

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

7:00 P.M.

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

APRIL 27, 2006

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Jerry Hejtmanek, Vice-Chairman; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; Raymond Will; and Alternates Anthony Coviello and Paige Roberts

MEMBERS EXCUSED: Donald Coker and George Savramis;

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

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Mr. Will made a motion to reconvene and Deputy City Manager Hayden seconded the motion. The motion to reconvene passed unanimously.

Chairman Ricci notified the public that May 6th is Household Hazardous Waste Day at the Department of Public Works on Peverly Hill Road and details are on the City Website.

I. PUBLIC HEARINGS

L. The application of the **City of Portsmouth, Owner**, for property located **off Nathaniel Drive**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for buffer restoration and enhancement, to create a higher functioning buffer within an Inland Wetlands Protection District. No construction is proposed. Said property is shown on Assessor Plan 292as Lot 221 and lies within a Municipal District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Peter Britz, City Environmental Planner, presented on behalf of the City. He indicated this was a buffer enhancement on Nathaniel Drive, off Lafayette Road, adjacent to a large wetland and connected to the Great Bog. He showed a plan that reflected the proposed enhancement. The City received a grant from the Moose Plate project from the State. Steve Miller from the Conservation Commission has been working with Mr. Britz and was also present. They want to improve the habitat rather than just plant grass and this will work as an outreach tool. They will bring in plantings and some boulders to create a seeding area and an interpretive sign to talk about the wetland values and the project improvements. One big change is to a row of pine trees that are small and are spaced very closely together so they are replacing them with evergreen shrubs for better screening. This is for buffer restoration only and they are not going into the wetland. They are also improving the stormwater filtering and no State wetland permit was required. They received a favorable recommendation from the Conservation Commission at their last meeting.

Deputy City Manager Hayden asked if they were planting early spring and were they using low maintenance plantings? Mr. Britz indicated they are planting vegetation that shouldn't need much maintenance and will do well on their own. The next step is they will be going out to the neighborhood and actually planting within two months.

Mr. Will asked if this was the Nathaniel Drive subdivision and he believed this lot was to be reserved for recreation space. He asked how the City came to own it? Mr. Britz explained that the detention pond was put in that location and the owner had no use for the property and deeded it to the City.

Mr. Will felt this was a great use for the land, to show people how valuable the wetland is. Mr. Britz agreed that the education component is nice.

Chairman Ricci also agreed that it was a great application.

The Chair asked if anyone 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 moved to approve the Conditional Use application as presented. Mr. Will seconded the motion.

The motion to approve passed unanimously.

Chairman Ricci asked for a follow up for the Board when the project was complete. Mr. Britz also confirmed that information will be sent to all residents with property adjacent to the wetlands and they will also put it on the City website.

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M. The application of **Martingale Wharf, LLC, Owner**, for property located at **99 Bow Street**, wherein site plan approval is requested to construct a 6/7 story 80' x 45' addition to the left side of an existing building and a 6 story 36' x 56' addition to the right side of an existing building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 106 as Lot 54 and lies within the Central Business A District, Historic A District and Downtown Overlay District.

Chairman Ricci and Mr. Coviello secluded themselves from this hearing.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Malcolm McNeill appeared on behalf of the applicant. Also present were Eric Weinrieb, of Altus Engineering, Shannon Alter and John Merkel, of TMS Architects, Butch Ricci, as the Principal and applicant. He displayed accurate renderings of both buildings. They went before the HDC and it took two months as the project has two sides to it, one being the street side to historically mesh into the Bow Street area. The structure requires no variances, no special exceptions and no waivers. The HDC process involved various plans over 6 months, and they propose retail used on the Bow Street floor, and the other floors will be commercial rather than residential, per the Master Plan. The HDC was concerned with roof lines and heights and the building conforms to all height requirements. There is an alley next to Harpoon Willys that leads to the water which will remain open. Also, there is a provision for the Riverwalk on the other side, should the Riverwalk be developed. They have written letters to the City supporting the Riverwalk.

The other side of the project will probably have a restaurant and retail along the waterfront on the first floor. The HDC attempted to make the building historically compatible and everyone was happy with the results. The HDC also looked at this project from the water side.

The proposal fully follows the Master Plan, it is retail compatible with other businesses downtown. The Board has received objections to this project. This project fully complies with all City regulations, and there are no view easements, so if one were to look carefully at the objections submitted they will see that they only deal with views. There was an appeal of the HDC decision to the BOA which was denied. That denial was appealed to the Rockingham County Superior Court and it was dismissed by that Court.

Attorney McNeill has reviewed all minutes which were comprehensive regarding infrastructure and water supply. They are in the process of resolving issues with DES for Shoreline Conservation Permitting. They are proposing that this be a condition of approval for the project. This project is compatible with the proposed Riverwalk. This will be a true landmark building and they have gone to great lengths to make sure it fits in.

Shannon Alter, architect, TMS, passed out a brochure. He started discussing the water side. One of the challenges was that the street side was about 20' – 30' higher than the water side. Working with the HDC, they felt that the result really reflects what Portsmouth wants to be. The road slopes up, and there is an accessway between the project and Harpoon Willy's. On the east end they are proposing a stairway. When the Riverwalk is extended, the public would have the ability to walk through the building and exit onto Bow Street. Fitting the building into the fabric was a tough part of the HDC approval. They broke the building down into 6-7 buildings to look like multiple buildings that were built over time. Two new additions enclose the existing Martingale building. He stated that on the water side, there is more glass than the Bow Street side.

Mr. Alter indicated that the new project site is close to the road so there is no site lighting except on the building. A handout diagram showed the photometric plan. They tried to retain light on the site, and they are using Dark Sky Friendly lights.

Acting Chairman Hejtmanek asked if it's the same brick on all buildings? Mr. Alter indicated they are using all the same brick, which is what the HDC wanted.

Eric Weinrieb, of Altus Engineering, indicated that there are currently 12 parking spaces that back onto Bow Street which will be eliminated. They are also providing a 60' loading dock in front of the building for safe access for trucks coming during the day for the whole area. The closest loading dock is Penhallow or Market Street. They will also provide a small raised island to separate the loading dock. They will integrate upper and lower Bow Street with brick sidewalk. From the utility standpoint, they are proposing to drop off the utility pole in front of the Martingale and put in an underground utility transformer hatch to be accessed from inside the building. The other utilities will be serviced from the existing pole, but it will be moved 2'. Natural gas will come in around the side so gas meters will be on the side of the building. They will have a new force main to pump up which will be tied into the existing sanitary service. They have been working with DPW to replace a new water line. They will do a 1" overlay. They have looked at a way to help some downtown traffic issues by providing off site pedestrian mitigation and crosswalks to link the areas. They have been working with Deb Finnigan to improve the Dolphin Striker sidewalk area and improve the handicap accessibility.

Deputy City Manager Hayden asked Mr. Weinrieb to talk more about the loading zone. She asked where it was exactly?

Mr. Weinrieb indicated there will be a 15' travel aisle for westbound traffic. The back of the island is the back of the parking and it will be set back. There is quite a sea of pavement now and one of

the benefits of the project is that they will eliminate the parking which backs out to the road and people will not be able to do u-turns there.

Deputy City Manager Hayden asked about traffic coming the other way? Is there anything to prevent people from coming across the street and parking backwards? Mr. Weinrieb stated that they can't control every driver and someone could still do that. Deputy City Manager Hayden asked if as much as possible was being done to prevent that? Mr. Weinrieb felt it would not be easy to do. It is basically a 15' wide travel aisle and they will not see a UPS truck doing that. Deputy City Manager Hayden asked if they were losing any on street parking? Mr. Weinrieb confirmed that they were not.

Mr. Hopley referred to the TAC minutes regarding a grease interceptor inside the building. There was no mention on the plan of a grease interceptor. He has heard there may possibly be two restaurants and he asked if TAC was aware of that? Mr. Weinrieb confirmed that TAC was aware of that. At the time of the sewer permit they would deal with that issue. They are thinking of using the "big dipper". It is not going to be a typical 8' x 10' deep pump chamber. It will have a smaller lift station, backed up by a pump and it will be mechanical.

Mr. Holden asked where the nearest loading berth was located. Mr. Weinrieb stated, going west, there was one in front of Penhallow near what used to be Goldi's and there is one on Hanover near 100 Market. Mr. Holden asked if TAC viewed this as a multi-use loading berth? Mr. Weinrieb confirmed that was correct.

Mr. Holden asked if they were proposing any grease traps or anything else in the public right of way. Mr. Weinrieb confirmed that was correct. Deputy City Manager Hayden asked if they would be meeting all of the City codes relative to grease traps. Mr. Weinrieb confirmed that they would be.

Attorney McNeill referred to a letter which was received from the Concerned Citizens regarding traffic safety on Bow Street. He advised the Board that was a subject that was reviewed by the Traffic and Safety Commission and the City Traffic Engineer. There was also a suggestion that the building was not in conformity with what was approved by the HDC and Attorney McNeill confirmed that they will not differ from the approved HDC plan. He referred to the 10 TAC stipulations and he indicated they are acceptable except the first stipulation which refers to the water line. They have concluded that they need a fire pump and will be putting one in however he explained that they will do so at the appropriate time and in a constructive, timely manner, and they will provide a bond if necessary. Doing it piecemeal would not work. All other conditions are acceptable. They request the Board's consideration in having the water upgraded at the same time as the other upgrades in that area.

Councilor Dwyer asked Attorney McNeill to address the remaining issues in the letter of objection from the Concerns Citizens group. Attorney McNeill spoke to the State of NH jurisdiction which prohibits any extension of the building footprint. He stated it has been very clear to the City that they are working with the DES regarding shoreline protection issues. They propose that that be treated as a condition of approval. The second item is that the site has been brought before the State many times and has been denied future expansion of the retaining wall. Attorney McNeill does not believe that relates to this site and does not effect this project and if it did, DES would not allow them to proceed.

Deputy City Manager Hayden asked about point #3 in the Concerned Citizen letter regarding the proposed road detour plan being dangerous. She asked him to address that. Attorney McNeill indicated that the Planning Department made it very clear that they were very concerned about traffic, understanding that there were limitations about what can be done in this area.

Mr. Weinrieb indicated that during construction they are proposing to change the alignment and are working with the City on the final Management Construction Plan. They will eliminate parking spaces, shift the center line over with a gentle sweep to maintain a full aisle to continue around to Chapel Street. They are shifting the double yellow to south so westbound traffic will continue through. They will have a safe walkway fenced in to allow safe pedestrian travel. They are creating a safe construction zone and signs will be posted. Post development access will be enhanced by eliminating the wide area for vehicles to pull a U-turn.

Deputy City Manager Hayden asked how long the construction period would be? Mr. Weinrieb stated 18 months. Deputy City Manager Hayden asked if they will require crane or a reason to shut off traffic for a period of time? Mr. Weinrieb confirmed that they would for an hour or two at times and they will have traffic control at that time. Deputy City Manager Hayden asked if there would be one way traffic at that time? He indicated that they would work with the Police to see what they want and it probably would result in one way traffic.

Councilor Dwyer felt that in the previous minutes, it was the assumption that the Riverwalk would not be built but tonight it appears that it is the assumption that the Riverwalk will be built. She asked that they expand on the public access. Mr. Alter stated that he hopes that the Riverwalk will go through and they are anticipating that future use. If it doesn't happen, the stairs will become internal. He referred to the display and pointed out how the Riverwalk would connect with this project.

Councilor Dwyer stated that public access has been brought up by a number of people but the plans don't really show it. She asked if the Riverwalk goes through will it look different? Mr. Alter confirmed that it will look the same. The steps next to Harpoon Willy's will be the access down to the Riverwalk. On the other side, the stairs go from the river to the street. They are creating an internal set of stairs to access the Riverwalk to anticipate those needs. Councilor Dwyer asked if the stairs are partially external and partially internal? Mr. Alter confirmed that was correct. When the Riverwalk comes in, the owners will allow the public through the building.

Mr. Will felt that the minutes were very different about the Riverwalk. He has serious concerns about the Riverwalk and doesn't even see a stipulation regarding the Riverwalk. He referred to City regulations to promote foot transportation and felt that this provides a way to travel on foot rather than by car. He believes the plan is wonderful but there is very little detail regarding the Riverwalk. He asked for more detail.

Deputy City Manager Hayden felt maybe just a note on the Plan would cover it. The Applicant has been very cooperative with the City regarding the Riverwalk and has allowed a review to make sure they are working in concert with the Riverwalk.

John Merkel felt that they had met Mr. Will's concerns. There is an additional 10' of elevation change and there is not enough room to take a stairway all the way down to the river level. Currently there is no dock so the stairs placed right now serves only the building. As the Riverwalk appears, internal stairs will be added.

Councilor Dwyer asked about the use of the building? If she were renting an office she would question allowing public to access it for the Riverwalk. How comfortable will people be allowing that? Mr. Merkel indicated that it would be blocked off from the rest of the building and would serve as an exit for the stairway only.

Butch Ricci indicated that they intend to block off the area and make it an enclosed area. It could also be a fire access and the offices would be blocked off. This building does not need the Riverwalk at all. However they have a letter of intent to work with the City to work with them and allow the city access to 200' for the Riverwalk.

Mr. Will stated his only concern is that they have something to plug the Riverwalk into. If it is satisfactory to the Department then he would just want a note on the plan. Deputy City Manager Hayden felt that the minutes would reflect what Mr. Ricci just said so it is well in place.

Ms. Roberts asked if the Riverwalk is inside building? Attorney McNeill indicated that the Riverwalk goes along the river. There will be an access from Bow street and the stairs will be internal on the right side of building. He felt that they have a writing on record which expresses their clear intent to cooperate.

Mr. Holden added that the minutes may be brief but TAC was tabled to deal with that exact issue and the Ricci family has worked very closely with the City. The Police wanted to make sure there were two accessways and the Ricci's provided that. They have indicated on many occasions that they are in support of the project.

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 stated, for the record, that all Board members received a copy of the letter from the Coalition as well as a letter from Deb Finnigan to Mr. Weinrieb. They have asked that Steve Parkinson be available for any questions. Acting Chair Hejtmanek asked Mr. Parkinson to address the loading and traffic issues.

Mr. Parkinson indicated that they have been involved since Day One. Ms. Finnigan has worked on various changes, including temporary traffic controls, and they are all in agreement. Mr. Holden asked him to address the Construction Management Plan. Mr. Parkinson stated that once the project moves forward, they will work out a construction plan on how the traffic will flow and what areas will be excluded for pedestrian traffic. This is similar to what they have done with the old Eagle Photo building downtown. City staff, including Fire, Police, DPW, City Manager and Planning, will come together and come up with a Memorandum of Understanding which will ultimately go before the City Council.

Mr. Will made a motion to approve with stipulations. Mr. Hopley seconded the motion and asked to make another stipulation that Note 9 on C-4 be altered to read that "Internal grease trap will be required for the restaurant(s) and sized for the resulting flow", due to concerns about multiple restaurants using a single trap. He is concerned that if there are multiple restaurants, they need to make sure that the resulting single trap will yield the proper sedimentation needed for that flow.

Mr. Holden asked that Stipulation #1 be read to require the approval of DPW, the Planning Department and the Legal Department for a method for bonding that is appropriate. Mr. Hopley indicated that he can understand Dave Allen's concern that he only wants to get into the street once and they do not want to dig up the street again and again.

Deputy City Manager Hayden asked to modify stipulation #4 as Deb Finnigan's letter addresses that. They are not on the plan yet so they should cite Ms. Finnigan's letter on the plans.

Also, regarding Stipulation #8 and the Construction Management Plan. Sometimes people come to them at the last minute with this plan so she suggested that they add that it must be approved prior to the start of construction.

Mr. Will mentioned that the Department is satisfied with the Riverwalk being implemented into this project but he doesn't think the Riverwalk will happen soon. In 30-40 years, how would someone know what they discussed today. Mr. Holden felt it could be tracked historically through the capitol

improvement plan and it would show that this building was built to facility this. He will provide evidence that they have added that to the draft plan for next year.

Councilor Dwyer asked if the stipulation was related to access rather than the Riverwalk? Deputy City Manager Hayden felt they accomplished that by attaching their letter. Mr. Will also stated that their annual Capital Improvement update will be a constant reminder.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the Technical Advisory Committee Meeting on April 4, 2006 (as modified by the Planning Board):

- 1) That the applicant shall replace the water line along the front property line and the necessity of a fire pump will be reviewed at the time of the building permit application with the Fire Department, and said work shall require the approval of DPW, the City Attorney and the City Planning Department as to an appropriate method of bonding;
- 2) That a recommendation shall be provided by the City Water Division relative to the water line sizes prior to the Planning Board meeting;
- 3) That the City shall work with the applicant's mechanical engineer to determine what they need for flows and to model the appropriate size of the water line and the applicant shall schedule that through the City Water Division as it shall require shut downs in the area;
- 4) That all traffic mitigations shall be reviewed and approved by the City Traffic Engineer and those notes shall be incorporated into the Site Plan Set as follows:
 - a. The pavement markings on Market Street shall be a painted island to help direct vehicles toward Market Square in addition to the double yellow center line;
 - b. On the southeast corner of Penhallow Street and Bow Street a bump out shall be placed so that ADA standard curb ramps can be built and there is a safe refuge for the pedestrians; and
 - c. On the northeast corner of Ceres Street and Bow Street and the southwest corner of Penhallow Street and Bow Street verify that the existing curb ramps meet current ADA standards. If the existing curb ramps do not meet current ADA standards then the curb ramps will need to be upgraded.(See Letter from Deborah Finnigan to Eric Weinrieb dated April 27, 2006 with attached drawing);
- 5) That the applicant shall provide automatic notification of emergency forces with a Master Box and a Knox Box shall be provided;
- 6) That the Plan Set detail shall be revised to show that the pavement cross section shall to be 4" (2 ½ and 1 ½);
- 7) That the Plan Set detail shall be revised to show the stone mix on the bricks shall be 1" rather than 2";
- 8) That a Construction Management Plan shall be prepared by the applicant, in coordination with Deb Finnigan, City Traffic Engineer, the Building Inspection Office and the City Manager's Office, and shall be approved by same prior to the start of construction;
- 9) That prior to the issuance of a building permit, all outstanding issues regarding the coastal process and Shoreline Protection Act shall be completed;
- 10) That a shop drawing of the stainless steel hatchway shall be provided to David Desfosses prior to the issuance of a Building Permit;

Stipulations from the Planning Board Meeting on April 27, 2006:

- 11) That Note 9 on Sheet C-4 be altered to read "Internal grease trap will be required for the restaurant(s) and sized for the resulting flow", due to concerns about multiple restaurants using a single trap;

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N. The application of **Harbour Place Group, LLC, Owner**, for property located at **One Harbour Place** wherein Site Review approval is requested to convert the 5th floor of the existing building from business offices to 9 residential units, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 105, as Lot 2 and lies within a Central Business A, Historic A and Downtown Overlay Districts.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared for the applicant, Harborplace LLC. This is very unique for a Site Review as there is no change to the site or utilities. All changes are internal. It is a reuse of an existing structure with no additions and it is exempt from Site Review approval however if there are more than 5 residential units, they require approval. David Holden and Attorney Pelech agreed to undergo the Site Review process. They appeared before TAC and received approval. He indicated there is very little to discuss. The top floor is being changed from offices to residential units. He displayed an as-built site plan and indicated nothing is to be change. They had the water looked at and it was determined that there is adequate pressure for the residential units. The current sprinkler system is to code. Dan Plummer from Harborplace and Dan Batting, Architect, were also present. This application also received approval from the HDC.

Ms. Roberts asked the status of the HDC approval. Attorney Pelech indicated they received approval with a condition that the materials be brought back to the Commission for the balcony.

Dan Batting clarified that it was a conditional approval from HDC because of the recessed balconies. There was concern once the current railing is removed, how they would they finish it off. They will go back for their final approval.

Deputy City Manager Hayden asked them to address the three stipulations from TAC.

Attorney Pelech stated that there were no shoreline coastal issues. They are not disturbing any soil whatsoever. Mr. Will asked if the public still be able to access the wharf or will it be made private? Attorney Pelech indicated everything will remain the same.

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. Coviello made a motion to approve with the TAC stipulations. Mr. Will seconded the motion.

Mr. Coviello mentioned that Item H-1.6 of the City Master Plan continues to encourage apartments in the upper floors of downtown buildings.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the Technical Advisory Committee Meeting on April 4, 2006:

- 1) That the applicant's mechanical engineer shall review the water demand and, if not sufficient, they shall install a booster pump, and this shall be reviewed and approved by the City Water Division;
- 2) That it be determined that the sprinklers provide adequate water flow for the residential area and this shall be reviewed and approved by Deputy Fire Chief Griswold;
- 3) That it be determined whether there are any Shoreline Coastal issues that need to be addressed;

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O. The application of **Ned and Bill Properties, LLC, Owner**, for property located at **621-627 Islington Street** wherein Site Review approval is requested to renovate the existing structure into six units, to be used as office, studio and four residential units, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 164 as Lot 6 and lies within a Business District.

The Chair read the notice into the record.

Mr. Coviello stepped down from this hearing.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared on behalf of the applicant. Also present was Bill Savoie, principal. They are doing renovations of this property. Mr. Chagnon reviewed the plan sheets with the Board. The project consists of restriping of the parking area, adding and removing pavement in the back and on the west side, adding landscaping, putting in new stairways and ramps for handicapped accessibility, and replacing sidewalks on the Islington Street side as part of the project. They received TAC approval on April 4th with 5 stipulations. Mr. Chagnon reviewed those stipulations.

Mr. Chagnon has provided specifications showing Dark Sky Friendly light fixtures (Note 8 on Sheet C-2). He added a City standard sidewalk detail to the plans. The No Parking sign will be sleeved. Regarding the stipulation about the stairs on the Islington Street side, the Technical Advisory Committee was looking to the Planning Board for guidance. Mr. Chagnon displayed a rendering of the building with five doors on Islington Street. The sidewalk slopes down so there are more stairs on one end. Their original plan reduced the doors to three. The property line is at the face of the building so the steps are on City property. TAC didn't want to recommend the steps so Mr. Chagnon looked at what they could do to make the situation better and he handed out new plans. They took the door in the middle and recessed that door as it comes into a hallway with space to provide for stairs to the basement. There are still two doorways which are very close and are almost one set of stairs so snow plows would only have one area to avoid. The basement will have an interior stairway. The applicant has made a significant improvement to the number of steps in the City right of way and the plans would reflect that steps would be constructed with more durable materials. He felt this was an overall improvement to the current situation.

The 5th stipulation referred to the water service. This plan has been reviewed by the City Water Division. They have put in two services, one for fire and one for domestic and Sheet C-2 shows that. They have received a variance for a 20' travel aisle. This plan was approved by the City traffic engineer and the re-use of the property will generate less traffic than the current use.

Mr. Will stated that he liked the recessed staircase. He asked why they don't have a single door rather than two right next to each other to make it easier for the plow to get past? Mr. Chagnon felt it might be possible to blend the steps together however the doors are an architectural element they want to keep. Mr. Will agreed that would be better.

Deputy City Manager Hayden asked why the doors can't be recessed? Bill Savoie indicated that inside one door is a staircase and they would have to completely rebuild the staircase. In the center they can push it back because it's a service entrance. If they recess one and not the other it will look peculiar.

Mr. Hopley indicated that only two units have a front and back entrance and the others just have a back entrance. Mr. Savoie confirmed that was correct. He indicated that the other alternative

would be to abandon both doors all together but that would not be in keeping with the street fronts on Islington Street.

Deputy City Manager Hayden asked what the width of the sidewalk at the foot of the stairs? Mr. Chagnon believed it was 3' – 4'. Deputy City Manager Hayden confirmed that someone could pass in a wheelchair. Mr. Holden asked what the minimum ADA standard was. Mr. Chagnon stated it was 36". Deputy City Manager asked if there were crosswalks where they would need tipdowns? Mr. Chagnon confirmed there were not crosswalks. There was one further down at the intersection.

Deputy City Manager Hayden referred to Sheet C-2, where she felt there might be an oversight as it shows the sidewalk as bitumious. Mr. Chagnon indicated that is the existing and he referred her to Note #10. He indicated he will take it off of the second sheet.

Chairman Ricci had a concern that the area for snow storage was not enough for the site. If the on site snow storage is inadequate, he asked that the remainder will be hauled off and he would like that to be a stipulation. He also noted that they are proposing new utilities to cross Islington Street and he did not see any details for the cut and patch and he assumed there were DPW standards? Mr. Chagnon indicated that the drawing was getting pretty crowded and they could have shown it as a detail but any work they do will have to be done to City standards.

Chairman Ricci asked if the trash enclosures were all internal to the building? Mr. Chagnon confirmed that they were. Chairman Ricci asked if there was one per unit? Mr. Chagnon confirmed that in the back there are some interior buildings with storage area and one area shall be designated for trash and there will be one for each residential unit.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.

Mr. Holden indicated that TAC recommended that the encroachments not be allowed but offered a way for the Board to do so if they wish. DPW indicates that the stairs have been a problem in the past with snowplowing and the City has been responsible for repairing them. The minimum width for a sidewalk plow is 5', hence the problem. TAC did not feel comfortable that an interior arrangement of rooms should effect the sidewalk when the City is trying to do a lot on the corridor.

Mr. Will asked how wide the sidewalk was presently and was there enough for a snow plow to get around? Mr. Chagnon believed it was 3' or 4'. Mr. Will was concerned as it was less than 5'. Mr. Chagnon explained that was why they wanted the Parking Sign sleeve. Also, the plow will be 80% on the sidewalk. Most snow in this area is trucked away in a big storm. Mr. Will was more concerned because the sidewalk is a public access.

Steve Parkinson, Director of Public Works, addressed the Board and indicated that the sidewalk tractor is 4' wide with a 6' of blade. Therefore, 2' of tractor will be off the sidewalk. Mr. Will asked if having only one door would help? Mr. Parkinson had not seen this proposal previously. But, he stated that he needs 5' of sidewalk for the tractor to safety pass something. Otherwise it tears the wheels up. Chairman Ricci asked if the stairs have been repaired in the past and how many times? Mr. Parkinson confirmed that they have been repaired more than a couple of times.

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 made a motion to approve with the TAC stipulations plus one more that he would like some help with. Deputy City Manager Hayden seconded the motion.

Mr. Will was concerned about Islington Street being a walking street. He asked how they go about stipulating to recessing the stairs? Should he make a stipulation or table? Mr. Holden recommended approval subject to no need for a license from the City for a right of way. Mr. Savoie agreed that was reasonable. Deputy City Manager asked if they eliminated the doors on Islington Street, would it still fit in with the streetscape?

Ms. Roberts agreed that would be problematic relative to the streetscape. Maybe they could consider faux openings as it would be unfortunate to take the doorways out. Maybe they should allow the applicant more flexibility.

Mr. Hopley felt the Board was not comfortable with the City license. They can either remove the door or leave them recessed and that gives them their flexibility.

Chairman Ricci asked for a stipulation for snow removal if there is inadequate snow storage on site.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the Technical Advisory Committee Meeting on April 4, 2006:

- 1) That all lighting shall be Dark Sky Friendly and so noted on the Site Plans;
- 2) That the City standard concrete sidewalk shall be revised on the Site Plans;
- 3) That the applicant shall notify DPW of the removal of the "No Parking" sign so that it can be sleeved;
- 4) That the fire and domestic water service connection shall be reviewed by the City Water Division prior to the Planning Board meeting.

Stipulations from the Planning Board Meeting of April 27, 2006:

- 5) That Site Review Approval is subject to the applicant having no need for a license from the City; and
- 6) That a note shall be added to the Site Plans stating that if the snow storage areas are not adequate then the snow shall be trucked off of the site;

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P. The application of **Michael Iafolla, Owner**, for property located **off Lafayette Road**, wherein an amendment to Subdivision approval received on May 7, 1969 is requested to remove certain restrictions stated on the approved subdivision plan, or in the alternative to determine that said restrictions have lapsed. Said restrictions relate to prohibited uses upon the property, which at the time of the subdivision was located in a General Business Zone. Said property is shown on Assessor Plan 252 as Lot 1-7 and lies within an Office Research District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of Michael Iafolla. He referred to the original 1969 subdivision plan and the Minutes when that was approved as well as a list of deeded restrictions that were recorded one year prior to the plan in 1968. In 1968 this property was rezoned to GB along with the 9 lot subdivision that runs along Lafayette Road. In 1968 when the property was considered to be rezoned, Mr. Iafolla met with the neighbors and got consent for the subdivision and rezoning based on the recorded restrictions. Those were also put on the 1969 subdivision plan with the exception of one important part. It referenced a period of 30 years so they expired in 1998. The property has since been rezoned to Office Research. This plan now creates a title problem for the two remaining lots that are for sale. When he discussed this with David Holden and Robert Sullivan, the City took the position that the restrictions had lapsed. Just a couple of uses are

affected by these restrictions. They are seeking a determination of whether they have lapsed or a vote to remove them from the subdivision plan to clear up a title problem.

Mr. Holden indicated that an abutter to Mr. Iafolla, Mr. Georgeopolos, wrote a letter in support along with a request to add his property in this request as well. Attorney Pelech agreed that Mr. Georgeopolos' lot would also be covered by this request.

Ms. Roberts asked the Board on their thoughts about whether the restrictions have expired? Mr. Holden stated that they work from the deed so they assumed they had expired but it doesn't really involve the City. It comes down to a title problem.

Mr. Will asked if this was reviewed by the City Legal Department? Mr. Holden confirmed that it was. The Applicant doesn't really have a preference but just needs it rectified. Mr. Will felt this was uncharted territory. He asked if it was an all or nothing proposition? Attorney Pelech confirmed it was an all or nothing situation.

Mr. Holden stated that they now have a Site Review process which was not in effect in 1969. In 1967 the City's Zoning Ordinance was found to be not valid so they pick up their Land Use Regulations roughly from 1967 and have built on them since then. There is a lot more protection now. Therefore, the Department by saying that they do not have an opinion is essentially saying if they are allowed to go, they are essentially covered.

Attorney Pelech indicated that they discussed this with Bob Sullivan and he felt this was the appropriate method to alleviate the title problem.

Mr. Will referred to the restrictions recorded in the Rockingham Registry of Deeds that were to expire in 30 years. He asked if this applies only to the undeveloped land? Mr. Holden confirmed that was correct. All of the properties except these two are developed land.

Attorney Pelech also added that this issue came up when the Demoulas Shopping Center was built and it was not covered by the original restrictions. Everything south of the shopping center was covered.

The Chair asked if anyone else was present from the public, wishing to speak to, for, or against the petition.

Bob Reynolds, 801 Lafayette Road, indicated that he bought his house in 1950. He believed that they cleared the lot and dumped gravel without permits. Lafayette Road has heavy traffic and it is difficult to turn on and off of Lafayette Road. He believes a hotel should not be allowed.

Kathleen Hersey, 1761 Lafayette Road, indicated that she would like to see it kept Office Research with no more retail development. She doesn't want a hotel but office use is fine.

Attorney Pelech confirmed that they are not asking for a zoning change. Office Research is acceptable. They are just trying to sell the land.

Bob Reynolds stated that something simple that would not cause problems to abutters would be fine.

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 asked if any part of the aforementioned property is not zoned OR? Ms. Tillman confirmed that from Pevery Hill to West is all OR. Mr. Will asked if the restrictions were removed before it became OR. Mr. Holden clarified that the OR district does under certain circumstances permit a hotel use.

Mr. Coviello moved to confirm that the restrictions have lapsed and the only restrictions on the property are those of the Office Research District.

Ms. Roberts seconded the motion.

Mr. Will indicated that he could not support the motion. He feels more comfortable stepping back. Lafayette Road should remain as it is. He would like to have the Legal Department weigh in at the meeting. He would be more comfortable with a motion to table with more details on how to proceed. He made a motion to table.

Mr. Hetjmanek seconded the motion.

Deputy City Manager Hayden appreciated the concerns of the neighbors. She didn't think the issue can possibly address those concerns. This is just a housekeeping issue. The Legal and Planning Departments have weighted in and have indicated that they are unenforceable restrictions. This is zoned OR and hotels are allowed. Denying this will not address the concerns voiced this evening.

Mr. Will indicated that he does not disagree but he does not feel comfortable without speaking to the City Attorney.

Mr. Coviello felt it was the responsibility of the Board to do this. The applicant needs to rewrite the plot plan to sell. This is trivial and he felt it was just housekeeping.

The motion to table was denied with all but Mr. Will voting in the negative.

Mr. Coviello reaffirmed his motion that the restrictions have lapsed and the only restrictions on the property are those of the Office Research District.

The motion passed with Mr. Will voting in the negative.

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II. CITY COUNCIL REFERRALS/REQUESTS

A. Request from The Housing Partnership for an access easement for property located on Bedford Way; (Referred from the March 3, 2006 City Council Meeting);

Mr. Holden indicated that representatives of the Housing Partnership were present. He indicated that this issue should be consolidated with the rezoning referral. His recommendation was that they consolidate the referrals and discuss them together.

Mr. Will made a motion to take them out of order and hear them together. Mr. Hejtmanek seconded the motion. The motion passed unanimously.

C. Request From The Housing Partnership for an Amendment to Section 10-1503 of the City's Zoning Ordinance Relating to Residential Planned Unit Developments (PUD); (Referred from the March 20, 2006 City Council Meeting);

Mr. Holden stated that the Department received a referral from the City Council that seeks changes to the Zoning Ordinance to enable a project to proceed. The Department, in conjunction with the applicant, have requested that they submit an information report as part of the process. Since then the applicant has submitted that report but it was not available at the time of the Board packet submittal. The Department recommends that the Board acknowledge receipt of the report and direct the Department to prepare their response to be available at the May 18th meeting. They should also direct the Planning Board to schedule a public meeting on May 18th for the purpose of soliciting public comment. They should table these items to receive both reports and act to schedule a public meeting for June and abutters will be notified. They would take the referral on Bedford Way at the same time. The Applicant has provided additional information on Bedford Way and they are continuing to work on that.

Deputy City Manager Hayden made a motion to table to May 18th for review of the Zoning Matrix. Mr. Will seconded the motion.

The motion passed unanimously.

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B. Letter from Attorney Douglas Macdonald regarding Driveway Permit Application for property located at 62 Deer Street. (Referred from the March 20, 2006 City Council Meeting);

Mr. Holden indicated that this was a referral from the City Council and as part of the referral they contacted the Department of Public Works and Steve Parkinson, Director, was present. The Traffic & Safety Committee has reviewed this matter and has recommended against it. It was referred back as part of a re-consideration and they reaffirmed that vote. This matter is now before the Planning Board for a recommendation back to the City Council. The Board has received Traffic & Safety Committee minutes and the Planning Department Memorandum identifying some of the major issues of this area. It is the advice of the City Traffic Engineer, the DPW and the Planning Department that this not be favorably recommended to the City Council.

Attorney Douglas McDonald addressed the Board on behalf of the applicants and owners of 62 Deer Street. He indicated that although there have been some safety issues cited, those safety issues are not an appropriate basis for a denial of a permit. He felt they are within driveway requirements.

Deputy City Manager Hayden asked about the issue of removal of on street parking space. Attorney Mcdonald indicated that there is a City parking space at the very end of the driveway that would be removed however they have proposed adding two parking spaces further down.

Attorney Mcdonald stated that it was his position that in the Subdivision Rules it says the Planning Board shall attempt to assure that the location of all driveways and accesses do not endanger the safety or impede reasonable traffic flow. He felt that by saying "to attempt to assure the location of all driveways and accesses do not endanger the safety" does not allow them to deny a permit based on that.

Mr. Will felt that flew in the face of logic, not to deny something on the basis of safety. Attorney Mcdonald felt that the Subdivision Rules and Regulations were pretty clear and it wasn't the first time that a law didn't make sense. Mr. Will felt Attorney Mcdonald needed to expand on how he felt it didn't impede public safety. Deputy City Manager Hayden reminded the Board that this is not a subdivision request but rather is a simple driveway referral.

Attorney Mcdonald stated that a traffic study had been done by the applicant and the study demonstrated that it was reasonably safe to put a driveway in that location.

Steve Parkinson, Director of Public Works, addressed the Board. He respectfully disagreed with Attorney Mcdonald. He felt this was a highly urbanized residential street and this driveway would

back out and be in close proximity to a very highly traveled intersection where, at peak hour, 700 cars traverse that intersection daily. The City did a peak in the evening hours which showed 876 cars in one hour and Saturday mid-day showed 790 cars in one hour. That's anywhere from 11 to 13 cars every minute so he would not classify this as a lightly traveled road. Mr. Parkinson indicated that there was a large hotel right across the street and there are a lot of people traversing the area at both ends of the block, going to the downtown area. And, there is another hotel being constructed so it will get worse. In ten years from now, projected volumes at this intersection will go to 760 in the morning, 960 in the evening and 860 in mid-day. The applicant's consultant said there was plenty of site distance. In this case, in close proximity in both directions there are parking areas so if a vehicle is parked there, they will not be able to see so they will not have the adequate site distance required. Mr. Parkinson indicated that there was no on street parking in the other areas that they used as examples of similar driveways. Mr. Parkinson felt there are definite safety issues. He did not sit on Traffic & Safety when they reviewed this request but he has reviewed their findings and they are the same findings that he has today which are problems with pedestrian safety, site distance, and a heavily traveled intersection.

Chairman Ricci asked what time of year the traffic study was done? Mr. Parkinson indicated that it was done in December of 2005 and was updated for seasonal variances.

Mr. Holden stated that quite commonly in a Central Business District many lots do not have driveways and that is not unusual. This area was developed as part of an urban renewal process and has existed since its inception in its existing configuration. The owner knew what he was purchasing when he bought it. There are a lot of other issues that are related to it.

Mr. Will made a motion to move for denial of a recommendation for a driveway permit. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

Attorney McDonald provided the Chair with a letter after the vote was taken.

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D. Request from HarborCorp, LLC (Sheraton) for four Proposed Zoning Amendments; (Referred from the March 20, 2006 City Council Meeting);

Chairman Ricci stepped down from this hearing.

Mr. Holden confirmed this was a City Council referral for rezoning. The applicant submitted their informational report and it was provided in the Board packets however the Department was unable to prepare it's zoning report. He recommended that they acknowledge receipt of the informational report, direct the Department to prepare the rezoning report at the May meeting and direct the Department to schedule a public meeting on May 18th for the purpose of soliciting public comment and also to invite City staff to attend.

Mr. Will made a motion to table to the May 18th meeting with Mr. Holden's recommendations. Mr. Coviello seconded the motion.

The motion passed unanimously.

Mr. Holden acknowledged a letter from Keane & MacDonald dated April 20, 2006 regarding the rezoning request which is in the file.

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E. Request from Perry Silverstein for permission for a license for an outswing door onto Commercial Alley; (Referred from the April 3, 2006 City Council Meeting);

Ms. Tillman, of the Planning Department, indicated that this was a City Council referral requesting an outswing door on Commercial Alley. Mr. Silverstein was currently in the design phase for an addition at 10 Commercial Alley.

Perry Silverstein provided color copies of his plan to the Board. He referred to photos showing the site from various angles. He pointed out where he is proposing to build his addition and where the main entrance is required off of Commercial Alley where there is an existing entrance to the parking lot. The addition will require a main door onto Commercial Alley and he indicated that the door would swing onto City property however all doors on Commercial Alley swing out. The reason why he is requesting that the door swing out is that the egress would have to run from the back of the building and the front entrance is so narrow, if he sets the door back, there would not be enough room to put the stairway to the 2nd and 3rd floors in. He would have to change the entire façade and he would have to start all over at the Historic District Commission.

Mr. Hopley asked if the door that will swing out be against the tree. He was referring to Exhibit #3 and asked if the door hinge would be on the right, swinging into the tree area. Mr. Silverstein indicated that was correct and Exhibit #2 shows that it swings towards the tree. He stated that the door would not interfere with the walking path. Commercial Alley is 16' wide and it is a protected area that will not interfere with public safety.

Deputy City Manager Hayden asked what happens with the tree? Mr. Silverstein indicated he has been before the Trees & Greenery Committee. Because the tree is leaning over the parking lot, contingent upon his plans being approved, the tree will be removed and replaced with a smaller tree that will be straight and not leaning.

Mr. Hopley asked if the Historic District Commission approved the roof? Mr. Silverstein stated that the architect drew the roof from an aerial view however the roof will not be visible from the street.

Ms. Tillman clarified that this has only gone to work sessions at this point and is only in the preliminary design stages.

Mr. Silverstein added that the door is not going to swing over much brick as the brick wall is owned by the City and the door will be on the other side of the brick wall.

Mr. Coviello asked when someone applies for a variance, they can't claim a hardship if it is self imposed? Ms. Tillman stated that was somewhat correct. Case law has changed slightly but they cannot set themselves up to be in that situation. However, Ms. Tillman went on to explain that they still have areas where licenses and easements can be obtained from the City. An example is for footings that go under City sidewalks or cornices on a roof. However, she reiterated that this is in a design stage and he is seeking input on whether he is allowed to have an outswing door or whether he will have to re-design the building.

Mr. Silverstein stated the he may not be able to do the project. There is not enough room for egress and the staircase to access the 2nd and 3rd floors. He understood that it is his hardship and it is a major hurdle. The HDC has been very receptive to the project as they are not happy with how it currently looks and he will be making the building look much better.

Deputy City Manager Hayden made a motion to not recommend a favorable recommendation back to the City Council. She understands the case that was made that there are other out swing doors on Commercial Alley however those are existing and have been existing for some time. This is new construction and they are receiving more and more requests to use public right of ways. The City has been very firm with other projects to use recess doors.

Mr. Will seconded the motion. The motion not to recommend a favorable recommendation to the City Council passed unanimously.

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III. OTHER BUSINESS

A. Planning Board appointment to the Historic District Commission;

Mr. Holden suggested that this be tabled to the next meeting. The HDC needs a member from the Planning Board and it is in the regulations.

Chairman Ricci recommended tabling until there was a full Board present next month.

Deputy City Manager Hayden moved to table this matter. Mr. Hopley seconded the motion.

The motion was unanimously approved.

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B. Letter to PDA requesting meeting with PDA staff and Jim Gove;

Peter Britz, City Environmental Planner, indicated that they had a previous work session to review the PDA proposed setbacks and buffer zones. The Planning Board and the Conservation Commission sent a letter to the PDA requesting they re-present their study and proposal with Mr. Gove. They are happy to come and present but first they want some questions from Board on what they are looking for.

Mr. Britz listed out four things that he had identified from their previous meeting:

- 1) Planning Board would like the presentation of how Mr. Gove determined the buffer width.
- 2) How the PDA would implement and regulate the buffer recommendations.
- 3) The flexibility of the different buffer width proposals.
- 4) Concerns that the City would not be able to participate in the program implement.

Mr. Britz was looking for other questions to help guide the PDA and Mr. Gove.

Deputy City Manager Hayden felt that was a great agenda. She had one suggestion. At the first presentation, there was no opportunity for discussion after the presentation. She suggested having Mr. Gove shorten his talk and then have Chairman Ricci or Conservation Commission Chairman Cormier chair a discussion.

Mr. Will suggested that this would be a good spring board to approach other ways to discuss future ideas for Pease. Mr. Holden cautioned that this is just to discuss wetlands and he encouraged Mr. Will to stay focused on this issue.

Mr. Will felt that other concerns should be identified but they didn't have to discuss them. Mr. Holden felt that they should narrow the focus rather than broaden it.

Mr. Britz indicated that he would discuss this at the May 10th Conservation Commission meeting and then get back to PDA.

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NON AGENDA ITEM:

Property located Off Falkland Way, Changing Places, Applicant. Subdivision Amendment.

Mr. Holden reminded the Board that they granted final subdivision approval to Mr. Lewis contingent upon a finding with regards to Falkland Way. Mr. Holden and City Attorney Robert Sullivan did a site walk and determined that Falkland Way was never built and has never been dedicated so it never existed.

Attorney Pelech stated that this has been a long process. Attorney Sullivan concurs with Attorney Pelech that Falkway Way may have been dedicated but it certainly was never accepted or built. The City has no interest in the paper street. Attorney Sullivan asked they prepare the amended plan showing the property line going down the middle of the paper street.

Mr. Holden confirmed that they are asking John to sign the plan tonight.

Deputy City Manager Hayden asked if they needed a motion to accept the plan?

Mr. Holden did not believe so.

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IV. ADJOURNMENT

A motion to adjourn at 9:45pm 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 at the July 20, 2006 Planning Board Meeting.