

MANCHESTER PLANNING BOARD
BUSINESS MEETING MINUTES
February 18, 2016 – 6:00 p.m.
City Hall, Third Floor – Aldermanic Chambers

Board Members Present: Chairman Mike Harrington, Vice Chairman Ray Clement, Guy Guerra, Kevin McCue, Jim Roy, Alderman Joe Kelly Levasseur, Eric Kizak

Alternates Present: Catherine Flinchbaugh, Dan LeClerc

Excused: Members: Pierre Boissonneault, Matthew O'Brien
Alternate: Michael O'Donoghue

Staff Present: Pamela Goucher, Deputy Director Planning & Zoning, Jeff Belanger, Senior Planner and Jodie Levandowski, Planner II

I. The Chairman called the meeting to order and introduced Planning Board Members and Planning Staff.

II. **BUSINESS MEETING:**

(Tabled Items)

At the request of the applicant, SP-08-2015/PD-2015, CU-04-2015 and CU-05-2015 will remain on the table.

1. **SP-08-2015/PD-05-2015**

Property located at 53 Mammoth Road (Tax Map 716, Lot 1B), an application to construct a two-story community building with approximately 4,100 SF adjacent to an existing church, with associated site improvements. *Joseph M. Wichert, LLS, and Rokeh Consulting, LLC for Faith Baptist Church (owner)*

2. **CU-04-2015**

Property located at 53 Mammoth Road (Tax Map 716, Lot 1B), an application for a Conditional Use Permit for a church use in the R-1B Zoning District. *Joseph M. Wichert, LLS, and Rokeh Consulting, LLC for Faith Baptist Church (owner)*

3. **CU-05-2015**

Property located at 53 Mammoth Road (Tax Map 716, Lot 1B), an application for a Conditional Use Permit for a reduction in parking from 87 parking spaces required to 80 spaces proposed. *Joseph M. Wichert, LLS, and Rokeh Consulting, LLC for Faith Baptist Church (owner)*

Mr. Kizak made a motion to take S-28-2014 off the table, which was seconded by Vice Chairman Clement. (Motion Carried)

4. S-28-2014

Property located at 388 Elgin Avenue (Tax Map 556, Lot 105) and at Tax Map 283, Lot 49, Tax Map 556, Lot 37 and Tax Map 556, Lot 106, an application for consolidation and subdivision to create 31 buildable single family residential lots with public improvements and proposed easements. *Northpoint Engineering, LLC for Marshall-Davis Investments, LLC*

Mr. Belanger advised that Mr. Demers, the developer, hired an expert to review the impact that the trucking was going to have on the roads. He reminded the Board that this is a subdivision on Elgin Avenue and one of the big concerns that came up from a lot of the abutters was the damage that was going to be done to the roads leading into the development as a result of the extraordinary amount of fill that was going to be trucked into the site; somewhere in the neighborhood of 75,000 cubic yards of fill.

As an offsite exaction, the Department of Public Works and the Planning Department, at the direction of the Planning Board, have been working with the applicant to come up with what the property owner's fair share of the financial contribution would be to the City for the impact to the roads that would result from the trucking. Mr. Belanger advised that months ago staff from DPW and from Planning met with the property owner, his engineer and Steve Keach of Keach Nordstrom & Associates, who is the expert hired by the applicant to determine what the applicant's fair share would be for this financial contribution.

Mr. Belanger stated that staff received Mr. Keach's report where he gave his estimate as to what he thought the fair share from the applicant would be. Planning staff has reviewed it and DPW has also reviewed it, but they have not sat down to talk about it and formulate an opinion as to what they might do for any improvements or edits to the report before it comes to the Board for their consideration. He advised that staff will be working with the Highway Department and the applicant to come up with a finalized report, but it is in draft form at the moment.

Chairman Harrington asked if they gave any indication when they would be ready to come back before the Board. Mr. Belanger advised that the applicant indicated that he would like to come soon. They feel that they are ready; however, his expert advised staff when he forwarded the report that it was his "first draft" so he expects comments. As such, they are all expecting some back and forth on this and staff will let the Board know when it is at a point to come before them.

Mr. Roy made a motion to put S-28-2014 back on the table, which was seconded by Mr. Kizak.

(Motion Carried)

(Current Items)

Chairman Harrington advised that there were nine members present this evening so they would all be voting on tonight's matters, including the alternates.

Ms. Flinchbaugh advised that she could not participate on the Elgin Avenue application so she did not weigh in on that at all. She is able to participate on the remainder of the applications this evening.

5. S-22-2015

Property located at 655 South Willow Street (Tax Map 437, Lot 2), an application to subdivide one parcel of approximately 665,899 SF into two parcels of approximately 648,199 SF and 17,700 SF within the B-2 Zone. *CLD Consulting Engineers for 655 South Willow, LLC*

Chairman Harrington advised that staff prepared a recommendation and the Board took a moment to review that information.

Mr. McCue made a motion to approve S-22-2015 per staff recommendation, which was seconded by Mr. Clement.

Discussion:

Mr. Roy asked if the applicant has seen the recommendations. Ms. Goucher did not think so but explained that they will get a letter with the recommendations. She believes they are prepared for the conditions because this is what was discussed at the hearing.

Mr. Guerra asked if that will still allow him to do the paving over that as he requested. Ms. Goucher said the condition basically makes it contingent on the Board seeing the site plan. There is not going to be a recording of this plan until the Board sees the redevelopment plan. Her guess is that the Board will see that plan in another month or so.

Chairman Harrington asked for clarification concerning the 100 percent easement. Ms. Goucher reiterated that until they see the redevelopment project come in, until they see how they are utilizing that portion, it is a little hard to weigh in on it but she thinks they are going to be okay. In looking at what they got variances for, she believes that will address it. Until they see the redevelopment plan, staff doesn't even if there will be any zoning issues with that. She said the developer was concerned that if this Board wasn't of the opinion or mindset to vote favorably on what they were trying to do, than they may come forward with a different type of development. Although this subdivision is conditioned on the Board seeing that redevelopment plan, she thinks the conditional approval gives them the assurance that the Board is supportive of what they are trying to do by breaking out this subdivided lot.

There was no further discussion and the Board proceeded to vote.

(Motion Carried)

Conditions of Approval:

1. A note be added to the plan stating that lot 2A is Non-buildable and the lot itself be labeled as such on the plan;
2. Final subdivision approval and recording of the subdivision plan shall not occur until the overall redevelopment plan of tax map 437 lot 2 (parent lot) is stamped and signed by the Planning and Community Development Department;
3. Should any changes to the conditionally approved subdivision plan occur during the site plan approval stage, a revised subdivision plan shall be submitted to the Planning and Community Development Department for review at a Planning Board Public Hearing, along with a new signed copy of the subdivision application and associated fees;
4. The street address for the new lot shall be secured from the Highway Department and the Fire Department and shown on the plan, along the parcel frontage, prior to submitting plans for signing and recording;
5. The new lot number shall be secured from the Assessor and shown on the plan;
6. The applicant shall obtain final approval from all reviewing agencies, including the Planning Department, prior to submitting plans for signing and recording;
7. All new property corners are to be set prior to submitting plans for signing and recording;
8. The surveyor shall provide a digital file in AutoCAD.DWG format with boundary lines and horizontal and vertical features based on N.H. State Plane Coordinate System (NAD83/92-NGVD 88), along with two mylar plans and four paper prints. The surveyor shall also provide the staff with the recorded plan number.

6. **S-01-2016**

Property located at Ohio Avenue (Tax Map 235, Lots 4 and 5), a subdivision application to adjust the lot line between lots 4 and 5, with approximately 12,000 SF transferring to lot 4 within the R-1B Zone. Joseph M. Wichert, LLS, Inc. for Yvon Rivard

Chairman Harrington advised there was a staff recommendation and the Board took a moment to review that information.

Mr. Guerra made a motion to approve S-01-2016 per staff recommendation, which was seconded by Vice Chairman Clement.

Discussion:

Mr. Guerra advised that there was a recommendation from the Conservation Commission and he was curious as to what the answer to that was going to be. Mr. Belanger realized in reviewing this

staff recommendation that he neglected to put in that condition. He knows the Conservation Commission had recommended to the Planning Board that there be a condition of approval added regarding marking of the wetlands on the property. As such, he drafted up the language that he would propose be an additional condition of approval as follows: *“Wetlands on the two lots shall be clearly marked with signs posted every 50 feet along the wetlands eastern edge with signs to be furnished by the Manchester Conservation Commission.”* He referred to the letter written by the Conservation Commission that was provided in the packet.

Alderman Levasseur asked if each homeowner will be responsible for a certain portion of wetlands. He asked if there is a responsibility factor for the signs and if there is a responsibility factor placed on the eventual homeowner. He asked if it was an easement put on the Deed. Mr. Belanger advised that the responsibility for the signs would not be the homeowners' responsibility in the first instance. The Commission would provide those so it would be free of charge to the owners. There would not be an easement. They simply would demarcate the borders of the wetlands so the property owners are aware that the wetlands are there so if someone wanted to build a shed on the property or something like that they wouldn't encroach onto the wetlands.

Alderman Levasseur asked if there are any other restrictions as far as the use of that property. Mr. Belanger said nothing beyond what State law and local Zoning Ordinance require. He clarified that the demarcation actually, as per the Commission recommendation, wouldn't even be the 25 foot setback that the City requires under the Zoning Ordinance. It would be the actual jurisdictional limit of the wetland itself; where the wetland begins, not its buffer.

Vice Chairman Clement asked what would happen if those signs disappeared and who would be checking on them. If they disappear, he asked whose responsibility it is to call the Conservation Commission to tell them the signs are missing. He also asked how often they will be inspected by the Conservation Commission to see if they are still there. Mr. Belanger advised this was in line with a discussion that actually staff and the Conservation Commission had with the City Solicitor's office regarding whose responsibility it is in the City to do things like monitor easements, watch signs and things like that which demarcate wetlands. The Solicitor's response was that it was really the Conservation Commission's responsibility as they are the body within the City that is charged with protecting and raising awareness of environmental issues within the City. As such, it would be the Commission in the first instance but also, as this would be a condition of approval from the Planning Board, it certainly wouldn't be out of bounds for the Planning Board to review the location of those signs either.

Mr. McCue asked where the 50 foot number came from. Mr. Belanger advised that the Conservation Commission has had a number of discussions about these signs that they are working on getting fabricated and distributed in cases like this and they talked a lot about what the distance between the signs should be. Fifty feet was what the Commission deemed to be a reasonable number, but he doesn't know that it is necessarily a magic number.

In looking at the property, Mr. McCue thought it looked like there will probably be four or five signs required for each lot. Mr. Belanger said that might be true but reminded the Board that per this recommendation, these would be signs furnished by the Commission. Mr. McCue asked if the

signs get lost who would pay to have them replaced. He added that they would also have to go in and mark the distances again. Ms. Goucher said like a lot of things, there is an education component with this. She explained that if you buy a property that has some wetlands on it, it is certainly in your interest to understand what that means when you buy a property. By having the Planning Board impose a condition such as this, a note will be on the plan that is recorded. That note will be on the plan that will be part of staff's records so when somebody comes in for a building permit and/or for a permit later on to build a deck or shed or anything like that, the plan is on record that indicates there are wetlands on the lot even if the sign should disappear. At the end of the day, the wetlands are still where they are and the point of this is to make sure that the Department does not issue permits for things that aren't allowed to be in the wetlands. To her, it is just a little more recognition for the homeowners to understand that they have bought a house on a piece of property that has wetlands on it and, as such, they should understand what the implications are.

Mr. McCue was concerned about the cost of the signs themselves. Ms. Goucher advised that the Conservation Commission pays for those. Mr. McCue thought it was a lot of money to pay for something that is already recorded as a restriction on the plan itself. He thought they were maybe overdoing it with five signs. Ms. Goucher said it is up to the Board whether or not they want to accept the condition which is a recommendation of the Conservation Commission. Mr. McCue said if they are willing to pay for the signs that is up to them, but he thought it was spending money on something they didn't really need to. Mr. Guerra said the cost of the signs roughly breaks down to \$3.00 each. Mr. Belanger thought it might be even less in that they were going to do 1,000 signs for under \$1,000. Mr. Guerra agreed with Mr. Belanger. Mr. Guerra said it is a three inch round sign that will get tacked to a tree.

Mr. Guerra modified his motion to include the 9th condition, which was the recommendation by the Conservation Commission concerning the placement of signs on the wetlands, which was seconded by Vice Chairman Clement.

(Motion Carried)

7. SP-01-2016

Property located at 300 Keller Street (Tax Map 874, Lots 12 & 12A), a site plan application to fully redevelop the site with a 40,507 ± square foot CarMax facility, inclusive of a 3,707 square foot private carwash and associated site improvements within the B-2 Zone. *Wadleigh, Starr, & Peters, PLLC for CarMax Auto Superstores, Inc.*

Ms. Goucher advised that staff has prepared a recommendation on this proposal, which the applicant has seen.

Alderman Levasseur made a motion to approve SP-01-2016 per staff recommendation, which was seconded by Mr. Roy.

Chairman Harrington said this seemed like a really clean plan and the applicant did a really nice job with this.

Mr. McCue said it looked really good and the recommendation was excellent.

Mr. McCue asked if all the comments from the Highway Department had been addressed. Ms. Levandowski said the only outstanding condition that Highway had was in regards to the potential for queueing on the Auto Center Road entrance. She believed that was discussed at the meeting and that it wasn't really going to be an issue. Mr. McCue confirmed with Ms. Levandowski that they agreed to change the traffic light sequencing.

Mr. McCue asked if the easement between the property owners was all set. Ms. Goucher believed staff had some correspondence from them on that, but that is between the two property owners; the City is not involved in that. She said the original easement allowed for the adjacent property owner to access their property over this one. CarMax is allowed to modify the location of it as long as the adjacent parcel has access and it is not changing where it touches on their adjacent property.

Mr. McCue asked if there was something about the development of the multi-use path. He referred to #6 on Mr. Winslow's letter that stated in part "significant reconstruction of existing culvert right-of-way will require the need to enter the parcel". He said the engineer was supposed to make his client aware of that. He was curious if that has been concluded. Ms. Goucher thought their follow up with Highway on that matter was that they didn't have any issue on that particular concern which was raised initially. She said if there is some additional information necessary for Highway, staff has no doubt that the developer would provide it. She said they have agreed to any of the comments and concerns that Highway has raised. There was a further discussion after that letter was sent so she thought that became moot, but staff will follow up on that.

Mr. Guerra noticed a picture in the packet of the bus stop. He asked if that is being affected in any way. Ms. Levandowski advised that the applicant has been in correspondence with Manchester Transit Authority about removing that bus stop since it is no longer relevant. Its purpose was mostly for the Walmart user. Ms. Goucher advised that the new Walmart is putting a bus stop over there, but she couldn't say how MTA might modify their route. If they feel it necessary to leave it there, it is going to stay, but if not she knows CarMax would like to see it gone.

There was no further discussion and the Board proceeded to vote.

(Motion Carried)

8. Review of new applications for regional impact and comment by the Manchester Conservation Commission.

The staff has received and reviewed the applications listed below and the Planning Board should determine if any of the applications are likely to have impacts beyond the boundaries of Manchester, requiring regional review pursuant to RSA 36:54, 55, 56 & 57 or warrant comment by the Manchester Conservation Commission.

1. SP-33-2015
Property located at 795 Grove Street (Tax Map 129, Lot 1), a site plan application for a proposed communications head-end building of approximately 496 SF, associated parking, utilities, and landscaping within the RDV Zone on a leased portion of Tax Map 129, Lot 1. *McLane Middleton, Professional Association for Verizon Wireless*
2. SP-03-2016
Property located at 235 Myrtle Street (Tax Map 24, Lot 22), a site plan application for a proposed entrance canopy for the Mt. Carmel Nursing Home, of approximately 935 SF, with a newly proposed horseshoe drive, landscaping, and associated site improvements. The proposal will add one additional curb cut and relocate one existing curb cut on Myrtle Street within the B-2 Zone. *Nobis Engineering, Inc. for Mount Carmel Rehabilitation and Nursing Center.*
3. SP-04-2016
Properties located at 401-419 South Willow Street (Tax Map 300, Lots 16, 7 & 8), a site plan application to redevelop existing commercial property with a new 5,000 SF retail building and associated site improvements within the B-2 Zone. *Chris Lewis for One Wall Street LLC & Brickwater LLC.*

Ms. Levandowski advised that right before 5:00 today staff received a phone call regarding this application and the applicant has decided to hold a pre-application meeting with staff and other Department heads before moving forward. As such, the Planning Board should not take an action on this item.

4. SP-05-2016
Property located at 445 South Willow Street (Tax Map 437, Lot 3), a site plan application to replace four fuel pumps (with a total of six dispensing nozzles) with six fuel pumps (with a total of ten dispensing nozzles) at an existing Budget Gas facility within the B-2 Zone. *Babar Khan, PE, Concord Engineering Consultants, PLLC, for IMF Holdings, LLC.*
5. CU-04-2016
Property located at 587 Maple Street (Tax Map 24, Lot 24), an application for a Conditional Use permit to allow other business and professional offices within the C-1 Zone. *New Hampshire Catholic Charities.*
6. CU-05-2016
Property located at 587 Maple Street (Tax Map 24, Lot 24), an application for a Conditional Use permit to reduce the required parking by two spaces within the C-1 Zone. *New Hampshire Catholic Charities.*

Ms. Flinchbaugh made a motion, which was seconded by Mr. Kizak, that the following applications do not have regional impact and do not require comment from the Manchester Conservation Commission: SP-33-2015, SP-03-2016, SP-05-2016, CU-04-2016 and CU-05-2016.

(Motion Carried)

III. ADMINISTRATIVE MATTERS:

2. Request from Barbar Khan, PE and Mohammad Mobeen to reconsider the need for SP-09-2014 to go back to public hearing.

Ms. Goucher referred to an email and narrative in the packet relative to Budget Gas on South Willow Street. She advised that she brought this issue to the Board at their last meeting and explained what was going on with the construction of the project. The Board took an action to request that they come back before the Planning Board for a public hearing and staff had scheduled abutter notices to go out tomorrow for that meeting in March. However, the applicant has asked for this Board to reconsider that decision and delegate it to staff and to that end, they have provided a narrative for the Board. The Board took a few moments to review that information.

Chairman Harrington asked Ms. Goucher to take the Board through the letter from IMF. He asked if there was anything in there that staff saw as either inaccuracies or things that need to be discussed or brought to the Board's attention. Ms. Goucher referred to the second paragraph and the statement that the Building Department approved the revised design including the gasoline dispenser reconfiguration increasing the number of pumps to six without the addition of the basement and issued a building permit and that is incorrect. She advised that the only permit issued is for the shell of the building and they issued a permit to remove a waste oil tank. She reminded the Board that at the last meeting she said that she had found a permit for the removal of a waste oil tank. She advised that the only permits issued were for the shell of the building and some rough plumbing fit up. There was a rendering on a plan that was part of the architectural building that showed two pumps but that was just the cover sheet rendering and not what they would issue a permit on. It has not been approved. She knows the applicant disagrees with that statement.

Mr. Kizak advised that the plan the Board approved in 2014 had four pumps and two of them were both sides and two of them were against the building with just one side. Ms. Goucher said attached to the narrative is the information that the engineer provided, which includes the approved site plan that shows the location of the pumps. Further in the information it shows what they are proposing with the location changes of the pumps. It also shows the additional stacking that would be necessary for the extra dispensers and it shows where the pumps are being added. She explained that where you see two pumps on the ends, essentially there used to be one pump on either side, not two.

In plan 6 of 9, Chairman Harrington asked if they have gone over that with staff to get any input or if this is just a product of their plan. Ms. Goucher said this is the design that they provided to staff as well as resubmitted so they could advertise for a new hearing because that was the direction the Board gave to staff two weeks ago. The one issue that the staff brought up with the applicant in a meeting was with the additional pumps shown - because more stacking is required by the Ordinance- the cars potentially might encroach into the drive aisles. The comment she had at a

meeting was that she didn't know whether or not the Board would have asked for either a one-way system or curbs on South Willow Street being closed up. That was the one issue she had as to if it had been shown in this configuration when it went to the Board the first time would there have been site changes proposed. She didn't know if the Board would have, but that was the question she raised with the applicant. She explained that when it came to the Board the first time for an approval, the applicant said they were not doing any site work. They were leaving the pumps and removing one side of nozzles because of the larger building and they weren't doing anything with underground tanks or changing tank locations. She didn't know if the Board would look at the site differently today.

Mr. Roy said these are some of the questions he had the last time they talked about this and whether or not there were some extenuating circumstances. In reading the information provided, he saw that the pipes were corroded and it makes sense that they would be changed. He said it looks like what they have added is a basement. Ms. Goucher said when they submitted their building plans, they originally showed a basement and they were told that they could not have a basement so they did not build a building with a basement. Mr. Roy asked if there will be a basement now. Ms. Goucher said the building is already built without a basement.

Mr. Roy asked if the issue here is that there will be two more pumps than what they originally looked at. Ms. Goucher said two more pumps with four more nozzles. Mr. Roy said he goes to different gas stations and some of them are pretty tight and it is kind of like a self-controlling mechanism. If there are too many cars, he doesn't stop. In his point of view he said it wouldn't have changed his mind about this project because "it's a gas station and it's going to be a gas station". He said he gets the idea that the Board saw a plan last time that wasn't approved that was introduced somewhere during the process but after looking at this and thinking about how he would have viewed it at the beginning, he doesn't think his position would have been different.

In looking at it the way it is now, Alderman Levasseur asked if it is going to fit with the change. Ms. Goucher said they are proposing stacking the way it is shown and it meets the numbers for dispensing. Whether or not the Board is satisfied is really part of why it is back before the Board. What was approved by the Board was drawing #2. This is an enlargement of what was approved. If the Board wants to delegate it to staff that is certainly within their ability. Alderman Levasseur asked if anyone spoke for or against it in the original public hearing. Ms. Goucher did not recall that anyone did. The Alderman said if no one came the last time he didn't see why they would need to have another public hearing on this. Mr. Roy didn't think anyone came because it is in an area that is all commercial. Alderman Levasseur said as long as it's not a safety issue and it fits specifications and it is within the parameters of the law he doesn't have a problem with it. He added that it was always a tight space even without the store there.

Chairman Harrington said his only hesitancy is that they don't want this happening on a regular basis. Mr. Roy agreed. The Chairman said a lot of these gas stations come before the Board and they have tried to make sure it was in keeping with the neighborhood, the laws and zoning and the decision is the decision. He doesn't necessarily think whatever the decision the Board takes will be a bad one; however, it is one of those things where he doesn't want to set a precedent.

Alderman Levasseur asked if the Board has the authority to make them pay a brand new permit fee for a brand new plan or if they have the ability to impose a fine. Ms. Goucher said if it goes back before the Planning Board, a fee will be involved. If they are asking for the staff to move it forward, another fee would not be collected. The Chairman said if the Board directed it back to staff they would have to look at a new redesign. Ms. Goucher said there is only so much staff can do. If the Board wants to leave it like it is that is their call. Chairman Harrington said if the Board vetted this in a public hearing and people came forward with concerns about the stacking and it possibly encroaching into South Willow Street, then there may be a recommendation made to close one of those curb cuts or as Ms. Goucher indicated, to make it a one-way circulation but they might not have the ability to do that at the staff level if they didn't have a public hearing.

In looking at it, Mr. Roy didn't think there was an issue. Even if they make it one-way circulation he asked who watches that anyways. He has no problem letting staff handle it. He agreed with the Chairman that they shouldn't make it a habit, but would consider this an extenuating circumstance of them finding that all of the pipes were rotted and something needed to be done.

Ms. Flinchbaugh echoed the Chairman's concerns. She thought it was dangerous to allow the staff to make these sorts of decisions and there is a process in place for a reason. She thought it was a different site plan so even though she tended to think that perhaps no abutters would come, she also thought the abutters had the right to have notice of the change and have an opportunity to come and be heard at this Board. She said she was sympathetic and it seems like a vast improvement and she has no desire to slow down the development, but there is a process in place for a reason and she does not think it is appropriate for this Board to skip it in this instance. She felt this is more than what the staff should be required to do without more input from the Board. Because it is a different site plan she thinks it needs to be noticed and the public should have the opportunity to be heard and the Board should go through the proper process.

Regarding the timing of this, Chairman Harrington asked if the applicant could have brought this to the Board's attention sooner. He asked how this even got found. Ms. Goucher advised that one of the inspectors drove by and saw work going on and came back to the office and checked if any permits were in place to be digging up and putting in new lines underneath. They had already set the new framework for the additional pumps, which is what brought it to staff's attention. They pulled out the approved plan and the permits and looked into the history of what had occurred. Chairman Harrington asked when that was found. Ms. Goucher said the building was completed last year. It was after the deadline for the March 3rd meeting that it came to her attention and she said if they could get the plans in by the Friday after the deadline, staff could move it forward to the March 3rd meeting. They subsequently came in and asked if they could do anything the following night at the Planning Board business meeting and she told them that the best she could do was bring it to the Board's attention and see if they wanted to delegate it to the staff or to go to hearing. That was two weeks ago and the Board said they wanted it to go to hearing and they basically came back and asked that staff provide the Board with this narrative and ask again, which is what the Board has tonight.

Alderman Levasseur asked if all of the lines are already in. Ms. Goucher did not know how much they have done without the benefit of the permits.

Mr. Roy asked if DES was ever involved in this. Ms. Goucher said they do have approval from DES.

Mr. Kizak's thinking on this is that he doesn't want to delay development or improvements in the City, but this smells an awful lot like they changed the plan and they got caught and now they are saying foul for being caught. He said maybe that is being too simplistic of an interpretation of what's going on but if the site has already been run with lines for six different pumps when there was four on the approved plan they've known they had the intent on going with six pumps for quite some time and to call foul and say that the Board is delaying them because they changed the plan and got caught, he isn't feeling very good about that.

Mr. Roy noticed they were in the audience and asked if the Board should make an exception and ask them to address some of the Board's concerns. Chairman Harrington said they pretty much have what they would talk about in writing, but he doesn't have an issue with having them come up if the Board would like.

Mr. Roy made a motion, which was seconded by Mr. Clement to have the applicant come forward to address the Board's questions.

Ms. Goucher reminded the Board that it has to be unanimous.

(Motion Carried – unanimous)

Attorney John Cronin appeared along with Mr. Khan who did the original site plan and the project engineering. Attorney Cronin said he got involved in this matter just a couple days ago and the first thing that he wanted to say is that what happened here was a mistake; it was wrong and the applicant isn't blaming anyone else but himself. There is a set of facts where after looking into it he thought there was a rational explanation for it.

Attorney Cronin said the Board approved the site plan that showed the six nozzles. There were eight there previously. He said once Mr. Khan does his site plan and gets it approved his work is pretty much done until he has to do the as-builts. It wasn't a slight of hand where this plan was buried and they said they weren't going to show it to the City and maybe they will get away with it. They had an inspector look at it. It wasn't his fault, he was looking at it for a door and the basement, but those dispensers and the adequate number of pumps were there and they signed off and issued the permit. Not for the additional pumps and not for the additional nozzles, but to go ahead with the building. The architectural plan goes up to DES and shows all the pumps on it. They get their DES approvals. The architectural plan comes back to the contractor and he gets going. It was nobody's fault. If Mr. Mobeen was a real stickler and paid attention and looked at it, he might have raised a question and thought that he should go back to the Planning Board. Attorney Cronin said he himself probably would have done that but he is before the Board all the time and he knows the regulations pretty well. After he looked at it a little more carefully he said if Mr. Mobeen went in with this plan in the beginning there would be no basis to deny it because it works and meets the regulations and stacking. There might be some minor changes on it but he doesn't see that there is any big deal going back and getting the site plan amended.

Attorney Cronin advised that he had a chance to chat with Mr. Mobeen and they have no objection to paying a fine just so there is a caution that this isn't an everyday occurrence.

Alderman Levasseur asked what the cost of the permit was originally. Attorney Cronin did not know. Ms. Goucher said it was probably \$400-\$500 with abutter fees, for the Planning Board. There was discussion concerning what the fees would be based on the newly adopted fees as well as levying a fine.

Ms. Flinchbaugh advised that she was not particularly interested in a fine. Her issue is that it should go to public hearing as it is going to be built and she thinks it is a new site plan. She said she was sympathetic and wished this hadn't happened but at the same time she is not interested in fining them. She felt strongly that this should go to a public hearing. The Chairman said he understood her point.

Mr. Roy appreciated Ms. Flinchbaugh's comments but said if they want to talk about precedent, the precedent about process was set here a month ago when he was the only one that sat there and said there was a process and they should have had a site plan for a development over on the corner of Wilson and Valley Streets, but the Board put it all on the lap of staff with no site plan at all. He thinks that was a lot more egregious than this is with the explanation that they have heard tonight.

Alderman Levasseur said he did not find the \$500 offer from the party a fine; he considers it to be just a fee to get the process and let the staff continue to work as if there was a new permit for a new project put in. He thinks it is for an additional amount of work by the staff to continue on and get this project through. He doesn't consider it a fine; he considers it a fair offer for the amount of time that has already been gone through and will have to go through to get this thing done.

Alderman Levasseur made a motion, which was seconded by Mr. Roy, to accept the applicant's offer of \$500 for a fee and that the project be allowed to go through without another public hearing and to be handled by staff.

Discussion:

Mr. Kizak said he would be in support of that. He doesn't think that the two additional pumps if they were on the plan in the first place would have raised much of a reaction if it had come up. He was on the Board when this came up and there were no abutters. He checked the Minutes from the business meeting when it was approved and there was no public comment indicated in those Minutes and he would expect the same if this was re-publicized.

Chairman Harrington advised that he was leaning in that direction as well in the sense that stacking is permitted the way they have it designed. He doesn't see that the plan that they are proposing would have garnered a lot of descent.

Mr. McCue agreed with Mr. Roy's original comments when he said "if it is all filled up they will just go down the street to the next guy". He said they know what they are getting into by having the six pumps and if they had done that in the beginning he thinks that would have gone through anyway.

Chairman Harrington reminded the Board that Alderman Levasseur had made a motion, which was seconded by Mr. Roy, to accept a \$500 fee/donation from the applicant and allow staff to work with the applicant to finalize the design.

There was no further discussion and the Board proceeded to vote.

(Motion Carried) (Opposed: Flinchbaugh)

Mr. Clement made a motion to reinstate the rules, which was seconded by Mr. McCue. (Motion Carried)

- 1. Review and approval of the Manchester Planning Board Minutes of December 17, 2015, January 7, 2016, January 21, 2016 and February 4, 2016.**

Review and approval of the Minutes was tabled until the next meeting.

- 3. Any other business items from the Planning Staff or Board Members.**

There were no other business items.

Mr. Guerra made a motion to adjourn, which was seconded by Mr. Clement. (Motion Carried)

ATTEST: _____
Michael Harrington,
Chairman, Manchester Planning Board

APPROVED BY THE PLANNING BOARD: March 3, 2016

With Amendment
 Without Amendment

**The above minutes are a summary of the meeting and are not intended to be verbatim.
Audiotapes are available in the Planning and Community Development office for a limited time.**

Transcription by Lori Moone, Planning & Community Development.