

TOWN OF BEDFORD
PLANNING BOARD MEETING MINUTES
December 7, 2009
BEDFORD MEETING ROOM

A meeting of the Bedford Planning Board was held on Monday, December 7, 2009, at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Paul Goldberg (Chairman), Jon Levenstein (Vice-Chairman), Bill Dermody (Town Council), Russ Marcoux (Town Manager), Jim Stanford (Public Works Director), Harold Newberry, Debbie Sklar, Erik Anderson, Chris Riley (Alternate), Neal Casale (Alternate), Rick Sawyer (Town Planner), and Cynthia A. May (Planner II).

I. Call to Order and Roll Call

Chairman Goldberg opened the meeting at 7:00p.m. Karen McGinley and Bob Young were absent. Mr. Riley was appointed a voting member in place of Ms. McGinley. Mr. Dermody is representing the Town Council. Ms. May read the agenda.

II. Old Business:

A. Continued Hearings:

None.

III. New Business

B. Application Acceptance and/or Public Hearings on Applications:

1. S.J.W. Assets, LLC (Owner) – Request for change of use from Office to Office/Commercial Recreation Facility for a martial arts studio, 334 Route 101, Lot 28-9, Zoned CO.
2. Waddell & Reed (Applicant), KLR Holdings, LLC (Owner) – Request to amend the site plan for Bedford Place Condominiums to finish 350 square feet of office space on the second floor, 40 South River Road, Unit 61, Lot 11-23, Zoned PZ.

C. Concept Proposals and Other Business:

3. Clearwire Inc. (Applicant), St. Joseph Cemetery (Owner) – Conceptual review of a proposed wireless telecommunications facility, 448 Donald Street, Lot 10-53, Zoned GR. **[WITHDRAWN]**
4. Lorden Oil Co. (Applicant), SulRich, LLC (Owner) – Conceptual review of a proposed bulk fuel storage facility with an associated office building and site improvements, Harvey Road, Lot 35-98-48, Zoned PZ.

Ms. May said all the applications submitted are complete, and in the Planning staff's opinion they are ready for application acceptance. The abutters for each application under Application Acceptance and/or Public Hearings have been notified as required. It is also Planning staff's opinion that there are no new items of regional impact.

MOTION made by Mr. Marcoux to accept the agenda as written. Seconded by Mr. Newberry. Vote taken – all in favor. Motion carries.

1. S.J.W. Assets, LLC (Owner) – Request for change of use from Office to Office/Commercial Recreation Facility for a martial arts studio, 334 Route 101, Lot 28-9, Zoned CO.

A staff report from Cynthia A. May, Planner II, dated December 7, 2009 as follows:

I. Project Statistics:

Owners: S.J.W. Assets, LLC
Proposal: Change of Use from Office to Office/Commercial Recreation Facility
Location: 334 Route 101, Lot 28-9
Existing Zoning: "CO" –Commercial Zoning District
Surrounding Uses: Commercial, Residential, Grocery, Church, Undeveloped

II. Background Information:

In June of 1988 the Planning Board approved a site plan for 'Kitchens by Design', which included the current building and parking lot configuration, with a second curb cut at the west end of the site. An amended site plan was approved for general office use to accommodate up to 50 employees for Neighborhood News in January of 1996. That plan provided for the removal of the second curb cut, 3 additional parking spaces in the front of the building and 20 additional spaces in the rear to be constructed before there were more than 25 employees at this site. The only improvement implemented from that plan was the removal of the second curb cut.

The Zoning Board of Adjustment approved a Special Exception from Article 45-4.2.c to permit a Commercial Recreation Facility (Martial Arts Academy) in the commercial zone at 334 Route 101, Lot 28-9 on October 20, 2009 (please see the attached copy of the ZBA Minutes from 10/20/09.)

III. Project Description:

This is a proposed change of use site plan to convert 2,643 square feet of office space on the main level to a commercial recreation facility, with 1,586 square feet on the basement level to remain general office. The 2.3 acre lot is on the south side of Route 101, between the new Hannaford's at the intersection of Route 101 and Hardy/Jenkins Roads and the cell tower to the east. This lot is in the Commercial Zone for the first 400 feet from the Right-of-way, and the rear undeveloped portion in is in the Residential & Agricultural Zone. The lot is currently served by private well and septic systems. An updated septic plan was approved on October 29, 2009 (please see the attached Effluent Disposal System Plan and NH DES approval notice.) There are no exterior changes to the building proposed.

The site is accessed by a single 26' wide paved driveway, which is directly across from the driveway for Bedford Field's garden center (please see the attached NHDOT plans for the Route

101 and Hardy/Jenkins Roads intersection improvements showing both driveways.) As noted in the memo from TF Moran, dated October 6, 2009, there is a painted median adjacent to the site to assist with left turns into and out of the site (please see the attached memo from TF Moran.) The controlled intersection light also provides regular breaks in the traffic flow permitting left turn movements. This site is also on the outside of a curve, which improves the site distance in both directions.

Traffic:

The existing office use will continue to operate during typical weekday hours (approximately 8 A.M. to 5 P.M.). The proposed martial arts academy is an established business proposing to relocate to Bedford from another community. Their hours of operation are anticipated to be primarily Monday through Friday from 3:00 P.M. to 7:30 P.M., utilizing two classrooms at the new location with 10 students per class and 2 instructors. TF Moran prepared a traffic analysis for the proposed change of use that included both the martial arts center and the existing general office (please see the attached memo from TF Moran.) TF Moran has concluded that through the majority of the day, there will be fewer trips per hour compared with a fully occupied office use in that location. With the addition of the martial arts academy, the worst case scenario over the office use alone would be an increase of 34 vehicles in the weekday P.M. peak hour, based on full enrollment, full attendance and no car pooling. The TF Moran analysis uses a generalized assumption that in the P.M. peak hour, the permitted office use would generate 10% of the total daily trips, rather than using the 69 P.M. peak hour trips calculated by ITE. The current site plan is approved for 50 employees, which would likely generate more than 34 vehicles exiting in the P.M. peak hour.

Parking:

Parking Space Calculations	Required	Existing/Provided
General Office: 1,586 SF	1 space/325 SF = 4.9 spaces	5 spaces
Community Center: 2,643 SF	1 space/150 SF = 17.6 spaces	22 spaces
Total Parking Spaces:	22.5 spaces	27 spaces

IV. Waiver Requests:

1. The applicant is not requesting any waivers from the Land Development Control Regulations.

V. Staff Recommendations:

The Planning Staff recommends that the Planning Board grant final approval of the change of use plan for S.J.W. Assets, LLC to allow office and a commercial recreation facility at 334 Route 101, Lot 28-9, prepared by TF Moran, dated October 22, 2009, with the following conditions (to be fulfilled within 180 days):

1. Prior to the plan being signed, the applicant shall list the NH DES Subsurface approval number and NH DOT curb cut approval number on the plan.
2. The applicant shall submit permit applications for a sign or proposed interior building changes to the Building Department as required.

Mike O'Donnell, TF Moran and Scott Winslow, SGW Assets LLC were there to present. The site is located between the cell tower to the east and the Hannaford to the west. It is right across

from Bedford Fields. The building is currently approved as office space for up to 50 employees, and the owner is proposing to change the use of 2,643 square feet of office space to become a commercial/recreation facility. The commercial/recreation space will be occupied by Lawrence Martial Arts. The downstairs lower area will continue to be used as office space. The martial arts studio will have two classrooms, and there is also a small loft area that will serve as an office for the martial arts studio. On October 20, 2009 we came before the Zoning Board of Adjustment for a special exception from Article 45-4.2.C to permit a commercial/recreation facility in a commercial zone. That special exception was granted. The zoning requirements are met by the existing building and lot. This change of use is not going to involve any changes to the outside of the building. There will be a new sign conforming to the regulations for that business. Other than that no other changes outside the building are going to be proposed. With that we have focused our efforts on looking at the parking, the septic and the traffic. The parking calculation was updated for that use for the commercial/recreation facility use. It now requires 23 spaces; 27 spaces are provided on the existing site. I also wanted to point out that there was a previous site plan approval that involved constructing 23 additional spaces over what is there now. Those 23 spaces were never built, but that approval is vested. So this owner can construct those 23 spaces according to the approved plan if and when he chooses. We also evaluated the septic system and found that the capacity of the existing septic system does not meet the current standards for the proposed use; therefore, a new septic system has been designed. It has been approved by the Town and the State, and it will serve as a backup design. In case this system fails, there will be another design there ready to go so they can replace the system without having to wait for approvals. We have done the traffic study for the proposed use, and we compared a typical office use of that size to the proposed martial arts studio plus office use that is proposed. Based on that method we calculated 34 new vehicle trips during the PM peak hour and 102 new vehicle trips over the course of a weekday. From a traffic engineering perspective these volumes are considered to be pretty minimal. The 34 PM peak hour trips translates to about one car every two minutes, which isn't really something that somebody standing there would notice as being different in comparison to the volumes along Route 101. We also took a look at the AM peak hours, Saturday mid-day peak hour, and those periods showed a slight decrease in hourly traffic volumes and daily traffic volumes. We took a look at the site driveway, which you can see on the posted plan. We are on the outside of a horizontal curve which supports pretty good site distance in either direction, well more than the DOT requires. The 400' is easily met by that driveway. We also took a look at left turns turning in and out of the site. I think Ms. May has a slide for the DOT's design when they just recently upgraded Route 101. You can see on the bottom the site driveway and out in Route 101 you can see a painted median. What that does for left turns in and out gives left turns in a place to sit and be out of the flow of traffic while they wait for a gap to make their turn into the site. Likewise a vehicle trying to turn left out of the site can make a two-stage left turn by pulling into that median waiting for a gap in the westbound lane and then pulling in. So we feel that left turns in and out can be made relatively easily. In addition, there is the nearby traffic signal, which will provide gaps for left turning vehicles both in and out of the site. This has also been reviewed by the DOT and they have issued their driveway permit. We are looking for an approval on the change of use, and we feel that all of the Town and State requirements have been met by this proposal.

Mr. Newberry asked on the traffic study, it appears that you're assuming that 20 cars are going to stay there when they arrive, which is probably not going to be the case. I think you're also

assuming that those trips are spread evenly over an hour, and I think what you're going to find is you're going to get your 40 trips all within about 15 minutes of a class starting, a class ending and another class starting. Rather than debate the specific numbers, I have a real concern around left turns out of there when really your peak hours are going to be peak hours of the traffic on Route 101, and we don't really know what the traffic numbers flowing by are and what the real conditions are going to be there for people coming out of there, especially that left turn. Granted there is some space there, and I would like to suggest that the Board consider requesting the traffic committee take a look at the situation here and whether there should be a no left turn sign on that driveway. I think the numbers are optimistic. You're saying they are conservative because every student is going to come in their own vehicle and that probably won't happen. You may not have a full class all the time. I think you are saying that those trips are spread over the hour and that every vehicle that comes in is going to stay. I don't think that's going to happen.

Mr. O'Donnell said in response to that, the classes are staggered. One classroom will change and then the other classroom will change, then the first classroom will change again, the second classroom will change. I also wanted to invite John Stewart from Lawrence Martial Arts to speak. He might have a better idea whether parents generally drop off their students or whether they stay there and watch. Mr. Newberry said I think staggering would certainly help my concern, but that still leaves the concern that five vehicles trying to make a left turn out of there would be a problem. Mr. O'Donnell said I can talk about that a little more. I was kind of curious myself. John Stewart said right now what we see is give or take approximately 10 students per class will have approximately two classes at a time, we do see a lot of carpooling. A lot of parents will bring other kids with them. If there are 10 students there may be three cars involved with that, four cars some days. I'm not making a fact; I'm just seeing what my observations are. A lot of siblings come to the same class so obviously two siblings will be in the same car along with the neighbor. There are several students that stay throughout the course because we invite our parents to watch their students in class. We set up a nice area to sit in with comfortable chairs. We are a business that wants the parents to be involved with their students. Rarely at this point do we have parents that go, come back, go, come back, go and come back, they usually stay the whole time. But there are certainly the people that will leave and will come back; you can't stop them. A majority of our parents will be there, but like you're saying, we might have a back and forth that one class might be getting out as the other one is starting. But most of our students will actually arrive about 15 minutes before class to start practicing or stretching. The class will start at 6:00pm, so it will be around 5:45pm, the other class will be over at 6:00pm. About 6:05pm to 6:10pm they might actually end up walking out the door once they see their friends, whatever it might be, to say good-bye everybody. So it's over the course of about a half hour on either end. That's just from my observations from our current studio.

Mr. O'Donnell said regarding the left turns, I just wanted to point out that the driveway directly across the street from Bedford Fields is a full access driveway of fairly significant use. I worked on the traffic study for the Hannaford and was not aware of any issues at the time. I did that traffic study with left turns in and out of Bedford Fields and that was before there was a traffic signal. Of course the Board has the right to have other groups take a look at the traffic study and provide their input. I just don't see an issue with it given the history with the other driveway and now that gaps into and out of this site are approved by the signal, as well as the painted median, a

left turn out of the site to make a very slow half of a left turn movement out into that median during the gap and give them a chance to wait for a westbound gap. Likewise turning into the site, I would think it's even easier just to pull off into that median, wait for a gap from the signal and make a left turn into the site. Whether it's 34 cars or 200 cars an hour, it seems like pretty easy movements in and out of the site. The Board can ask to have another committee take a look at it. Vice-Chairman Levenstein said I think the left turn in is going to be no problem, I think the left turn out might be. Mr. Dermody said I think the previous comments were appropriate. I note that the Zoning Board of Adjustment also had some concern in their report about the left turns, and I interpret them as hoping that this Board would make some comments with that respect. I'd add one thing as far as people making a left turn out of this particular lot with respect to traffic coming out of Bedford Fields. We now have increased traffic coming out of both of these facilities, and from my experience when I'm at Bedford Fields, is that I don't bother trying to make a left-hand turn out of there. I come down to Hardy Road and find my way back from a round-about direction. But also I don't think a person making a left-hand turn to head left on Route 101 is afforded much opportunity. It's true that the light at Hardy/Jenkins Roads will give the person making a right-hand turn and heading east out of your facility some break, but that's not true as far as a person making a left-hand turn and heading westbound. There is always traffic coming down that hill. There's almost never an opportunity to make a safe left-hand turn out of there. I would support us asking the traffic committee to further investigate this. Mr. Marcoux said I guess I'm not as bothered as the last two comments. There are businesses on that side of the road all the way up and down. There is another martial arts studio a little bit further down; there are a number of businesses all the way down. I was there earlier, not at the peak period, Route 101 is left and right traffic in and out a problem no matter where you go. I don't have a problem asking the Traffic Committee to review it, but I would hate to see this held up for a month or whatever for a report that pretty much has been identified by others, plus it is a vacant building, it's a business moving in. Route 101 is always going to be a problem. It is just that type of traffic. I would ask Mr. Stanford as a member of the Traffic Committee as well if he could add his comments to this discussion. Mr. Stanford said Mr. Dermody is on the Traffic Committee as well. Ordinarily I guess I would agree that I prefer not to see left turns out of there, but the reality is you have a left and right turn lane. I believe that there are some gaps with the new signal. I just came out of the Village Shops and I was amazed at the gap there was from the signal up the street. This is a little bit different circumstance of signals. I didn't look at this in depth as to what type of facility or folks going into the new business, but in general I didn't have any overwhelming concern just because it is a straight section. You do have good visibility, you do have the gap, and you have a center turn lane. Would I like to see left-hand turns restricted, I think that would go all the way down. I think if this Board was going to say from now on we restrict left-turn lanes and was a policy, I'd be all for it, but I think for this specific application, I don't have a problem with it.

Ms. May said if I wasn't clear in the staff report, this site is currently approved and allowed up to 50 people in an office setting who would be leaving at the PM peak hour, which would be a higher number than what this proposal is bringing to the table. Please keep that in mind. Ms. Sklar said in thinking about the Zoning Board of Adjustment's comments about recommending that there be no left-hand turn, would the applicant be willing to have as a condition a limitation on the hours of Monday to Friday, 3:00PM to 7:30PM, no plans using the facility on the weekends or prior to 3:00PM or anything like that? Mr. Stewart replied at this particular time

with our schedule right now we don't currently have Saturday classes. We have had Saturday classes in the past, and I certainly don't want to say that we are not going to say we are not going to offer them in the future because I hope to offer them again in the future. That would be Saturday mornings from about 9:00AM to 11:00AM. At the present time we don't offer day classes. If anything it might be a private lesson we hold for one person, so there would be one vehicle there. We don't offer day classes or morning classes at this particular point in time. Also to note on the traffic, most of our students, about 95% of our students, at this particular point in time would most likely be turning right out of the parking lot anyway based on where they reside. Very few students live close to the Amherst end. Most of them go right. Ms. Sklar asked would the Board consider at least limiting or adding a condition to restrict the number of classes at any given time so that we're controlling the amount of left-hand turns. Chairman Goldberg said we don't know the mix. Mr. Riley said I wouldn't want anything that wouldn't allow Mr. Stewart to be as profitable as possible in town. I think by restricting hours and restricting classes we are putting limitations on his business, and I don't know if this is the environment that we want to start restricting how businesses become profitable. Ms. Sklar said only because the testimony to the Zoning Board of Adjustment was that he was just open Monday through Friday, limited hours, that was kind of the argument and that is what we heard now that we are only having X number of students therefore you ought not to be concerned about left-hand turns. But if the number of students doubles, this Board might perhaps be more concerned and might want to recommend. I'm trying to help the applicant. I'm not in favor of turning it over to the traffic committee, so I'm saying are there any conditions that you would be comfortable agreeing to so that it might be easier for the Board to say it is okay, we really understand there are only going to be 20 students, 40 students as stated in the application before the Zoning Board of Adjustment. Mr. Winslow said I own the building. The answer is anything that doesn't interfere with Mr. Stewart being able to do his business the way he wants to do it, I pretty much mostly would be agreeable to. Speaking to the traffic; I've had my office there for five years. You wouldn't know it, I don't have a public type of business, but I've been coming in and out of there at all hours of the day for five years. I can tell you that since the lights are up it is much better than it ever was prior to that. What happens is that you get a break both east and west at any given time, and there's generally always a huge break every couple of minutes, enough for a traffic flow. It's a lot better than it used to be and it's a lot better for Bedford Fields across the street than it used to be simply because of the timing and the light stoppages down at Wallace Road and over on Jenkins/Hardy. There really are pretty good stretches where people could take a left turn without it being dangerous.

Chairman Goldberg asked for comments or questions from the audience.

MOTION made Mr. Marcoux that the Planning Board grant final approval of the change of use plan for S.J.W. Assets, LLC to allow office and a commercial recreation facility at 334 Route 101, Lot 28-9, prepared by TF Moran, dated October 22, 2009, with the following conditions to be fulfilled within 180 days:

- 1. Prior to the plan being signed, the applicant shall list the NH DES Subsurface approval number and NH DOT curb cut approval number on the plan.**
- 2. The applicant shall submit permit applications for a sign or proposed interior building changes to the Building Department as required.**

Seconded by Vice-Chairman Levenstein.

Vice-Chairman Levenstein asked when you applied for the curb cut to the DOT, do they know that you are making left and right turns and they granted the permit knowing that. Mr. O'Donnell replied yes.

Ms. Sklar said I'm going to ask for clarification to my question because I didn't feel I got a clear answer. Are there any restrictions that the applicant could suggest to make it easier for the Board. Mr. Winslow replied as I said, that would depend more on Mr. Stewart than me because I don't have a public presence. If it didn't affect his business, that would be fine. Mr. Stewart said I agree with that. We have been operating our classes for several years now with a start time of around 3:30M and ending around 7:30PM, and it is a pretty consistent schedule. We haven't deviated from that a lot. I can't tell you that we're never going to change it, but I would really hope not to have any restrictions on the time allotted just based on that it gives parents convenience. That is my biggest thing to have convenience for my customers. Ms. Sklar asked what about number of classes, number of students per class. Chairman Goldberg replied that's not really part of the motion at this time. I would like to vote on the motion as made and seconded. You are welcome to propose an amendment. Ms. Sklar asked in discussion you can't discuss things related to the amendment? Chairman Goldberg replied if you want to discuss it as an amendment, yes. To put the applicant on the spot without us even voting on the motion, I don't think is proper. If you want it as an amendment, I think it should be made as an amendment; I think it should be made as an amendment and then we will vote on the amendment and then hear the discussion. Ms. Sklar said whatever you think is proper procedure, Mr. Chairman.

Chairman Goldberg called for a vote on the motion. Motion carries, with Ms. Sklar voting in opposition.

2. Waddell & Reed (Applicant), KLR Holdings, LLC (Owner) – Request to amend the site plan for Bedford Place Condominiums to finish 350 square feet of office space on the second floor, 40 South River Road, Unit 61, Lot 11-23, Zoned PZ.

A staff report from Cynthia A. May, Planner II, dated December 7, 2009 as follows:

I. Project Statistics:

Applicant: Waddell & Reed
Owners: KLR Holdings, LLC
Proposal: Finish 350 square feet of office space on second floor
Location: 40 South River Road, Unit 61, Lot 11-23
Existing Zoning: "PZ" Route 3 Corridor Performance Zone
Surrounding Uses: Commercial, Multi-family Housing

II. Background Information:

The original site plan for Bedford Place Condominiums was approved on May 7, 1984 to allow 38,400 square feet of office space in a multi-unit one and two-story complex. The parking formula implemented at that time was 1 space per each 150 square feet, resulting in 256 required parking spaces, which is the number of spaces provided. The off-street parking requirements have changed since 1984, and professional office, which is the primary use at Bedford Place, has a requirement of 1 space per each 250 square feet or 155 spaces. 5 of the 32

units were originally designed as two-story buildings, however, the steep roof pitch on some of the one-story buildings provide enough usable area in the attics to create office space. According to the Building Department, egress is not an issue with Unit 61.

III. Project Description:

At this time, the applicant is requesting approval to finish 350 square feet for office space on the second floor of a single unit. There are no changes proposed for the exterior of the building or the site, and the Plan Review Committee did not have any concerns with the proposal. Applying the current parking requirement, the additional finished floor area will bring the total parking requirement to 155 spaces, which is well below the 256 spaces on site.

IV. Waiver Requests:

There are no waivers requested with this application.

V. Staff Recommendations:

The Planning Staff recommends that the Planning Board approve the amended site plan for Bedford Place Condominiums, 40 South River Road, Unit 61, prepared by TF Moran, dated October 22, 2009, with the following condition:

- 1. The applicant shall apply for a Building Permit prior to commencing improvements.*

Mike O'Donnell, TF Moran and Curt Redland, Waddell & Reed were there to present. Mr. O'Donnell said Bank of America is located to the east and VIP Auto Parts and Centrix Bank are across the street. There are some residents to the north of the condominiums. The parcel is owned by KLR Holdings LLC and it is in the Performance Zone. The applicant is Waddell & Reed. They occupy units 61 and 62 and they are asking to amend the approved site plan to allow for the construction of 350 square feet of second story office space in unit 61. The second story of that building is currently unfinished; it is not being used for anything. The site is serviced by public water and sewer. The focus of this application for us was to review the parking calculation and confirm the number of spaces in that parking lot. We counted 227 spaces, which matched the approved plan where 155 spaces are required. We understand a greater number of parking spaces were constructed due to the parking requirements at the time the original site plan was approved. There are also no physical changes being proposed outside the building as part of this application, and the proposal meets all the Town's regulations.

Mr. Marcoux asked is the loft in unit 62. Mr. O'Donnell replied the additional space is going to be constructed in unit 61, which is the end unit. Mr. Casale said it says something about a high-pitched roof, which is more consistent with unit 62. Ms. May said the Town Code Official has already been to the site and has expressed that this can happen and that egress is not an issue. Mr. Marcoux said it just didn't look from the outside as though there was any space in there at all. I don't object to it. Mr. Sawyer said please describe what it is like inside. Mr. Redland replied it is deceiving. There is a lot of space in there.

Chairman Goldberg asked for comments or questions from the audience.

MOTION made by Vice-Chairman Levenstein that the Planning Board approve the amended site plan for Bedford Place Condominiums, 40 South River Road, Unit 61, prepared by TF Moran, dated October 22, 2009, with the following condition:

1. **The applicant shall apply for a Building Permit prior to commencing improvements.**

Seconded by Mr. Marcoux. Vote taken – all in favor. Motion carries.

3. **Clearwire Inc. (Applicant), St. Joseph Cemetery (Owner) – Conceptual review of a proposed wireless telecommunications facility, 448 Donald Street, Lot 10-53, Zoned GR. [WITHDRAWN]**

This application has been withdrawn.

4. **Lorden Oil Co. (Applicant), SulRich, LLC (Owner) – Conceptual review of a proposed bulk fuel storage facility with an associated office building and site improvements, Harvey Road, Lot 35-98-48, Zoned PZ.**

A staff report from Cynthia A. May, Planner II, dated December 7, 2009 as follows:

I. Project Statistics:

*Applicant: Lorden Oil Co.
Owner: SulRich, LLC
Proposal: Conceptual Site Plan Review – Bulk Fuel Oil Facility
Location: Harvey Road, Lot 35-98-48
Existing Zoning: “PZ” – Performance Zone
Surrounding Uses: Business Park, F.E. Everett Turnpike*

II. Project Description:

The attached application is for the conceptual review of a site plan for a proposed bulk storage facility of home heating oil and propane, and an associated 6,000 to 7,000 square foot office building on Harvey Road in the Route 3 Corridor Performance Zone. The irregularly shaped 3.72 acre parcel is situated on the west side of Harvey Road between an existing business condominium park at 27 Harvey Road and an industrial warehouse facility at 33 Harvey Road. The undeveloped site is currently used as a staging area for construction on the Everett Turnpike, and is almost entirely disturbed (please see the attached aerial photograph from the Town’s Pictometry files.) A truck terminal facility is a permitted use in the Performance Zone, providing the site is enclosed on all sides by a six foot high wall or fence, and the parking lot paved and protected by barriers or wheel stops (from footnote #14 of Appendix 45-A Table of Uses).

III. Site Improvements

The conceptual plan shows two proposed curb cuts on Harvey Road, with a 30 space parking field in front of a one-story 7,000 building footprint, and 12 truck spaces behind the building. The heating fuel facility was placed at the back side of the paved area, with three loading bays and an adjacent 35 foot high fuel storage tank to the west. There are also four propane tanks shown within a fenced area at the northern end of the lot, one to be buried and three above-ground. The impervious coverage would not exceed 50% as currently shown on the concept plan. Staff recommends moving the tanks and associated equipment further from the property line, and the applicant has indicated that the equipment shown in the setback can be relocated. According

to the applicant, the facility would meet all the safety requirements for bulk fuel storage facilities.

IV. Architecture and Landscaping

At this time, the applicant has not determined the architectural style, details, or materials to be used in the proposed one-story building. Staff has advised the applicant of the architectural design standards outlined in the Land Development Control Regulations, and the need for this site to be compatible with the context of the surrounding area. Although the concept plan does not address landscaping, staff understands through conversations with the applicant that they intend to comply with the landscaping requirements for the Performance Zone. Staff recommends increasing the landscaping along the property lines between the adjacent lots to minimize the visual impact of all the tanks.

V. Traffic Study

As part of the site plan submission, the applicant will be required to provide a traffic study to include anticipated traffic trips for fuel delivery trucks, other vehicular traffic to and from the site, and an analysis of traffic impacts in the peak hours. The Route 3 Corridor Access Management Plan (August 2007) indicates the need for a traffic signal at the intersection of Route 3 and Technology Drive South/Autumn Lane, which would provide access from Harvey Road to a traffic signal controlled intersection. As a condition of site plan approval, the proposed development would be subject to an impact fee for their fair share portion of the cost of the traffic light and intersection improvement.

VI. Waivers

There are no waivers currently proposed.

Mr. Sawyer said there was one additional letter that came in today from the Town of Ayer, Mass. Town Administrator. Mr. Marcoux said for full disclosure purposes, I would like it to be known that I met with Mr. Lorden and Mr. Robichaud when they first approached the Town.

Nathan Chamberlain, Meridian Land Services, Ted Lorden, Lorden Oil were there to present. As you can see from the aerial photos posted, this lot is being used as a staging area right now for highway construction by Continental. As Ms. May said in her letter, the site is pretty much all disturbed and there are stockpiles on it currently. We would be looking to develop this parcel as a bulk storage facility. The bulk storage facility itself is located at the back of the property on that finger adjacent to the highway. That is a 32' high tank in a concrete containment vessel and then a canopy fuel dispensing station in front of it. The fuel bay closest to the containment center would be the offload and then two loading filling stations on either side of the canopy island. Also as part of this project, we would be looking for a propane storage facility as indicated on the photo. It is a three tank facility with one future tank. Mr. Lorden would also like to put in a 7,000 square foot office building. The office building would be for their own use. It would not be leased out to anyone. I don't think there will be a lot of traffic associated with this. There will be a small display area for heat furnaces and maybe a parts counter. I had on the plan a service bay, but it's really not a service bay to work on the trucks. That's what my initial thoughts were, but it is really just a drive-in door. There are not going to be any mechanics done on the vehicles. Initially they only expect to have four fuel oil trucks and then three to four

service vans and then one LP truck working out of this facility. You can see by the layout that we are proposing two curb cuts and the circular motion counter clockwise coming in from the east entrance up to the fuel dispensing station, the bulk storage facility and then back out. We will be working with Knowles Design for landscape architecture. He is very familiar with the Performance Zone regulations. Mr. Lorden wants to have a very nice facility here. We would meet all of your local regulations. He has built other facilities. His most recent one is in Ayer, Mass., which I think you received a letter on that. We would meet all applicable safety codes, all applicable local regulations. Mr. Lorden had a very positive meeting today with the Building Inspector and the Fire Chief. They didn't see anything that they didn't like about this proposal. There is a little fueling station on the side of the containment, west side, for their own use, for the trucks to fuel there. So there would be a diesel pump and a gas pump there. The site is serviced by municipal water and sewer. Mr. Lorden can answer any operations questions.

Mr. Lorden said we take a lot of pride in the way our facilities look, especially on design in making them very environmentally friendly, something that exceeds all the State and local regulations. We met with the Fire Chief and Building Inspector today. We had very good exchange with them, they had some good input, and we showed them a little bit more extensive plans that we have for the facility in regards to safety. I would like to mention that the bulk terminals are 100% self-contained, especially in regards to the bulk fuel facility. We exceed all of the containment expectations, the load pads, the dispensing island, everything is self-contained within itself, and it has a lot of additional safeties in the event of a release that it is all contained within the facility itself. I might mention that we are required to carry 110% of the largest container within the facility; this is designed to carry 100% of the entire facility. The loading pads where the delivery trucks load fuel, where the transports offload, are also self-contained. It's hard to see on the plan but there is a containment collection sump underground in the event that there is any kind of release on the pad itself. That all goes down collects into that and can be completely reclaimed. It is a very high tech loading facility as well. It is called bottom-loading, which is ultra-safe. There is a computer on the facility and there is a computer on the vehicle, so when the driver engages the facility, they are somewhat speaking to each other. It will eliminate the probability of overfilling a delivery truck. It has additional safeties where it shuts the system down. Also it is designed to eliminate overfilling the bulk tank from the transport, the offload. There will be audible alarms that will be tied into the Fire Department in the event there's any type of a mishap or problem. In regards to the propane facility, that will all be a self-contained facility as well. They meet very stringent State and local regulations. They'll have a fire safety analysis performed on each facility, and again, we're very confident in the safety, the environmental aspects, as well as the aesthetics of how it looks.

Chairman Goldberg said I notice in the staff report that it did mention that possibly moving the propane tanks away from the property line. Ms. May said we're talking about the ancillary features associated with the regular bulk storage tank. Mr. Chamberlain said that's a containment tank in the setback. We can certainly move that out of the setback, and then there is a staircase on the side of the containment and we can shift that down as well.

Mr. Riley said I understand that it's conceptual in nature what we are doing now, but it would be helpful for me on visual, so I like to see what these tanks look like, how they will appear on the horizon line; if you could just have some visuals when the application is filed. Ms. May said we

have photos of the site in Ayers, Mass. if you want to see them now. Ms. May distributed the photos to the Board. Mr. Lorden said that facility was built in 2002.

Mr. Lorden said we added a few photos of the looks of our vehicles as posted. We are very particular about the way our vehicles look, so we thought that was important to illustrate that we keep a very clean image in the way we look and appear because we do service many people, we go into their homes, so we want to have a good image. We also want to be good in the community as far as the way our appearance is, and we want to be part of the community in a positive way.

Mr. Newberry asked how does the large tank in the pictures compare to what you're proposing. Mr. Lorden replied this is exactly the same facility. There are three tanks, as you see in that one photo. There is the one bulk tank and then the two next to that are for our personal use for our own vehicles. Mr. Chamberlain said one would be diesel and one would be gasoline. Mr. Lorden said sometimes we load the diesel fuel into vehicles to deliver to contractors. Mr. Chamberlain said the containment area can hold 110% of the largest tank.

Mr. Marcoux said referring to the aerial photo, please indicate where are the storage tanks going to go on that site. Ms. May indicated on the posted photo. Mr. Chamberlain said the propane tanks will be where the scrub brush is along the property line. Mr. Marcoux asked what is the distance between where those are and the other buildings to the left. Mr. Chamberlain said probably about 90' to 100' on the propane. Mr. Marcoux said how about from there to where the condo buildings that are there now, approximately. Mr. Chamberlain said I would say over 100'. Chairman Goldberg said about 130'. Mr. Lorden said the location of those tanks are regulated by the National Fire Protection Agency, which the setback requirements for a building is 50', and in many cases it's reduced to 25' depending on the configuration and the types of tanks that are used. We would far exceed that setback.

Mr. Casale said Mr. Chamberlain, you mentioned something about a demo area, maybe a parts counter. Could you go into that a little bit more? Mr. Chamberlain replied they will have a little showroom in the office building with a parts counter. There would probably be one or two customers a day that would come in and look at furnaces, look at their options. Mr. Lorden said we try to encourage local residents if they would like to come into our facility to talk about conservation needs and things like that. They can look at different types of heating systems or air conditioning systems that we have to offer. We have very minimal traffic that comes in and out.

Mr. Riley said I understand you met with Chief Wiggin and Mr. Richardson, I just might make a suggestion that we get some input maybe from Chief Bailey as to security for the site, to deter anybody from going onto the site that shouldn't be there. Mr. Lorden said we do have surveillance systems that we install in all of our facilities. Mr. Chamberlain said as Ms. May pointed out, this type of facility needs to be fenced in. Fencing that entire property is a little extreme; maybe we can reduce the amount that needs to be fenced in once we get further along in design; the area in question where the trucks and the fuel tanks would definitely be fenced in.

Ms. Sklar said I don't have any conception of what a facility like this requires in terms of the number of trucks a month, a day, for delivery, size of the trucks, and then a question to Mr. Stanford about when the traffic light for that intersection is proposed to be installed, or do we know. Mr. Chamberlain said it's not a big generator of traffic by any means. You get three or four fuel trucks going out and maybe come back. Mr. Lorden said they normally will make one trip, sometimes two trips a day back to the facility. So we'll have a transport vehicle that comes in and brings the bulk deliveries into the terminal and the home delivery trucks will come in and make deliveries. They will do two loads a day. One home delivery truck holds 3,000 gallons. Chairman Goldberg asked how many trucks would be at this facility. Mr. Lorden replied to start out we're estimating about three or four and then one propane delivery truck. Then we have some service vehicles that we do emergency service repair also. There might be three or four of those, there might be three or four people in the office as well. I would consider it low volume. Customers visiting our office initially could be one or two or three a week. It could increase to one, two or three a day. Mr. Newberry asked during the heating season, how many transporters do you have per day or week. Mr. Lorden replied probably two in a day, maybe three. The same one makes maybe two or three trips in. We get the fuel from Newington and Boston. That would be pretty good volume. That would be 30,000 gallons in a day. That could increase over time, but it would take some time to increase that.

Mr. Newberry asked how does this facility line up to the airport runways. Mr. Chamberlain replied that's something we need to look into. Mr. Newberry said it would be good to know if it's going to be subjected to low flying aircraft. Mr. Lorden said there is a propane storage facility that might be even closer to the airport than this one. Chairman Goldberg said the airport facility itself has a nice fuel farm.

Mr. Sawyer said there is no timeline for the installation of the traffic light. As you know, we have collected fees from all of the applicants that would go to that light, and as soon as money is available to construct it, it could go in at any point. I don't believe the warrants have been met. Chairman Goldberg asked would they have a fair share contribution to make. Mr. Sawyer replied they would. If they choose to go forward, that would be part of their application and once the traffic study is completed, that would go to VHB at that point for recommendation on fair share calculation. As you know, we've talked about that in the past and we've talked about trying to increase those fees. We're going to have some balancing to do on that.

Mr. Marcoux said another point and Ms. May just clarified it for me, but I think it's important to note that if you look at the way the entrance is on the plan, on the prior plan, it shows a separate entrance and a circular motion of them coming in and out so that they're not using the current entrance that's there now on Harvey Road or going into the condo complex, which was one of my concerns. Is it true that there would be no need to use the entrance that's currently used? You're not going to have another entrance going across the parking area up above by the loading dock and then coming down? Mr. Lorden replied I'm assuming to add that second one. Mr. Marcoux asked which is on the left-hand side. Mr. Sawyer said there will be no connection to the existing complex.

Mr. Stanford said you're not going to have any subcontractors coming in and buying fuel, you are going to deliver to them. Mr. Lorden replied not at this time. Mr. Stanford said as far as the

site access point, I prefer to see only one curb cut. I know there is a circular path within the site, but I'd like to see the Town get away from approving multiple curb cuts. I would prefer that you try to look at just that one access point. Mr. Chamberlain said we can certainly take a look at that. Mr. Lorden said because you are dealing with tankers, deliveries that come in, it makes it a lot easier to swing through than try to kind of S-curve around.

Chairman Goldberg said what we're now hearing is a concept plan. Typically with concept plans we don't have audience participation, but seeing that there are some people that spent a little time here, if you do wish to comment on this concept plan, please be brief and we will entertain them tonight.

Mark Fenski, Englewood Commons Condominium Association, said I took a poll from all the condo owners, and they all have concern that the impact of both the propane and the oil is really being kind of shoved under our complex. We don't like this plan at all the way it is laid out because nobody wants to live next to an oil tank. We'd really like to see both the propane and the oil somehow so that it impacts its own lot more than it impacts the abutters' lot.

Bob Gallagher, condo owner, asked how many gallons capacity is the fuel tank. Mr. Lorden replied 270,000 gallons; gas 20,000 gallons, propane four 30,000 gallon tanks or 120,000 gallons. You can only store up to 85% in each tank. Mr. Gallagher said without trying to be negative, and I don't really like to get involved with telling other people what they can and can't do with their property, we basically have two buildings with about a \$2+ million assessed value. It is impossible for anybody to say that these are not going to affect the value of our property. This tank at 32' is twice the height of our buildings. It is going to stick out like a sore thumb. Forget that because looking at it, that doesn't bother me, what bothers me if the propane goes, this isn't to be an alarmist, we're gone. There are no ifs, ands, or buts about it. These are above-ground tanks; they are just too close to our buildings, in my opinion. As far as the fuel tanks, you're fueling from the bottom, where are you storing your trucks after they are filled? Mr. Lorden replied we don't store the trucks full. Mr. Gallagher asked the trucks don't stay on the site with any fuel on them. Mr. Lorden replied no they don't. Mr. Gallagher asked they don't come back with fuel on them. Mr. Lorden replied no they don't. Mr. Gallagher asked they come back and empty them. Mr. Lorden replied they come back empty at night. Mr. Gallagher asked if they're not empty, they empty them. Mr. Lorden replied if they have fuel on them, it is residual, 50 to 100 gallons, which is a minimal amount of fuel to have in a truck like that, which is approved to park with fuel on it at night as well. There's nothing illegal about parking a fuel truck with 50 to 100 gallons on it. It is common. Mr. Gallagher said right, except trucks come back with fuel on them. Having delivered fuel, if anything happens and they don't get their route done so the trucks are full or can be full, could be partially filled, where are you parking the trucks as far as the containment if the trucks have a leak? Mr. Lorden replied we're not required by any regulation to have containment under the delivery trucks, so we are parking them on the back of the parking lot. Mr. Gallagher asked there is no top-fill capacity on this rack; it's all strictly bottom-filled. Mr. Lorden replied it is all bottom-filled. Mr. Gallagher said I tried to be open minded when I first came, I really didn't want to be out here against it, but at 32' tall, that just blows me away. You're going to see that from the highway. We've already got the impact of the highway where we deal with Continental letting them cut through our property to access the road. This type of an installation, while I see it's needed for a community, it belongs on a

site large enough where it's impact is not so close to the abutters. They are weeding the tanks right into a sliver between us, and if you notice most of the pictures they try to avoid the fact that our buildings are as close as they are. These are very, very close, and if anybody's not sure, where the storage trailers for Sullivan are parked, will give you a good indication of just where those tanks are going to be. If you can imagine the tanks being twice the height of the buildings, there's no screening that's going to screen that view. Looking right out of the front door you're going to see 120,000 gallons of propane because those tanks, I would imagine, you're not going to be able screen. The biggest thing is that you're going to impact the value, and I don't want to get into it, but there are a whole bunch of other issues that this isn't really an appropriate location. There is White Avenue, which is industrial zoned, there is a lot over there that's for sale that's far enough where stuff like that could be tucked back, and if there was an incident, it's a better place.

Dick Perreault, Jennifer Drive, said there was another applicant back in April or May through a real estate firm in this Town that approached the Planning staff for this site for something very similar, and we were told no way, there's enough development in this area to where something like this would not be allowed based on the offices. Chairman Goldberg said that didn't happen to our staff. Mr. Sawyer said I've never had a conversation about this particular site. Someone did come forward and ask about a trucking terminal, but never gave me a location. Mr. Perreault said I'm quite confident that I'm aware of what I'm talking about. I was the applicant. Mr. Sawyer said we never talked about this site.

Mr. Marcoux asked in Ayer, Mass. is that in a condo development complex or is that a free-standing development. Mr. Lorden replied it is an industrial area very much like this. Mr. Marcoux asked could we go out and take a look at it. Mr. Lorden said I would encourage that, and if you came in person, you would see that it isn't quite what you might think. It is very aesthetically pleasing and compared with what is there now. There are 20' piles of product being stored on the site now, there are eight or ten trailers, and it is a very disturbed site. I think when we're finished with this project, it is something that the Town, and I do think the abutters would think it is something that we could be proud of in this community. I don't think it's anything that's unsightly at all. We do meet the setbacks of the Town requirements in the zoning, and we do meet all the setbacks required by the State and the NFPA. Mr. Chamberlain said there is also a facility that went in in Amherst that Irving put in. It is very similar as well. They don't have the propane component, but it is nestled into an office park industrial area.

IV. Approval of Minutes of the November 2, 2009 Planning Board Meeting

MOTION made Mr. Marcoux by to approve the minutes of the November 2, 2009 Planning Board meeting as written. Seconded by Vice-Chairman Levenstein. Vote taken. Motion carries, with Ms. Sklar and Mr. Dermody abstaining.

V. Communications to the Board

Mr. Sawyer said I did email today and put on your desk tonight a copy of the draft zoning amendments based on our discussions in August or September. At this time it looks like we have six zoning amendments. The first couple are purely housekeeping measures. No major items

there. The third was the flagging of wetlands on sites during construction. That was brought up by the Building Department as an item that they'd like to see. The fourth is something that came a little bit out of the economic development roundtable table that we were having, as well as some of the applicants that have been before both the Planning Board and the Zoning Board, in trying to find a way to have the lapsing of zoning variances and special exceptions be tied to either the building permit or the site plan that comes after it. Currently we require them to meet substantial development within one year of a variance and frankly I rarely see that happen, unless it's a homeowner with a deck or a pool or something like that. Those would still probably get done within a year. But projects that need to come before us or are complex in any way have taken more than a year from the zoning timeline. The fifth is dealing with the daycare home occupations where we've had those discussions. I put the number of 12 in there because that's where it really kicks off another level for permitting at the building permit level and the State level. Anything beyond 12 students would kick it off into an educational institution. The sixth is discussions that we've had. A little bit with the workforce housing and again with the economic development discussions and here at the Planning Board is increasing the size of accessory apartments. We currently have 650 square feet; we've always talked about possibly going to 1,000 square feet. In my opinion, that's a little bit more in keeping with what residents come into our office asking to try and do. They are usually in the 900 square foot to 1,200 square foot range. But 1,000 square feet seems to be a reasonable standard; at least something to start our discussions on.

Mr. Sawyer said there are two pages labeled as minor amendments but that means minor amendments to site plans. It is two pages of text, so it's somewhat of a major change, but that is really talking about giving the Planning Director the ability to approve minor changes. I would say probably the karate studio that we saw tonight would not be one because of the issues with traffic and so forth that would have come to the Planning Board. The second one with 385 square feet, that clearly, in my mind, would meet the category where it is all internal, there's no visual. It might generate the need for one additional parking space, or possibly two, permitted use, or parking is available on site that would have been handled administratively under this new ordinance. I did put in the language of 10 percent or 5,000 square feet, whichever is less, that we talked about earlier this year. Again, this is open for discussion. We can talk about this at our next meeting on the 21st and then at the two public hearings. Don't feel like any of this is set in stone. These are talking points to get us started.

Mr. Sawyer said I have not received any citizens' petitions. There are a couple of days left; they have until December 9th to submit them. This could change based on that and/or discussions with legal counsel who will receive this tomorrow.

Mr. Marcoux said there's been some discussion and the Economic Development Commission will be making their recommendations and their report next Wednesday at the Council level, part of the discussion is going to be or recommendation will be something in there about the approval of these types of Zoning Ordinance changes. My question is, is that going to be too late to be discussed by this Board and the ballot in March, or will it have to wait another year and a half? Mr. Sawyer replied I believe we would have to post it as part of the changes at the December 21st Planning Board meeting. We have to officially post citizens' petitions on the 21st and any proposed ordinance changes by the Planning Board.

Mr. Stanford said as the Board is aware we have been putting together an RFP for engineering services. This is the review that has been undergone for all applicants. We would like to put together a committee to review whatever proposals we get in. We're going to be putting that out probably within the next week. I have already finished the draft RFP, and what we're looking for is two members of the Planning Board who would be willing to serve on the committee, review the proposals, along with the group of staff, three from Public Works, Recreation and two members from the Planning Board would be helpful. We anticipate that we will probably have interviews with the select top candidates before we come back to the Board with a full vote. Chairman Goldberg said I will fill one seat. Mr. Marcoux said I would recommend Mr. Anderson. Mr. Stanford said it will be a lot of reading. The proposals we get will be pretty comprehensive. The reviews go through quite a bit. There is a lot of traffic, a lot of just different types of engineering services. The biggest part will be reading the proposals that come in and then meeting with the group probably once or twice. I don't anticipate more than that. They can try to schedule the meetings as best we can to suit the committee. The biggest part is reviewing the proposals that come in. I anticipate, given the economy, that we will receive quite a few of them. Mr. Sawyer said we can confirm it when we get the proposals in and see what it is like and we could come back to you. We know Chairman Goldberg is willing to serve. If we had to do interviews, those would likely have to take place during the day. Mr. Stanford said we expect it to be advertised next week sometime. The proposal documents will start going out and we don't anticipate getting them back probably until mid-January because it is a pretty comprehensive thing we're asking for.

VI. Reports of Committees

None.

MOTION made by Vice-Chairman Levenstein, seconded by Mr. Newberry, to adjourn at 8:08 pm. Motion carries.

Respectfully Submitted by Valerie E. Fysh