of the City or State, the Board would like the lot restored to the original condition. He stated it is not an option to build wetlands in an alternate location because it would not help the damage done to abutting property owners. He stated the City can take the action they want, and hopes it will help the abutters but if it does not that becomes a separate third party legal matter that the City would not be involved in.

Saunders stated she does recommend establishing a timeline that the property needs to be restored. She stated she would recommend 60 days to bring the site back to its original state.

Rhodes stated he would be in favor of that amendment.

Witham stated he would also be in favor of that, but asked if the applicant would be able to get that done at this time of year.

Saunders stated if the applicant started now he would be able to get in the plantings by mid April. She stated once the applicant started work they would require him beef up the erosion control.

Belmore asked if there is a legal requirement to give the applicant 60 days and how long has been under a violation notice and in noncompliance.

Saunders stated there is no legal requirement for the 60 days, that is her recommendation based on her estimated time frame to get the fill out of the site. She stated he has been under a violation notice since April 2019.

Belmore clarified the applicant has not submitted a restoration plan as requested. Saunders stated correct.

Belmore stated he does not want to give the applicant 60 days. He stated he would suggest 2 weeks to get a restoration plan submitted.

Rhodes and Witham were in support of amending the motion and second to include the requirement for the applicant to supply a restoration plan within 14 days.

Witham inquired other than restoration to the property if there was a civil fine that could be attached to the violation. Saunders stated they could, the applicant has been under a violation notice since April. She stated since it is a land use violation they could impose the standard fee for each day under violation.

Witham stated he would encourage seeking those fees as there has been significant staff and expenses with this matter.

The Board held a brief discussion on legal fees.

Rhodes stated he would amend his motion to seek all legal penalties and costs permissible, along with the 2 week time frame.

Witham was in favor of that amendment as well.

AMENDED MOTION: Rhodes, stated I move that the request of Steven E. Brown, is seeking an After the Fact Conditional Use Permit to allow earthwork activities within the 100' wetland buffer on properties located at Map 43 Lots 1-G, 1-I & 1-K Commercial and Willand Drive be DENIED for the following reasons:

1. Continued inaccessibility; (lack of attendance to meetings and submission of requested plans)
2. The applicant's disregard law, regulation and endangerment of Willand Pond;
3. Continued damage to the surrounding portions of the City;
4. The applicant shall supply a full restoration plan to the Department of Development Services within 2 weeks; and
5. The City shall seek all legal penalties and costs permissible.

The MOTION is SECONDED by Witham.

The MOTION CARRIES by an 8-0 vote. The application is denied.

- C) Any other new business
No other new business.

5) **WORKSHOP BUSINESS**

A) **ZBA Proposal to review the Business District Zoning on Main Street**

- i) Saunders stated there was a request from the ZBA to considering looking at note #2 of Table 4.A.1, that prohibits new residential on the first floor in the Business (B) district. She stated this review process will be a multi-step process. She stated she has provided the Board a map showing the major businesses along Main St. within the B district. She stated on the southern portion of Main St. there is R1, single family housing, across from the B district. Saunders pointed out the mixed use locations and the business locations within the Main St. corridor.

Saunders stated she wanted to show the Board the existing conditions and reviewed permitted commercial uses in the B district. She stated to just remove note 2 would result in a short term fix and would advise considering rezoning the area. She stated she is looking for feedback from the Board in regards to rezoning the corridor.

LeHoullier noted that from Indio Hill Rd to Center Rd the lots vary from single family to multifamily homes with commercial uses mixed in.

Saunders there is areas of the City that the zoning allows for a mix of residential and commercial uses. She stated one of those zoning districts may work for the area or a new district. She stated that a portion of the street may still work to remain the B district.

Witham stated he does think that driving the street and stewing on the proposal is a good method of review. He stated South of Franklin St. turns very residential and wants to keep the B district closer to the downtown area.

The Board held a brief discussion of the history of the area.

Saunders noted that if they change the zoning the existing businesses would be grandfathered.

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MOTION: Witham stated I move to table the discussion of the review of the Business District note 2 on Main St. to the March 18, 2020 meeting.

The MOTION is SECONDED by Belmore.

The MOTION CARRIES by an 8-0 vote.

- B) Any workshop business that may come before the Board.
No other workshop business

6) COMMUNICATIONS AND MISCELLANEOUS

- A) Witham stated there had been a discussion previously about limiting parking on non-improved driveways such as lawns and dirt areas. He stated he would like to resurrect that conversation and get the ball moving on a discussion of that. He requested to start a workshop discussion on that topic for next meeting.

MOTION: Belmore MOTION to ADJOURN.

Witham SECONDS the motion.

The motion carries by an 8-0 vote and a left handed vote from Belmore at 8:16pm.

Respectfully Submitted,

Dana Crossley, Planning Secretary