

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**OCTOBER 21, 2010**

**MEMBERS PRESENT:** John Ricci, Chairman; Paige Roberts, Vice Chairman; Donald Coker; John Rice; Anthony Blenkinsop; MaryLiz Geffert; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector; Norman Patenaude, Alternate and William Gladhill, Alternate

**MEMBERS EXCUSED:** Eric Spear, City Council Representative

**ALSO PRESENT:** Rick Taintor, Planning Director

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**6:00 – 7:00 Joint Work Session with Board of Adjustment – Neighborhood Zoning and Sign Regulations**

**Board of Adjustment Members present:** David Witham, Vice-Chairman; Carol Eaton; Alain Jousse; Charles LeMay; Arthur Parrott; Derek Durbin, Alternate; and Robin Rousseau, Alternate

Chairman Ricci called the work session to order and indicated that there would be no public comment tonight. The Board members introduced themselves for the record.

Mr. Taintor's presentation:

Mr. Taintor explained this was a project they had talked about for quite some time. Starting in 2006 they looked at the neighborhoods throughout the City to see where lots were not conforming with the zoning ordinance regulations. Zoning has changed over time to address specific situations. From 1951 to today lot requirements have increased, which is not unique to Portsmouth, but the problem is that it requires too many homeowners to come to the BOA for a change which is perfectly reasonable.

They mapped out the City by parcel area and there are a lot of lots less than 5,000 s.f., where 5,000 s.f. lots are not allowed. He showed maps of various areas in the City showing the amount of nonconforming lots. They end up with a lot of nonconforming lots which require a variance to do any type of expansion in that neighborhood

Mr. Taintor indicated that staff reviewed the different areas to see what they might want to do. They came up with an informal map of the residential districts with possible zoning changes. Districts were colored with hatching showing areas for suggested change.

He used Elwyn Park as an example. He showed all lots that comply with current minimum lot area and minimum frontage requirements in green and the area they can bring into compliance if they reduce the lot area to 7,500 s.f. and reduce the frontage to 75 feet in blue.

He displayed a graph of Christian Shore to help visualize things. Along the bottom were the percentage of lots and, looking at close to 300 lots, the median lot area is 7,664 s.f. If they looked at trying to make 80% of the lots conforming they would have to drop the minimum lot area to 4,157 s.f. The current minimum lot area is 7,500 s.f. and 50% of the lots currently conform. If they drop it down to a minimum of 5,000 s.f. they would have 27% of the lots nonconforming. Mr. Taintor added that they will come back with data on building setbacks.

As a result of this study, they are suggesting another Single Residence district with a minimum lot requirement of 7,500 s.f. and another General Residence district for the very densest areas of the City (Atlantic Heights and the South End). They are suggesting that the MRB District have its minimum lot area reduced from 7,500 s.f. to 5,000 s.f. because this is more in keeping with that area.

Mr. Taintor displayed a chart of five neighborhoods: Elwyn Park, Maple Haven, Christian Shores, South End, and Atlantic Heights. The chart showed the actual development conditions, the current zoning, suggested changes, compliant lots and potential lot splits where they do not want to increase density.

Ms. Rousseau asked for a history of lot sizes. Mr. Taintor believed over time lot sizes were increased to cut down on development. Ms. Rousseau asked Mr. Taintor what their goal was in doing this exercise. Mr. Taintor responded the goal is to make it easier for property owners to do developments which are consistent with the neighborhood and to eliminate creating roadblocks to normal home improvements. Ms. Rousseau asked about an alternative of increasing building coverage instead of changing the size of the lot as that encourages new development. Mr. Taintor said they are not doing that and are looking very carefully to make sure that doesn't happen.

Deputy City Manager Hayden noted this is targeting City districts that are already developed and there is very little subdividable land left other than dividing one lot into two. Mr. Taintor added that they are only looking at two dimensions at the moment: lot area and frontage.

Mr. Coker felt there are 21 lots in Elwyn Park that could be subdivided and developed under the suggested zoning but they would then look like every other lot in the neighborhood.

Chairman Ricci also suggested that of the potential lots that could be subdivided, some have houses right in the middle of the lot. He can really only think of two lots that could be realistically subdivided. Ms. Rousseau felt it wasn't that they would necessarily look like each other but it's adding to the tax burden of the City and that is her issue.

Chairman Ricci believed that the exercise is to benefit the homeowner so that they don't have to keep coming back to the BOA for a nonconforming lot when, in fact, they are just like everybody else in their neighborhood. He thinks this is a great idea.

Deputy City Manager Hayden commented that this is an analysis and review that is just a piece of what they are trying to do and there will be a lot more review.

Mr. Coker felt that from a tax revenue vs. cost to the City view, a homeowner is a net loser for the City and that the unintended consequences should be considered. Ms. Rousseau suggested looking at alternative solutions to allow homeowners to have a reasonable renovation without appearing before the BOA but not allowing neighborhoods to become denser.

Mr. Taintor discussed the trade-offs. They want to reduce the number of nonconforming lots but minimize undesired density increases. The other balance is simplicity vs. flexibility. If they had more districts they would be able to have the regulations closer to individual neighborhood patterns but fewer districts would be a simpler Zoning Map and Zoning Ordinance.

Mr. Taintor advised the Boards that they will continue to research this and take a closer look at the neighborhoods, they are creating a data layer for front setbacks and they will be coming up with recommendation of changes to the existing districts, new districts and neighborhood zoning changes

Mr. Taintor concluded the presentation and asked for discussion and ideas from the Board members.

Mr. Coker suggested that they look into the tax revenue vs. tax impact issue.

Chairman Ricci felt another key point was of the 21 lots in Elwyn Park that are subdividable, what percentage is that of the neighborhood (out of 342 total lots).

Mr. Taintor indicated they will start to add more variables in the numbers, those conforming lots will decrease.

Ms. Roberts appreciated that this was a huge amount of work and she thanked staff. She was thrilled about this. After 30 years they are getting back to creating regulations that meet reasonable compliance. Their objective for land use is to determine what land density they want and it is a real juggling act. She was thinking about Christian Shore where, with reduced zoning, 27% of the lots would still be nonconforming, and how they should approach that. She realizes it will be a tremendous amount of work for staff. Mr. Taintor agreed it would be an enormous amount of work if they did every possible combination but if they settle on a few ideas, it would not be a lot of work. If they try different alternatives, they can map them out for the Board.

Deputy City Manager Hayden understood that they don't want to get the neighborhoods in 100% conformance but she asked what the most important parameters are. Mr. Taintor felt it was most important to have the lot pattern be appropriate. It is problematic if a huge number of lots are nonconforming to zoning because it undercuts the Master Plan. He thought you could probably do more with a special exception for a setback, which doesn't require proof of a hardship, and then try to get the lot coverage and frontage correct.

Mr. Witham shared Ms. Roberts' sentiment to help correct some past blanket zoning ordinance that has wreaked havoc on a lot of neighborhoods. He felt there is agreement that density is always a concern. He felt this path would be far more effective in controlling density than looking at lot coverage and

increasing that. He believed lot coverage was one of the best tools to control density. He feels comfortable with this path and appreciates the work that has gone into it.

Mr. Jousse was excited about this as he felt each neighborhood is unique. Regarding Mr. Taintor's comment about looking at a special exception instead of a variance for setbacks, they could also take into account the setback of the two or three neighboring properties so they would have more leeway to give a special exception. Mr. Taintor agreed that would be similar to what they did with the front setback by averaging the two sides.

Mr. Jousse noted that of the 19 lots in Christian Shore that can be subdivided, most of them are within the 100' buffer zone and two of the huge lots are multi family already.

Ms. Eaton wouldn't be concerned about the high percentage of nonconforming lots in certain neighborhoods as it reflects the nature of those areas where they don't want expansion to be easy, as opposed to Elwyn Park or Maple Haven. She also feels that 2<sup>nd</sup> and 3<sup>rd</sup> floor expansions have a huge impact on density.

Ms. Rousseau asked about the next step. Mr. Taintor stated they will try to identify sub-areas within the neighborhoods and work with other staff to develop the data layer for front yard setbacks. They will then come up with recommendations. They haven't determined how long it will take. This is a huge effort so they may want to take a couple of the easy neighborhoods and start with them. The next fiscal year and master plan is starting up soon. The Master Plan has set a good basis but Mr. Taintor felt they will be working on this for the next six months or longer.

Chairman Ricci thought that Elwyn Park, for example, had 21 lots that can be subdivided and he asked if they could have a map showing those lots for the Board members to look at. Mr. Taintor agreed they could do that and even have staff look at them and report back.

Ms. Geffert wondered if they could ask staff to continue and maybe they could recommend something to the City Council within the next few months. Atlantic Heights might be a good place to start. Mr. Witham felt if they were going to pick some of the easier areas, they should be very comprehensive in terms of what it addresses and not strictly lot size and frontage. In terms of non-conformity he believed setback were more of an issue than lot size. The setbacks are a key variable.

Chairman Ricci believed tonight's meeting was to get feedback and everyone seems to be pretty excited about this.

Mr. Jousse echoed Mr. Witham's comments. For instance, Atlantic Heights almost needs its own zoning ordinance. When they finally adopt something he wants it to be concrete without having to be changed again. He would rather delay it and make sure they get it right the first time around. Mr. Taintor felt another way to approach it is that the SRB districts are the easiest as they have consistent requirements and you can get them into compliance pretty quickly.

Chairman Ricci felt this would give landowners more flexibility and lighten the BOA workload.

Mr. Rice asked if they could calculate average setbacks as he felt that would be critical. Mr. Taintor indicated they do not have the capability to do that yet.

Mr. LeMay thought it was obvious this is like a reverse archaeology dig. The areas that were developed latest are the most uniform. He is not as concerned about areas that predated zoning and it is not surprising they are not going to change the numbers and have everything suddenly be in compliance. He felt this is going in the right direction and starting with one of the easier neighborhoods makes sense.

Ms. Rousseau asked why they didn't discuss sign regulations this evening, as stated on the Agenda. Chairman Ricci responded that they did not have time tonight as they have a public hearing scheduled for 7:00 pm. An additional work session will be scheduled before next month's Planning Board meeting on Thursday, November 18<sup>th</sup>. Chairman Ricci indicated he felt it was more important to get through the neighborhood zoning comprehensively tonight rather than rush through it so that they could get to the issue of signs. Ms. Rousseau felt it was disrespectful to the community to have it on the Agenda and then not cover it. Chairman Ricci was sorry that she felt that way.

Chairman Ricci thanked the Board of Adjustment members for attending and adjourned the work session.

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**I. APPROVAL OF MINUTES**

- 1. Approval of Minutes from the August 19, 2010 Planning Board Meeting – Unanimously approved.
- 2. Approval of Minutes from the September 16, 2010 Planning Board Meeting – Unanimously approved. (Blenkinsop abstained)

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**II. OLD BUSINESS**

A. The application of the **City of Portsmouth, Owner**, for property located at **155 Parrott Avenue**, requesting Site Plan approval for the renovation and expansion of the Portsmouth Middle School, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 128 as Lot 15 & 16 and lies within the Municipal District.

Mr. Taintor advised the Board that the applicant indicated they need more time to address the off site drainage issues and have requested a postponement to November.

Deputy City Manager Hayden made a motion to postpone this application to the November Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone to the November Planning Board meeting passed unanimously.

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B. The application of **Richard and Linda Harding, Owners**, for property located at **1808 Islington Street**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots with the following: Proposed Lot 1 having 64,951 ± s.f. (1.4911 acres) and 140' of continuous street frontage on Islington Street and Proposed Lot 2 having 17,400 ± s.f. (0.3994 acres) and 100' of continuous street frontage on Islington Street. Said property is shown on Assessor Plan 241 as Lot 15 and lies within a Single Residence B (SRB) District.

The Chair read the notice into the record.

Both Mr. Rice & Mr. Blenkinsop recused themselves.

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

Jeffrey Clifford, of Altus Engineering, addressed the Board. They were before the Board on September 16<sup>th</sup> and were referred to TAC. This is a 17,400 s.f. lot being subdivided from a 1.898 acre parcel. It is in the SRB zone and meets all zoning requirements. They are proposing a single family home. There are a series of cross easements which were approved by the City Council on September 7, 2010. The applicant will be constructing a sewer as part of this project to provide sewer to the existing farmhouse, the new proposed lot and the adjacent Paterson lot.

At the last Planning Board meeting there were questions about traffic and safety along Islington Street, drainage and sewer, and flooding so it was sent to TAC to deal with some of the issues. On October 5<sup>th</sup> TAC made a favorable recommendation to approve the project with several stipulations.

Mr. Clifford provided revised plans to the Planning Board on October 13th with notes from TAC. There was also an extension of a drainage easement out to Islington Street.

Mr. Clifford addressed the traffic sight distance. He looked at sight distance from the center of the lot and there was 500' of sight distance either way where only 200' is required by AASHTO. Plains Avenue has been cut off by recent improvements so there is less traffic turning at Plains Avenue. TAC and the Police did not have an issue with the sight distance and the new driveway but they did have a concern about backing out onto Islington Street so a stipulation was added that the applicant put a "hammerhead" on the site.

Mr. Clifford stated there was an existing sewer at Pearson. They plan to add new sewer service to the two units in the farmhouse, thereby eliminating the septic system. There will also be a force main with two manholes tied into it. TAC felt it would be best to bring a force main all the way to service the Paterson property as well as Lot 2 so the applicant has agreed to also build a force main that will be dedicated to the Paterson property.

The water service for Lot 2 will come off Islington Street.

Mr. Clifford indicated there was a lot of discussion regarding site drainage. He explained that drainage for Lot 2 comes from Islington Street and goes in the general direction of the woodland behind the Harding House. It then goes to a manmade drainage ditch that goes towards another wetland. The City

has a drain that drains Plains Avenue, goes by the old schoolhouse and works its way overland to the drainage swale. The Paterson property also drains in the same direction. Part of the Paterson property, in the front, drains from the driveway onto Lot 2, and there may be some water that goes from Lot 2 onto the rear of the Paterson property. They are proposing a swale along the property line to connect into the existing ditch which goes to the wetland. That would prevent any water coming from Lot 2 from going onto the Paterson property and help drain the Paterson property. TAC wanted the swale to go all of the way out to Islington Street and pick up some road drainage, which was also a concern. They are creating an easement from Islington Street to the other drainage easement they are providing to the City.

As discussed at the previous meeting, the property has a series of sewer easements as well as a driveway easement.

At the TAC meeting they discussed drainage in greater detail. The overall drainage area is the wetland behind and to the east of Islington Street and is the dominant feature of the drainage area. The City drain comes across Pearson from the Plains and gets into the manmade drainage ditch that goes across the Harding property to Lot 2. The proposed drainage swale would go between Lot 2 and the Paterson property and all water goes back to a pond that is fairly shallow, which is controlled by the outlet that is six properties over and about 600' away from the Harding property. It then discharges to an 8' drop to another wetland. Mr. Clifford did a drainage analysis using HydroCAD standard procedures to compare the pre-development and post-development conditions, adding in about 3,000 s.f. of impervious at Lot 2; and the analysis showed no difference at all in what would happen at the wooded wetlands.

As Mr. Clifford mentioned at the last meeting, another way to look at drainage is to look at the water balance. Because they will remove two septic systems, the hydraulic loading from those septic systems will no longer be going into this watershed. The reduction in wastewater going into the watershed will be 204,000 gallons per year (516 gallons per day x 365 days). In comparison, 77,000 gallons per year of rainwater (3,000 s.f. of impervious surface x 42" of rain per year) will be added to the system. They are therefore reducing the hydraulic loading to the watershed by 127,000 gallons per year, or more than 50%. If the Patersons tie in to the new sewer line, that will take out another 50% beyond that.

Mr. Clifford mentioned the photos which Mr. Patterson submitted at the last Planning Board meeting. They were portrayed as being "flooding" but what he sees is water going across grass and draining off the grassy areas. You can see the top of the grass blades. He would not refer to that as flooding but rather he would refer to it as slow drainage. It is a flat area but there is positive drainage to the back. He felt that some of the issue on the Paterson property is that the septic system is to the rear of the property which is built up about 4' and could actually be impeding some of the flow. The ditch which they are providing is going to be a benefit. There are several benefits being provided to the public off the easements which they have going across Lot 1. DPW was very supportive of them providing the easement as they have a lot of trouble with maintaining the drain so that it flows well. The other drainage easement will deal with stormwater from both Islington Street and the Harding property, and the plan will take out the wastewater going into the site.

In closing, Mr. Clifford stated they have minimal impacts, drainage easements providing public benefit, they met all zoning requirements, they have attended numerous meetings for this subdivision and they request approval from the Board.

Mr. Coker referred to Exhibit 1 which showed the sight distance from Lot 2 south along Islington Street and Lot 2 north along Islington Street. Mr. Coker was having a hard time seeing 500' and he wanted to know where that was measured from. Mr. Clifford explained that the reason he took the pictures the way he did was so that they would see a vehicle in each picture as they are approaching. Those vehicles are measured to where they were after they passed and they were 500' away. He also took the pictures from the white line. Mr. Clifford recognized that some trimming will have to be done or else they will lose their 500'. He believed that will be part of the driveway permit from DPW.

Deputy City Manager Hayden wanted to confirm that AASHTO required 200' of sight distance in a 30 mph zone. Mr. Clifford confirmed that was correct.

Deputy City Manager Hayden asked how much runoff would be picked up by extending the drainage swale all the way to Islington Street and asked where that water goes now. Mr. Clifford stated it was his understanding that on much larger storms there is a watershed on the other side of Islington Street that doesn't have anywhere to go and in a highly unusual storm it crosses Islington Street. Deputy City Manager Hayden asked what happens with the swale. Mr. Clifford explained that when you build Lot 2 out, they will build up some of the grade in front of the house and they will make sure it is graded to the ditch and gets around the front of the house.

Chairman Ricci asked if there is a setback from the State for septic systems with the open drainage ditches as he was concerned about making Mr. Paterson's septic system non-compliant. Mr. Clifford felt it would be around 35'. It was his understanding in speaking with the State that if you are not intercepting the water table then the 35' would not necessarily apply. They would not have been able to design the septic systems the way it is if the water table were as shallow as 6". Chairman Ricci stated that he felt the drainage ditch was a good idea and the plan is dramatically improved. He asked about any conversation with Mr. Couture about extending the septic up to his lot. Mr. Clifford was not aware of any discussion.

Mr. Gladhill asked if the grass swale was also designed to collect water from the Paterson property or just to prevent it from going on to the Paterson property. Mr. Clifford referred to the spot elevations, and pointed out that the driveway on the Paterson property drains onto Lot 2. They would be taking that water and collecting it. On the other side of the Paterson property, it looks to be 2" to 3" lower so there is some water that may come from Lot 2 and they are taking that away.

Mr. Hopley asked about Note 4 on the Subdivision Plan, Part A "...any house shall not be built substantially below existing grade and shall have no basement below existing grade." Mr. Clifford explained that if they build above grade they won't have to put in a sump pump and will not be pumping any ground water. Mr. Hopley was concerned that a future homeowner would truck in some fill and mound the lot so they could have a basement and still keep their basement slab at existing grade. Mr. Clifford felt they would have physical limitations being able to do that because of the width of the lot and requirement for the drainage ditch.



Ms. Geffert had the same question and the TAC minutes reflected that Mr. Desfosses went on at great length about trucking in fill and his point was that with such a small lot you could not do that.

Mr. Coker asked about the use of the term “substantial” when they are talking about not building substantially below grade. Mr. Taintor stated the word “substantial” was used because the issue was that a slab would not be below grade but there would need to be some footings that would have to be below grade. The intent of the stipulation was that the floor would not go below existing grade but they could go below grade to the extent that footings were necessary. He stated they could re-write it if the intent was not clear.

Chairman Ricci opened up the public hearing and called for public speakers.

Ed Beevers, owner of 1618, 1628 and 1674 Islington Street. His land totals approximately 5 acres and therefore he “owns the wetlands”. His family has owned his property for three generations and he has watched the wetland slowly grow. His concern is by putting more water into the swale, the property will be dramatically impacted. He built 1674 Islington Street fifteen years ago and at that time the property was 60’ from the wetlands. Today, that same house is 40’ from the wetlands. He suggested an independent engineer tell them what the impact will be to his property.

Andy Yager, 1707 Islington Street, was concerned that all lots in the neighborhood are approximately  $\frac{3}{4}$  acre of an area. The properties across the street are approximately 300’ in depth and have 100’ of frontage. The City has gone to great length to protect the integrity of neighborhoods and he doesn’t think a .39 acre lot is good for the neighborhood. Mature trees will have to be removed to build a house. He believes Mr. Beevers’ property will be severely impacted and a swale of this size would become a breeding ground for mosquitoes.

Tom Paterson, owner of the property next door to the Hardings, was concerned how the swale will work and he doesn’t want kids falling into the swale. He is concerned the setbacks on Lot 2 would not allow enough space to build a house. He feels the engineer is wrong about the 200’ of sight distance as he does not have enough sight distance to get out of his driveway safely. He thinks the lot is too small and he will be blocked in by “stupid looking houses.”

Andy Yager, second time speaker, stated he owns 355’ of frontage on Islington Street and his lot is 115,434 s.f. so, using the same guidelines as this property, he could subdivide his lot into six lots. He believed the impact would be addressed if he wanted to pursue that. He felt the members of the Board should keep that in mind.

Linda Harding, applicant, pointed out that the only direct abutter that spoke was Mr. Paterson and the other two were not abutters. Her engineer tried to make this as environmentally sensitive as possible and they are attempting to improve the neighborhood.

Mr. Clifford indicated that they did have a detailed survey and they did pick up the top of the septic system which means the distance is about 38’ to the swale.

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 Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Coker stated that the location of the proposed house is not the purview of this Board and the proposed lot is a conforming lot. Mr. Taintor agreed with that. Mr. Coker added that the lot itself is a subdividable lot per the zoning requirements. The issues are difficult but TAC did a very good job and the Hardings have secured good professional advice on this.

Chairman Ricci confirmed that someone could not come before them to create a nonconforming lot.

Ms. Geffert made a motion to grant preliminary and final subdivision approval with the recommended 9 stipulations. Mr. Patenaude seconded the motion.

Mr. Coker referred to Note 4 which reads "The subdivision plan shall include notes as follows: Any house constructed on Lot 2 shall not be built *substantially* below existing grade, and shall have no basement below existing grade." He would urge the Board to clarify exactly what *substantially* means. Mr. Taintor thought the phrase was superfluous and they could just say "shall not have any floor level below existing grade." Ms. Geffert was in agreement with that change.

Deputy City Manager Hayden pointed out that this was Note 11 on the subdivision plan so that is what the stipulation should be modifying.

Deputy City Manager Hayden understands the concern of the speaker of additional water being added to the wetland and she asked what Chairman Ricci's thoughts were. Chairman Ricci's personal opinion was that the small amount of increased runoff is far exceeded by taking septic systems out of service. He was opposed to this last month. He is sensitive to the needs of the neighbors with drainage but he believed this has a very positive environmental impact that the increase in runoff is so small that you cannot even measure it.

Mr. Coker agreed with Mr. Paterson and he was not comfortable with the statement of 500' of sight distance. His concern was the bushes that would have to be cut back and he asked if that will be part of the driveway permit. Deputy City Manager Hayden stated it would be and Mr. Taintor mentioned that it will be 200' because that is what AASHTO requires.

Mr. Hopley noted that only 100' of bushes could be cut back because that is all the frontage there is on Lot 2.

Chairman Ricci wanted to add a stipulation that the engineer of record submit a letter of record certifying that the drainage ditch does not make the abutters' septic system non-compliant.

Ms. Geffert felt that the hardest part of creating the driveway is where the barn is. She was wondering if it would be appropriate to ask the owner of Lot 1 to have a covenant running with the land prior to subdivision so the owner of Lot 2 could always ask for the bushes to be trimmed. Mr. Taintor thought the subdivision plan could have a landscape easement from Lot 1 to Lot 2. After discussion, Ms. Geffert agreed it was probably best to just leave it as part of the driveway permit process.

Chairman Ricci stated that he was against this application last month. He is very sensitive to drainage and he felt that pulling the septic systems out and changing them to municipal sewer will certainly help the amount of water going into the ground. The water quality will increase and drainage between Lot 2 and Mr. Paterson will be better. He believes there are more positives than negatives. This plan is dramatically different than last month’s plan.

The motion to grant Preliminary and Final Subdivision approval passed unanimously with the following stipulations:

To be completed prior to the filing of the plat:

1. All easements shall be reviewed and approved by the City Legal Department.
2. The drainage easements from Islington Street to the already approved drainage easement on Lot 2 shall be approved by the City Council.
3. The existing shed on the boundary between proposed Lots 1 and 2 shall be removed.
4. Property monuments shall be set as required by DPW prior to the filing of the plat.
5. GIS data shall be provided to DPW in the form as required by the City.
6. Note 11 on the Subdivision Plan shall be revised to read “Any house constructed on Lot 2 shall not have any floor level below existing grade.”

To be completed prior to the issuance of a building permit for a dwelling on Lot 2:

6. The final plat, the easement plan, and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
7. The applicant shall construct a drainage swale within the easements on Lot 1 and Lot 2, from Islington Street to the existing drainage ditch on Lot 1. The design of the swale shall be subject to approval by the Department of Public Works.
8. The applicant shall construct a sewer force main from Plains Avenue across Lot 1 and Lot 2 to the easterly lot line of Lot 2, to serve the abutting lot (Assessors Map 241 Lot 14).
9. All sewer work shall be coordinated with the City’s Sewer Division prior to installation.

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Mr. Rice made a motion to read Items A and B together but to vote on each application separately. Ms. Geffert seconded the motion. The motion passed unanimously.

**III. NEW BUSINESS**

A. The application of **Chris and Alison Pyott, Owners**, for property located at **774 Middle Street, Unit 4**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for the construction of an addition to an existing structure and a rain garden within a wetland buffer. Said property is shown on Assessor Map 153 as Lot 9 and lies within the General Residence A (GRA) District and the Historic District.

B. The application of **Chris and Alison Pyott, Owners**, for property located at **774 Middle Street, Unit 4**, requesting Site Plan Approval for the construction of a 384 s.f. 2-story addition, 42 s.f. porch and 85 s.f. deck to an existing residence, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 153 as Lot 9 and lies within the General Residence A (GRA) District and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, addressed the Board on behalf of the Pyotts. They propose removing an existing deck and constructing an addition and a new deck on the rear of the structure. The rain garden is shown to the northwest of the proposed addition and will handle runoff from the existing parking area. There also is a proposed infiltration basin to handle roof runoff from the back half of the house. The project was before TAC on November 5th and it was a different design at that time. During discussion with TAC, they revised the design. They had originally brought all of the roof runoff and driveway runoff into the rain garden, which made it much larger and TAC felt they could just treat the pavement runoff and make the rain garden smaller. There was a condition that they show that design to DPW and Mr. Britz and they have approved the new design.

They met with the Conservation Commission on November 13th and they recommended approval with one stipulation: that a note be added to the plan that the applicants remove some debris that has accumulated over the years in the back yard area. At a meeting with DPW and Mr. Britz there were some further revisions to the plan and Mr. Chagnon handed out a revised plan with the revisions highlighted with clouds on the drawings.

DPW asked them to revise the infiltration basin design shown as the detail on C-2. DPW wanted more stone underneath the basin and to raise up the inverts to insure no water table intrusions. DPW thought they should connect the south roof drain to the infiltration basin and the relocation is shown. They had not shown the curb material on the parking area to divert runoff to the rain garden. The curb will take that area of runoff and treat it in the rain garden so they added a note that they will propose concrete curb as the curb medium for that diversion.

Mr. Chagnon pointed out that the Board's packet also included architectural elevations and an Operation and Maintenance Plan for the rain garden.

Mr. Rice asked if the property was in the Historic District. Mr. Chagnon confirmed they received HDC approval.

Ms. Geffert asked for confirmation that the condominium association has approved this. Mr. Chagnon confirmed that the condominium association has voted to approve this project and that information is on file with the City.

Mr. Coker asked Mr. Chagnon to review the runoff from the parking area and how it is treated. Mr. Chagnon described the rain garden as a structural device, shown on D-1, and the purpose is to act as a bio-filter so that runoff flows into it and is trapped. It treats the first 1" in a storm. The material in the layers underneath the top surface is 18" of a top soil, mulch and sand mix to allow the water to percolate vertically into a rain garden and provides treatment to the runoff as it moves vertically through that medium. There is a planting list on that detail and the plants like that type of environment, being totally submerged for short periods of time. There is also an overflow for when the rainfall is

more than the first flush and it runs through the rain garden and exits through a safe rip rap overflow panel.

Mr. Coker noted the parking area is blacktop and he asked how big it was and whether the rain garden was sized to handle the size of the parking lot. Mr. Chagnon confirmed the rain garden is sized based on calculations created by DES in the Alteration of Terrain Permit process. The Stormwater Management, Inspection and Maintenance Plan, on Sheet 2, lists the rain garden design and how to determine the proper size. Mr. Chagnon explained the calculations they used to determine the size of the rain garden being used for this project.

Mr. Taintor mentioned that when this initially came to TAC it had a much larger rain garden. TAC felt there could be less environmental impact if they separated the roof runoff and the parking lot runoff because the roof runoff does not need the same type of treatment as the parking lot runoff. That is why they have separate sets of roof drains going into the infiltration chamber and then going to the outlet. That allowed the rain garden to be smaller.

Mr. Coker was interested in the impact of water being put into the ground where there isn't any now and what happens to all of the water that infiltrates into the ground. Does it raise the water table and what calculation deals with that? Mr. Chagnon responded that they did not do any specific calculations or groundwater mounding analysis but in looking at the topography, the land slopes from Middle Street down to the wetland which is the catchment for the entire block. Therefore they are not adding water per se in this application: when you add impervious surface the water that would have soaked into the ground more will run off quicker, but the water balance does not change.

Deputy City Manager Hayden asked if the trash and debris that has been dumped in the rear is vegetation and grass clippings. Mr. Chagnon confirmed that was correct and it is in the buffer and not in the wetland. Deputy City Manager Hayden asked if he would object if they added to the stipulation "and no additional trash and vegetative debris will be dumped in the wetland buffer." Mr. Chagnon was agreeable to that.

Chairman Ricci asked if they did a test pit where the infiltration basin is located. Mr. Chagnon stated they did not do a test pit there. They raised it up and it is only 2' below the surface and he would doubt it would intercept the groundwater table. Chairman Ricci thought they were 6' below grade at the bottom. Mr. Chagnon confirmed at the bottom of the stones it is 6' below but the piping that conveys the water is not in the water table at all.

Chairman Ricci stated he was not a big fan of the silt fence they are proposing and asked if they could use a silt sock that will biodegrade. Mr. Chagnon would rather have stipulation that they remove the silt fence as silt sock is 10 times more expensive.

Chairman Ricci commended Mr. Chagnon on this design and he felt it was probably the finest residential design he has seen before this Board. Without the rain garden he probably could not support the project. He looks forward to seeing it after it is all done. He would like to see this implemented on other applications.

Chairman Ricci opened the public hearing.

Eric Weinrieb, of 9 Middle Road, agreed that this was a well thought out, modest approach and very respectful of the neighborhood and the buffers.

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 Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

**Conditional Use Permit:**

Deputy City Manager Hayden made a motion to grant Conditional Use Permit approval, adding to the Conservation Commission stipulation “and no additional trash or vegetation shall be dumped in the wetland buffer”. Mr. Rice seconded the motion.

Mr. Coker requested a stipulation to insure total removal of the silt fence. Chairman Ricci felt the note on the Site Plan saying it will be removed was sufficient.

The motion to grant Conditional Use Permit approval passed unanimously with the following stipulation:

1. All the existing trash and dumped vegetation on the property shall be removed as part of the project and no additional trash or vegetation shall be dumped in the wetland buffer.

**Site Review:**

Deputy City Manager Hayden made a motion to grant Site Review Approval as presented. Mr. Hopley seconded the motion.

The motion to grant Site Plan Approval as presented passed unanimously.

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Ms. Roberts made a motion to read Items C and D together but to vote on each application separately. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

C. The application of **Regeneration Park, LLC, Owner**, for property located at **3612 Lafayette Road**, requesting an Amended Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for the removal of 16,900 s.f. of paving (rather than the removal of 19,000 s.f. of paving which was approved on April 15, 2010), a portion of which falls within a wetland buffer. Said property is shown on Assessor Map 297 as Lot 3 and lies within the Gateway District.

D. The application of **Regeneration Park, LLC, Owner**, for property located at **3612 Lafayette Road**, requesting Amended Site Plan Approval to include restaurant use in the building resulting in revised parking configuration, addition of a grease trap and the addition of two exterior doors, with

related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 297 as Lot 3 and lies within the Gateway District.

The Chair read the notice into the record.

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

Shannon Alther, of TMS Architects, addressed the Board. Mr. Alther stated they received Site Review and Conditional Use Permit approval earlier this year. They have received favorable approvals from TAC on October 5<sup>th</sup> and the Conservation Commission on October 13<sup>th</sup> to add a restaurant instead of office space. To revise their parking accordingly they need to remove more pavement and move the dumpster location. TAC made a note regarding seeding on the north side of the lot and they now propose to plant a conservation seed mix. Eric Weinrieb of Altus Engineering was present as well to help answer any questions the Board may have.

Mr. Hopley felt the notes on the plans for the water service were confusing. Mr. Weinrieb explained the existing domestic water service is believed to be a 6" water line and it will be used for the fire suppression and they will put in a new domestic service. Mr. Hopley felt that the fire service is important now that they have a restaurant. Mr. Alther confirmed that they have looked at the pressure at the street utility service and have found that it is relatively low. They are investigating and in the process of putting in a well service to specifically address the sprinkler system for the restaurant. They will definitely put in a 2" for the domestic; the 6" line may stay but they will probably specifically address the fire sprinkler system with the well. They will make sure the fire sprinkler system is compatible with the standards by NFPA and IVC.

Mr. Taintor followed up by indicating that he discussed the water service with Mr. Alther and they talked about the fact that if a well is put in it will require further amendment of the plan and the extent of those changes will determine whether it will be an administrative approval or it will have to come back to the Board again.

Mr. Coker asked if the lighting for the parking lot and the building was dark sky friendly. Mr. Alther confirmed that was correct.

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

### **DISCUSSION AND DECISION OF THE BOARD**

#### **Conditional Use Permit**

Ms. Geffert made a motion to grant Conditional Use Permit Approval. Mr. Blenkinsop seconded the motion.

Mr. Taintor confirmed that the Conservation Commission discussed with the applicant the idea of substituting the wildflower mix and the applicant agreed. That has been included as a stipulation to Site Plan approval.

The motion to grant Conditional Use Permit approval passed unanimously.

**Site Review:**

Mr. Hopley made a motion to grant Amended Site Plan Approval with the two TAC stipulations and a stipulation that they better delineate the future design of the fire service on the Site Plan. It can just be a note but they have heard there is perhaps a larger diameter line going to the building, they have heard that they are in tune to the needs of the fire service and that line may not supply the necessary flow and they are looking at design alternatives. Mr. Hopley believed it was important enough that it should be noted on the plan. Chairman Ricci suggested that they add a note that the fire service design be compliant with the City Inspection Department.

Deputy City Manager Hayden seconded the motion.

The motion to grant Amended Site Plan Approval passed unanimously with the following stipulations:

1. On Sheet C-1, Parking Lot Improvements Plan, the words “install 6” loam and seed, typ.” shall be deleted from the note pointing to the landscaped area at the rear of the site.
2. On Sheet L-1, Landscape Plan, the native grass seed mix specified for the rear of the site shall be changed to a native wildflower mix that will not need mowing.
3. A note shall be added to the Site Plan that the fire service design shall be compliant with the City Inspection Department.

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Mr. Rice made a motion to read Items E and F together but to vote on each application separately. Ms. Roberts seconded the motion. The motion passed unanimously.

E. The application of **Tain Properties, LLC, Owner**, for property located at **195 Commerce Way**, requesting Site Plan Approval for parking lot improvements with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 216 as Lot 1-8 and lies within the Office Research (OR) District.

F. The application of **Tain Properties, LLC, Owner**, for property located at **215 Commerce Way**, requesting Site Plan Approval for parking lot improvements with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 216 as Lot 1-8A and lies within the Office Research (OR) District.

The Chair read the notice into the record.



**SPEAKING TO THE APPLICATION:**

Patrick Crimmins, of Appledore Engineering, presented on behalf of Tain Properties, owner of both properties. He explained this is a parking lot improvement project. They received approval from TAC with 3 stipulations. In 2009 they received approval for a new building on 235 Commerce Way which included parking lot improvements at 215 Commerce Way. This project is an extension of that previously approved improvement plan.

This project will include three configured parking areas with head-in parking, new pavement, striping, stop signage, and new concrete sidewalks around the exteriors of the buildings leading up to the building entrances. It will include 88 conforming spaces, ramps and signage, all located closer to the building than the existing. Each property will include a dumpster pad with an enclosure made of a chain link fence with vinyl slats. On the south side of 215 Commerce Way they will be constructing a retaining wall which was already previously approved.

215 Commerce way will result in a net loss of 21 spaces although parking will still be conforming. On 195 Commerce will result in a net increase of 9 spaces.

One of the more important items that he wished to point out is that the proposed project will increase open space on both properties.

For drainage improvements they will retrofit all existing catch basins with oil separator hoods. The reduction in the impervious area will result in a decrease of runoff.

They have determined that the lighting fixtures are not dark sky compliance so the existing fixtures will be replaced. The parking lots are lit with building mounted fixtures and light poles. The lights that will replace the existing fixtures are the same lights that were previously approved as part of 215 & 235 Commerce Way. They are Dark Sky compliant.

Mr. Crimmins indicated the proposed project will include enhanced landscaping, including new trees, ground covers and additional lawn coverage.

They received three stipulations from TAC:

- First, all site lighting should be dark sky friendly and, as previously mentioned, all light fixtures will be replaced. On October 19th Mr. Crimmins met with Mr. Desfosses at DPW and the substituted fixtures were approved.
- The second stipulation was that the irrigation system will require smart sensors. Mr. Crimmins stated at this time the owner does not anticipate adding an irrigation system but a note has been added to the Landscape Plan in case an irrigation system is added in the future.
- The last TAC stipulation was that cross easements for cars backing out shall be provided to the Planning Department. A copy of those deeds were provided to the Board and Planning Department.

In summary, Mr. Crimmins stated these are two existing office buildings with two 25 year old “tired” parking lots. They feel this will be a significant improvement to what is currently there, both aesthetically and by the fact that they are increasing open space and reducing impervious area.

Ms. Roberts was concerned about the location of handicapped parking and their location to the entrances. Mr. Crimmins responded that they were located in such a manner so that they could function as shared handicapped spaces. They centered the spaces to all four doors so they can share them.

Mr. Coker did not feel they had enough information to assure that the easement stipulation was satisfied. Mr. Taintor explained that he reviewed the information provided and they only provided a deed from Lot 6 to Lot 7 but not from Lot 7 to Lot 6. The deed also refers to Exhibit A but that was not provided. Mr. Taintor recommended that they leave that stipulation in until construction begins.

Mr. Coker asked if they should also request that the deeds need to be approved by the Legal Department. Mr. Taintor felt that would be very appropriate.

Mr. Blenkinsop added that they would also want them recorded at the Registry of Deeds.

Mr. Hopley made a comment that on Sheet C-8, the exterior stair detail should indicate that a handrail is required on both sides of the stairs.

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

## **DISCUSSION AND DECISION OF THE BOARD**

### **Motion on 195 Commerce Way:**

Deputy City Manager Hayden made a motion to grant Site Review Approval with the recommended stipulation modified to include review and approval by the City Legal Department and recording at the Rockingham County Registry of Deeds, prior to the issuance of a building permit.

Mr. Blenkinsop seconded the motion.

The motion to grant Site Review Approval passed unanimously with the following stipulation:

1. Cross easements for vehicular access and circulation shall be provided to the Planning Department for review and approval by the City Legal Department and recorded in the Registry of Deeds, prior to the initiation of any site work.

### **Motion on 215 Commerce Way:**

Deputy City Manager Hayden made a motion to grant Site Review Approval with the recommended stipulation modified to include review and approval by the City Legal Department and recording at the Rockingham County Registry of Deeds, prior to the issuance of a building permit.

Mr. Blenkinsop seconded the motion.

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

1. Cross easements for vehicular access and circulation shall be provided to the Planning Department for review and approval by the City Legal Department and recorded in the Registry of Deeds, prior to the initiation of any site work.

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G. The application of **Sarnia Properties, Inc., Owner**, for property located at **933 Route One By-Pass**, requesting Site Plan Approval for parking lot improvements with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 142 as Lot 37 and lies within the Business (B) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared on behalf of Sarnia Properties. Mr. Chagnon stated this is also known as 4 Cutts Street. This project is the reuse of a section of the facility for indoor recreation as a venue for children’s parties of up to 50 participants. As a result, there is a need for additional parking. There are no proposed changes to the building exterior. It is a change from warehouse use to recreational use. The parking they are providing complies with the ordinance. There will also be ample parking as the timing of the uses will oppose each other. The office use will be daytime and the party center use will be evenings and weekends. They appeared before TAC on October 5<sup>th</sup> and they recommended approval with one condition regarding parking. They originally had some parking which was in the vicinity of the entrance and it was felt that was not a good location because it was too close to the entrance. Therefore, they redesigned the parking lot. They met with DPW on October 18<sup>th</sup> to review the design. The plan they handed out this evening shows the redesign stemming from that meeting.

Mr. Chagnon stated some plan changes were requested at that meeting, including an increase in the number of handicapped parking spaces to 4 spaces. The spaces were also moved closer to the ramp and the path of travel. They did not show the gas line on Sheet C-2 and they have added that. They had shown a curb at the edge of the proposed parking area and TAC felt they should provide a bumper for the cars due to a difference in grade. They revised the plan to show an area of riprap adjacent to the parking to provide some erosion control and they will place stones intermittently through that area, which is shown as BB on the detail sheet.

It was suggested they square off the paving in an area which they did. They restriped the front parking to provide better access to the door and changed the retaining wall from a curvilinear to an angled configuration.

There were some questions regarding the porous pavement detail. Their detail is different than the Community Campus detail but they feel their detail is more appropriate for this project. They are

looking to provide treatment for the first flush of rainwater and the Community Campus detail provided more under-surface storage.

They have been working with PSNH as a power line easement crosses the site. They have a Joint Use Agreement with PSNH to use the area under the power lines as a parking lot. PSNH did not want the dumpster underneath their power line, so on Sheet C-1 they relocated the dumpster to the other side of the project to eliminate that concern.

Mr. Coker asked if the sedimentation basin referred to on Sheet C-1, Note 7 is actually wetlands. Mr. Chagnon confirmed that has turned into a wetland but it is not jurisdictional as it is less than 10,000 s.f.

Ms. Geffert asked Mr. Chagnon to explain how this new facility is going to be used to help her understand their access from the parking area. Mr. Chagnon pointed out that the access is a common door to the offices and he pointed out the path of travel. Most parking will be in the office parking lot.

Mr. Gladhill noted the western part of the parking lot is well lit but wondered if there are any lights on the eastern part of the building. Mr. Chagnon responded the same wall packs were installed as part of the renovation of this part of the building.

Mr. Taintor advised the Board that he had granted two administrative approvals to this site back in April. One was for the easterly part of the building for the Community Action Program and one was for a small structure on the southern corner of the lot for a used car dealership with a maximum of five cars. He felt that the dumpster location should not be shown on the Existing Conditions Site Plan as it was never placed there. It was something that was required as one of the Administrative Approvals and he was surprised to find out at TAC that they hadn't done it. At TAC they discussed what the dumpster was going to be used for and how they would access it from the north side of the property all the way over to the south side of the property. Mr. Chagnon responded that there is a secondary access to the spaces which would provide an exit on the other side of the building to get to the dumpster. Unfortunately there really isn't a good place for a dumpster. Mr. Taintor added that the building used to be a single use and now they are dividing the building into multiple users so each user must have access to the dumpster. Mr. Taintor asked where the indoor recreational area is located inside the building and if it goes from the north side to the south side. Mr. Chagnon was unsure as he did not have the floor plan. Mr. Taintor advised Mr. Chagnon that he would not be able to change the title of the plan because it doesn't show proposed conditions, it shows existing conditions. He thought they may have to prepare another plan that shows the whole site which might be a good idea because they keep doing small approvals without looking at the entire site.

Mr. Taintor stated that David Desfosses had sent an email with three questions. He asked if the new dumpster area was easily accessible and well lit, he felt the pavement design is cheap and he did not believe it would work in the coldest part of the winter. That would result in an increase in flow during January and February and he asked where that would go. He also asked if the loading area for the fourth handicapped space conforms to ADA. Mr. Chagnon believed he was talking about the width of the handicapped space and it doesn't have a striped landing area but it is 12' wide so it complies.

Mr. Hopley asked if the client has mentioned difficulties in providing sewer to the middle of the building. Mr. Chagnon believed the bathrooms were being created in the newly created corridor being

shared with Community Action. For informational purposes only, Mr. Hopley explained that as part of the build-out of the front part of the building, there might have been some representation to the owner from one of the contractors of a method to achieve additional bathrooms to service this new use and that may have been bad information based on the plumbing code. There is a genuine concern on how to tie the new bathrooms to the sewer which is on Cutts Avenue. Mr. Hopley believed the owner was probably looking at pumping and Mr. Hopley wondered if they have looked to go outside.

Mr. Coker wanted to follow up on Mr. Gladhill's question regarding light. He looked at the spec sheets and he does not see where it says the lights are dark sky friendly. Mr. Chagnon stated the lights are all full cut-off and point downward so they all comply.

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

### **DISCUSSION AND DECISION OF THE BOARD**

Deputy City Manager Hayden asked how the Planning Board knows that the parking calculations provided are accurate. Mr. Taintor understood that the parking area capacity was scaled to the amount of spaces allowed on the site so it might be appropriate to add that as a stipulation. Deputy City Manager Hayden understood that there will be shared spaces available when offices are not open and the recreation use is, but her concern was if the office use changes over time and the recreation use is very successful and expands over time. Mr. Chagnon confirmed it meets the parking calculations so all uses are addressed independently. Deputy City Manager Hayden asked how the parking calculation works and how do they know that 50 users is an accurate number. Mr. Hopley stated it would be based on the interior design and they don't have an interior design. Mr. Chagnon added the 50 also comes from potential lessee.

Ms. Geffert wanted to point out that when looking at the Simply Green application [Regeneration Park] earlier this evening, they had an interior floor plan. They don't have that here and she is having trouble understanding. Egress information would be helpful also. Chairman Ricci agreed that floor plans are necessary. Mr. Chagnon stated that the Board received the interior information with the last application that was approved in April for the re-use of the office. He also explained that a lot of cars will be dropping off and picking up later.

Mr. Blenkinsop did not remember what came before them in April. Mr. Taintor explained that the April approval went before TAC but did not come before the Planning Board as he approved it administratively. Also, that only showed the corridor and not this space. He would like to see the rear access and the dumpster as that is an important issue.

Ms. Geffert made a motion to postpone this application to the next meeting and ask that the applicant come back with amended plans showing the dumpster and showing, either visually or with notes, more information about the rear egress for the dumpster access. Mr. Hopley seconded the motion and added that 50 seems to be a magic number that comes out of thin air but the occupancy load will, in fact, be determined by a building code analysis so he would require more backup data for substantiating 50 occupants and 25 parking spaces.

Mr. Rice had concerns with the awkwardness of the parking layout. It struck him that all of the parking lots back up to confined streets so if there was an overflow of cars they could have overflow parking on Cutts Street creating a potential hazard. Also, on the Route One Bypass side, what is to prevent people from parking there or is that going to be a viable parking area. That is a very confusing and nebulous area. Lastly, the small upper lot is so much higher, he wonders about water coming down and creating an icy condition.

Mr. Hopley was concerned as he was in this building last month and was given a general tour of this part of the building and there will still be almost half of the building vacant. They need to see a master plan of the entire building. This was a giant warehouse with a very small occupant load out front to support the business office and now the new owner is attempting to subdivide it into multiple uses on a very constrained site.

Ms. Geffert asked Mr. Taintor to share Mr. Desfosses' comments on the pervious pavement because he had valid concerns.

Deputy City Manager Hayden asked them to add the sewer issue that Mr. Hopley brought up to the list of outstanding items.

Mr. Coker felt that the magic number of 50 becomes more and more important and he asked what happens if that number is really closer to 100.

Mr. Chagnon asked to respond however the public hearing was closed and therefore the Chairman denied his request.

Chairman Ricci would like to see the entire building with a projection of what it may be. If they have a large area that is vacant they should make an assumption of what it may be so that parking can be calculated.

The motion to postpone this application was granted.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

A. Letter from Peter Loughlin, Attorney representing Service Credit Union, regarding Ordinance amendment proposal to Chapter 10, Section 10.517, Roof Appurtenances and Other Rooftop Features.

Mr. Taintor reminded the Board that at a previous work session he provided several proposed changes to dimensional regulations in the Zoning Ordinance and one had to do with increases to the allowable heights of roof appurtenances. There was concern that the proposal was too broad and concern about the potential impacts in the Historic District. This proposal has to do with the Gateway District.

Attorney Peter Loughlin was present with Michael Bergeron, Vice President of Service Credit Union, and Eric Svahn, architect with Gund Partnership.

Attorney Loughlin spoke of the new Gateway District which “will provide for redevelopment along existing developed commercial corridors in order to enhance the visual character and environmental quality of such corridors and encourage site designs that promote pedestrian circulation and public transit use.” Intensity and dimensional standards were developed to guide the development. Service Credit Union is looking forward to come before this Board in December with a project in the Gateway for its new corporate office building. It is a very exciting proposal and will incorporate many green and sustainable elements, including on the roof of the building. In the design process, Mr. Svahn found that a very minor refinement of the ordinance is necessary to allow for ADA access to the roof. At the August Planning Board meeting, Planning Director Rick Taintor discussed this proposed ordinance change but he did not have the benefit of a plan or building elevation and, as a result, the Board had some very legitimate questions.

The proposed changes being submitted tonight only applies to the Gateway District and proposes a change to elevator enclosures to be up to 5’ above the present appurtenance limit.

Attorney Loughlin handed out the proposed ordinance change.

The principal question that came up at the last meeting was related to the height of the elevator enclosures. What this ordinance change would allow and address is shown in red on the plan he handed out. Mr. Taintor had proposed that it would be no greater than 300 s.f., or roughly two elevator structures. In order to provide rooftop access and to see the sustainable features on the roof and use the roof deck, the elevator shafts have to get up to a higher height than is presently permitted, which is why they are asking for an additional 5’. Their ordinance proposal states that vestibules and partial shelters such as trellises and pergolas on the roof are allowed provided they are set back a certain distance and do not exceed 15% of the total roof area. Railings are permitted if less than 4’ above the roof and set back at least twice the height from the edge of the roof. These proposed changes do not create any additional habitable space but would allow the employees to enjoy the weather. Attorney Loughlin understood the concerns of the Board last month about what it would look like and how it would loom over a building however the applicant hopes to use the roof in a reasonable manner.

Mr. Coker asked why they would change the zoning rather than getting a variance. Attorney Loughlin responded that there was case law that says if the restriction affects all property in the zone the proper course of action would be a zoning change. It would be difficult to come up with a hardship for just this building.

Mr. Coker felt the counter argument is that the ordinance does not allow it and they should seek relief from the zoning, and it would have been easier. Attorney Loughlin made the decision that they would have difficulty addressing the unnecessary hardship argument and that someone would say that this was a result of something in the ordinance that was not anticipated when being drafted and as a result applies to all properties.

Deputy City Manager Hayden made a motion to recommend that the City Council enact the Zoning Ordinance amendment as proposed. Ms. Roberts seconded the motion.

Deputy City Manager Hayden understood Mr. Coker’s concern; however, the Gateway District is brand new so this is just tinkering with the ordinance that they developed. This will benefit other projects and they just didn’t get it quite right when they drafted it.

Mr. Coker stated that the Planning Board and City Council has just finished a long battle for a zoning change with a single developer. He remembers their discussions on this zoning item and they reviewed things thoroughly.

Mr. Taintor felt that in order for the BOA to grant a variance they have to find something that is different from the other lots and there must be a hardship. If someone were to appeal it, the BOA would lose. The applicant has a reasonable use of their property. Mr. Taintor also stated that he had probably advised Attorney Loughlin to request a zoning amendment rather than a variance.

Mr. Blenkinsop felt that this was dramatically different than Mr. Coker’s example as this would apply to the entire Gateway District and would apply to numerous potential properties.

Ms. Geffert felt that the changes from Mr. Taintor’s August report are minimal and the problem that the Board had was trying to visualize what they were talking about. Given that they are localizing this to the Gateway, it makes sense and it more broadly encourages the type of development they want to see in the Gateway District. She is supporting it more because it is a great approach to an issue they were struggling with.

Mr. Gladwill asked if there was any way to use visuals to see what had been done before with elevators and appurtenances.

Mr. Coker wanted to clarify that what is being proposed is up to an additional 20’ above the roof and the allowed structure. Attorney Loughlin clarified that the previous ordinance was 20’ and the current ordinance is 10’. They are asking to go an additional 5’ above that for a total of 15’.

Deputy City Manager Hayden felt they should be excited about their first Gateway project which is exactly what they were envisioning.

Ms. Roberts agreed wholeheartedly and added that they will be working on the Zoning Ordinance re-write project forever. This is just one little tweak. She felt the gateway district is huge for them.

Mr. Coker stated for the record that he is in complete support of this project.

Chairman Ricci stated he doesn’t care what this looks like but he does feel that this change makes it better for every single development in the district.

The motion to recommend that the City Council enact the Zoning Ordinance amendment as proposed passed unanimously.

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B. Request from Matthew King, of Mombo Restaurant, for proprety located at 66 Marcy Street, to install a projecting sign over City property.



Mr. Taintor advised the Board that this is a sign on a new bracket and meets all zoning requirements. .

Ms. Geffert made a motion to recommend approval of a revocable municipal license with the recommended stipulations. Mr. Rice seconded the motion.

The motion to recommend approval of a revocable municipal license to the City Council with the following stipulations, passed unanimously.

- 1. The license shall be approved by the Legal Department as to content and form;
- 2. Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and
- 3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works.

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C. Request from Daniel LaCava, of Foobar Restaurant, for property located at 21 Congress Street, to install a projecting sign over City property.

Mr. Taintor advised the Board that this projecting sign is on a new bracket and meets all zoning requirements. They are also applying to the HDC for an awning.

Mr. Rice made a motion to recommend approval of a revocable municipal license with the recommended stipulations. Ms. Geffert seconded the motion.

The motion to recommend approval of a revocable municipal license to the City Council with the following stipulations, passed unanimously.

- 1. The license shall be approved by the Legal Department as to content and form;
- 2. Any removal or relocation of the projecting sign, for any reason, shall be done at no cost to the City; and
- 3. Any disturbance of a sidewalk, street or other public infrastructure resulting from the installation, relocation or removal of the projecting sign, for any reason, shall be restored at no cost to the City and shall be subject to review and acceptance by the Department of Public Works

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**V. PLANNING DIRECTOR’S REPORT**

Mr. Taintor reported on several items.

- 1. Development of Regional Impact Process. A local land use board is required to notify surrounding towns if there is a reasonable belief that a proposed development would have a regional impact. Mr.

Taintor felt the IMAX 12 theater in Greenland should be declared regional impact and requested that the Greenland ZBA designate it as a Development of Regional Impact; however, the Greenland ZBA disagreed. The project will need numerous approvals so they will have other opportunities.

He reminded the Board that it was their responsibility to identify regional impact projects for other communities.

Mr. Coker stated that he did not believe the Sylvania/Target site was declared Regional Impact so why would they request that the theater be declared Regional Impact. He asked for more information on that.

2. Update on legislation. There recent statutory change requiring that local land use boards specify in their regulations when and how an alternate may participate in meetings. Mr. Taintor confirmed that the Planning Board Regulations already address that.

3. Administrative Approvals. At 621/633 Islington Street open space was relocated as a result of the City's new sewer line which went through this property. At 800 Lafayette Road a PSNH utility pole and underground conduit were relocated.

4. Historic District Commission representative. William Gladhill was appointed by the Mayor and the City Council Monday night. At the same time, the City Council is considering an amendment to the City Ordinances regarding the HDC membership, such that one member of the HDC "may" be a member of the Planning Board (as stated in State law), rather than "shall" be a Planning Board member.

5. Update on Zoning Ordinance amendments – City Council actions. The Council enacted the proposed wetland changes; did not enact the proposed CCRC provisions; and will be reviewing proposed changes to the size of a multifamily dwelling in GA/MH and to the setbacks for accessory structures in CBA/CBB, and the proposed rezoning of the former Fire Station #2 from Municipal to Gateway.

6. Planning Board procedures. Mr. Taintor recently attended a Municipal Law Lecture which touched on a number of procedural issues. Many boards vote to accept applications to determine completeness. Another item would be to hold hearings to determine whether "conditions precedent" have been met. There was a recent court case where the date of when final action took place was important. The issue of compliance hearings was discussed and some communities have voted to find that an approval has lapsed. Lastly, State law allows a preliminary or conceptual review process before you actually get to a formal public hearing which might be worth considering.

Chairman Ricci felt it would be helpful to have staff do a report and they could discuss it at a work session. Ms. Roberts would like to have a sense of how these would play out.

Mr. Taintor mentioned that there are a few significant projects being reviewed by the HDC that are not being submitted to the Planning Board yet. He is concerned they will have more situations like Kline's, where the Planning Board was asked to endorse a plan that the applicant had worked out with the HDC. He is going to suggest that they request a joint work session with the HDC on 30 Maplewood Avenue and the Arts Center at the brewery complex off Islington Street. Especially in the case of the

Brewery project, they are not paying enough attention to parking which could change their whole development. He will arrange that.

Chairman Ricci mentioned to the Board that a great example of dark sky friendly lighting is the Crossroads House. He recommends driving by to see it.

Mr. Coker wanted to let the Board know that the Police Chief complimented the Board on the Orchard Park redevelopment. The dark sky lighting made a huge difference to their neighborhood.

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**VI. ADJOURNMENT**

A motion to adjourn at 9:50 pm 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 November 18, 2010.