

**MINUTES OF MEETING  
REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**7:00 P.M.**

**CITY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**APRIL 15, 2003**

**MEMBERS PRESENT:** Kenneth Smith, Chairman; Cindy Hayden, Deputy City Manager; Paige Roberts, Vice-Chairman; Thomas Ferrini, City Council Representative; Richard A. Hopley, Building Inspector; Raymond Will; Donald Coker; George Savramis; and Alternate John Ricci

**MEMBERS EXCUSED:** John Sullivan and Alternate Jerry Hejtmanek

**ALSO PRESENT:** David M. Holden, Planning Director; and, Lucy E. Tillman, Planner I

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**I. APPROVAL OF MINUTES**

The minutes from the March 18, 2004 Planning Board meeting were approved unanimously.

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**II. PUBLIC HEARINGS**

A. The application of **Islington Woods, LLC** for a lot located **off Borthwick Avenue**, Assessor Plan 234 as Lot 7-4A, and owned by Islington Woods, LLC and for a lot located **off Barberrry Lane**, Assessor Plan 234 at Lot 1, and owned by **Northern Utilities, Incorporated** wherein Final Subdivision Approval is requested so as to subdivide two lots into three lots with the following: Proposed lot 7-4B with an area of 3.478 acres and continuous street frontage off Borthwick Avenue; Proposed Lot 7-4A with a lot area of 6.488 acres and continuous street frontage off Borthwick Avenue; and, Proposed Lot 1 decreasing in area from 5.226 acres to 3.624 acres and having access off Barberrry Lane and no continuous street frontage off Barberrry Lane; and, with all proposed lots lying in an Office Research district where a minimum lot area of 3 acres and 300 feet of continuous street frontage are required.

The Chair read the notice into the record.

Councilor Ferrini stepped down from this hearing.

**SPEAKING TO THE APPLICATION:**

William Doucet, of Doucet Surveying, addressed the Board. He gave a brief description of their plans to subdivide two existing lots into three lots. They have met with members of the Planning Department and have met all of their concerns.

Mr. Holden acknowledged a letter from John Whiteman which each Board member had a copy of.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Coker asked if the Planning Department was satisfied that the 16 stipulations had been met.

Chairman Smith confirmed that they had all been met.

Ms. Roberts made a motion to approve the application with a stipulation that Barberry Lane cannot be extended without additional approval. Mr. Will seconded.

The motion passed unanimously.

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B. The application of **The RLD Revocable Trust & The AMD Revocable Trust** for property located at **3201 Lafayette Road** wherein site plan approval is requested for the construction of a 2,926 ± s.f. two-story office building, after removal of the existing office building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 291 as Lot 7 and lies within a General Business and Garden Apartment/Mobile Home districts.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Dennis Moulton, PE, of Millette, Sprague and Colwell, addressed the Board. He indicated that the subject property was the location of the Desfosses Law Firm and the Hillcrest Mobile Home Park. The entire lot is over 9,000 s.f. however they are concerned with the portion off of Lafayette Road. There is a mobile structure there presently along with a garage. They are proposing to replace the mobile structure with a 2-story office building to be used by the law firm. The parking and handicapped spaces meet the requirements for the site. They are providing a dumpster pad, motorcycle parking pad, landscaping including trees along the front, all utilities will be underground, there will be a new sewer connection. They are not proposing any additional stormwater treatment as the existing vegetative buffer will provide adequate treatment and will be better than any other system. There is a very small increase in flow to the impervious surface and baseline coverage should have almost a negligible effect on the site.

Mr. Moulton indicated that TAC had referred them to Traffic & Safety, which resulted in a revised plan. It was felt that the two entrances were too large for the current use and they were requested to reduce the width of both entrances. However when they applied to NHDOT for driveway permits, they were advised that they would need deceleration lanes at both entrances. As a result of the TAC meeting, they came up with a compromise whereby they will leave the southern entrance as is and they will reduce the wider and more problematic entrance from 70' to 35'. Traffic & Safety approved this new configuration at this morning's meeting. Mr. Moulton was advised by NHDOT that they would not be able to make a decision on the revised plan at this time. Mr. Moulton indicated they would be happy to have a stipulation that NHDOT approval is required for the entrance configuration.

Lighting was discussed and Mr. Desfosses, owner of the property, agreed to contact PSNH and arrange to replace the two large lights with shorter and smaller lights.

Mr. Coker referred to a letter from John Kerrigan and inquired about construction hours and dumpster pick up times, attempting to keep them at reasonable hours.

Mr. Hopley questioned some of the elevations and their ability to make the entrance handicapped accessible as it appeared that there was a 6” difference in the levels.

Mr. Moulton felt the slope would not be a problem and they would be able to accommodate it.

Chairman Smith asked about snow storage as he did not see it on the plans.

Mr. Moulton indicated that they plan to store snow at the end of the parking lot and will make a note on the revised plans.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Holden indicated that the department doesn’t have any particular concerns as Traffic and Safety was looking at this application today but asked if they would keep all of the conditions in place to make sure that NHDOT does respond.

Mr. Coker asked if they could post the hours of construction on the plans.

Mr. Holden indicated that they could do a stipulation however they apply to any project so they are applicable. It is a Zoning Ordinance requirement.

Mr. Will asked about appropriate language for a stipulation regarding the lighting.

Mr. Holden suggested that a lighting plan with sufficient low lighting be reviewed and approved by David Desfosses and Lucy Tillman.

Mr. Hopley made a motion to approve with stipulations. Mr. Will seconded.

The motion passed unanimously.

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C. The application of **Erie Scientific Company, Inc., owner, and C & L Construction Company, Inc., applicant**, for property located at **20 Post Road** wherein site plan approval is requested for increasing the size of an existing parking lot and constructing additional water detention areas, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 285 as Lot 9 and lies within an Industrial district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Patrick Crothers, of C & L Construction, addressed the Board. He indicated they were adding two loading dock doors on the east side of the building, along with associated paving and infiltration area.

Chairman Smith asked if they were putting any additional lighting up?

Mr. Crothers indicated that the existing lighting was adequate.

Mr. Holden indicated that one of the concerns that TAC had was the drainage and they agreed to construct a stormwater infiltration basin that will accept the entire volume of a 25 year storm event and if this doesn't work, then they will work with the City to find a better solution. The applicant was very willing to meet with the City and the abutters to address this concern and it worked out very well. The Board was provided a Memorandum from David Desfosses, summarizing their agreement.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Coker asked what would have happened procedurally if the applicant had not been able to work out the drainage issue to the satisfaction of Public Works?

Mr. Holden indicated that the application would not be before the Planning Board at this point.

Mr. Hopley made a motion to approve, subject to the Memorandum dated April 14, 2004 from David Desfosses. Ms. Hayden seconded.

The motion passed unanimously.

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D. The application of **Olde Port Development Group, LLC** for property located at **126 State Street** wherein site plan approval is requested to construct a 19' x 22.5' addition to the rear of the existing building and to add 1 ½ stories to an existing section of the building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 107 as Lot 57 and lies within a Central Business district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, PE, of Ambit Engineering, addressed the Board. Also present were Steve Kelm, property owner, and Attorney Paul McEachern.

They were proposing a 19' x 23' 3-story addition on the Court Street side of the building. There is frontage on State Street and also on Court Street. In the middle of the site, there is a 2-story structure. They plan to remove the top story and put a 2 ½ story addition in that section. That section will be sprinklered. The current use of the property is six apartments and a bar. The proposed use is seven apartments and commercial use off the back. Water and sewer will use the existing connections. There is a proposal to put five parking spaces on the first floor, inside, exiting on Court Street with a 10' accessway. They received approval from the HDC in February and received a variance from the BOA for the travelway, subject to the condition that the driveway be heated. The project also went to TAC and there were six stipulations as a result of that meeting. They were asked to work with the City regarding the curbing and sidewalk on Court Street as they are in the process of designing that section. The BOA condition was noted on the Site Plan. A parking calculation has been noted on the Site Plan and the project was grandfathered so that the property has a baseline of 78 spaces. Required parking for this project is 17 so there is an excess and no unmet parking needs. The Site Plan will be approved by the HDC and the Traffic & Safety Committee reviewed this matter and also put conditions that they work with the City regarding the sidewalks and that the heated driveway be utilized. They will be installing a Knox box subject to approval by the Fire Department.

Mr. Will asked how much commercial space will be on the State Street side, in light of the new ordinance?

Mr. Holden indicated that the proposed ordinance requires that the ground floor be commercial however this application was filed prior to that amendment so it is not applicable.

Mr. Hopley asked for clarification on the sprinkler system and the water lines.

Mr. Chagnon indicated that the three story addition will be separated by a fire wall and therefore will not need to be sprinklered. The sprinklering will be in the ancillary section in the middle. He is not sure where the water is coming from and they may need to tap the fire service for that.

Mr. Hopley indicated that the plans show a single water line and he pointed out that the water line was hooking into an 8" cast iron drain line.

Mr. Chagnon indicated that was mislabeled and they would look into it and make a correction.

Chairman Smith asked if there were any plans to put a restaurant on the first floor and Mr. Chagnon indicated that the commercial use was unspecified at this time.

Chairman Smith asked about lighting on the back. Mr. Chagnon felt it might be appropriate to put some lighting at the garage entrance that was activated by the opening of the garage door.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application.

Shelley White Zebart asked about water drainage. She and her husband own the building next door and had concerns.

Mr. Chagnon indicated that the building was on a 0 lot line and the roof drains will be connect into the stormdrain system that they presented.

Mr. Kelm indicated that this issue came up before the HDC and the discussion was that they will have gutters on the exterior of the building and the gutters will come down and then be diverted into the interior of the building. It will be diverted into the parking area and then out to the drainage system.

Walter Zebart spoke and indicated that he owned the building next door. He indicated that if the gutters run along the roofline and there is a 0 lot line then the gutters are encroaching on his property. As he plans to build on the back of his property, this issue needs to be addressed.

Mr. Chagnon indicated they could install the gutters so that they don't encroach, per the plans presented to the HDC package.

Mr. Holden asked if there was any encroachment over the property line.

Mr. Chagnon indicated that he did not believe there was any encroachment over the property line. If there is an encroachment, they understand it will be an issue between the property owners.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Holden suggested that the Board keep the TAC conditions and also keep the Traffic & Safety notes that they must continue to work with DPW on the sidewalk design with regards to Court Street and also a note on the plan that not only will there be a heated driveway but they will be required to use that.

Mr. Hopley made a motion to approve with stipulations, including the plan reflect a separate fire service for State Street by relabeling the water service. Ms. Roberts seconded.

The motion passed unanimously with the following stipulations:

1. That the applicant demonstrate that they have worked out curbing and sidewalk issues to the satisfaction of DPW, prior to the issuance of a building permit;
2. That the applicant list the variances granted by the Board of Adjustment on the Site Plan;
3. That parking calculations be worked out with Lucy Tillman and marked on the Site Plan;
4. That the Site Plan be reviewed for conformance with the Historic District Commission for a Certificate of Appropriateness, prior to the issuance of a building permit;
5. That this matter be referred to the Traffic & Safety Committee for review at their April 15, 2004 meeting, for a recommendation to the Planning Board;
6. That a Knox box be installed at a location to be approved by the Fire Department;
7. That lighting at the garage entrance be added to the Site Plan with a note that the lighting be activated by the garage door opening;
8. That the applicant will continue to work with the DPW on the sidewalk design on Court Street;
9. That a note be added to the Site Plan that, there not only be a heated driveway but that the tenants are also required to use it;
10. That the Site Plan reflect a separate fire service for State Street thereby re-labeling the waters coming into the building as fire service;
11. That the gutters being added remain internal and that they remain on the property;
12. That a lighting plan to provided to David Desfosses, DPW, for review and approval.

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E. The application of **The Estate of Anthony Giovannettone**, for property **located off Lang Road** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the construction of a two-story 28' x 65' building upon a paved accessway within an Inland Wetlands Protection District Buffer Zone. Said property is shown on Assessor Plan 286 as Lot 22A and lies within a General Business district.

The Chair read the notice into the record.

Mr. Coker stepped down from this hearing.

**SPEAKING TO THE APPLICATION:**

Attorney Bernie Pelech spoke on behalf of the applicant. They originally requested that the approval be extended but the Board requested that they file a new application and have the Conservation Commission review it. They appeared before the Conservation Commission and the Commission was very supportive and unanimously recommended approval. The impervious

surface is being reduced. They are asking for the same approval as before. Unfortunately, Mr. Giovannettone passed away and his Estate is still being probated.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Will made a motion to approve the application. Mr. Ricci seconded.

The motion passed unanimously.

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F. The application of **Parade Office, LLC**, for property located at **195 Hanover Street** wherein Preliminary Subdivision Approval is requested to subdivide one lot into three lots with the following: Lot 1 having a lot area of 28,515 s.f. and continuous street frontage off High Street and Hanover Street; Lot 2 having a lot area of 9,266 s.f. and continuous street frontage off Hanover Street; and Lot 3 having a lot area of 175,470 s.f. and continuous street frontage off Hanover Street, Maplewood Avenue and Deer Street; and lying in a zone where a minimum lot area of 1,000 s.f. and no continuous street frontage is required. Said property is shown on Assessor Plan 125 as Lot 1 and lies within a Central Business district.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Cory Colwell, of Millette, Sprague and Colwell addressed the Board. He indicated they are proposing to subdivide the Parade Mall site into 3 lots. Lot #1 will be 28,515 s.f. with 0.65 acres and would be adjacent to High Street with frontage off of High Street and Hanover Street, Lot #2 will be 9,266 s.f., 0.21 acres and would have frontage only on Hanover Street and Lot #3 will be 175,470 s.f. or 4.02 acres and would house the Parade Office Mall. Access to Lots #1 & #2 would be via an access easement running from High Street across the backs of Lots #1 & #2 to the middle of the site and then in a southerly direction to Hanover Street and a northerly direction to Deer Street. The source of entrance for Lots #1 & #2 would be from either High Street or Deer Street. There is no plan to open the curbcut on Hanover Street however they have extended this access easement in the event that in the future they want to open it.

They are only seeking preliminary approval as the design of the building is changing to incorporate HDC comments. As the building changes the size of the lot will change as well. They will be back for final approval and there will be some minor changes in area.

Mr. Will asked about the Deer Street entrance, noting that it doesn't line up. He inquired about moving it so there is a straight access easement all the way to Deer Street, rather than having the turn.

Mr. Colwell confirmed that prior to Urban Housing Redevelopment there was a street that went out all the way to Deer Street. They are having a traffic study conducted and part of that analysis will provide recommendations to this item. That will be addressed at Site Review.

Councilor Ferrini indicated that the Northern Tier Study was to make sure that they had many appropriate and attractive means of access into the Northern Tier and a limited easement would not be something that he would consider appropriate. He understands that there is a traffic study issue

and a pedestrian issue and those are all things that they are cognizant of and he looks forward to working with them on these issues in the future.

Mr. Colwell indicated that their development team has looked into that study and they are working with the City to make what is best for not only this site but for the whole section.

Mr. Coker remembered when they closed that off and he asked if it was within the purview of the Board to recommend or encourage making this, not just a simple easement, but make it a City Street.

Mr. Holden wasn't sure that would be in the City's best interest but he felt that was one of the issues that will be addressed as this site is developed.

Mr. Coker indicated that if part of the presentation was making this into 3 lots and a critical part of that is the easement. He is always very uncomfortable granting preliminary approval and, according to the applicant, this will come back to them changed. He is uncomfortable with preliminary approval on something that may come back in another form.

Mr. Holden indicated that this is a very complicated project and has had numerous work sessions before the HDC. As such, it has been developed as two lots and at some point they have to jump and create the lots so that they can be reviewed. It's a chicken and the egg type problem – which comes first. They have encouraged the applicant to seek preliminary approval and continue they have to jump and create the lots so that they can be reviewed. It's a chicken and the egg type problem – which comes first. They have encouraged the applicant to seek preliminary approval and continue with their HDC process with a public hearing coming up which will determine the location of their building. The easements are critical but they can be changed.

Ms. Roberts shared with the Board that the way the lots divide is that Lot #1 will be the hotel section of the project and Lot #2 will be a residential section.

Councilor Ferrini wanted to confirm that the Board reserves all rights pending final site approval.

Chairman Smith confirmed this.

Mr. Ricci wondered if the easement was wide enough to handle large vehicles.

Mr. Colwell indicated that was a valid point and if a tractor trailer needed to get in for deliveries, they would not be able to get in.

Mr. Hopley asked if Mr. Colwell was present at a design team meeting?

Mr. Colwell indicated that he was not.

Mr. Hopley asked that he convey to the team that with the creation of the lots #1 & #2 and as Mr. Holden pointed out the tentative design with the hotel on one lot and residences on another lot, there probably will be building code issues because there are two buildings with 0 setbacks on lot lines and they will have to conform to the building code. The windows, or lack thereof, may be an issue.

Mr. Colwell indicated that a restrictive building easement was recommended to them, to go 30' beyond the lots #1 & #2 and as Mr. Holden pointed out the tentative design with the hotel on one lot and residences on another lot, there probably will be building code issues because there are two buildings with 0 setbacks on lot lines and they will have to conform to the building code. The windows, or lack thereof, may be an issue.



Chairman Smith asked if they were proposing to open the accessway onto Hanover Street? He was concerned about the curbcut

Mr. Colwell confirmed that was correct.

Chairman Smith indicated that he would like to see it remain that way. This is also an opportunity to use this area and open it up for a walking path. He also agreed with Mr. Will's comments and was concerned about how the easement lines up. He mentioned the turn around for the trucks to have access and that also raises the concern of trucks going on to High Street.

Councilor Ferrini clarified that, if you look at the rather extreme jog that the easement takes, he presumes they are looking at going straight through or closer to it and perhaps changing that configuration. He asked if that was viable and worth considering?

Mr. Colwell indicated that the reason it takes the sharp ends now is to keep it out of parking stalls and utilize just the aisles that exist today.

Chairman Smith pointed out that if tractor trailer trucks are going in for deliveries and they need to address how to accommodate those.

The Chair asked if there was anyone from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Savramis made a motion to approve with the stipulations in the Planning Department Memorandum. Mr. Will seconded.

The motion passed unanimously with the following stipulations:

1. That the applicant work with the City to identify parking requirements/credits for each lot and that these be identified on the Final Plat Plan;
2. That the vehicular easements be provided to the City for review/approval as to content and form;
3. That the easements shall be identified on the Final Plat and shall be filed concurrently with the Plat by the City [so that all documents are included in the chain of title];
4. That the Deer Street right-of-way be better defined on the subdivision plat so that it shows such particular features such as intersecting lot lines, curb cuts and a general orientation of what is existing on the northerly side of the right-of-way. [Section IV Requirements for Preliminary Plat Number 8].
5. That when all the aforementioned stipulations are satisfied that an application for Final Subdivision Approval shall be submitted in accord with the City's Subdivision Regulations along with documentation that all boundary monuments have been set as required by the Department of Public Works [Section V Requirements for Final Plat Number 13].

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### III. CITY COUNCIL REFERRALS/REQUESTS

A. A public meeting is scheduled in order to solicit public comment on a proposal to construct an addition to an existing pier on property located at **67 Ridges Court**. The purpose of this meeting is to assist the Planning Board in preparing a recommendation to the City Council pursuant to RSA 482-A:3 (XIII).

The Chair read the notice into the record.

#### **SPEAKING TO THE APPLICATION:**

Attorney Bradley Lown addressed the Board on behalf of Mr. & Mrs. McLeod who are requesting a recommendation to the City Council to permit them to construct a dock with a ramp and a float on it. The issue is whether this would effect the use of the City's adjacent parcel. Attorney Lown indicated that the existing dock was in the middle and has been there for about 40 years or so. To the east there is an existing dock that was built about 40 years ago by the Kirch family and is now a public use dock. It is also referred to as the Harvey dock. To the south is the dock of the Vandermarks. Attorney Lown referred to the statute which indicates that any docking facility that is within 20' of an abutting line but obtain consent of that abutter. The regulation that was enacted consist with the statute adds an important element to that, which is that any portion of that docking facility must be 20' from the imaginary extension of the boundary line. There is a difference between the statute and the regulation. People swim and launch kayakes from the public dock however the McLeod proposal will have no effect on the public strip in any way. The McLeods would also be happy to deed any interest they have in the city parcel, or paper street, to the City. The distance between the end of the Kinch dock and the end of the proposed McLeod dock is 39'. The distance between the ends of the dock and the Kinch dock is 47' 7". The existing dock will be shortened and will be narrower than the existing one. It will be rebuilt up to standards. The McLeods would not be entitled to place a float or mooring in front of their land without city approval.

Attorney Lown indicated that they wrote to all of the members of the neighborhood and invited them to sit down and talk to them but no one replied.

They are asking that the Board recommend to the Council that this proposal be approved.

Mr. Coker referred to Item #7 which indicate that the McLeods were entitled to a mooring or float without any approval from the City. So, why are they here?

Attorney Lown explained that they wanted a dock and that requires the approval of the abutters.

Mr. Coker indicated that the extension of the paper street has an impact on this proposal and he does not see any extension of the property line or the edge of the paper street out into the water. He felt that he needed that information to make a final decision. Mr. Coker asked if he could assume that the property line to the edge of the paper street is the property line as indicated on the west side?

Attorney Lown confirmed that that was correct. The Kinch dock is completely within the City strip. In 1998 the City approved the upgrade and construction of the Kinch dock, which has not been done yet.

The Chair asked if there was anyone from the public who wished to make comment at this public meeting?

Melvin Trefethan (Sandy) of 49 Ridges Court asked that whatever recommendation that the Board makes to the City Council, that it ensure and protect the over riding public interest, public benefit

and public use of Fernald' Court and water access and be consistent with the historical use of this property and preserve its access to the public without obstruction.

Mr. Will asked if Mr. Trefethan had any specific concerns.

Mr. Trefethan indicated it was more of a personal trust between neighbors. He has a fear of any type of docking or boats in that area on a long term basis which may or may not interfere and that needs to be protected. The float does come within, if you extent the imaginary lines, the public area. Last year people were leaving kayakes up against the trees and the City Attorney advised them that wasn't allowed.

Chairman Smith pointed out to Mr. Trefethan that the Applicant indicated that they would give up all rights to the City's paper street.

Harold Whitehouse, of 58 Humphrey's Court, addressed the Board. He lives approximately 600' – 700' from the proposed dock. He is an old south-ender and residents of the sound end are often concerned that they will lose their quaintness. He felt that this first plan that came before the Board showed a 20' distance between the Harvey float and the McLeod float and that was very close. People were wondering if they would be able to get out Fernald's Court, out the back channel and out into the river. The current plan shows that the float has been removed from the Harvey dock and they have kept the float on the McLeod dock so the distance is 39'. He asked the Board to take a long, hard look at the City's paper streets and encouraged them to protect them. He would like to suggest that if the Board approves this matter, they add a stipulation that the McLeods agree to give up their rights to the City street.

Mr. Will asked if Mr. Whitehouse anticipated any future problems?

Mr. Whitehouse indicated that he did not see any problems.

Attorney Lown indicated that the 20' distance was an engineering error and it was not measured correctly, which got people in the neighborhood upset. They now have the correct measurement.

Mr Coker was concerned because they didn't have stamped engineering drawings, however, his assessment shows that the vast majority of the dock is within the 20' boundary of the imaginary line.

Attorney Lown indicated it was only the base of the dock that was within the 20', which brings the statute into place requiring the abutter's approval.

Councilor Ferrini asked what the depth of the water was at the shore at high tide and then where the low tide water line and where that falls with relation to the piers.

Attorney Lown indicated that at low tide is it all mud flats. At high tide, the water will come up to the beach to the base of the existing dock.

Councilor Ferrini asked if the proposed float at low tide would be in the mud.

Attorney Lown indicated that it would be.

The Chair asked if there was anyone else from the public who wished to speak to, for or against the application. Seeing no one rise, the Chair declared the Public Hearing closed.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Holden acknowledged a letter from Kathleen Thompson that was distributed to the Board members.

Mr. Holden indicated that the Planning Department maintains some concerns with this application which revolve around the street right of way. He was hearing an offer from the applicant to offer the city whatever rights they have in the right of way, enhancing the City's ownership, and the principal concern of the Department is that if you extend the right of way, it does bisect the dock so how can you argue that it has no impact on the public's access. The regulations further state that it should be 20'. He was hearing a willingness to negotiate and he therefore recommended that the Board table this matter so that the Planning Department and the Legal Department can work out some understanding and encourage the applicant to eliminate any infringement into the right of way area and seek some compromise that might effect the 20'.

Mr. Coker indicated that he went down and looked at this site and was struck by the very narrow band of sand that was there. If one were to take the City's right of way and create a beach, they would cover the vast majority of the dock. Therefore, he is uncomfortable with the City giving up rights to public access. Perhaps there is something else that can be done like moving the dock over or working with the Vandermarks.

Councilor Ferrini made a motion to table to the next regularly scheduled meeting on May 20<sup>th</sup> to allow for the following:

- 1) That the applicant provide a more accurate drawing reflecting where the property line bisects the dock and/or the float;
- 2) That a history be provided on the right of way;
- 3) That City Attorney review the City Ordinances and Regulations that relate to this matter so that they can all be considered at the same time;
- 4) That alternative locations for the dock be reviewed;
- 5) That a drawing, in the form of a Site Plan, be provided, including low and high tides, be provided by the applicant;
- 6) That the difference between the imaginary lot line extension over the water keeping the same bearing as they are on land vs. changing the bearing to a perpendicular extension over the water, be reflected on a drawing;

Mr. Hopley seconded the motion.

The motion passed unanimously.

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**IV. OLD BUSINESS**

**A. 126 Spring Street** - Request of Margo R. Villandry for an Extension of Conditional Use Approval, granted on June 19, 2003, extending approval to June 19, 2005.

The Chair read the notice into the record.

Chairman Smith indicated that the applicant had a contractor walk out on her and she is attempting to find a new one.

Mr. Hopley made a motion to grant the extension. Mr. Will seconded.

The motion passed unanimously.

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Mr. Holden reminded the Board members of their Master Planning meeting scheduled for April 29, 2004.

Ms. Hayden advised the Board that she had provided the Board with revisions based on previous meetings they had have so they should all now have a current working copy.

**VI. ADJOURNMENT**

A motion to adjourn at 8:50 pm was made and seconded and passed unanimously.

Respectfully submitted,

Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on May 20, 2004.