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**MINUTES OF THE
PLANNING BOARD**

**MEETING OF
August 11, 2009**

A meeting of the Planning Board was held on August 11, 2009 at the Salem Town Hall, 33 Geremonty Drive, Salem, NH.

PRESENT: Jim Keller, Chairman; Gene Bryant, Vice-Chair; Beth Roth; Selectman’s Rep; Ronald Belanger; Robert Campbell; Linda Harvey; Ed DeClercq, Alternate; Jason Haroutunian; and Ross Moldoff, Planning Director.

The meeting was called to order at 7:00 p.m. Chairman Keller introduced the board members. There were no withdrawals. Abbas has asked to be placed at the end of the agenda.

PUBLIC HEARING

Road Impact Fee System

Chairman Keller declared the hearing open at 7:00 p.m. Mr. Kennedy had questions from the last hearing that he answered in writing.

Mr. Moldoff said Marty Kennedy sent a memo and Mr. Moldoff has extra copies of that. He also has a comparison to the existing fees.

Chairman Keller asked for people to focus on the questions and try not to reiterate old items.

Marty Kennedy from VHB, published a memo dated August 3rd. In the memo he summarized the 3 major topics from the last meeting. The 1st was the area of construction cost estimate assumptions. At the last meeting, it was based on a 34-foot wide cross section. The direction from the Planning Board was to eliminate the shoulders and we did that. The new cost is \$1.5 million for a mile, as opposed to \$2.1 million. The end result of that is about a 29% reduction. There is a revised table in the memo. The second area is the rationale for the zones. One topic was the desire to have cross-zone type impacts. You can trace the trips from zone to zone but it’s an extensive effort. That’s why he went to a more general system. With the new procedure, you don’t have to do that. The other question was, why not have a single zone? You could do that. It would bring flexibility with expending fees. However, the recommendation is still to use 3 zones. It’s important to be able to stay closer to the rational nexus. When a developer pays a fee, there is a reasonable expectation to see the benefit of that fee in the vicinity of where they are. We do believe 3 zones is still the way to go. Concord and Hooksett have similar zones. The last thing was a question of, if you have a development with a unique type of use that didn’t fit the ones in the table. He created a table to make it easy for people to know what the fees are up front. There will be unique uses. We’ve run calculations and given you dollars per daily trip, and if you apply that, you’ll get the fee. With the new cost estimate, it’s \$166 per new daily trip. If

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1 you have a unique use, you'd have a traffic engineer do a traffic study and estimate the new
2 number of trips and multiply it by the rate.

3
4 Mr. Campbell mentioned the rational nexus and the issue of the zones. When you look at the
5 residential zones, there's little need for increase in capacity in those zones. The real impact of the
6 residents in those zones is when they go shopping on Rt. 28. His concern is, what can you
7 reasonably do in those areas to increase capacity based on the presumed increase in demand for
8 which is the basis for the impact fee.

9 Mr. Kennedy explained that if you have mostly residential development in a particular zone,
10 there will be a need to increase capacity because there will be traffic. He thinks you will have
11 some growth but not a lot. You will still be collecting a lot more fees in the Rt. 28 area and some
12 in the north but it won't be to a greater degree. There will be projects to spend that money on.

13
14 Mr. Belanger said he's not following that part about not creating a big impact in the residential
15 areas.

16 Chairman Keller said that's why Mr. Kennedy is indicating that the extent to which fees will be
17 collected in a new residential neighborhood will be limited.

18 Mr. Belanger said he doesn't want to see the impact hit on a residential home. The problems we
19 have on the roads in Salem is people coming from other communities.

20 Mr. Bryant said you need to get a handle on the number. They're probably thinking about a lot
21 more money than what this amounts to. Getting 200 building permits is \$300,000. It will
22 improve capacity but it won't generate a lot of money. But you've generated a little money to
23 solve some problems and you've met the rational nexus. The fee system is fair and will stand up
24 in court. It's a small fee in a part of town that will generate a small amount of money.

25 Mr. Belanger asked, how long do you have to spend the money from the impact fee?

26 Mr. Moldoff replied, 6 years.

27 Mr. Belanger said he thinks what generates the traffic in the community is the bus community in
28 town. He suggested an impact fee from businesses and dedicate it strictly to the road.

29 Chairman Keller reminded that you can't use impact fees for maintaining roads. You can only
30 use it for capacity.

31 Mr. Belanger said we should go about finding out how to do that.

32
33 Chairman Keller asked for public input.

34
35 Chris Goodnow has a question on the underlying methodology. Currently the Town of Salem
36 uses the cost allocation procedure. Is it fair to say that the current road impact fees are calculated
37 on total daily trips or are they calculated on peak?

38 Mr. Moldoff said it's primarily peak trips.

39 Mr. Goodnow clarified, so our current system assesses road impact fees on peak generation. He
40 spoke about the queues on Stiles Road and the peak times. We currently rank the impact fee on
41 how it affects peak periods, which seems logical. The system that's being contemplated doesn't
42 use that. It uses total daily vehicle trips. He thinks this takes us farther away from a rational
43 nexus. Office and medical office are currently rated the same. In the proposal, medical office has
44 an impact fee almost twice as much as general office. He thinks a lot of those trips for medical

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1 office are at non peak times. We're now contemplating a system that doesn't take that into
2 account. It penalizes trip generation in non-peak times. He spoke about reductions and increases.
3 A 25% reduction on a huge increase, means a huge increase, less a little bit. This is a two-part
4 thing, the road impact fee system and the townwide traffic study. We don't have the second part
5 of that puzzle. With the townwide traffic study, you can make a direct connection between a
6 development off Zion Hill and making improvements to Millville/Main Street. This is a two-
7 piece puzzle and we don't have the second piece.
8

9 Stephen Campbell, 22 Shepherd Avenue, asked how long has it been since the road impact fee
10 has been increased?

11 Mr. Moldoff replied, the last update was in 1994.

12 Mr. Stephen Campbell said that making it townwide makes sense. The second question is about
13 the large increase. The real reason for the large increase is because this hasn't been increased in
14 15 years, while everything else has gone up. If it was increased every couple years, you wouldn't
15 have this huge increase. Since we've waited so long, you have to have this sort of increase so
16 that the taxpayers aren't carrying this burden all by themselves. It has to be done and since it's
17 been so long, this is the best time to do it. Regarding the argument about projects being in the
18 works that are based on the old system, there's not a lot of building going on right now, so this
19 may be the best time to do it. When things start getting built again, new development will be
20 aware of what the new rates are. He has read comments about this increase making Salem
21 uncompetitive. The State of Massachusetts just made Salem a lot more competitive by raising
22 their sales tax. He thinks that what you're doing is the right thing. Whatever you do decide, it
23 should be implemented as quickly as possible. If you wait, people will be looking for waivers. If
24 this is used for capacity, it will make it better for the businesses as well as the residents. He
25 hopes you don't delay.
26

27 Mark Gross, with MHF Design Consultants, is glad to see that we're moving in the right
28 direction with the recalculation of the roadway cross-section. Are you considering an across the
29 board reduction as well? What happens with existing projects that are approved? If a project
30 comes back for a change in use, and if the traffic numbers aren't any different or are less, than
31 where does that leave us with the impact fee? Does it penalize that project because it's coming
32 back for a minor change? There are several projects that fall into this category.

33 Mr. Bryant said we would differentiate between one that had a traffic study done and impact fee
34 calculated and that the Planning Board has seen, as opposed to ones we haven't seen.

35 Mr. Gross said he thinks it's unfair for a project to come back with a minor change and no
36 additional traffic but has to pay a bigger impact fee. New Hampshire has implemented taxes this
37 year too, which makes us less competitive. Other communities are going forward with promoting
38 businesses.
39

40 Chairman Keller asked Mr. Moldoff about approved plans and modifications.

41 Mr. Moldoff said the impact fee ordinance we have now says that when need a project needs site
42 plan or subdivision approval, the impact fee is assessed at the time of Planning Board approval
43 of the plan. So the system that's in place when a plan is approved is what is used. What happens
44 if it doesn't get built? If it's just an extension that's granted by the Planning Board, they would

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1 still pay the old fees. What if it waits a couple years to be built or there is a minor change? It's
2 technically a new project. Will you let them use the old fee system or will you make them
3 comply with the new fee? You have to decide that. You will have to make a case by case
4 decision. If it decreases the amount of traffic, you will have to look at it at the time.
5 Chairman Keller asked, if a project is built and there is an addition to a building that's
6 subsequently approved by this board, he assumes we would utilize the new fee system?
7 Mr. Moldoff said it's considered a new plan and the system that's in place when that comes in is
8 what you'd use.
9 Mr. Bryant asked, what about any projects that have not been approved by the Planning Board,
10 but a traffic study is done and an impact fee is calculated?
11 Mr. Moldoff said you have a couple of those. He suggested the board let them use the old fees.
12
13 Chairman Keller said his intent is to have the fees be as fairly aligned with the equivalent of what
14 would have been the case if we had just increased for inflation over the past 15 years.
15 Mr. Moldoff showed a comparison of recently approved projects and some that are in the works,
16 with the existing fee and proposed fee. He also showed what the fee would have been with
17 inflation. In some cases the fee is higher but in some cases, the fee is lower.
18 Mr. Kennedy showed a chart comparing the fees for Hudson, Concord, Hooksett and Plaistow.
19 The original fee we calculated for retail was \$4.00 per square foot. But with the reduction it's
20 down to \$2.85. So it's in the range of other towns. He also showed a comparison with general
21 office and with single-family.
22
23 Mr. Belanger said he doesn't want us to do something that will give other towns an advantage
24 and bypass Salem.
25 Chairman Keller said his objective is to normalize the fees and adjust for inflation. He asked Mr.
26 Kennedy to address Mr. Goodnow's question with the difference between the old system and the
27 peak time calculations compared to the new system.
28 Mr. Kennedy explained that the old system used PM peak hour. This procedure is a general
29 average procedure so we use the overall daily trips. We could apply a straight average factor to
30 every one of the uses. We don't want to do that. It implies that this is more exact than it is. We
31 can translate it into peak hours, but he suggests that we don't do that.
32
33 Mr. Bryant said it's important that this system be townwide and it's important that we bring our
34 fees up the 15 years. We've shown that the new fee system is based on sound science and on
35 ITE. We tied it back to something that protects us in the rational nexus. We're at a point now
36 where the fee schedule makes sense and is approvable as it stands. We've established our case.
37 Mrs. Harvey asked if we need to make a change to the zoning article.
38 Chairman Keller said it's no different than what we're doing today.
39 Mr. Moldoff read the wording from the zoning ordinance. He interprets it to mean you can
40 decide.
41
42 Chairman Keller suggested that a grace period is in order and he suggested a 6-month
43 implementation window.

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1 Mrs. Harvey suggested we make an effective date for 6 months, and there'd be no increases for
2 that 6 months, then after that, add 50% for another year and add the other 50% the following year
3 so it take 2 ½ years to do the whole thing.

4 Chairman Keller said the issue is that we'll be reducing the fees we currently get by 50% if we
5 do that.

6
7 There was discussion of how to implement the fee.

8
9 Ms. Roth said her concern is the plans coming in. If a plan is delayed, what plan would they be
10 under when they come back? She suggested that we give due notice that the fees will change. We
11 will give consideration for those that are in the pipeline. She thinks a 6-month advance notice is
12 reasonable.

13 Mr. Bryant mentioned the fee schedule that was calculated and reduced by 29%. It's the August
14 3rd memo has the fees that should be implemented. He would reduce across the board the
15 schedule by 10% with implementation on the schedule in its entirety less ten percent, as of
16 March 1st. Any plan that's filed, has a traffic study and an impact fee calculated by March 1st
17 would come under the old plan. As of March 1st any project whose impact fee is calculated as the
18 result of a traffic study, would come under the new plan, which is 10% across the board, less
19 than the schedule we're looking at.

20 Mr. Gross mentioned his concern of existing space that's vacant. Other communities have taken
21 a percentage across the board. This is a huge increase all at once. He suggested 20%. He thinks
22 10 will hold up legally.

23 Stephen Campbell said his taxes go up every year. This rate hasn't gone up. The business
24 community always finds it objectionable when fees go up. Taxes have gone up every year. It's
25 time for this rate to catch up with the cost the town is facing. He thinks 10% is more than
26 generous. You should go with the science, but 10% makes sense.

27
28 Mr. Bryant said the Planning Board can always put off an increase when they review it every
29 year.

30 Chairman Keller said he wants to get the facts straight. We are not implementing a 400% fee
31 increase. We're implementing a decrease in some cases. He explained that the reason that the
32 prior boards didn't change the fee is because it required a total redo of the zoning ordinance
33 based on how it was written, which would have cost consulting dollars and town meeting
34 approval and legal fees. When it was determined that we had to make a change is when it made
35 sense to have a townwide implementation with a simple system that accounted for inflation.

36 Mr. Belanger said he still feels it's a bad time to put any increase. He mentioned the empty
37 buildings in Salem. We should be doing something to get those occupied. He won't be voting for
38 this increase.

39
40 Mr. Kennedy reminded the board that this procedure has an automatic inflation adjustment that
41 occurs on January 1st. So if you're thinking of a delay, you may want to think about January 1,
42 2010.

43 Mr. Bob Campbell said we need to be as specific as possible with respect to the date. His
44 concern is that we'll get a flood of half-done plans in February, and we'll be asked to vote that

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1 they're ready when in reality they're not ready. The requirement shall be that the fees will be
2 those which are enforced at the time either when complete final plans subject to approval with no
3 conditions are submitted. Either the plan is submitted subject to approval with no conditions, or
4 the approval date. Otherwise we will be flooded with half done plans in the month before. Either
5 complete and ready for approval without conditions, or when they're approved.

6 Mr. Moldoff said the ordinance says "At the time of Planning Board approval."

7 Bob Campbell said he wants that in the motion.

8
9 **Mr. Bryant made a motion that the Salem traffic impact fee be implemented in a townwide**
10 **basis. The fees be based on the final calculation by category as submitted by the consulting**
11 **firm on August 3rd, which incorporates final adjustments to the known cost of**
12 **construction. The fee be further reduced across the board by ten percent and that the fee**
13 **be implemented on March 1, 2010 and that the automatic cost of living adjustment that**
14 **would occur on January 1, 2010 be waived and that any plan with a traffic impact fee**
15 **calculated and approved by the Planning Board, the fee will be based on when the plan is**
16 **approved.**

17
18 Mr. Moldoff said the motion didn't include the words "to adopt the new fee system".

19
20 **Bob Campbell said the motion is to adopt the new fee system, effective date will be March**
21 **1, 2010. It will be applicable to plans approved on or after that date, and the schedule will**
22 **be that which we saw tonight less 10% plus the construction cost index due January 1, 2010**
23 **is hereby waived.**

24 **SECOND by Ms. Roth.**

25
26 **VOTE ON MOTION: 6 – 1 (Mr. Belanger opposed.)**

27
28 The board recessed at 8:15 p.m. The board reconvened at 8:25 p.m.

29 Mr. Belanger stepped down from the board. Mr. DeClercq joined the board.

30
31 **REVIEW OF MINUTES**

32
33 **Mr. Bryant made a motion which was seconded by Mr. DeClercq to approve the minutes of**
34 **7/14/09 as submitted.**

35
36 **VOTE ON MOTION: 4 – 3 (Mrs. Harvey, Ms. Roth and Mr. Haroutunian all abstained.)**

37
38 Chairman Keller then went over the agenda.

- 39
40 1.) **ABBAS SITE PLAN – Public Hearing for revised site plan (additional use of second floor)**
41 **at 291-297 South Broadway, Map 128, Lot 711.**

42
43 **Mr. Bryant made a motion which was seconded by Mr. DeClercq to accept the Abbas site**
44 **plan application as complete.**

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1 **VOTE ON MOTION: 7 – 0**2 **UNANIMOUS**

3
4 Abutters: There were no abutters present.

5
6 Attorney Bernard Campbell, from Beaumont & Campbell Professional Association, is here on
7 behalf of Adam Abbas. The site has a lengthy history. The primary building was constructed in
8 1986 as a single tenant for a large appliance retailer. The parking was constructed primarily at
9 that time. There are physical constraints with the Spicket River and State shoreland issues. There
10 was a major modification in the mid-1990's when a freestanding restaurant was approved. At
11 that time, the parking was reallocated and in 1995 there was basically a condition that the second
12 floor in the original retail building be not used for any substantive purpose. Since then, the tenant
13 mix in the main retail building has changed. There were at least two trips to ZBA relative to
14 parking. In 1994 the ZBA agreed that the second floor could be used for warehouse space for a
15 first floor tenant. In 2007, one of the first floor tenants, Sleepy's, wanted to open a warehouse
16 type retail sale on the second floor. We got the necessary permission from the ZBA and Planning
17 Board. The application tonight is an evolution as part of the site. He commended Mr. Abbas
18 because this has been conducted in stages and each time there has been an analysis if the site still
19 works, or if there were any problems, and the answer has been no. We're here for a minor site
20 plan amendment. There are two parts. One of the first floor retail spaces was, in the 2007 site
21 plan, designated at 1 space for 500 square feet for retail space. Mr. Abbas foresees the possibility
22 of a tenant change and is seeking permission to use that space at the general retail level, which is
23 1 space for 200 square feet. The second piece is an expansion of the use of the second floor. One
24 option is to convert the remaining 18,000 square feet into office uses, which would be business
25 office on the second floor. The alternative would be to allow approximately 11,500 square feet to
26 a large retail use, potentially furniture, or appliance sales. Since there is no additional parking
27 that can be created on site, these require the board to grant a conditional use permit under Section
28 309-68-1. He has submitted a detailed analysis of the criteria to be satisfied. Also here is Jim
29 Winn from Greenman Pedersen.

30
31 Jim Winn is the project manager with Greenman Pedersen. We did a study. Generally the stores
32 currently there are more specialty retail. We looked at critical peak periods. We looked at
33 weekday from 12-2, Saturday from 12-3 and Thursday, Friday and Saturday evening from 6-8.
34 We found an average peak of 100 vehicles. There are 239 spaces today. The maximum time was
35 Friday at 7:30, where we found 179 cars. These observations were made in June. On a Thursday
36 we found 138 parking spaces used and on Saturday, 139. We also looked at the ITE parking
37 generation manual. During the peak hours, the ITE data was higher than what we observed. To
38 be conservative, we used the ITE observations. We also looked at the ITE parking generation
39 manual for December. We found, during Thursday, Friday and Saturday evening periods, there
40 are about 30 to 40 parking spaces available. During the other time periods, 90 to 100 spaces
41 would be available. We're trying to consider uses that are less or little demand during those
42 evening time periods and also to better utilize the parking spaces. First we looked at
43 redesignating to general retail. Second we looked at better utilizing the 18,000 square feet of
44 current warehouse space on the second floor. We can either provide for 11,500 of that second

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1 floor to do a large retail. We also looked at office utilizing the 18,000 square feet. For the large
2 retail use, it calculates to about an 8.8% reduction from what we're looking for to what would be
3 required. We looked at the average rate for the whole center, which is 5.2 spaces per square feet.
4 ITE suggests 4.4. For the office use, the requirement is about a 20% reduction.
5

6 Attorney Campbell read the conditional use criteria in Section 309-68-1.

7 309-68.1(1) - The modification complies with the purposes of the parking regulations noted in
8 Section 309-65. The purpose of the parking regulation is to provide adequate on-site parking to
9 satisfy the reasonable demands on any given site. The GPI study concludes that the applicant's
10 requested modifications will not result in parking demand in excess of the capacity available.

11 309-68.1(2) - The applicant's particular situation justifies a modification to the requirements.
12 Because of the history of the original site development, the applicant is entitled to relief to
13 reasonably use the building with the available parking spaces. The building was originally
14 constructed for a single tenant "large" retail use. Since that time, there have been modifications
15 to the usage. At no time has there been a problem with adequate parking. The owner cannot
16 construct additional parking to meet demands of the building due to environmental constraints
17 created along the Spicket River.

18 309-68.1(3) - The site is suitable for the proposed modification. The accompanying GPI study
19 demonstrates the site is suitable for the proposed modifications. Physical conditions prevent
20 development of additional on-site parking.

21 309-68.1(4) - There will be no adverse impact on neighboring properties. There is no
22 expectation that parking would occur on adjoining sites, all of which are retail developments.
23 Expanding uses of the subject property may positively benefit adjacent sites.

24 309-68.1(5) - There will be no adverse impact on traffic or pedestrian safety. The GPI study
25 indicates there should be no adverse impact on traffic. Site is serviced by a traffic signal and
26 there is significant stacking in the site entrance drive.

27 309-68.1(6) - The aesthetic character of the site and the surrounding area will not be adversely
28 affected. There are no proposed physical changes to the site or structures, so no aesthetic factors
29 are being affected.

30 309-68.1(7) - The modification will be consistent with the spirit and intent of the Zoning
31 Ordinance and the Master Plan. The GPI study reflects the fact that the site will have sufficient
32 capacity for the requested modifications. Retail and office uses remain concentrated on Route 28,
33 and traffic is handled through existing signalized intersection.

34 Attorney Campbell said we have addressed all the criteria and he hopes that the board acts
35 favorably. Mr. Abbas pays taxes on this and hasn't had effective use of the second floor. The site
36 has operated without any problems. He believes the small modifications won't result in any
37 adverse impacts.
38

39 Mr. Moldoff read the following staff comments:

40 He talked about the impact fee. Since the second floor was previously approved and used for
41 retail, it won't apply here.

42 The key issue is the conditional use permit for the parking. 262 spaces would be required if
43 the upstairs is used for large retail. 299 would be required if it's used for office. 239
44 provided.

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1 A public safety impact fee is not required.

2 Received an OK from the Fire Department and Public Works. Haven't heard from
3 Engineering.

4 Recommend - if you're satisfied and if you grant the conditional use permit, that you grant
5 site plan approval this evening with conditions.

6
7 Mr. Bob Campbell asked what parking would be if all of these places were occupied or assigned
8 parking based on the uses you've asserted.

9 Attorney Campbell said the note indicates that it's currently large retail. If we were to increase it,
10 it would be 15 additional spaces.

11 Mr. Bob Campbell said, you've identified the uses. If you applied the required parking for every
12 one of those uses, what would the number be?

13 Attorney Campbell replied, if we used the second floor as large retail, the total would be 262 as
14 opposed to 239. With the office, it would be 299 versus 239. The demand wouldn't be exceeded
15 because of the timing.

16 Mr. Bob Campbell asked, does the 299 include the additional 15?

17 Attorney Campbell said we believe it does.

18 Mr. Bob Campbell said he'd like to see a chart with those numbers. He is concerned that, if we
19 go along with this and then traffic is backed up onto Rt. 28. He'd like to see, as part of this
20 process, a management plan of how you're going to manage the tenancy and parking so that you
21 maintain this control of this good operation so that we have a basis for coming back to you if
22 things change. AT&T and Oreck have low usage, but if you have something different, it could be
23 over-run. He wants a management plan for how you're going to manage the site and so that a
24 new owner isn't surprised. He'd like to see that requirement incorporated in a deed addendum.

25 Attorney Campbell said there are statutory changes about conditions of approval and recording
26 such items. So if approved, the approval letter may accomplish your goal. The management plan
27 is going to be the market place. If the tenants experience traffic issues and customers can't park
28 there, the marketplace will adjust that because those tenants won't stay. The self interest of the
29 marketplace will be a better regulatory tool than a management plan. Parking will be key to the
30 tenants who are there. If parking isn't there, the tenants won't stay.

31 Mr. Bob Campbell said he is concerned that the marketplace won't deal with holiday traffic. He
32 wants to know what you'll do if a disaster happens. He wants a plan that says the owner is
33 responsible for making sure this site works and that traffic doesn't back up onto Rt. 28. He wants
34 an agreed to plan that says you're going to deal with it.

35 Attorney Campbell said he heard you, but he doesn't know if he can respond to you.

36
37 Mrs. Harvey said that approximately 50% of the parking spaces are currently in the floodplain
38 and they do go under water. That really doesn't have much impact on the retail end of things. If
39 people can't park, they won't go shopping, but there would be an impact on office spaces. If you
40 work at an office, you expect to go to work each day.

41 Mr. Winn said the 15 for the first floor space was in addition to those numbers. So it would be 75
42 and 38.

43 Mr. Moldoff said the total requirement would be 313 and 276.

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- 1 Mr. Winn said we looked at a typical weekday afternoon. There was very little demand during
2 those time periods for the other uses. So there would still be a lot of extra spaces.
3 Chairman Keller said, that's presuming that the current tenants are the future tenants.
4 Attorney Campbell said Mr. Abbas has a determination letter dealing with the building. It
5 appears that the special flood hazard area, its defined as a 1% chance of flood elevation, is still at
6 114.9. The building is not in a flood hazard.
7 Mrs. Harvey asked, are the parking spaces in Chili's included in the 239?
8 Attorney Campbell said yes. The parking demand includes the restaurant.
9 Mrs. Harvey said, so there's only about 60-70 spaces that are outside of the floodplain area.
10 Attorney Campbell agreed with 60-70.
11 Mrs. Harvey is suggesting that the office use may not be do-able.
12 Attorney Campbell pointed out that if we're experiencing a flood like that, then sections of Rt.
13 28 would be closed in its entirety so people probably wouldn't be accessing this site.
14 Mr. Moldoff said, when the parking lot floods on this site, the building is closed. It's not
15 accessible. Whether its office or large retail, it's not open.
16
17 Mr. Bryant asked, are all the retail spaces currently occupied?
18 Attorney Campbell replied, yes.
19 Mr. Bryant asked, when Chili's was built, was their view that Chili's parking demand would
20 remain in their parking lot?
21 Attorney Campbell said he doesn't know if that was the view. In 1995, when Chili's opened, that
22 was when the initial restriction on the second floor was imposed. He explained that this has been
23 a progression and the site has been looked at and it works.
24 Mr. Bryant mentioned that when Chili's is doing well their parking lot overflows, at lunchtime
25 frequently. For that reason and for the idea that there is more impact on the parking lot by office
26 space, then we may want to consider that the large retail is better.
27
28 Chairman Keller suggested a condition that the board needs to approve tenant changes. He asked
29 for public input. There was none.
30
31 Mr. Moldoff recommended conditional approval.
32 1.) Any future change of use or tenant that changes the demand for parking requires Planning
33 Board approval. Or any change of tenant requires Planning Board approval.
34 2.) The approval is restricted to the proposed changes from the applicant and that the second
35 floor of the building will either be 18,000 square feet of office or 11,500 square feet of retail with
36 a large display area.
37 3.) Revise the parking calculations to make it clear.
38
39 Mr. Bryant said, we're going to approve a conditional use permit and the use of the remaining
40 space based on a recommendation we're going to make on how it's going to be used.
41 Mr. Moldoff said they're asking to approve both options. If you're not comfortable, you can just
42 approve one if you want.
43 Attorney Campbell said, with regard to the tenant mix on the first floor, the only issue is the last
44 space with regard to New Hampshire Tool. The concern he has is if there is an approval process

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1 associated with a change of tenancy, it creates a process that's a deterrent to the landlord and to
2 potential tenants. We have a restriction on a category of use which is why we're here tonight. He
3 suggested a restriction in changing the size of the tenant space.

4
5 Adam Abbas, landlord, asked why do you want to put a restriction on the building?

6 Mr. Bob Campbell said you're coming here asking for a permit to use the space with
7 substantially less parking than is permitted in the ordinance. The justification for that is on how
8 few of the existing parking spaces are used. His concern would be to have you tell us, on a
9 performance based plan, how you would manage to assure that you don't need more parking
10 spaces than are available. In the future, how you would manage it in a way that has adequate
11 parking. He further explained his concern. Also, if you sell it, the buyer knows that the
12 requirement is there to manage that site so you never need more than 239 spaces.

13 Mr. Abbas said he has managed it in the last 15 years with no problem. He never has any parking
14 problems. We always go with the square foot. You are asking something impossible. He
15 manages it the best he can. He meets the square footage requirement.

16 Mr. Bob Campbell is saying that, in exchange for us approving that plan, he wants you to tell us,
17 how, if you put all of those different tenants in there, how you'll assure that we don't have a
18 parking problem.

19 Mr. Abbas replied, the engineer has shown you. The office will be open in the daytime. The
20 traffic peak is from 6-8 on Thursday, Friday and Saturday so the number won't clash.

21 Mr. Bob Campbell said he wants that in writing.

22 Attorney Campbell suggested putting in the lease language, hours of operation. The board is
23 looking for a commitment that leases for the office space would have operating hours that don't
24 clash with other uses.

25 Mr. Bob Campbell said he wants a requirement that whatever the operation is and tenants are, the
26 site will be managed so that there is no demand exceeding that available on the site and if
27 something happens, you will fix it forthwith.

28 Mr. Abbas said, if the tenant has a problem, they won't pay the rent. He is looking out for his
29 tenants' interest. He has been paying taxes for the last 15 years. He is paying \$90,000 for unused
30 space and he has never complained. You're putting conditions that he's never heard of.

31
32 Chairman Keller explained that the applicant is looking for relief because this is unique. The
33 question is, what happens in the future and how do we manage that. Mr. Moldoff had suggested
34 that if the tenant changes and there is an increase in traffic, then this board would want to review
35 it.

36 Attorney Campbell said we may have to continue and give the owner an opportunity to respond.

37 Mr. Abbas said he has a tenant that he may lose.

38 Chairman Keller said we're granting a conditional use permit for the site, not one tenant.

39 Attorney Campbell said he needs to confer with his client.

40 Mr. Moldoff said one condition is that any future change of use or tenant that substantially
41 changes the demand for parking requires Planning Board approval. We could also add that the
42 owner is required to manage the site to address parking demands and prevent parking problems.

43
44 The board recessed at 9:30 p.m. The board reconvened at 9:38 p.m.

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1
2 Attorney Campbell said he is working with Mr. Moldoff to address Mr. Abbas' concerns. Mr.
3 Moldoff suggested that if there is a change of tenant of an existing use in the site, it would be
4 first screened by the staff and if there is no problem, we hope you'd rely on staff. If there is a
5 substantial change, then the Planning Department has control. If the board accepts Mr. Moldoff's
6 language, Mr. Abbas would be agreeable.
7

8 **Mr. Moldoff read the following conditions:**

- 9 **1.) Any change of tenant requires staff review. Changes that substantially increase the**
10 **demand for parking require Planning Board approval.**
11 **2.) The approval is restricted to 18,000 square feet office or 11,500 square feet large**
12 **display retail on the second floor.**
13 **3.) The parking calculations will be revised on the plan.**
14 **4.) A note on the plan that Bob Campbell revised regarding the owner's management**
15 **of the plaza to minimize parking problems.**
16

17 **Bob Campbell read condition # 4 – The drawing shall include a note that the owner of the**
18 **site shall operate the site, including tenancy and uses of the site, so that parking demand**
19 **does not exceed capacity or circulation on or access to the site, and the condition shall**
20 **apply to any subsequent owners or operators of the site.**
21

22 Mr. Bob Campbell explained that the purpose is not to tell the owner what to do. It's to set an
23 objective standard to say the site will be operated within the 239 spaces that are there. He doesn't
24 care who rents what, he does care if it starts to affect how the site works.
25

26 Mr. Bryant said he has a problem with the either/or. Is it either/or or both?

27 Mr. Moldoff said it's one or the other.

28 Mr. Bryant has a problem with the required parking for the office. Its almost 100 spaces more
29 than you have, and he doesn't think he can agree with that. There are times during the week
30 when Chili's is busy. If Chili's is busy, he doesn't see how the site works.
31

32 Chairman Keller asked, what if we limit the conditional use permit to retail use?

33 Attorney Campbell said he doesn't know. The parking calculations and the report that was done
34 indicated that two different alternative proposals could fit in the available space on the site. It's
35 either 11,500 square feet of second floor for large retail or it would be an office use. There may
36 be a combination of the first floor tenant and second floor tenant.

37 Mr. Moldoff said it's a retail building and there is not a lot of office space above retail buildings
38 on Rt. 28. He thought it would be a low-traffic generating use. Mr. Abbas is willing to reduce the
39 square footage from 18,000 to something lower. He didn't see a problem with it. He didn't think
40 it would be a big traffic generator.

41 Mr. Bryant has a problem with the hope that traffic will work itself out with office during the
42 day. He is willing to consider an office or a retail environment if we can get the parking spaces
43 required to get a lot closer to the 239.
44

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1 Attorney Campbell said Mr. Abbas said he'll withdraw that part of the application for office
2 space on the second floor and instead dedicate the area to the large retail request that's in the
3 original application, which is 11,500 square feet. If he's agreeable to that, do we still need some
4 of the other conditions?

5 Chairman Keller said yes.
6

7 **Mr. Bryant made a motion to grant the conditional use permit under Section 309-68-1 to**
8 **allow for the development of 11,500 square feet of retail space on the second floor of this**
9 **property in excess of the 276 parking spaces required when only 239 are required.**

10
11 **Attorney Campbell said the 276 does include the conversion of 4,000 square feet on the first**
12 **floor from large retail to general retail.**

13
14 **Mr. Bryant added that to his motion.**
15 **SECOND by Mr. DeClercq.**

16
17 Mr. Bob Campbell asked, what are the conditions of the conditional use permit?

18 Mr. Moldoff said they don't have any right to use the conditional use permit unless you approve
19 the site plan. Putting conditions on the site plan approval is OK. They can't use the conditional
20 use permit without site plan approval.

21 Mr. Bob Campbell said it belongs on the conditional use permit.
22

23 **Mr. Moldoff said conditions 1 and 4 are applicable to the conditional use permit.**

24 **1.) Any future change of tenant requires staff review. Changes that substantially**
25 **increase the demand for parking require Planning Board approval.**

26 **4.) Bob Campbell's note about the owner operating the site in a certain manner.**
27

28 **The condition is: The drawing shall include a note that the owner of the site shall operate**
29 **the site, including tenancy and uses of the site, so that parking demand does not exceed**
30 **capacity or circulation on or access to the site, and the condition shall apply to any**
31 **subsequent owners or operators of the site.**

32
33 **Mr. Bryant modified his motion. Mr. DeClercq agreed.**

34
35 **VOTE ON MOTION: 7 – 0**

36 **UNANIMOUS**
37

38 **Mr. Bryant made a motion which was seconded by Mr. DeClercq to approve the site plan**
39 **for the property on South Broadway taking the second floor to a large retail with the**
40 **conditions remaining which are: The approval is for the addition of large retail 11,500**
41 **square feet on the second floor. The parking calculations on the plan will be revised. All**
42 **representations by the applicant or its agent are incorporated as part of the approval. First**
43 **floor change also. Final approval from Engineering.**
44

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1 **VOTE ON MOTION: 7 – 0**
 2 **UNANIMOUS**

3
 4 2.) **HUSKEY SITE PLAN** – Public Hearing for year-round take-out restaurant at 86 North
 5 Policy Street, Map 71, Lot 3642.

6
 7 **Mr. Bryant made a motion which was seconded by Mr. DeClercq to accept the Huskey site**
 8 **plan application as complete.**

9
 10 **VOTE ON MOTION: 7 – 0**
 11 **UNANIMOUS**

12
 13 Abutters: Delpozso was present.

14
 15 Ron Close is representing Mr. Huskey, and Steve Patrick, the professional engineer. This is 86
 16 North Policy Street, which is at the intersection of Dyson Drive. It’s a pre-existing building,
 17 parking area and shed. We’d like to propose that the establishment be re-opened as a
 18 pizza/sandwich shop. It had been closed for 5 years which required us to come back to the board.
 19 There are special requirements. One is the conditional use of 13 spaces. The calculations indicate
 20 that 21 spaces will be required, and you have a 25 space minimum. The nature of the
 21 establishment, the pizza and sandwich shop, we believe would allow for reduced parking. Most
 22 of the business is done by telephone. We don’t expect anyone staying on site for any amount of
 23 time. Currently there have been improvements made. We did renovations inside and cleaning up
 24 outside. Traffic stops were put in along North Policy and a concrete berm was put in place. The
 25 intent is to stripe it for 13 spaces. Handicap ramps were put in and there have been improvements
 26 as requested per the Fire Department. The total building square footage is 1,574 square feet.
 27 There was an apartment there, which was eliminated. This plan was approved by the ZBA.

28
 29 Ross read following staff comments:

30 They were granted a variance in October 2007. There were several restrictions on the use
 31 from the ZBA.

32 There is limited sight distance. If they can cut the vegetation it will be OK.

33 The parking lot buffer is not met in some areas along the front but it’s an existing situation.

34 There are 25 spaces required. They have 14 so they need a conditional use permit. They gave
 35 us a letter which the board has.

36 He mentioned the sign setback on the edge of the right-of-way. It’s been there many years.

37 He doesn’t know if the public safety impact fee is required.

38 He received an OK from the Fire Department.

39 The Safety Department said OK. They just wanted the sight distance addressed.

40 Public Works said OK.

41 He wants to hear from the abutters.

42 One condition from the ZBA had to do with a fence along the abutting property line. He read
 43 the stipulation from the ZBA.

44 Recommend - if you’re satisfied, he can give conditions for approval tonight.

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- 1 Chairman Keller asked, what's unique about this situation that would warrant us deviating from
2 our parking regulations?
3 Mr. Moldoff said it's an existing use and not an area where they can add anymore parking. Its
4 take out only.
5 Chairman Keller asked, do the restrictions say that it remain takeout only?
6 Mr. Moldoff said it's noted on the plan.
7 Mr. DeClercq asked, will there be any outside dining?
8 Mr. Close replied, no.
9 Mr. DeClercq said he'd like a note on the plan for that. Also, is there a sight distance problem
10 where the existing sign is?
11 Mr. Moldoff said no. The problem is the shrubbery. The dumpster doesn't pose a problem.
12
13 Mrs. Harvey asked, there's access from both North Policy and Dyson?
14 Mr. Close said yes.
15 Mrs. Harvey asked, was one-way traffic considered?
16 Mr. Close said he can discuss it with the Safety Officer.
17 Mrs. Harvey mentioned that people walk in that area. So where the curb stops are, having an
18 extension of the sidewalk up to Dyson Road would be much safer than the way it is currently.
19 Mr. Close said it's fully paved out.
20 Mr. Moldoff showed pictures of the site.
21
22 Mr. Bryant suggested a white stripe lining up with the curbing on North Policy and continuing
23 onto Dyson to delineate the roadway. He suggested striping the whole corner.
24 Mr. Close said we can accommodate that.
25 Mr. Campbell asked, has there been construction on this site?
26 Mr. Moldoff replied that they did work internal on the building. The Building Department gave
27 them a permit. They need approval for the use of it as year-round. The sign loses its
28 nonconforming status. He read the regulation.
29 Mr. Campbell said the sign needs to conform to what is in a residential zone.
30 Mr. Moldoff said there are special provisions for commercial businesses in residential zones. He
31 read that ordinance. But he'd like to get an opinion from the Building Department.
32 Mr. Campbell said we have a requirement in the ordinance so we should conform to the
33 ordinance. He'd like to see a curb extending as far as the parking space designation. He also has
34 a concern about the dumpster. It looks like the truck will be projecting into the roadway and the
35 right-of-way. The dumpster location should be such that it requires the truck to park on the site.
36 He mentioned conditions on the conditional use permit. We need to have a condition that says
37 you won't overload the parking.
38
39 Ms. Roth mentioned the fence. Privacy slats were to be installed on the chain link fence? Why
40 weren't they installed?
41 Mr. Close said they're currently on order.
42 Ms. Roth said she thinks the chain link fence is unappealing and when you put the slats in it will
43 be more unappealing. She thinks vegetation or a stockade fence may be a better choice. It's odd

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1 that this was allowed to exist in this area. She'd like to see the aesthetics of the residential area
2 be protected more than it is.

3 Mr. DeClercq mentioned the sign issue. Does the 6-month abandonment apply to a seasonal
4 business?

5 Mr. Moldoff assumes that it applies to all businesses. If it's a seasonal business they don't intend
6 to abandon the sign.

7 Chairman Keller said they haven't done anything for 5 years, so to him that's abandonment.

8
9 Chairman Keller then asked for public input.

10
11 Elaina Delpozso, 4 Dyson Drive, said it's been 8 years since it's been active. She agrees with the
12 comments on the fence. We weren't asked about it. She also agrees with having a sidewalk. She
13 hasn't seen or heard anything about the dumpster. Where will it be?

14 Mr. Moldoff said it's out front.

15 Anthony Delpozso, 4 Dyson Drive, said that all this property slopes into his driveway then goes
16 out back and drains into the woods. He wants a provision that they don't put the dumpster on the
17 back of the property which is actually facing Dyson. Also, we were here before. Regarding the
18 conditions for the permit, one was to never obtain a liquor license.

19 Mr. Moldoff said that was a condition from the ZBA and is noted on this plan.

20
21 Mr. Campbell asked, is there any functional purpose for that pavement? Why not remove it and
22 make it part of the landscape? What does it do?

23 Mr. Close said he doesn't know. It was there.

24 Mrs. Delpozso explained that they recently installed some propane and there's a bulkhead to get
25 out. That's what that pavement is for.

26 Mr. Campbell said some of that could go away if they had landscaping. He asked if there is any
27 intent to change that pavement and grass for a dumpster.

28
29 There was discussion of this area.

30
31 Mr. Campbell asked, the drawing will be corrected to show the limits of the grass?

32 Mr. Close replied, correct.

33 Mr. Campbell asked, there is no intent to put pavement where there isn't pavement today?

34 Mr. Close replied, correct. There is no additional pavement to be added.

35
36 Chairman Keller asked the board's recommendation on the sidewalk.

37 Mrs. Harvey suggested that the sidewalk go down and around the corner. Having a curb out on
38 the street is safer than just a white line that people will drive over and ignore.

39 Mr. Moldoff wants to get a recommendation on that from Public Works.

40 Mr. Bryant mentioned Mr. Campbell's requirement to block access to parking spot # 13. He said
41 the sidewalk really needs to make the corner and come down to what would be a driveway
42 entrance off Dyson.

43 Chairman Keller asked about the board's thoughts on screening the fence and on pavement.

44 Mr. Haroutunian recommended putting a stockade fence and vegetation as an added buffer.

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- 1 Chairman Keller said there is a discrepancy. The site plan says there's 21 spaces required. And
2 they want the conditional use permit to get it to 13. Your notes say 25 and 14.
3 Mr. Moldoff said its 13 spaces.
4 Mr. Close said that's correct. We removed the space adjacent to the dumpster. 25 is actually the
5 figure.
6 Chairman Keller said the plan should say 25. He asked Mr. Moldoff, you're recommending that
7 we waive the requirement for the public safety impact fee?
8 Mr. Moldoff said it's an existing building and it was used in the past. It's not creating an
9 additional demand. The ordinance says it's required where the use is creating an additional
10 demand.
11
12 Chairman Keller asked about the sign.
13 Mr. Moldoff said, you're coming around a curb there, and it's placed at a location where it can
14 be seen.
15
16 There was discussion of Section 309-85A&B.
17
18 Mr. Moldoff wants to check with the Building Department on that.
19
20 **Mr. Bryant made a motion to continue the Huskey site plan because of all the items that**
21 **are up in the air at the moment including the sidewalk and signage.**
22 **SECOND by Mr. Campbell.**
23
24 **VOTE ON MOTION: 7 – 0**
25 **UNANIMOUS**
26
27 **PUBLIC MATTERS**
28
29 1.) Braemoor Woods
30
31 Mr. Moldoff said that Mr. Lewis sent a letter asking for a waiver of the school impact fees for
32 the portion of the Braemoor Woods project dealing with the tax credit subsidized senior housing
33 units. He read the section of the ordinance, Section 309-149C, that was in affect when the
34 approval was granted in 2004. He recommended that you grant the waiver.
35
36 **Mr. Bryant made a motion which was seconded by Ms. Roth to grant the waiver request.**
37
38 Mr. Campbell asked, is it ever conceivable that it could be converted to anything other than 55-
39 plus?
40 Mr. Moldoff said there are deed restrictions enforced by the Federal Government.
41 Steve Lewis said it's a 99-year thing so for 99 years it can't change.
42
43 Mrs. Harvey said she thought we did this before.
44 Mr. Moldoff said we didn't have recreational impact fees until 2005.

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1 **VOTE ON MOTION: 7 – 0**2 **UNANIMOUS**3
4 2.) Letter from NH Housing Finance Authority

5
6 Mr. Moldoff said Mr. Lewis sent a letter from the NH Housing Finance Authority. They will do
7 a substantial level of construction inspections on the site. They recommended that we don't need
8 to duplicate their inspections with our own inspectors. Would you allow him to work with Mr.
9 Lewis and the Engineering Department to come to some agreement on what we'll do, if anything
10 on the local inspections?

11
12 Mr. Bryant asked if we can see the document that you come up with at some point.

13 Mr. Moldoff said yes.

14 Mr. Campbell asked, so we will get an actual PE signed and stamped drawing saying that
15 everything on the plan is complete per the plan and here is the as-built?

16 Mr. Moldoff said that's what we'll get.

17 Mr. Lewis gave the letter to the board.

18 Chairman Keller said, as long as they cover what we're going to cover is fine with him.

19 Mr. Lewis said he's not asking for any reductions. This is the new requirement of an outside
20 third party inspector. They're all inspecting the same thing over and over again.

21
22 The consensus of the board is that they're fine with this.

23
24 3.) 19 Main Street

25
26 Mr. Moldoff received a letter from Mr. and Mrs. Korbey regarding 19 Main Street. They want to
27 renovate part of the first floor of the building for a walk-in clinic that would operate Monday
28 through Sunday. It's similar to the clinic at 22 Main Street. The second request is to put an
29 apartment or two on the upper floor in the future. He read from the letter. He told the Korbey's
30 that the Planning Board will probably require a formal plan. This is located in the Business
31 Office District.

32 Mr. Campbell asked, are all of the proposed uses part of the permitted uses in this district?

33 Mr. Moldoff said yes. Do you want to see a site plan?

34 Chairman Keller said yes.

35
36 Mr. Campbell mentioned the crosswalk across the street. Is there parking on 22 Main Street?
37 Mr. Moldoff replied that there is. They're intention is to use this as overflow parking for the
38 facility across the street.

39 Mrs. Harvey said there is already a pedestrian crosswalk near that building.

40 Mr. Moldoff said he is talking about that with Public Works and the Police Department.

41
42 4.) Kids Crossroads

43

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1 Mr. Moldoff said this is an existing childcare center on Ermer Road and Rt. 111. They want to
2 move into an additional unit and add 22 more children and up to 4 additional employees. He read
3 from the letter. He has been dealing with the owner of the building. They have an adequate
4 amount of parking. Will you waive the site plan approval requirement?
5

6 Mr. Campbell has a question on the parking requirements. He read the requirement. What district
7 is this?

8 Mr. Moldoff said it's the Limited Village Shopping District. The requirement is 1 per 7 students
9 and 1 per employee.

10 Mr. Campbell asked, does it cover the staff?

11 Mr. Moldoff said it does. They have more than enough parking out there. He doesn't see a
12 problem with it.
13

14 The consensus of the board is that they have no objection.
15

16 5.) Scrub a Dub Carwash
17

18 Mr. Moldoff said they put up a shade canopy for auto detailing services. He read from the letter.
19 The canopy will be up from April through September.

20 Mr. Campbell asked, does it use calculated spaces?

21 Mr. Moldoff said yes, they're labeled as employee parking.

22 Mr. Campbell said, so if they do that, they will no longer conform to the ordinance or the site
23 plan.

24 Chairman Keller said we should get a modified site plan.

25 Mr. Moldoff asked, do you want to see them?

26 Chairman Keller said he wants a modified site plan with that modification. Having them come in
27 under Public Matters is fine.
28

29 Chairman Keller asked the status of the Rite Aid storage trailers.

30 Mr. Moldoff said the Code Enforcement Officer talked to them. They sent an email requesting
31 permission. They wanted to come in to the Planning Board for permission to leave them there.
32 You said to get rid of them. They asked for 60 days to get rid of them and we're in the middle of
33 that now.
34

35 Chairman Keller asked, has Town Fair Tire done what they need to do?

36 Mr. Moldoff said he believes that those trailers were removed.
37

38 **Mr. Bryant made a motion which was seconded by Mr. Haroutunian to adjourn.**
39

40 **VOTE ON MOTION: 7 – 0**

41 **UNANIMOUS**
42

43 The meeting adjourned at 10:52 p.m.
44

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1 For further information, kindly refer to the videotape dated 8/11/09, located in the Planning
2 Office.

3

4 Minutes by: Susan Strugnell, Planning Board Recording Secretary

5 Approved: Planning Board

6 Date: