

Therefore, the Department’s recommendation is that they deal with ordinance as presented, with the understanding that there are areas they may need to expand into in the future. This meets the directive that was given to the Council. He recommends scheduling this for a public meeting, noting that no abutters will be notified as there are no abutters, before they make their recommendation to City Council for them to schedule a public hearing.

Mr. Coviello asked about the speakers that they discussed at their last meeting.

Mr. Holden indicated they were still working on that with Hampton and they will have that added prior to the public meeting. They will encourage the use of a technology that doesn’t require speakers.

Deputy City Manager Hayden added that technology may work for McDonalds but may not work for financial institutions. This only applies to the OR district so it probably doesn’t make as big of a difference. They need to worry when they look at applying this to other districts. It would be completely different, for instance, if they were talking about downtown.

Mr. Will added that there aren’t any locations where there is an OR district right next to a residential district.

Mr. Holden indicated that the Department hopes that the Board would direct them to set up a public meeting to move this forward.

Mr. Sullivan felt that was the best way to go.

All Board members were in agreement to recommend that this matter be scheduled for a public meeting so that it could then be referred to the City Council.

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Vice-Chair Ricci welcomed Christine Dwyer to the Board as the new City Council Representative.

John Bohenko and John Ricci announced that this was John Sullivan’s last meeting after 16 years of service on the Planning Board. A gift was presented.

City Manager Bohenko indicated that he has worked with Mr. Sullivan on many projects, including 10 CIP’s. He felt that Mr. Sullivan made a lot of information available to them and he thanked Mr. Sullivan very much for all of his service.

Mr. Sullivan indicated how much he enjoyed working with his fellow Planning Board Members and John Bohenko as well as the employees of the Planning Department. He thanked everyone.

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It was announced that Item D relative to Starbucks Coffee Company and Item E relative to Home Depot would both be tabled.

Mr. Holden indicated that Starbucks was looking at a revised Site Plan and they will head back to the Conservation Commission for review.

Mr. Holden indicated that Home Depot has indicated that they are looking to make revisions to their proposed plan and will also appear before the Conservation Commission again so they have withdrawn their application.

It was further announced that the CIP presentation will go before the acceptance of Minutes and the Election of Officers.

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I. OTHER BUSINESS

A. Presentation of Capital Improvement Program

City Manager John Bohenko presented the CIP for the fiscal year 2007 – 2012 which is a 6 year plan in accordance with State and local requirements. All City Departments submitted any new projects or equipment that they felt should be included in this plan. The CIP Sub-Committee, consisting of Planning Board Members John Sullivan, John Ricci and Anthony Coviello, along with City Manager Bohenko, Andrew Purgiel and David Holden, held meetings with all Department heads. For fiscal year '07 the amount of \$2.8 million was requested and those funds were reduced to \$1.5 million, resulting in a reduction of \$1.3 million. The City wanted to increase this year to catch up as a result of the reductions in fiscal years '04 and '05. Approximately 60% of all projects being funded will be funded through Federal or State grants or private funds.

David Holden, Director of Planning, coordinated the presentation with City Staff members Chris LeClair, Fire Chief, Captain Bill Irving, Police Department, Deputy City Manager Cindy Hayden, Steve Parkinson, Director of Public Works, David Allen, Deputy Director of Public Works, and Peter Rice, Water Sewer Engineer.

City Manager Bohenko indicated that the Planning Board needed to act on this plan so that it could be forwarded to the City Council, where it will be adopted on April 2, 2006.

Vice-Chairman Ricci opened the hearing up to comments from the Board.

Mr. Sullivan asked that the chart on page 19 showing how the expenditure of \$1.5 million generates into \$15 million be explained to the public.

City Manager Bohenko referred to the pie chart and indicated it was closer to \$9 million. Taking into account Federal and State funds, along with private partnerships, about 68% was funded from other resources other than the City. City Manager Bohenko further indicated that many projects are fully funded by the State, such as the traffic circle project.

Mr. Sullivan asked the Fire Department if they had the capability to recharge their oxygen tanks at the fire station?

Fire Chief LeClair confirmed that they have an air compressor that refills tanks at the station. It is a very old system. They cannot refill the self contained breathing apparatus.

Councilor Dwyer asked City Manager Bohenko to compare Department requests vs. the final draft. There were a couple of places where things were delayed, such as the technology infrastructure went from \$100,000 to \$40,000. The other two are the McIntyre building and the Fire Station which were also reduced or delayed.

City Manager Bohenko addressed the technology question first. He explained that, unlike the general fund on June 30th, those monies that are uncommitted go into the operating surplus. With regards to capitol improvements, the funds do not expire so there are still funds available. It's the same with the other two projects where the money is still not expended in the plan. When the Fire Department has their final design done, they will present to the City Council at which time they will make a determination of whether they want to raise the bond at that time, have two readings and have a public hearing. The projects identified in '08 are the most critical and what needs to be funded in the fiscal year. City Manager Bohenko indicated that they are not really cutting back as much as it appears.

Mr. Coker asked about on page 105, Market Street improvement and sidewalk expansion. If this moves forward, is the money earmarked so that this project will be a go?

Deputy City Bohenko clarified that that it was the same as he just explained. If identified as FY 07 and the City Council approves it, it will move forward. If a project is identified for bonding, it still comes back to the City Council for approval. But, sidewalks hope to move forward.

Vice Chairman Ricci commended Mr. Bohenko and the staff on all of their hard work and an excellent job.

Vice Chairman Ricci called for public speakers.

Nicholas Johnston, of Franklin Street, spoke regarding page 80, relative to the cooling towers upgrade and replacement. He lives directly across from City Hall. He has complained to the City about the noise created by the fan. The pond amplifies the noise. He wanted to reinforce the importance of this item. He also thanked the staff who worked with him on this matter, including Peter Britz and Steve Parkinson.

Mr. Will noted this was a general fund project so he encouraged Mr. Johnson so to also speak on March 20th at City Council public hearing.

There were no further speakers.

Vice-Chairman Ricci asked for a motion to accept the Capital Improvement Plan.

Mr. Will made a motion to accept as presented. Mr. Sullivan seconded the motion. The motion to accept passed unanimously.

Vice Chairman Ricci indicated that on March 20th the public was welcome to attend the City Council public hearing.

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II. NEW BUSINESS

A. Election of Officers;

Mr. Holden assumed the gavel for the election of officers.

Chairman:

Raymond Will nominated Mr. Ricci for Chairman. Mr. Sullivan seconded the motion.

Mr. Sullivan made a motion to close nominations. Deputy City Manager Hayden seconded the motion.

The motion to vote **John Ricci as Chairman** passed unanimously.

Vice Chairman:

Chairman Ricci called for nominations for Vice Chairman.

Mr. Savramis nominated Jerry Hejtmanek. Mr. Sullivan seconded the motion.

Councilor Dwyer nominated Ray Will. Mr. Ricci seconded the motion.

Mr. Will nominated Mr. Coker. Mr. Savramis seconded the motion.

Results by secret ballot:

Jerry Hejtmanek was voted as Vice-Chairman with a majority of the votes.

Chairman Ricci welcomed Christine Dwyer to the Planning Board as the new City Council Representative.

Chairman Ricci also thanked John Sullivan for his 15 years of service.

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III. APPROVAL OF MINUTES

A. Approval of Minutes from the November 17, 2005 Planning Board Meeting – unanimously approved.

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IV. PUBLIC HEARINGS

John Ricci stated he was a direct abutter and therefore reclused himself from the next two hearings on 141 Banfield Road.

Newly elected Vice-Chairman Jerry Hejtmanek chaired the hearing.

A. The application of **T-Beyer Realty, LLC, Owner**, for property located at **141 Banfield Road** wherein an amendment to Conditional Use Approval received on November 21, 2002 is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow parking on an existing area of pavement and revisions to the drainage swale within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 254 as Lot 2 and lies within an Industrial District. (This application was tabled at the December 15, 2005 Planning Board Meeting)

Deputy City Manager Hayden made a motion to take the application off of the table. Mr. Sullivan seconded the motion. The motion passed unanimously.

B. The application of **T-Beyer Realty, LLC, Owner**, and **Tina Montgomery, Applicant**, for property located at 141 Banfield Road wherein amended site review approval is requested to revise the loading docks and the striping of the existing paved area, and the removal of the landscaped islands, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 254 as Lot 2 and lies within an Industrial district

The Chair read the Site Review Application notice as well as the Conditional Use Application notice into the record as both hearings would be heard simultaneously.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech, Attorney for the owners, addressed the Board. He indicated that this project goes back to 2002 and he explained the reason for the amendments. The project is built and fully occupied however when it was first designed, it was planned to have a single user as a wholesale lumber facility. As such, the original site plan had a large truck turning area and few parking spaces. Subsequently, the tenant fell through and the project was reformatted as a number of small condo units that require a lot more parking and less truck turning space. There is plenty of asphalt but no designated parking spaces. They appeared before the Conservation Commission who favorably

recommended this application. They appeared before TAC who also recommended approval. He introduced Dennis Moulton, of AMES MSC, the Site Engineer.

Mr. Moulton, of AMES MSC, reviewed the technical aspects of the project. He felt it was important to note that the original Conditional Use approval approved 27,500 s.f. of impervious surface in the buffer and when all built the actual impervious area was 26,870 s.f. so there was less impervious surface which was good. What was not accomplished was the construction of the treatment swale. The contractor built a stone rip rap which was not approved and the applicant has agreed to remove those stones and replace them with loam seed and an appropriate wetland friendly seed mix. They are requesting additional striped parking for the site as parking was occurring over graveled areas and in the buffer area. The tenants have been notified not to park in those areas and the problem has been corrected for the time being. They have created an additional 47 spaces on the site. They originally had landscaped islands but those just never made sense so it is futile to maintain those and they have been removed.

During the Conditional Use hearing before the Conservation Commission they received approval with three stipulations. The planting plan needs to be approved by the Planning Department and they have provided that Plan to the Department. They have proposed a wooden guardrail which extends from the edge of the buffer and along the edge of the pavement as specified by TAC. Lastly, they have agreed to reconstruct the vegetative swale and re-grade it as was originally planned.

There were four stipulations from TAC. They have upgraded the guardrail detail as requested and extended it along the roadside of the property. All parking spaces will be painted and not taped and that note has been adjusted on the plan. Lastly, the applicants agree that a new Site Review Agreement will be required.

Mr. Moulton stated that they have covered all stipulations. They were also requested by TAC to provide a display showing tractor trailer movements which was included in the Planning Board packets.

Mr. Will asked the Department about the fact that there was an approved site plan and they didn't follow through with the plan. He referred to the minutes from the Conservation Commission where Ms. Powers felt they didn't do what they said they would do and it seems awful easy to make changes now. She asked if there was any penalty and Mr. Britz indicated the costs associated with the revised plans and obtaining amended approvals was the penalty to the applicants. Mr. Will went on to indicate that TAC reviewed the matter and Mr. Holden stated at that hearing that the site was not envisioned for the current use. It appears that no one is concerned about why it wasn't completed properly and they just want to correct it. Mr. Will felt it should be corrected but he was concerned about why it was not completed as approved.

Mr. Holden felt Mr. Moulton could better address that question. However, as a means of explanation, when the City did the site inspection they discovered the differences. The applicant has been very willing to work with the City and this plan is substantially better than the previous plan.

Mr. Moulton stated that it was his understanding that the contractor chose to do it differently as he thought it was better. He felt he was improving the site and didn't understand why the plans had to be followed exactly. Also, the propane tanks were installed with permits issued by the City so that was proper.

Mr. Will stated, for the record, that he doesn't want future applicants to think they can change plans.

Mr. Moulton always advises clients that they need to contact the Planning Department if they want to make changes to the site.

Mr. Coker had the same concerns. He asked if the original Site Plan was not T-Beyer Realty?

Mr. Moulton indicated that was correct and it was CCI, which is their construction company and T-Beyer is the real estate “arm”.

Mr. Coker’s concerned are for the longer term. He will assume everything will be followed this time but how it that verified?

Mr. Will indicated there is bonding with the City to make sure they complete the project properly.

Mr. Coviello indicated that he works in this field and he has yet to see a building built exactly according to plans but that is picked up at the inspection process so the system does work and he felt it was important to put that on the record. He asked about Mr. Britz’s comment about increased pavement on the site?

Mr. Moulton was not aware of any increased pavement and was not sure what Mr. Britz was referring to.

Peter Britz, City Environmental Planner, indicated that in terms of that statement, he was not referring to the overall impervious area but just to the area where they paved and parked in an area that was in the buffer.

Mr. Coviello asked about snow storage on the right side of the plan?

Mr. Moulton confirmed that there is also snow storage along the back edge with most of it on the right side.

Mr. Coviello stated that curbing was mentioned in the minutes. How does the snowplow know where to put the snow?

Mr. Moulton indicated that is the purpose of the guardrail, which will prevent them from pushing the snow too far. Also, the owners will tell the tenants where and where not to park.

Mr. Covillo asked what a cape cod berm was?

Mr. Moulton indicated it was a shallow berm and was not being proposed here.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Deputy City Manager Hayden made a motion to approve Conditional Use with the Conservation Commission stipulations. Mr. Sullivan seconded the motion.

The motion to approve passed unanimously with the following stipulations:

- 1) That the applicant shall provide a planting plan to be reviewed and approved by the Planning Department;
- 2) That a barrier shall be constructed at the edge of the pavement within the wetland buffer area and no snow storage shall be allowed in that area; and;
- 3) That the vegetative swale shall be constructed as originally approved and enhanced with plantings.

Mr. Will made a motion to approve Site Review with stipulations. Deputy City Manager Hayden seconded the motion.

The motion to approve Site Review passed unanimously with the following stipulations:

- 1) That the guardrail detail shall be upgraded to a 6 x 8 post and a 3 x 8 horizontal section and so noted on the Site Plans;
- 2) That guardrails shall be extended along the roadside of the parking lot, and so noted on the plans;
- 3) That all parking spaces shall be painted (and not taped) and so noted on the Site Plans;
- 4) That a new Site Review Agreement will be required, along with a corresponding bond to be posted with the City in an amount to cover all proposed site work;

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C. The application of **Irving W. Spinney, Revocable Trust, Janice L. Karkos, Trustee, Owner and Dawn M. & Arthur R. Tobin, III, Applicants**, for property located **off Middle 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 residential building to be built on an existing concrete foundation within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 232 as Lot 122 and lies within a Single Residence B District. (This application was tabled at the December 15, 2005 Planning Board Meeting)

The Chair read the notice into the record.

Mr. Hopley made a motion to take the application off of the table. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

SPEAKING TO THE APPLICATION:

J. Corey Colwell, of AMES MSC, appeared on behalf of the applicants. He handed out a colored plan to the Board members. The proposal was for a 2-story dwelling with 1,252 s.f. of buffer zone disturbance. The total buffer zone disturbance, including the dwelling, the grading around the house for excavation and construction, the steps, patio, chimney and driveway is 5,004 s.f. The previously disturbed buffer estimated to be in the 1950's was 8,206 s.f. for the construction of the foundation as well as clearing debris. The color plan which they distributed shows the proposed dwelling in roughly the same location as the existing location, although it is slightly closer to the middle and east to make a bigger buffer. The distance from the existing concrete foundation to wetlands are 22.5'; increasing to 32.9'. The pervious driveway and patio have been agreed upon. A much larger dwelling was originally proposed with a larger driveway. In working with the Environmental Planner and the Conservation Commission they were advised to move the dwelling further away from the wetlands, reduce the size of the buildings and driveway and create pervious surface for the driveway. They did all of this and the Conservation Commission voted to favorably recommend approval with the three conditions:

- 1. That the natural vegetation be left at the 44 foot contour;
- 2. That there shall be no fertilizers or pesticides within the buffer zone; and
- 3. That the driveway and patio shall have a pervious surface.

The applicants are agreeable to all of those conditions. The project has been ongoing for three months and they have worked very closely with City staff. They have incorporated a lot of nice features to protect the buffer zone.

Mr. Sullivan asked how they were going to monitor the fact that there will not be any fertilizers or pesticides used on the property? The soil in front of the foundation is not the best soil and so what lawn they have would need a fertilizer.

Mr. Colwell indicated that they discussed that at the Conservation Commission. The Shoreland Protection Act prohibits fertilizer and the applicants have explicitly agreed not to use any or otherwise they would be in violation. To green up the lawn there are other options.

Mr. Sullivan asked if there are non-invasive fertilizers?

Mr. Colwell stated not to his knowledge.

Mr. Sullivan wondered if this is a just requirement that individuals cannot use fertilizer on front lawns?

Mr. Colwell felt it was a trade off. If the existing foundation wasn't there, they would not be before them. The Conservation Commission felt it was important not to use fertilizers.

Mr. Sullivan stated that the City would be using salt on the roadway.

Chairman Ricci asked if the applicants would be agreeable to putting restrictions as part of the deed?

Mr. Colwell indicated they would have no objection.

Mr. Will asked when something is on a deed, how is it enforced? They could still put fertilizer on the lawn.

Mr. Holden indicated that zoning is voluntary and they are trying to make a good situation better. By putting it in the deed, they are notifying any future owners of this condition. Everything is largely voluntary and he has faith that most people will comply.

Mr. Hopley noted that the plan in their packet is Revision #1 and dated 12/12/05 however the plan that was handed out this evening was Revision #3.

Mr. Colwell indicated that a plan was submitted prior to the Conservation Commission meeting which the Board did not get.

Mr. Coker stated that one of the criteria for Condition Use is #4 that states that the applicant shall demonstrate that the proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of the ordinance. It appeared to him that there was 30' from the corner of the house to the edge of the wetland.

Mr. Colwell confirmed it was 32.9'.

Mr. Coker indicated there was discussion in the minutes about a reluctance to approach the BOA to move the house closer to the road. He thought that a BOA variance would create a less impact and he asked what was their hesitation to do that?

Mr. Colwell stated it would take relief from BOA and there was also a safety issue. The steps are right at the setback with a short driveway and they would end up right on the edge of Middle Road.

Mr. Coker felt that many houses in the area are at least that close if not closer.

Mr. Colwell indicated that they asked for input from the Conservation Commission and they felt that increasing the buffer zone was positive and the relief required was more than maintaining a lesser buffer zone. Those factors outweighed bringing the building closer.

Mr. Coviello asked if they had a silt fence as it's not shown on the plans.

Mr. Ricci pointed out that it was shown on the new plan.

Mr. Coker asked for a brief review of the drainage plans, how it will flow and where it will go.

Mr. Colwell indicated that the roof is pitched at mid level, front to back. From the front everything drains to the street. The driveway elevation goes slightly up so it drains away from the wetlands. In the back, everything follows the existing contours or straight back through the vegetative state to the wetlands.

Mr. Coker asked what makes it go straight back?

Mr. Colwell stated the water will flow perpendicular to the contours, and beyond the lowest contour, it will turn.

Councilor Dwyer asked about the fertilizer and if the intention was to have lawn or some other ground cover?

Mr. Colwell stated that the intent was to have lawn and some plantings.

Chairman Ricci asked if the applicant would be agreeable to change condition #1, that the natural vegetation be left at the 44 foot contour, and add “or a minimum of 10;” all the way around?

Mr. Colwell had no objection to that change.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Savramis made a motion to approve the application with the 3 stipulations, and the revision to the 3rd stipulation. Deputy City Manager Hayden asked that he add to his approval motion that they are approving Revision #3 of Site Plan dated 12/12/05. Deputy City Manger Hayden seconded the motion.

Mr. Sullivan indicated that if the water slopes from the front of the house to the street, he doesn't see why can't they use fertilizer on the front lawn. He would like to make that a 4th stipulation.

Mr. Savramis seconded that stipulation.

The motion to approve with stipulations passed unanimously.

1. That the natural vegetation be left at the 44 foot contour;
2. That there shall be no fertilizers or pesticides within the buffer zone, with the exception of using fertilizer on the front lawn, and this condition shall be included in the Warranty Deed for the property and recorded in the Rockingham County Registry of Deeds; and
3. That the driveway and patio shall have a pervious surface.

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D. The application of **Portsmouth Farms, LLC, Owner, and Starbucks Coffee Company, Applicant**, for property located at **1855 Woodbury Avenue** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the renovation of an existing building and the addition of a drive-thru window within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 215 as Lot 11 and lies within a General Business District. (This application was tabled at the December 15, 2005 Planning Board Meeting)

Chairman Ricci indicated that the applicant has requested that this matter be tabled to a time uncertain.

Mr. Will made a motion to table to a time uncertain. Mr. Coker seconded the motion.

The motion to table to a time indefinite passed unanimously.

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E. The application of **Thomas J. Flatley, Owner and Home Depot, Applicant**, for property located at 500 Spaulding Turnpike wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to allow the demolition of the existing building, the construction of a 145,193 ± s.f. retail store and a 26,650 ± s.f. pad building and corresponding parking within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 238 as Lot 20 and lies within a General Business District.

Chairman Ricci indicated that the applicant has requested that this matter be tabled to a time uncertain.

Mr. Will made a motion to table to a time uncertain. Deputy City Manager Hayden seconded the motion.

The motion to table to a time indefinite passed unanimously.

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F. The application of **Lewis A. and Ruth Cicero, Owners, and Changing Places, LLC, Applicant**, for property located **off Falkland Way** wherein site review approval is requested for the creation of 24 new town home units on a proposed 8 lot subdivision, with all of the proposed lots having access off of a proposed extension of Crescent Way extending through to Saratoga Way, with related paving, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Plan 212 as Lot 123 and lies within a General Residence B District;

Mr. Will reclused himself from the hearing as he is a member of the Neighborhood Association.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of the applicants, Cicero and Ruth Lewis, who were also present. John O’Neil from Changing Places and the Site Engineer Dennis Moulton from AMES MSC were also present. Attorney Pelech indicated that this project began several months ago. They received preliminary subdivision approval and then began working on Site Review approval with City staff and TAC, who referred them to Traffic and Safety where they had a site walk and received a unanimous favorable recommendation. They then went back to TAC for 2 more meetings and ultimately received a favorable recommendation from that Committee. They worked with City Staff and TAC and modified the plan to everyone’s satisfaction. They are asking for Site Plan approval tonight and will be back for final Subdivision approval. This project complies will all zoning requirements and they comply with all Site Review Regulations. There were some concerns with stormwater runoff but they redesigned so there is no additional flow off of the site. They also worked with the City Water Department to work with the water lines in the area.

Dennis Moulton of AMES MSC, addressed the Board. Mr. Moulton clarified that the owners are Cicero and Ruth Lewis. He indicated that this site currently has one single family residence which will remain and there will be a new driveway to the proposed roadway. They propose to subdivide the lot into 8 parcels and construct a new residential street. Preliminary subdivision approval was granted in

October. The other 7 lots will contain 23 townhouse 2-bedroom units with drive under 2 car garages. All lots meet the zoning requirements. The roadway construction meets the City requirements for residential streets, which also includes a 5' sidewalk on one side. They also added a 10' easement along the road to provide landscape options for the City. The design includes all utilities that will be underground. Drainage will be collected by a closed system with two basins. The site runs high to low so by locating the catch basins at a low point they are catching almost all run off from the site. They received a favorable recommendation from TAC in January. There were a number of stipulations which Mr. Moulton addressed.

- 1) That prior to approval by the Planning Board a report shall be provided to DPW and the Planning Board either that there is approval by the adjacent property owners to the increased drainage flow or that some Agreement is in place to allow such drainage flow;

Mr. Moulton indicated that an alternate solution was suggested. The plans and drainage calculations reflected an increased flow that would come down to the low end of the site. At the suggestion of DPW they have worked at devising a subsurface storage detention area. They have modeled it with their software and determined it will accommodate a 50 year storm. The detention area with a controlled outlet will contain run off and reduce treatment swales. He felt it was a win/win situation. There is a certain amount of ledge on site and they know they will be generating stone from construction so it makes sense to use that stone in a way that also helps the drainage. Mr. Desfosses was very pleased with the way it turned out and they will finalize the design with him.

- 2) That the two outfall structures (one swale and one level spreader) shall be fully constructed and stabilized before use;

They have revised their design to have just one treatment swale and they have made notes in the construction sequence and erosion control sections that those will be fully stabilized before use.

- 3) That a detail be added to the Site Plans showing an armored slope from both the outlet of the treatment swale and the bypass culvert to the toe of slope or the stone wall;

A Detail was added showing that they provided that at the low end of the treatment swale.

- 4) That Saratoga Way be widened to 24' for approximately 100' near the intersection with Raleigh Way where there is no parking and that the hydrant be relocated as required;

They have widened Saratoga to 24' on the plans with no disturbance to the sidewalk side. The pavement will have to be removed to install utilities so they will repave at the conclusion of that work.

- 5) That the applicant shall meet with Debbie Finnigan, City Traffic Engineer, to review the revised Site Plans to make sure that Saratoga Way meets all requirements;

They met with Debbie Finnigan and reviewed the plan. Her additional comments were that they re-stripe the parking spaces at the end of Saratoga Way and they have done that.

- 6) That the water line should be 10" CLDI connecting to the 8" main in the Raleigh Way intersection and to the future 10" on Crescent, with a 10" diameter stub to the Portsmouth Housing Authority property line so that the City could extend the line for a looped feed;

They met with Tom Cravens to discuss this and they came up with an extension of the water line, which hopefully some day come over from Osprey landing to provide a true loop to the water system.

- 7) That a meeting be scheduled with the applicant and Tom Cravens and David Allen of DPW to discuss off-site improvements on the water mains;

This was done per Stipulation #6.

- 8) That the Planning Department will review the “cut through” that is being used on private property and provide a report at the Planning Board meeting;

Mr. Moulton assumes that was done by the Planning Department. Mr. Holden interjected that they are continuing to work on the curbcuts for that property, however, he clarified that this project has no relation to the curbcut and the projects should be separated out.

- 9) That a 10’ vegetative buffer easement shall be prepared by the Applicant and reviewed and approved by the City Attorney;

That will be put on the final subdivision plan and it is shown on the Site Plan.

- 10) That a stop line and stop sign shall be added to the Site Plans at the intersection of Saratoga and Raleigh Way;

A note was added to the site plans.

- 11) That there shall be an independent inspector for the proposed roadway as this will eventually be a city street;

The applicant has agreed to this and is familiar with the process.

- 12) That the water service as shown crossing the lot line on Lot #1 shall be amended on the Site Plans;

That was corrected and noted on the plans.

- 13) That on the road profile, the sewer is shown very steep and a drop manhole should be added uphill to relieve the slope;

They determined the drop manhole would be at an unacceptable level so they reduced the slope to less than 2% at the request of public works.

- 14) That a detail showing well drained material 2’ below the treatment swale shall be added to the Site Plans so that the Field Contractor will be aware of it;

They show well drained materials in the detail which will ensure that the soil is relatively free of moisture and the treatment is enhanced by the swale, all per DES Management Practices.

- 15) That it is recommended that the wooden guardrail detail be upgraded to a 6 x 8 post and 3 x 8 horizontal section;

This has been revised on the plans and actually shown as a 4 x 10 guardrail.

16) That a full detail of the roadway cross section where it crosses the large existing ditch showing well graded fill under the road be added to the Site Plans; and

They have done a full detail of the roadway which they reviewed with Daved Desfosses. Mr. Desfosses was satisfied that the fill material was sufficient for the construction of the road and this was added to the plans.

17) That language shall be added to the deeds of the two lots that border the wetland buffer, relative to the prohibition of dumping debris in the wetland buffer zone, and said language shall be approved by the Planning Department and the City Attorney;

Mr. Moulton pointed out which two lots that referred and the application has agreed to that stipulation.

Mr. Moulton indicated that a concern from TAC was drainage. Mr. Moulton showed the topo map showing the drainage area that contributes to the drainage area. It is a very large area and their mitigation methods will reduce the stormwater flow significantly as shown from the original drainage calculations.

Mr. Ricci asked Mr. Moulton to address the January 19th letter from PSNH after all speakers were heard.

Mr. Coviello asked why not add a deed restriction to the third lot?

Mr. Moulton indicated that they could.

Attorney Pelech confirmed that Mr. Britz only asked that the 2 lots be included.

Mr. Hopley indicated that there was testimony regarding the water lines feeding the individual units. Mr. Cravens suggested 1" instead of ¾". He assumes the units are 3 stories in height and the top story will have plumbing fixtures. The water lines are coming down to the low sections and he is concerned about pressure. He felt they might not have enough pressure to run the plumbing fixtures.

Mr. Moulton stated that has been discussed and the plumber suggested moving the water laterals to the front of the buildings.

Mr. Hopley felt they shouldn't hold them to the 1" if they need more. His only other comment was to reiterate Deputy Fire Chief Griswold's concern and cautions that when the architect is selected, lacking residential sprinkler systems, they will be very restrictive about the walls separating the units and they should keep that in mind.

Mr. Ricci asked if any test pits were done in areas of the treatments?

Mr. Moulton indicated that they don't but that was the purpose of undergrounds, to dry out the area.

Mr. Ricci asked Mr. Moulton to comment on the PSNH letter.

Mr. Moulton stated they have been talking to PSNH about the site and they contacted him last week. He forwarded plans to her and advised her they were in the process of revising them to allow them to mitigate their current drainage calculations. He mailed those revised plans and calculations yesterday morning. They do not have a civil engineer on staff so they couldn't do an interoffice review. They are having an independent consultant review the plan and Mr. Moulton will meet with their consultant. Mr. Moulton is confident their design is adequate. PSNH indicated they have been very cooperative.

Attorney Pelech addressed the second option. He first heard from PSNH counsel today. This is a mystery to him why they would like a restriction in their deeds simply because this property is next to a power plant which runs 24/7. It seems unreasonable for PSNH to require them to put that in their deeds. Does that mean they will have to do this in the future with every deed in Atlantic Heights?

Mr. Coker referred to 500 Market Street which is across from the scrap piles which is a good example of why PSNH may want them to put that in the deed. He thinks it is probably a good idea.

Mr. Ricci asked if they had heard back from the Portsmouth Housing Partnership?

Attorney Pelech indicated he had not. Once he understood that they have revised the drainage so they are not increasing the drainage flow, he made no further attempts to contact them.

The Chair called for public speakers.

Raymond Will, 125 Preble Way, Atlantic Heights, indicated that he explored how the Portsmouth Planning Board could use this to make affordable housing. Atlantic Heights consists of naturally affordable housing, designed that way and he believed Criteria H of the Site Review Regulations can be complied with and he believes the Planning Board can do this. The building next to Dunkin Donuts on Islington Street is an example. Mr. Will asked if this development meets the historic intent of the development? The chance to build affordable housing will not come along very often. Also, Atlantic Heights will be subject to several developments in the next few years and he asked if the City looked at these as a whole.

Mr. Holden indicated that when City looks at water and similar issues, that is taken into consideration, however, there is no discussion with the application about other applications.

Robin McIntosh, of 583 Kearsarge Way, handed out colored maps for the Board. She is not against the project but is against the process that Mr. Will addressed. The City needs to look at what's best for the community and look at the big picture. She believes that Raleigh Way is an inadequate street and, although the Traffic & Safety Committee concluded that the project would not add a significant amount of traffic to the street, she wondered if fire trucks be able to get through with snow piled on the sides of the roads. Ms. McIntosh's handout included the proposed Portsmouth Partnership project with proposed traffic flows. The cut through is causing a problem. She asked why this project and the Portsmouth Housing Partnership project be connected so that traffic could be redirected. She felt that Raleigh Way should be repaired. Water pressure is a constant problem in the neighborhood and nothing has been presented to alleviate that problem. Wet basements are very common in Atlantic Heights. She would like to see a "big picture planning" regarding traffic and the infrastructure.

Mr. Coviello asked if it was the neighborhood opinion that they would like more structures similar to Atlantic Heights?

Ms. McIntosh indicated that they spoke to that with the Avanti project, which are the units at the front of the neighborhood.

Mr. Coviello felt that the neighborhood would be impacted more if they built smaller houses.

Ms. McIntosh stated they were not against the project but the big picture needs to be looked at.

Mr. Coviello indicated that the drainage is flowing away from the neighborhood so it shouldn't effect them. He asked if it was possible to ask the multi developments to meet?

Mr. Holden indicated that they needed to respond to the application before them. This street is proposed where a paper street was planned. There has been testimony from the Planning Department

and the applicant that this project meets the Site Review criteria. The Portsmouth Housing Partnership application is not before them.

Ms. McIntosh stated that the paper street was designed for a community that didn't have any cars. They would like to alleviate what is already there.

Mr. Ricci indicated that the street was 32' wide. He asked if there were provisions for parking on the street?

Mr. Holden indicated this allows for parking on both sides. Also, this development is providing space for 2 cars to park off street so he suspects it will then neighborhood that is parking on the street.

Christy Kiedaisch, of 199 Concord Way, Atlantic Heights felt some main concerns are still unresolved. The condition of Raleigh Way is unresolved and it is the street to travel to get to the new street. They would like to see some type of commitment from the City to repair Raleigh Way as part of this project because of increased traffic.

Kathleen Gallagher, 175 Raleigh Way, asked Mr. Moulton if the 8" main was going to be connected to the 10" main to the development. She lives on that corner and when a hydrant is flushed she gets no water out of her faucet. She is worried this will cause more problems with the water pressure.

Mr. Moulton indicated that the water line they are proposing at the intersection of Raleigh and Saratoga has an existing 8" water main, they will connect the 10" water main up to their development and into the 10" water main that will be connected to the reconstructed Crescent Way which is slated for construction next year. By doing that they are providing a better connection and a better quantity of water. It will not effect the pressure. This was TAC's opinion as well. They have discussed and reviewed this with DPW and Tom Cravens.

Michael Power, 105 Saratoga Way, indicated he was on the short end of Saratoga Way, winding into the project. He supports what other neighbors have said. He is not opposed to the project but he does not think they are ready yet. He would like a second study done on traffic as Raleigh Way is a problem. He would encourage the Board to look at the big picture. He indicated that a lot of blasting was done when the Senior Housing went in and it created water problems on his lot. Water pressure in Atlantic Heights is very bad and a real problem. He feels this is a well designed plan but they still don't know what these units will look like. The owner sent a representative to a neighborhood meeting months ago and asked for input but they haven't seen him since.

Stephanie Krane, Atlantic Heights, wanted to reiterate the impact of this plan on their neighborhood. She would like development of the infrastructure at the same pace as the development of the buildings. Mr. & Mr. Lewis are distinguished members of their neighborhood and they have the right to develop their land but she is asking the City to make sure the infrastructure is also developed.

Mr. Will also pointed out that they still do not know the height of the buildings and if they will look anything like the other buildings in the neighborhood.

Mr. Coker asked where that was in the purview of the Planning Board.

Mr. Will felt that Criteria H of the Site Review regulation addressed that. It lists the reasons why the Planning Board can deny an application. Criteria H refers to historic features so it is within the Board's judgment to say that it the historic features of Atlantic Heights is not just a façade and it is the intent that the neighborhood be affordable.

Mr. Coker felt it was frustrating to not be able to take the big picture into consideration. They must deal with application that is in front of them. He disagrees with Will's interpretation of Criteria H as

nothing is being destroyed but rather they are actually adding to it. He thinks it is beyond the purview of the Board.

Mr. Will felt Criteria H, because of modern building regulations, they need to put something that completes the development. By putting something not consistent with the environment, they will lose that feature. They don't have to be the same as the buildings in Atlantic Heights but there should be some historic intent and that is a problem that should be addressed in the City

Councilor Dwyer was concerned with the traffic aspect. It seemed there was some evidence that the adequacy of a traffic study might not be limited only to the area in question but potentially would look at a larger picture. She's wondering why a traffic study appropriate for this project wouldn't have looked at a larger issue.

Mr. Holden stated that, in general, when the traffic issue developed, they were looking at how it intersected with the streets. This is a small project on a small lot, using a paper street. It is not unusual infield-type development.

Councilor Dwyer felt the traffic comment is limited to the adequacy of widening and streets abutting each other and didn't take into account the parking. Also, she didn't feel the 24 trip count made sense.

Mr. Holden indicated that the ITE trip generation gives you a calculation for the development. They are providing off street parking over and above what the ordinance requires and are building a street conforming to City requirements which allows for on-street parking. They conform to all City requirements. Mr. Holden indicated that his message is that this project is designed to the standards that the City requires and expects.

Carolyn Marvin, 129 Raleigh Way, stated that the largest pothole is at base of her driveway. Her 10 year old granddaughter lives with her so she is concerned with the flow of traffic in and out of Raleigh Way. The streets of Atlantic Heights were not designed for this amount of traffic. The Board may not have authority to require another study or to have Raleigh Way repaired prior to this project being completed, or to look at the big picture, but she asked who then does?

Mr. Holden stated that the Master Plan addresses this. The lots in this area are twice the size of the existing structures and the density is much less than the rest of the neighborhood. The Master Plan is being implemented. Also, when this community was developed, there was no affordable housing.

Michael Powers didn't understand Mr. Holden's response to the traffic study. He doesn't think traffic study should be confined to that one area.

Attorney Pelech responded to the speakers. He felt Mr. Will's comments are well taken but they are not within the jurisdiction of this Board per the Site Review Regulations. They cannot take architectural review and the proposed structures meet all requirements of the Zoning Ordinance. The Traffic Study did what TAC required and they appeared before the Traffic & Safety Committee who did a site walk. The streets are very narrow and Raleigh Way is in terrible disrepair but the City has indicated that it is the next street to be repaired. They heard from City staff that they could improve safety on Raleigh Way by removing parking but they didn't think the residents would want their front yards taken for that. They have met all of the City requirements. Most neighbors are not opposed to the project but are looking to the City to improve their infrastructure. This project will be less than 10% of Atlantic Heights. Under today's Zoning Ordinance you cannot crowd housing units in so it's difficult to make affordable housing. The Housing Partnership has not come before this Board and no application has been submitted. Also, Avanti has not yet come in for approval and they have not started with their Site Plan yet. The Board needs to look at things one at a time.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Ricci asked if it was in their purview to ask for building elevations?

Mr. Holden confirmed that it was within their purview. The City has worked with the applicant to determine they will be built with consistency of the neighborhood. If the Board would like to see that information, it is within their purview to ask for it.

Mr. Coker felt it was frustrating to hear the concerns of the neighbors, which are all valid, but he knows there is nothing they can do about it. They can only deal with this proposal. There are rules and regulations that they have to adhere to. They cannot have personal opinions or sympathies rule their vote. Their job is fairly narrow in scope. The info that TAC supplied to this Board, as well as Traffic & Safety, was that traffic was not an issue.

Mr. Holden didn't believe they have said that this was "not an issue" but it is an issue that can be addressed through improvements which has been done through the criteria the Board is looking at. They have made a smoother transition to the existing streets. There was a lot of discussion at TAC on water, traffic and drainage. The Planning Board has the power to make sure the applicant has addressed all criteria. The larger picture is dealt with through the Master Plan rather than through this application. A lot has been done on this project.

Deputy City Manager Hayden felt that the applicant has done a lot to modify this project to make it work but she wants more information relative to Raleigh Way. She doesn't have a copy of the traffic study and she would also like additional information from staff regarding the infrastructure. She wants to know whether this project will make any of the existing problems worse. She would also like more information on the PSNH drainage concerns. Deputy City Manager Hayden stated that she is not ready to vote on this yet. She would like additional information on drainage and a traffic study.

Mr. Coviello indicated he would like to see elevations of the buildings. Mr. Coviello also cautioned the Board that, sometimes when you are working close to a historic area, you don't want to try to match the area as it often fails. Sometimes you want to do things completely different. He felt the new library was a good example. Therefore, he advised the Board to look at the elevations but don't jump to any conclusions.

Mr. Hopley reiterated that this Board has no design review purview.

Mr. Holden stated that in the Master Plan they are looking at design review. The Regulations do allow for elevations to be provided so there can be a discussion.

Mr. Hopley still made the point that they cannot make them move a window or a door. He shares the concerns of the neighborhood on the roads and water. He is not convinced that a project of this impact can't be asked to provide more off site improvements.

Councilor Dwyer agrees that Site Review Criteria J requires them to have more information regarding traffic impact before they can render an opinion.

Mr. Coker felt the Board is focusing on a lot of information that they don't have.

Chairman Ricci felt one of their main concerns was that they have City staff who has a wealth of knowledge and he would like to have City staff here to go through that with the Board.

Mr. Coker made a motion to table this matter to the next meeting.

Mr. Holden summarized that they are looking for input on the infrastructure, water, surface run off, traffic, building elevations, and to have City Staff present at the next meeting.

Mr. Savramis seconded the Motion.

Mr. Savramis further stated that he would not support the motion as he felt they had sufficient evidence presented. He felt they have to put a certain level of trust in TAC. He doesn't see where delaying this to next month will provide them with much more information.

The motion to table to the next regularly scheduled Planning Board meeting passed with Mr. Savramis and Mr. Sullivan voting in the negative.

Attorney Pelech asked for a list from the Department listing out exactly what they are looking for.

Concerns from the January 19, 2006 Planning Board Meeting:

- 1) That a traffic study be provided to the Planning Board;
- 2) That City Staff be present at the next Planning Board meeting to address the infrastructure;
- 3) That the drainage concerns of PSNH be more adequately addressed;
- 4) That building elevations be provided to the Planning Board.

Stipulations from the January 3, 2006 Technical Advisory Committee Meeting:

- 1) That prior to approval by the Planning Board a report shall be provided to DPW and the Planning Board either that there is approval by the adjacent property owners to the increased drainage flow or that some Agreement is in place to allow such drainage flow;
- 2) That the two outfall structures (one swale and one level spreader) shall be fully constructed and stabilized before use;
- 3) That a detail be added to the Site Plans showing an armored slope from both the outlet of the treatment swale and the bypass culvert to the toe of slope or the stone wall;
- 4) That Saratoga Way be widened to 24' for approximately 100' near the intersection with Raleigh Way where there is no parking and that the hydrant be relocated as required;
- 5) That the applicant shall meet with Debbie Finnigan, City Traffic Engineer, to review the revised Site Plans to make sure that Saratoga Way meets all requirements;
- 6) That the water line should be 10" CLDI connecting to the 8" main in the Raleigh Way intersection and to the future 10" on Crescent, with a 10" diameter stub to the Portsmouth Housing Authority property line so that the City could extend the line for a looped feed;
- 7) That a meeting be scheduled with the applicant and Tom Cravens and David Allen of DPW to discuss off-site improvements on the water mains;
- 8) That the Planning Department will review the "cut through" that is being used on private property and provide a report at the Planning Board meeting;
- 9) That a 10' vegetative buffer easement shall be prepared by the Applicant and reviewed and approved by the City Attorney;
- 10) That a stop line and stop sign shall be added to the Site Plans at the intersection of Saratoga and Raleigh Way;
- 11) That there shall be an independent inspector for the proposed roadway as this will eventually be a city street;
- 12) That the water service as shown crossing the lot line on Lot #1 shall be amended on the Site Plans;
- 13) That on the road profile, the sewer is shown very steep and a drop manhole should be added uphill to relieve the slope;
- 14) That a detail showing well drained material 2' below the treatment swale shall be added to the Site Plans so that the Field Contractor will be aware of it;

- 15) That it is recommended that the wooden guardrail detail be upgraded to a 6 x 8 post and 3 x 8 horizontal section;
- 16) That a full detail of the roadway cross section where it crosses the large existing ditch showing well graded fill under the road be added to the Site Plans; and
- 17) That language shall be added to the deeds of the two lots that border the wetland buffer, relative to the prohibition of dumping debris in the wetland buffer zone, and said language shall be approved by the Planning Department and the City Attorney;

.....
 Mr. Ricci asked about the 10:30 rule. The Board agreed to proceed forward.

G. The application of **Marilyn Rath, Owner, and Portsmouth Fabric Company, Applicant**, for property located at **112 Penhallow Street** wherein site review approval is requested to construct a 679± s.f. second floor addition to the existing one story section of the building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 106 as Lot 20 and lies within Central Business B, Historic A and Downtown Overlay Districts;

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Rummler, of Interface Architects, introduced himself as representing Marilyn Rath, owner of 112 Penhallow Street, and Margaret Rath, owner of Portsmouth Fabric. Also present were John Chagnon, of Ambit Engineering, and Attorney Charles Griffin. Mr. Rummler described this as a simple proposed 2nd story addition to the rear of the existing footprint of the building. The property is in the CBB and Historic A districts. They received a Certificate of Appropriateness from the Historic District Commission on July 7th and appeared at two TAC meetings and received a recommendation of approval on January 3, 2006. There is no change to the building footprint. There are some legal issues that they have been working with the City on relative to the party wall. The issue is the blockage of three existing windows on the abutting property. Their position is that this project is within the compliance of Site Review Regulations and they would request that they grant approval.

John Chagnon, of Ambit Engineering, presented on behalf of the applicant. He indicated this is a minor addition on the back side of 112 Penhallow Street. It is a rather unglamorous project from an engineering perspective. There are no new utilities or impacts to the ground surface. The issue of storm drains and roof drains that TAC addressed was that the gutters should be realigned and not tie into the sewer system. They have addressed that concern by adding Note #19 to the plan which states that the gutters and downspouts will not be connected to the sanitary sewer. That note has been reviewed by DPW and it satisfies Condition #2.

Attorney Charles Griffin spoke on behalf of the applicant. A legal issue was raised by the abutter about whether the blockage of the windows was a problem. He has researched this issue and as there is no blockage of light and air an abutter has the right to block the windows on a party wall. There is a case from Manchester that is very similar to this case regarding the removal of air conditions to allow for an addition. The Supreme Court ruled that the addition was allowed and the air conditioners had to be removed. In Attorney Somers letter, she indicated that there is light and air coming in from the other side of the abutters building. There is a claim that there is a loss of adequate light and air however the room that will be blocked off has three other windows in the same room. Also, their lot has 42% open space which is remarkable in the downtown area. The Supreme Court states that the purpose of Site Review is to determine whether a project fits into the area where it is being developed. Bearing in mind, this property lies in the Central Business District where there are no setbacks. They feel they have satisfied all Site Review criteria and the blocking of the windows will not make an unacceptable nuisance.

Attorney Sharon Somers spoke on behalf of Judith Tausch, owner of 108-110 Penhallow Street. She submitted a letter that the Board received in their packets. She discussed the method of analysis of the Board. She is present to object to the proposal due to the lack of light and air that will be going into their building. The applicant has indicated that they have a Certificate of Appropriateness from the Historic District Commission and they have a 0 setback so that is the end of the story. She feels the Board has an obligation to review Site Review Criteria F, which she read: "The site development lacks adequate protection for neighboring properties against fire, noise, explosion, glare, odor, air pollution, hazardous waste, or other objectionable features or nuisances." She is concerned with other objectionable nuisances and features. The HDC advised her client that they did not have any jurisdiction to address their objection. It is very unclear on how to define objectionable nuisances and she encourages the Board to use their commonsense. She reminded the Board of the case law which she cited, which talks about a N.H. Planning Board must make sure that the development occurs in a manner which will be compatible with the area they are situated in and to assure that they are developed in an attractive manner which will not interfere with the health, safety and prosperity of abutting property owners. That case concerned a flagpole. If the Supreme Court can feel that the flapping of a flag and a light is valid criteria to consider, then their objection in this matter is also valid. Attorney Somers believes that the issue of the party wall is a legal issue. The Board needs to understand that despite the representations made by Attorney Griffin, the basic premise of party walls in NH falls under easements. She does not believe it is reasonable for the applicant to block off the windows in question. In an attempt to address this, they have met with the applicant, they asked for additional information regarding the specifics of the proposal to provide them with assurance that the structural integrity of their building will not be effected, and they have had discussions on how to mitigate the loss of light. The applicant has not offered to do anything to their building to litigate this. Ms. Tausch has gone forward on her own and has applied to the HDC to add some lights to her property. They are scheduled for February 1st before the HDC. If they are successful then they believe their needs have been met and they will withdraw their objections. She would suggest that the Board realize that they hope to have a resolution to their problems within the near future. She asked for a condition to mitigate the loss of light and air on the windows.

Mr. Will referred to Site Review criteria F. He agrees it is their purview and that it was put in as a catch all in case some nuisance came along that no one had ever heard of before. Therefore, if someone is going to use that, they must be very specific. Otherwise, it will open them up for a law suit. He asked Attorney Somers to specify exactly what her concern was.

Attorney Somers stated that specifically her objections are the blocking of three windows on the northerly side of the building and the subsequent elimination of light and air from those three windows.

Mr. Will felt there was precedent law about views being challenged so they could not interpret her objection in any way as one about the blocking of views, because they cannot consider that.

Attorney Somers confirmed that she is not raising a view issue. The issue is the protection of the current level of light and air.

Mr. Will stated that the Salvation Army also has a common wall and every office window looks out to a brick wall and this is common in downtown Portsmouth. He asked what makes this building different than all of those other buildings?

Attorney Somers stated that The Salvation Army building already exists so there is no jurisdiction and she recognizes that the downtown district has a 0 lot line. But, what distinguishes this is the fact that this building is unique in downtown Portsmouth as her client has a 2 story building surrounded on all sides by a 1 or 1 ½ story building. This proposed building would be physically attached or just 1" from her building.

Mr. Hopley referred to Page 3 of Attorney Somers letter where she quotes a Manchester case and she uses this as a judgment on nuisance. But, she doesn't state what happens.

Attorney Somers indicated that she raised that simply to discuss the principals of private nuisance law in NH. She thinks that it also needs to be mentioned that the principal is that a nuisance will be found by the removal of light and air if it creates a substantial interference with an abutting property. In the absence of any specific case law in NH, she is simply trying to offer assistance in corollary law.

Mr. Hopley asked who won the case? Did they create a nuisance by blocking the window?

Attorney Somers stated that based on that case, they determined that they did not block but the point is that it is a very fact specific analysis.

Mr. Coker asked about the photo in Attorney Griffin's exhibit of the back of the building and what the small window on bottom was.

Attorney Somers stated that was a temporary window which is blocked off by the tenants who are using the room as a dark room.

Mr. Coker asked if there was one room on the top floor?

Attorney Somers confirmed that it was one room.

Mr. Coker asked if there would be a significant number of windows remaining?

Attorney Somers stated there would be windows remaining but they will be reducing a significant source of light and air on the 2nd floor. Attorney Somers described the design of the interior.

Mr. Coker asked if lights tubes would be a satisfactory solution to them?

Attorney Somers confirmed they would and a lot of issues that she is raising tonight will be resolved on February 1st at the HDC.

Mr. Sullivan asked if the building used to be French's Clothing Store?

Johanna Lyons, of 18 Cutts Street, indicated that she grew up in this building. It was part of a subdivision of the French Company which Joe Sawtell did in the mid 1970's. The front of the building is very old, from 1700 -1800. The back was put on in the 1900's and the interior party walls were put in during the mid-1970's.

Mr. Will asked what a light tube was?

Attorney Somers described it as a solar tube which is essentially a flexiglass tube installed in the roof, which allows a shaft of light to come down into the interior.

Attorney Griffin referred to the case he cited and he believes there is established law in the state that this is not a nuisance. Also, the three windows in question could not be built under the current codes. Also, he believed that the abutters property is on the market for sale.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Holden indicated that Attorney Sullivan was asked if view was a protected issue and he concurred that views are not protected under the ordinance. However, Attorney Somers is relying on Criteria F. TAC did not find that it applies in this instance and found that it met all of the criteria. He believes this is a private dispute between property owners. TAC recommends approval, If there is litigation, Attorney Griffin would represent the City's interest. If the Board feels there is a problem, the City would defend the Board's finding.

Mr. Sullivan asked if it should go before the HDC because it is a historic building in a historic district?

Attorney Griffin confirmed that it did go to the HDC and the addition was approved.

Mr. Coker felt that the Board could also table this matter until the HDC makes a decision regarding light tubes which is scheduled for February 1st. If the light tubes are approved by the HDC it would be a moot point.

Deputy City Manager Hayden stated that she has great sympathy for the objectors but this Board should not be contingent upon an HDC action. Site Review is quite limited and the dispute is between two private parties.

Mr. Holden added that the application is properly before the Board and they have a responsibility to act. This board is not conditioned on what happens on adjacent properties.

Mr. Will disagrees with Deputy City Manager Hayden and Mr. Holden. He felt it was well within their purview per the Site Review Criteria. He agreed that Attorney Somers was correct that F is an objectionable feature. If the Board decides this is a dispute between two private property owners, it defeats the whole reason they are here. He asked for an elaboration from the Department on the final view of the Department on air and light as objectionable features.

Mr. Holden stated that TAC recommends approval of the project as it meets all Site Review Criteria.

Mr. Coker disagreed with Deputy City Manager Hayden. They send things to other Boards all the time. Why not give them an opportunity to get the lights approved or denied.

Deputy City Manger Hayden felt that they needed to act on the application.

Mr. Coker moved to table the application until resolution of the HDC light tube issue. If resolved in favor of the abutter, it comes back to the Planning Board for approval.

Mr. Will seconded the motion.

Mr. Sullivan stated that earlier this evening they tabled a petition for a project for additional information because they should have all information available at the time of vote. He disagrees with Deputy City Manager Hayden and feels that they should wait for the HDC to vote on this. If people are living in the building, he looks at it another way and to close up that number of windows is ridiculous. He supports the motion.

Mr. Savramis indicated that he supports the motion.

A roll call vote was taken on the motion:

Mr. Hejtmanek - no
Councilor Dwyer -no

Mr. Sullivan - yes
Chairman Ricci - No

Deputy City Manager Hayden - No

Mr. Hopley - No
Mr. Savramis - Yes
Mr. Will - No
Mr. Coker - Yes

Motion to table did not carry.

Mr. Will made a motion to approve with two stipulations.

Mr. Hejtmanek seconded the motion.

Mr. Will asked Attorney Griffin what was to prevent the applicant from creating a building and giving a foot of space between the two buildings which would create light and air but no view.

Mr. Rummeler stated that the building has a party wall so the addition would be engineered so any additional load is adequately supported by the party wall. The property line is in the middle of the 12" party wall.

The motion to approve with stipulations passed with Mr. Coker, Mr. Savramis and Mr. Sullivan voting in the negative.

- 1) That a note shall be added to the plans stating that the storm drains and roof drains are not tied into the City sewer;
- 2) That the applicant shall work with the Planning Department and DPW to review the revised Site Plans prior to submittal to the Planning Board;

.....

H. The Portsmouth Planning Board, acting pursuant to NH RSA 12-G:13 and Chapter 400 of the Pease Development Authority Site Review Regulations, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: The application of **Pioneer Development, LLC, Applicant**, for property located at **29 New Hampshire Avenue**, wherein site plan approval is requested for the construction of two buildings, each being 2-story office buildings with 11,600 ± s.f. footprints, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 302 as Lot 5 and lies within the Business Commercial District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Dirk Grotenhuis, of HTA Kimball Chase, addressed the Board. He stated that this project is a redevelopment of an existing site on the Pease Tradeport. There is one existing building and they propose to construct two new buildings, both with 11,600 s.f. footprints. The project also consists of demolishing the existing building. The two new buildings would be the exact same size. They went before the PDA Board in November and received approval for the concept. They met with TAC who recommended Site Review approval on January 6th with stipulations. There were some note revisions to the plans and all stipulations have been revised or addressed on the set of plans that the Board has received.

Mr. Grotenhuis reviewed those changes. On Sheet C-2, Existing Site Plan, it shows a 3.7 acre parcel that is subdivided on the PDA and is the previous military communication building. The building is currently occupied by four tenants. The site is accessed by one driveway with 90 paved parking spaces in the front of the building. The site slopes away from the property to about 4-6' relief from the

roadway up to the site. There are no wetlands on the site and there is an existing sewer main that services the building. The proposed use would be two new office buildings, each 2 stories high. The frontage along New Hampshire Avenue is 466', the setbacks would be 70' front, 50' from the back and 30 from each side. The parking setback along New Hampshire Avenue is 50' whereas the current parking set back is 15'. The site demolition would involve removing the existing building and paving, abandoning all old utilities and adding landscape features.

Mr. Grotenhuis reviewed the rendering plan that showed two buildings which will be the same size and symmetrical. The reason for siting the buildings in that particular area is a sewer line that runs through the site and an easement will be provided to the City so that it can be maintained. They are proposing 232 new parking spaces which complies with the parking requirement. They re including 24' drive aisles which exceeds the current regulations. There will be six handicapped spaces and one handicapped accessible van space. They are including motorcycle and bicycle parking. They will be replacing the existing paving, and the existing asphalt sidewalks and the bituminous sidewalks with a new 5' wide concrete sidewalk. The grading and drainage of the site is higher on the back side and lower as it gets closer to the roadway. They are proposing a closed drainage system for the majority of parking in the rear, conveying that through pipes to a sediment removal system with an oil water separator. That will then discharge back into an on-site infiltration system, essentially having a stone encased area to detain the water on site, reducing run off from the post conditions. They would also have areas with proposed sheet draining across the parking lot and discharging into the existing storm drainage system on New Hampshire Avenue. They will be reducing the rate and volume into the system. The site currently has no treatment at all so this will benefit the existing stormwater drainage system. The fire suppression system line would come from New Hampshire Avenue. They would reconnect into the existing sewer line. They had discussions with PSNH, who indicated they will be serving these buildings with underground utilities. They have proposed landscaping and with an elevation difference and they took advantage of a berming effect on top of the hill where they can add a little bit more soil and add some screening. They are reducing amount of pavement.

Deputy City Manager Hayden asked if the mature trees were being removed?

Mr. Grotenhuis indicated that they are trying to transplant them on site. They will make very good parking lot trees. There are 7-8 species that are 4-6 caliber trees. They will attempt to relocate them on site. They are trying to keep as many buffer trees as possible. They could have increased the density but they did not want to impact the buffer.

Mr. Coviello asked if there was a lighting plan?

Mr. Grotenhuis handed out a photometric plan as well as a landscape plan to the Board members.

Mr. Coviello asked if they were Dark Sky Friendly lighting?

Mr. Grotenhuis confirmed that they were.

Mr. Coviello asked if 20' poles were okay?

Mr. Holden indicated that the height of the fixture is less important when they use Dark Sky Friendly. By having lower poles, you are required to have more poles.

Mr. Will asked if the handicapped ramp will have upright signs?

Mr. Grotenhuis confirmed that they will and they are on the Plan detail sheet.

Deputy City Manager Hayden asked if the Planning Staff had an opportunity to review the Landscaping Plan?

Mr. Holden indicated they did not. He asked if the trees that they are going to transplant don't survive, will they be replaced?

Mr. Grotenhuis indicated that they may not be replaceable in the same caliber. But, there would be a new tree planted.

Mr. Holden asked if they could be 3' caliber?

Mr. Grotenhuis was agreeable to that.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition. Seeing no one rise, the public hearing was closed.

DISCUSSION AND DECISION

Mr. Will indicated that last month he asked about sending a message about getting together with the PDA regarding Site Review Regulation and asked what the status of that was?

Mr. Holden indicated that a letter was drafted and it will go out soon.

Mr. Hopley made a motion to approve with stipulations. Mr. Sullivan seconded the motion.

Deputy City Manager Hayden requested that a stipulation be added that when they transplant the trees, if they die, they will be re planted and also that the Planning Department review the Landscaping Plan.

The motion to recommend approval passed unanimously.

Stipulations from the January 19, 2006 Planning Board Meeting:

- 1) That the mature trees (8-10 years old) shall be transplanted on site and should they not survive, they shall be replaced with 3" caliber trees;
- 2) That the Landscaping Plan be reviewed and approved by the Planning Department;

Stipulations from the January 3, 2006 Technical Advisory Committee Meeting:

- 3) That the note on the Utility Plan regarding tapping the main should be amended to say that the tapping sleeve and the tap on the main shall be supplied and installed by the Portsmouth Water Division;
- 4) That two water services should be shown for the property; one domestic for the whole property with only one meter and one fire service;
- 5) That the note on the Detail Sheet about concrete casing around the water main coming too close to the sewer should specify a sleeve rather than an encasement or that the sewer shall be encased in concrete;
- 6) On the standard detail of the hydrant setting, the note should require that the hydrant meet Portsmouth Water Division standards rather than NHDOT standards;
- 7) That the drainage portion shall be finalized in a meeting with DPW to review the design for a report back at the Planning Board meeting;
- 8) That a maintenance schedule of the subsurface drainage system shall be provided to DPW and a yearly confirmation report be filed showing that the maintenance is being performed;
- 9) That a note should be added to the Site Plans that the existing hydrant in the southwesterly corner of the building should be removed and abandoned;
- 10) That the entrance onto New Hampshire Avenue should have a stop line and a stop sign to delineate the site;

- 11) That the traffic impact study shall be provided to Debbie Finnigan, City Traffic Engineer, and the Planning Board for their review prior to the next meeting;
- 12) That automatic notification of emergency services is required along with a knox box on each building by the main entrance;
- 13) That a sign detail be added for the handicapped accessible parking spaces showing the MUTCD standard;
- 14) That concrete sidewalks be provided along the front of the property and for all walkways and sidewalks need to be built to Portsmouth DPW standards;
- 15) That all lighting shall be "Dark Sky Friendly";
- 16) That an easement or license shall be obtained for access/egress cross-easements for the property subject to the approval by the PDA as to content and form;
- 17) That a sewer and drainage easement shall be prepared by the applicant for review and approval by the City Attorney;
- 18) That an appropriate payment shall be made into the TIIF fund, per the PDA requirement, with a report to Debbie Finnigan, City Traffic Engineer;
- 19) That bike racks and motorcycle pads shall be added to the Site Plans; and
- 20) That the drainage pipes on the Site Plans shall be consistent between what the notes say and what the plans show.

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Mr. Holden asked if there was a volunteer to be the Historic District Commission representative. As no one volunteered, Mr. Holden indicated this would be the first item on the next agenda as the position needs to be filled.

V. OLD BUSINESS

- A. Report back from DPW on current standard for monuments;

This matter was tabled to the next regularly scheduled meeting due to the lateness of the hour.

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VI. NEW BUSINESS

- A. Project of potential regional interest (Letter enclosed)

This matter was tabled to the next regularly scheduled meeting due to the lateness of the hour.

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VII. ADJOURNMENT

A motion to adjourn at 11:45pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on March 16, 2006