

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**May 19, 2011**

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

**MEMBERS EXCUSED:** n/a

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

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**6:00 – 7:00 pm WORK SESSION** on proposed Zoning Ordinance and Zoning Map Amendments related to downtown parking and residential development.

Chairman Ricci called the work session to order and announced that no public input would be allowed.

Mr. Taintor indicated that they had sent out a copy of last week’s powerpoint presentation to the Board along with some data they had requested and they will be continuing last week’s discussion. Deputy City Manager Hayden stated that the City Council Work Session on the Worth Lot will be on the 22<sup>nd</sup> and they will have to wait for a final decision as that would have a direct bearing on their decision. The garage has passed first reading and the second reading was moved out to July. Parking is not a small issue and they have been talking about it for a long time. She felt they should keep talking about it and not feel pushed to make a rash decision.

Ms. Roberts touched on some points from last week. Councilor Spear brought up the suggestion of not requiring parking for commercial under a certain square footage. They asked Mr. Taintor to come back with floor area by land use data as they felt that was a big issue, regarding residential vs. commercial, to understand where they are now and where they want to go.

Councilor Spear agreed they should not make a serious move prior to the City Council Work Session but he was not sure the councilors are aware of how integrated the Planning Board thinking is with their decision regarding a new parking garage. He felt they should let the City Council know that they need to know what their decision is. Deputy City Manager Hayden suggested the Planning Board could provide an interim report back to the City Council, advising them that their decision is key to where they go with zoning.

Mr. Coker added that the Downtown Parking Focus Group (DPFG) recommend that the Worth Parking Lot be the location of the next structured parking facility. They felt the Worth Lot was the underpinning of the whole thing.

Deputy City Manager Hayden recommended reading the minutes of the City Council public hearing on April 18<sup>th</sup> because a lot of issues came up regarding the challenges of building on the Worth Lot. Numerous residents have concerns and suggestions which all would result in a smaller garage.

Mr. Rice asked about any discussion on the in-lieu fees. Chairman Ricci stated there was a lengthy discussion at last week's Planning Board Work session. Chairman Ricci indicated that the general consensus was to eliminate the in-lieu fee for commercial and institute an in-lieu fee for residential. They discussed a residential/commercial mix but the general consensus was to eliminate the fee. Ms. Geffert added that the idea of an in-lieu fee for residential was not introduced to be punitive but more because it may be impossible in certain circumstances to find spaces.

Councilor Spear indicated that they were discussing eliminating the parking requirement for non-residential, which is different than eliminating the fee because the fee becomes irrelevant when the requirement is gone. They also discussed retaining the parking requirement for residential and giving the fee as an option in case it was not possible to provide parking. That is better than having the BOA doing it for free. They also talked about an exception for hotels.

Mr. Rice asked about the rationale behind going to 2.2 spaces per 1,000 s.f. rather than 2.0 and whether that was discussed.

Mr. Taintor stated that the DPFG recommended aiming for 2.2 per 1,000 s.f. which is a higher requirement than they have right now. They recommended doing that only for larger properties. They talked about a number of those approaches and they may have to go in that direction if the City doesn't provide some public parking, which would make the regulations stricter. It all comes back to the Worth Lot or another lot being built.

When Deputy City Manager Hayden thinks about the Northern Tier, she doesn't want to see a lot of residential buildings without parking. She likes the percentages proposed by Mr. Taintor. She would not want to see Portsmouth compared with any place else because every place else is trying to get residential downtown. Mr. Taintor proposed a maximum residential floor area of 67% in DBA and a maximum floor area of 50% in CBB. She wondered if they could do first two floors nonresidential and upper floors residential.

Mr. Rice wondered if the demand for commercial space would be enough to fill up the second floors. Mr. Taintor stated they do not have any data on second floor demand. Brokers do not see a demand for second floor space. Mr. Coker felt this was precisely why some pushed very hard for public hearings. It would be developers who are impacted by this. Obviously, their interests are to develop and profit so that has to be tempered by the balance between commercial and residential. In his 13 years on the Planning Board he has never had so many conversations with developers who are concerned about an issue. If onerous requirements are put on commercial or residential it could have huge impacts and he doesn't know how to answer those except he feels public hearings will be vital.

Deputy City Manager Hayden believes they have heard from developers that it is more expensive to build downtown because of parking. If the City Council makes the policy decision that they are going to be the provider of public parking, then it makes it more competitive for developers to develop commercial space downtown, rather than going to Pease or another town. She does not want to go to a public hearing until they have a proposal. It is a known fact that there is a huge demand for highend residential in downtown.

Mr. Rice wondered why they wouldn't have a market study done. Chairman Ricci's concern is that they are planners and need to look 5-10-15 years down the road and not at the current market.

Councilor Spear felt in order to get a balance of commercial and residential, by removing the parking requirement for commercial for all floors it incentivizes commercial.

Mr. Coker did not believe that developers only look 6 months out. They also look 10 years out or else they won't get the financing. Chairman Ricci stated that building to hold and building to flip are completely different. It depends on whether they are building condos for the quick flip which would be a 24 month period vs. whether they are looking to build and hold on for the long term.

Ms. Roberts agreed with Councilor Spear's vision for the potential positive impact of removing the parking requirement for commercial which leaves residential with a parking in-lieu fee. She wondered what type of in lieu payment would they expect.

Deputy City Manager Hayden wasn't sure they could ever get to a payment in lieu per space for residential that would be enough to truly build the space. Even the \$25,000 per space fee doesn't include the cost of the land. Someone building a single family house pays for their own garage so why shouldn't downtown residents have to pay. Owners are going to want parking so the City might as well have reasonable standards and manage how they are going to build it.

Mr. Rice stated it is very difficult to sell a residential unit downtown without parking. Deputy City Manager Hayden would like to see them come up with a reasonable lot area where it would make sense to have a garage on site

Mr. Blenkinsop asked what if parking wasn't feasible. Should they have an in lieu fee that is more representative of the actual cost so that its cost is admittedly very high but the developer could make the decision of whether they want to pay that high price. Deputy City Manager Hayden felt that was a great idea rather than forcing them to the BOA. Maybe the in-lieu option would apply to lots under 20,000 s.f. or 10,000 s.f. of residential. If the developer really wants to develop a lot and the only way they can make it work in the market is to pay the fee rather than provide the parking, then she believes that would be a great idea.

Mr. Coker felt they first need a policy decision and then they need to decide what financial incentives or constraints they want to help mold that policy. For instance, if they want to encourage commercial development, they should take away the restrictions and the city should step in and be the supplier of parking and residential, at 13% of the square footage, will take the hit. Maybe \$10,000 isn't enough if the policy decision is to discourage residential. However, Mr. Coker does not have a sense of what the policy is at this point.

Chairman Ricci has heard that the in lieu fee downtown for commercial property makes it more attractive to go out to another site such as Pease. He felt as they incentivize commercial he would not call it a negative on residential. He indicated they might have a \$25,000 fee for residential per space or if they provide less than 800 s.f. per unit then the fee would go down to \$5,000 per space. This would incentivize residential to go to smaller units, or more affordable units.

Mr. Coker reiterated the need for a public hearing at this point because of all of the people who have spoken to him about this issue. Chairman Ricci stated he has also received calls and it was crystal clear what their agenda was. He wants to get out of the agendas and into the planning perspective.

Ms. Geffert agreed with Chairman Ricci and felt the only piece that he left out was hotels. She felt that what he said is the proposal that she is hearing consensus on. She believes it reflects what everyone is saying.

Deputy City Manager Hayden agreed with Ms. Geffert and Chairman Ricci.

Mr. Coker suggested as a conceptual recommendation that the City should be in the parking business. The DPFG report showed that downtown parking is a tremendous money maker in this City and we now have paid parking on Sunday.

Deputy City Manager Hayden believes that what the City Council decides on the Worth Lot is the linchpin to anything. She did not believe they should be proposing anything on paper until they decide. The Council is headed in that direction and she feels they have to be patient. Mr. Coker said that he understands that but he is trying to get some clarity so they can focus on the pieces they need to discuss. They will be having public hearings so why can't they just take these recommendations one at a time and establish the policy decision. The places he feels they will have a spirited debate will be finding a balance between commercial and residential. Deputy City Manager Hayden suggested that staff could take tonight's discussion and write up the points that have been made so that at their next work session they can review them.

Chairman Ricci asked Councilor Spear, as a councilor, did he feel that the City Council has a good vision of what the Planning Board is up against related to parking? Councilor Spear did not believe they do. The City Council received a letter from the EDC on the parking garage so he felt it would help to explain to the Council how land use was involved in this decision as well.

Ms. Geffert asked if they should pen a letter or attend a Council hearing. Councilor Spear felt a letter from the Planning Board Chair to the City Council stating the issue in a broader sense would be good.

Ms. Geffert thought, in addition to public parking, they need to make sure bicycle use and access is encouraged at the same time.

Mr. Coker felt the reality is they have to deal with their point of view as planners and that involves looking down the road. The City Council is a political creature and they respond to people calling them and expressing their opinions. He doesn't think anything the Planning Board does will change

the way the City Council does things. Councilor Spear stated that the Councilors may ignore the Planning Board recommendations at times but they value input from the Board.

Deputy City Manager Hayden suggested that staff write a very brief report from the Planning Board to the City Council and remind them how all of these things interact and remind them of the key concepts in the Parking Omnibus. She felt it was unfair to oversimplify the Planning Board and the City Councilor’s intentions.

Chairman Ricci agreed that as a Board they owe it to the City Council to let them know the planning issues and then let the Council do what they want. Mr. Coker added that they should say they are going through the process and will be requesting formal public input.

Mr. Blenkinsop noted that all speakers at the City Council were negative to the garage so maybe the developers should be speaking to the City Council in favor of the garage.

Mr. Gladhill noted that the Worth lot would add 300 spaces which should help be an incentive to the second floor downtown retail.

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the April 21, 2011 Planning Board Meeting. There were no minutes available for approval. A motion to postpone was made and seconded and was unanimously approved.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

Mr. Rice made a motion to read in City Council Referral A with Public Hearings - Old Business A. Deputy City Manager Hayden seconded the motion. The motion passed unanimously.

A. The application of **Bonhomme Richard Realty, LLC, Owner, and Chinburg Builders, Applicant**, for property located **off Kearsarge Way**, for Final Subdivision Approval to consolidate Lots 118, 119 and 122 as shown on Assessor Map 212, totaling 227,623 s.f. (5.2255 acres), and subdividing the lot into 20 individual lots varying in size from 5,053 s.f. to 54,871 s.f. Said lots lie within the General Residence B (GRB) District. (This application was postponed at the April 21, 2011 Planning Board Meeting)

A. Letter from John Chagnon, P. E., Ambit Engineering, regarding a Subdivision Application for property located off Kearsarge Way (Tax Map 212, Lots 118, 119 and 122).

The Chair read the notices into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, addressed the Board. At the April 21<sup>st</sup> Planning Board meeting the Board raised concerns which he has addressed with this submittal.

The Board was looking for a long term Operation and Maintenance Plan for the drainage pond which will be turned over to the City as part of the project and that was submitted. They were looking for information relative to the transfer of responsibility for that drainage infrastructure and they have outlined some ideas on how that might be accomplished. They were asked to look at redesigning the drainage system so it would be lowered and not require permitting from the DES Dam Bureau which has been done. They were asked to look at some features to protect the pond and they have chosen a landscaping alternative versus fencing. They requested additional information on retaining walls which was included on the detail sheets. There were some questions regarding sizes of catch basins which was addressed in the plans. They asked for additional information on the fill for the berms and that information has been provided. The Board was looking at the possibility of a vehicle gate and the plans now show one. There was some discussion that DPW had some ideas about street lighting at the intersection. Since the last meeting they have met with PSNH and have come forward with a proposal. They added a note to the plan regarding invasive species management. Mr. Chagnon indicated that the Staff recommendations were acceptable to the applicant.

Mr. Chagnon stated there was one change they would like to make at the last minute. They have been asked to approve the street name tonight and the applicant would like to request Harborside Way as the street name to keep it in the nautical theme.

Deputy City Manager Hayden asked for the spelling of Harborside Way. Mr. Chagnon believed it was without the “u” and is one word.

Mr. Coker asked if they approve street names or do they just recommend to the City Council. Deputy City Manager Hayden said that the ultimate decision lies with the City Council.

Chairman Ricci thanked Mr. Chagnon for the improved plans. He asked about the details on the longitudinal section through the pond and what the diamonds relate to. Mr. Chagnon responded that they relate to the backfill schedule on the bottom left side of the page. Chairman Ricci asked if there was some way to better denote the backfill schedule. Mr. Chagnon confirmed they can put a legend on and tie them together. Chairman Ricci really liked the improvements around the detention basin.

Mr. Hopley referred to Sheet D-3. He thanked him for more detail on the wall. He asked about the foundation drainage shown for the wall, probably for relief from hydrostatic pressure, and he asked if those pipes could be at some interval. Mr. Chagnon indicated that the foundation drain in that detail is actually the individual unit foundation drains to the buildings. The grading plan shows their penetrations.

Mr. Hopley felt they should remove the notes that pertain to the “code” as they will contradict their railing design. They are in agreement that the code is not applicable in this case.

Ms. Roberts noted that the Stormwater Management Plan suggests that they are planning for 2 and 10 year storms. She asked Mr. Chagnon to talk about what will happen with a storm bigger than a 25 year storm. Mr. Chagnon stated that the larger storms are collected in the infiltration pond but will outlet the emergency spillway. When the infiltration capacity is exceeded by the input of runoff, any excess will travel down the spillway. It is sloped as it exits the infiltration area but it flattens out to a long level area where the water will infiltrate and travel to the drainage swale along the railroad tracks.

Chairman Ricci noted that their drainage calculations were done up to a 50 year storm and, understanding that they are not required to, he asked what would happen if a 100 year storm event were to occur. Mr. Chagnon stated there would still be stability in the riprap and there would just be more water exiting the pond. The site velocities are well under 3' per second which is acceptable for that riprap protection.

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**

### Final Subdivision Approval:

Deputy City Manager Hayden made a motion for final subdivision approval with the stipulations as listed in the Memorandum and additionally a recommendation to name the new street Harborside Way pending input from Public Safety and other appropriate City staff to remove the language on Sheet D-3 relative to the fence being built to code and to tie the backfill schedule on Sheet D-7 to a key.

Mr. Blenkinsop seconded the motion.

The motion to grant final subdivision approval passed unanimously with the following stipulations:

### Conditions Precedent (to be completed prior to recording of the subdivision plat):

- 1) On Sheet D7, Detail Z (Lateral Section Through Lower Pond), show the water main as approved by the Department of Public Works.
- 2) The applicant shall enter into an agreement with the City assigning to the applicant the responsibility for operation and maintenance of the improvements on Lot A for at least one year after the conveyance of Lot A to the City.
- 3) All utility easements, sight line easements, and drainage easements shall be approved by the City Legal Department and recorded simultaneously with the subdivision plan.
- 4) The new street shall be named "Harborside Way", subject to the approval by the Public Safety departments.
- 5) On Sheet D 3, Detail K, delete the note referring to compliance with the building code.
- 6) On Sheet D 7, add a legend or notes tying the backfill schedule to the details.

Conditions Subsequent (to be completed prior to the start of construction of improvements shown on the subdivision plans):

- 7) The applicant shall receive approval of all required State permits for improvements shown on the subdivision plans.
- 8) The applicant shall pay for the services of an independent oversight engineer, to be selected by the City, to monitor site development including the new street and utilities.
- 9) The applicant shall prepare a Construction Management and Mitigation Plan for review and approval by the City.

City Council Referral:

Deputy City Manager Hayden made a motion to recommend that the City Council vote to accept the land shown as Lot A, subject to an agreement, to be approved by the Legal Department, regarding operation and maintenance of the stormwater management system. Mr. Hopley seconded the motion.

The motion passed unanimously.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

*The Board’s action in these matters has been deemed to be quasi-judicial in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

Chairman Ricci recused himself from this hearing. Vice Chairman Roberts assumed the chair.

A. The application of **Regeneration Park, LLC, Owner**, for property located at **3612 Lafayette Road**, requesting Amended Site Plan Approval to include a 29’ x 30’ concrete deck for restaurant use, a 12’ x 30’ shed, the relocation of a transformer and generator, and revised parking configuration, 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, presented on behalf of the applicant. Also present was Erik Saari from Altus Engineering.

Mr. Alther stated that they received amended Conditional Use Permit approval on April 21, 2011. They are now looking for approval for an outside patio, relocation of the generator and transformer pad and a shed in the back. They have received a favorable recommendation from TAC for these changes. They had discussions at TAC about access from the east side of the site to the main entrance of the restaurant and they added a sidewalk so that pedestrians would have a clear and safe path. Another



comment from TAC was the material of the patio canopy. It will be a metal aluminum structure with a fabric awning. The fabric will be fire retardant which satisfies the Fire Inspector.

Mr. Coker assumed the application has been reviewed for the new Gateway regulations. Mr. Taintor confirmed it meets the basic Gateway standards but they are not applying for the Conditional Use Permit like the Service Credit Union.

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**

Mr. Blenkinsop made a motion to grant amended Site Plan approval. Mr. Rice seconded the motion.

The motion to grant amended Site Plan approval passed unanimously.

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Mr. Coker made a motion to read Item F out of order. Ms. Roberts seconded the motion. The motion passed unanimously.

F. The application of **Henry and Jaqueline Brandt, Owners**, for property located at **37 Wholey Way** and **Salmon Falls Holding, LLC, Owners**, for property located **off Echo Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revisions) are requested between two lots as follows: Lot 64 as shown on Assessor Map 237 increasing in area from 2,728 ±s.f. to 15,056 ± s.f. with 241.28' ± of continuous street frontage on Echo Avenue and Wholey Way and Lot 76 as shown on Assessor Map 237 decreasing in area from 43,703 ± s.f. to 31,375 ± s.f. with 200.89' ± of continuous street frontage on Wholey Way. Said properties are located in a Single Residence B district and are shown on Assessor Map 237 as Lots 64 and 76. This application was previously denied by the Planning Board; however, the Rockingham County Superior Court subsequently reversed the Board's decision and remanded the matter "for consideration of the wetlands issue and any other concerns not addressed" in the Board's decision.

Mr. Taintor advised the Board that a letter had been received from Attorney Pelech stating he was unavailable this evening and requested a postponement to the June Planning Board meeting.

Mr. Coker stated that, as this was sent back from the Rockingham County Superior Court, he would be more comfortable with some legal guidance on their role. Mr. Taintor felt that was a reasonable request but he has discussed it with City Attorney Sullivan who indicated it involves anything that was not discussed at the previous hearing and any further information they feel is necessary. At the last hearing it came up that there was not enough information on the plan and the Court said they should give the applicant the chance to rectify that information. Mr. Coker requested a copy of the minutes from the original hearing.

Deputy City Manager Hayden made a motion to postpone to the June 16, 2011 Planning Board meeting. Mr. Blenkinsop seconded the motion.

The motion to postpone passed unanimously.

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B. The application of **51 Islington Street, LLC, Owner**, for property located at **51 Islington Street**, requesting Amended Site Plan Approval for the addition of a back up generator on an 11' x 17' concrete transformer pad and surrounded by a 6' wood fence, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 126 as Lot 33 and lies within the Historic District A and the Central Business B (CBB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared on behalf of 51 Islington Street LLC. Mr. Chagnon explained the proposal is to place a generator on the site. A backup generator is required per code and they were not aware of that at the time of their original approval. They appeared before TAC on May 3<sup>rd</sup> and although they had originally proposed the generator pad to be in the rear corner it was felt that it would be better if they placed it behind the building instead. They were also asked to expand the size of the aisle in the parking area from 5' to 8' and to revise the parking calculations on the plan. All of those items have been revised on the plans.

Deputy City Manager Hayden noted in the Planning Board Memorandum that it says they will be installing a wood fence with a fabric liner and if it doesn't pass the sound levels after inspection they will install "acoustiblok" sound panels but on the plan it says 6' wood fence with internal acoustic fence panels. Mr. Chagnon indicated there was a written narrative that was provided to the Board members indicating that they intend to install the fence and acoustic fence panel, which is a fabric panel that is placed inside the fence, and they will test the sound at the property line. If the sound does not meet the requirements of the Zoning Ordinance, they will add the acoustiblok sound panels. It's just different terminology.

There was mention in the Planning Board Memorandum about compliance with the noise limits and Ms. Roberts wanted to make sure that would also pertain to the regular testing of the generator. Mr. Chagnon believed it only applies to the regular maintenance. Mr. Taintor confirmed that the emergency use is exempt so the testing is the only sound that need to comply.

Keeping the HDC in mind, Deputy City Manager Hayden asked if the acoustiblok will only be internal to the fence, if it is required. Mr. Chagnon confirmed that it was only inside the fence and it does not extend over the top because the generator needs the air to cool itself.

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**

Mr. Blenkinsop made a motion to grant amended site plan approval with the two recommended stipulations. Mr. Hopley seconded the motion with a modification to stipulation #2 by adding language that the sound testing shall be done by a qualified sound engineer or company that specializes in this type of work, rather than the building inspector having to go out and do the testing. Deputy City Manager Hayden asked that they also add that a City Staff member be on site at the time of testing and that the test results to be sent back to the City.

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

- 1) The generator shall only be exercised on a weekday between the hours of 10:00 a.m. and 2:00 p.m.
- 2) The sound levels at the property line shall be tested after installation by a qualified sound engineer or company; the Building Inspector, or his representative, shall be present for the testing; and further sound attenuation shall be installed if necessary to comply with the noise limits set forth in the Zoning Ordinance.
- 3) A report of the sound level testing shall be provided to the Building Inspector.

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C. The application of **Stuart and Jennifer Varney, Owners**, for property located at **8 Lens Avenue**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including construction of a 10' x 10' shed, to be placed on cement blocks. Said property is shown on Assessor Map 222 as Lot 58 and lies within the General Residence A (GRA) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Jennifer Varney, owner, was present. She indicated that she hopes to build a 10' x 10' shed which will be placed on blocks. She asked for questions from the Board.

Ms. Geffert asked how much of the lot was in the buffer zone. Mr. Taintor stated that the entire lot is in the buffer area except the driveway. Ms. Varney indicated that they are building the shed on the lawn and there is no place to move it out of the buffer area. They will build it on site.

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**

Mr. Patenaude made a motion to grant Conditional Use Permit approval. Ms. Geffert seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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D. The application of **122 Mill Pond Way Condominium Association, Owner**, for property located at **122 Mill Pond Way**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland buffer, including the demolition of an existing storage barn and the construction of a 24' x 50' 4-bay garage. Said property is shown on Assessor Map 143 as Lot 7 and lies within the General Residence A (GRA) District.  
The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, was representing 122 Mill Pond Way Condominium Association on this application to construct a new garage. There is an existing barn structure which will be removed and a garage will be constructed in the same area. The design has been relocated from where they originally wanted the structure to go so that it is as far away from the buffer as possible. One unit owner gave up some of his common area space to allow that. The garage is designed with a drip edge to infiltrate as much roof run off as possible.

Mr. Chagnon reviewed the five criteria:

1. The land is reasonably suited to the use, activity or alteration. The property is zoned residential and garages are accessory uses.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration. The Association attempted to use the least impacting alternative and there is no where else to put the garage. There are also significant views from the westerly abutters that would be impacted if it was shifted to the north.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties. They do not believe there will be any change to the function and value of the resource as there is plenty of buffer left and they are not cutting any trees.
4. Alteration of the natural vegetative state of managed woodland will occur only to the extent necessary to achieve construction goals. They are only impacting the buffer for what is needed for the project.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section. They believe this is the least impacting design.

They received a favorable recommendation of approval from the Conservation Commission. The Staff Memo pointed out an issue regarding the propane tank which currently sits behind the barn, out of view. There is a row of arborvitae to the west of the garage which they will keep and they don't want to interrupt that by placing the generator there. To place the tank behind the garage, further south of that vegetation, would place it in the area that was given up by the unit owner. As that unit owner gave up a lot to protect the buffer, they would like to not put the tank in his yard. The tank location they have selected is 10' from the building which is code required and it is in an area where they will not

have to clear any trees. It is in the buffer but they do not believe it will diminish the function of the wetland buffer.

Mr. Hopley asked about the lots that he is showing as being owned by the City of Portsmouth. Mr. Chagnon stated that the small lot is the pump station and the larger one was deeded to the City as a park as a result of the original subdivision. The third was also deeded to the City by another land owner who subdivided their lot.

Chairman Ricci asked that they add a legend on the proposed site plan with a symbol for the line of silt fence.

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

Phillipe Favet, of 152 Dennett Street, which is behind the proposed garage. He stated that the buffer has been diminishing and he felt the setback is there for a reason. He is concerned about the preservation of the trees and buffer. He wanted to know exactly what was going to be cut. Mr. Chagnon showed Mr. Favet the plan and he pointed out that no trees or buffer will be cut. They have also applied for a Shoreland permit from the State which for a 250' buffer. Mr. Favet felt they should preserve as much as they can, especially the trees. Mr. Chagnon reiterated that they are not planning to cut any trees, there is no impact to the buffer in their opinion and they have done everything they can to minimize impact to buffer.

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. Rice made a motion to grant Conditional Use Permit approval. Deputy City Manager Hayden seconded the motion with the stipulation that a legend be added to Sheet C-2 for the silt fence.

Mr. Coker asked if they should add a stipulation that the granting of the Conditional Use Permit is subject to approval of the State Shoreland Permit. Mr. Taintor did not believe that was necessary.

Ms. Geffert thanked Mr. Chagnon for the aerial photo as it helped out a lot.

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

- 1.) Add a legend to Sheet C2, Proposed Site Plan, and include the symbol for the silt fence.

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E. The application of **Robert C. & Dawn D. Comito, Owners**, for property located at **1185 Maplewood Avenue**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland buffer, including construction of a 12' x 16' screen room and a

14' x 16' deck off the rear of the home. Said property is shown on Assessor Map 219 as Lot 42 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

David Calkin, of Alternative Solutions Contracting, appeared on behalf of the home owners. They are proposing a deck and screened in room. They received a favorable recommendation from the Conservation Commission on May 11<sup>th</sup>. He had additional photos of the property which he passed around to the Board members. The owners would like to build a deck in the back of their home to enjoy the views of the pond and trees. The porch and sun room would be off of the back of the house in the Single Residence B District. They will not encroach on any of the required setbacks.

The homeowners have just purchased the house. The property is shown on the tax map as 100' x 150'. On the front left corner of the property there is a granite post that appears to be a property marker. Therefore, it appears that 30' of their property is under the high water mark. Also, in 2007 the prior homeowner submitted an application for a similar deck which was granted but never built.

As a result of their Conservation Commission hearing, they have offered to put in a planting bed on one side of the screened in room to help with runoff from the roof. The Conservation Commission also suggested putting in some form of a crushed stone or pea stone underneath the deck. In front of the fence along the back of the property they will do a planting bed as a last ditch effort to capture any runoff before it gets into the wetlands. They are planning to install a silt fence during construction.

Mr. Calkin stated they are installing seven 10" sonotubes which are of impervious material. They are altering drainage on about 128 s.f. of space. The clients are proposing to plant 202 s.f. of new vegetation.

They do not believe it will diminish the value of the house or surrounding properties.

Mr. Coker asked if the fence is the property line in the photo. Mr. Calkin provided a different photo and explained that he believed the water at its highest point is where they have to respect the 100' buffer zone. Mr. Coker always associated high water marks with tidal areas. If the fence is the property line, for the sake of discussion, they would have 28' rather than 30' from the fence. Mr. Taintor stated that there is another plan showing the property line extending into the water and the fence is not the property line.

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**

Mr. Rice made a motion to grant Conditional Use Permit approval. Deputy City Manager Hayden seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

*The Board's action in these matters has been deemed to be legislative in nature.  
If any person believes any member of the Board has a conflict of interest,  
that issue should be raised at this point or it will be deemed waived.*

B. Letter from Ralph Woodman, Jr., of Boynton Waldron Doleac Woodman & Scott PA regarding Lot Line Revision at 155 Parrott Avenue and 82 Court Street.

Mr. Taintor indicated this was similar to a previous request from Jane Donovan and Bill Hess for 54 Rogers Street. This request is for the next property over and they have also received a notice from the next property in line as well. Unlike the Donovan/Hess property, this did not come with a Lot Line Relocation plan. He recommended that they vote to refer this to the School Board but not take action until they have a plan before them, and vote on the next one as well as they know it is coming. They should not take action to recommend to the City Council until they have a plan before them.

Deputy City Manager Hayden stated they can vote on Item A twice for both letters. They do have the letter in their packet but they haven't officially received it from the Council yet.

Deputy City Manager Hayden made a motion to vote to refer the proposed land transfer as requested from Boynton, Waldron to the School Board for a determination as to whether the land is needed for school purposes and to vote to refer the land transfer request from Flynn & McGee to the School Board for a determination as to whether the land is needed for school purposes.

Mr. Rice seconded the motion.

The motion passed unanimously.

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C. Potential sale of Connie Bean Center.

Mr. Taintor advised the Board that the City Council had referred the potential sale of the Connie Bean Center to the Planning Board for a recommendation but there was no specific proposal. He has contacted the School, Fire, Police, Library and Public Works Departments and received responses saying they have no proposals for the building.

Mr. Taintor recommended that the Board vote that the City Council dispose of the property by sale or long term lease.

Mr. Blenkinsop asked if that is that the level of their review. Deputy City Manager Hayden indicated that a City Ordinance required that any property the City is disposing of goes to the Planning Board for review. Past practice has been to reach out to City Departments and report back to the Council on that. To clarify, Mr. Blenkinsop asked if they were saying, from a planning perspective, that City staff does

not need it in the future and they leave it to the City Council to make the policy decision. Deputy City Manager Hayden confirmed that was correct.

Mr. Gladhill asked about the option of a long term lease. Mr. Taintor responded that would just give them more flexibility.

Mr. Coker did not see what basis the Planning Board has to make that recommendation. He has no information to base his vote on. Chairman Ricci confirmed that they are asking if any other municipality arm has a use for the building. Mr. Coker said his point was that the reason the building is being turned over is because it is an older building and no longer up to code and it is his understanding that the upper floors have been closed due to safety concerns. Deputy City Manager Hayden stated there are lots of reasons and there has been a tremendous amount of study done by the City determining that the building is not useful as a recreational facility. This is the same process they have followed when they recommended to sell the fire station land and this is the same process they have followed for many years.

Mr. Blenkinsop felt it might be a matter of how they word their motion. He asked if they need to find there is no need for municipal use. Mr. Taintor agreed the motion could be reworded. He recommended that the City Council dispose of the property by sale or long term lease, and he did not say anything about whether there is any municipal use for it or not.

Deputy City Manager Hayden made that motion and Councilor Spear seconded the motion.

Ms. Roberts was thinking about the proximity of the parcel to the parking lot and issues that may come up with the rehab of the bridge or potential parking for the City.

Deputy City Manager Hayden did not believe the bridge construction or approaches will affect the building. However, if the Board needs more information they need to tell Staff exactly what that information is.

Ms. Roberts understands that their vote is subject to reports back from municipal departments.

Mr. Rice asked if DPW considered the demolition of the building and the construction of a parking garage. Deputy City Manager Hayden stated that did come up as a question and there is not enough space.

Mr. Coker asked why the City couldn't take the open parking leading up to the bridge and combine it with this lot for a parking garage. Deputy City Manager Hayden confirmed that option was also discussed and there is not enough room. Mr. Coker stated he did not know that or what any discussions there have been so he is not comfortable voting to find that there is no municipal use for the Connie Bean Center.

Mr. Coker made a motion to table this matter to the next meeting pending further information from all Department heads as to why the building is not usable by the City. He would like some sort of report or summary of efforts that went into the determination of whether it was salvageable.



The motion did not receive a second.

The motion to recommended that the City Council dispose of the property by sale or long term lease passed with Mr. Coker abstaining.

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**V. PLANNING DIRECTOR’S REPORT**

A. Mr. Taintor reviewed some administrative approvals that he has granted over the last month.

- 2300 Lafayette Road, Water Country – Approved a new roof structure which is invisible from the street.
- 2800 Lafayette Road, Whitebirch Plaza – Deck for outdoor dining at the Beach Plum.
- 40 Wedgewood Road, Gosling Meadows - Addition to the administration building.
- 51 Islington Street - New entry on Tanner Street side of the building that conforms to an HDC approval

B. Rezoning request from the City Council for land on Cate Street, between the Route One By-Pass and Bartlett Street, to rezone from Industrial to General Business - They have started on that request in fits and starts. They recently had a meeting with all parties this week and the original applicant has now sent a letter indicating they are no longer interested in rezoning. Therefore Mr. Taintor recommends that the Planning Board report back to the City Council to take no action on this request.

Deputy City Manager Hayden made the motion. Mr. Blenkinsop seconded the motion.

The motion to send a memo to the City Council stating that they should take no action on the original request because of the withdrawal of the applicant.

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**VI. ADJOURNMENT**

A motion to adjourn at 8:20 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 August 18, 2011.