

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**DECEMBER 15, 2011**

**MEMBERS PRESENT:** John Ricci, Chairman; Eric Spear, City Council Representative; Paige Roberts, Vice Chairman; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector; MaryLiz Geffert; William Gladhill; Norman Patenaude, Alternate and Brian Groth, Alternate

**MEMBERS EXCUSED:** John Rice; Anthony Blenkinsop

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

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Chairman Ricci acknowledged two members of the Board that were retiring: Norman Patenaude and Mayor Elect Eric Spear. Gift, thanks and well wishes were presented.

**I. 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.*

Deputy City Manager Hayden made a motion to read Items A & B in together and to vote on them separately. Ms. Roberts seconded the motion. The motion passed unanimously.

A. The application of **Mitchell and Edward Hyder, Owners**, for property located at **659 and 677 Dennett Street and 295 Woodbury Avenue** (now consolidated into one lot), requesting a Conditional Use Permit under Section 10.726 of the Zoning Ordinance for a Residential Density Incentive Planned Unit Development (RDI-PUD) consisting of one 4-unit building and one 5-unit building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 161 as Lots 31 and 32 and Assessor Map 175 as Lots 6 and 6A and lie within the General Residence A (GRA) District. (This application was postponed from the October 20, 2011 Planning Board Meeting)

B. The application of **Mitchell and Edward Hyder, Owners**, for property located at **677 Dennett Street**, requesting Site Plan Approval to construct a 9-unit residential development with one 3,918 s.f. 5 unit building and one 2,753 s.f. 4-unit building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 161 as Lots 31 and 32 and Assessor Map 175 as Lots 6 and 6A and lies within the General Residence A (GRA) District. (This application was postponed from the October 20, 2011 Planning Board Meeting)

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared on behalf of the applicants. Also present were Steve McHenry, of McHenry Architects, Terrence Parker from terra firma landscape, and Bob McGuire, representing the property owners. They received a lot of feedback on their design at the Planning Board meeting in September so they did some revisions and are back looking for approval tonight.

Mr. Chagnon reviewed the major revisions. The buildings are now set back from the front on Dennett Street and Woodbury Avenue which provides some green areas. The shed has been deleted and inside space will be used instead. They eliminated sidewalks along Dennett Street and Bartlett Street and pedestrian access will be through a sidewalk on Dennett and sidewalk circulation on site. The driveway is in the same place but does not have the inside circular access. They needed it at first to access garages but the revision is stacked units in two buildings. There is a single parking field in the back of the site with sidewalk access to the buildings and a bike rack and mail kiosk. The overall impervious area has decreased and they were able to eliminate a detention pond in the back. They are replacing that with 4 smaller detention treatment facilities. There will be three rain gardens and one underdrain filter pond. Because they eliminated the detention area in the back they were able to create a play area to provide the residents with a backyard to be used for recreation.

Mr. Chagnon stated there is one change from the plan that the Board had which was landscaping. They were going to place a row of arborvitae but they have moved them back to the back line as shown on the plan.

TAC recommended approval on November 29<sup>th</sup>. They have since been before the Parking Committee and the Traffic & Safety Committee and received their approvals. They met with DPW on drainage and they made two minor changes to address their concerns. The main discharge pipe has been changed from 12" to 8" to retain flow and slow it down and the emergency spillway elevation was lowered by 1/10' to spill more water in the direction of the bypass at higher frequency storms. Those changes did not result in any flow increases. They submit that the density is appropriate to the neighborhood. Also, DPW has reviewed and approved their capacity use calculation. They are underway with all TAC stipulations.

Steve McHenry, of McHenry Architecture, was present with Branden Holden and Brian Murphy of his office. When they came before them a couple of months ago it was quite controversial regarding the scale and some of the design elements. They would like to emphasize that this project has undergone a complete redesign as a result of comments. They have applied for a RDI-PUD which allows them to increase density from 6 to 9 units and in order to get that capacity there is criteria required, specifically that it be harmonious with its neighborhood context. Their previous design raised concerns about scale, amount of open space and the issue of harmony. He displayed a series of photographs of the neighborhood showing a large range of building height. Their design has changed so that the units are no longer town house units. It allows the units to be smaller because of the elimination of the private garages and it allowed them to lower the buildings to two-story buildings and have a consolidated parking lot. They created a different building module with long eaves that protrude out and are about 28' wide. It is similar in scale and width to the neighborhood. It allows the corners of the project to

recede back to create the feeling of open space and yard, also similar to the neighborhood and Dennett Street. They simplified the roof lines. The only thing protruding above the roof is an entry hallway that acts as a light well. They also reworked the landscape and open space.

Mr. McHenry stated that they thought it would be helpful to talk to the neighbors. They had two public meetings. They got good feedback when they showed the revised plan. Major concerns of the neighbors were about management, maintenance and landscaping and traffic issues. In general, he felt there was a tremendous amount of relief about the changes and scale of the project although some don't always agree aesthetically.

The issue of harmony was answered with the scale of the project, its density, its simplicity, and the quality of the materials. They feel it is well designed and integrated with the landscape, the new construction will be highly energy efficient with a lot of natural lighting. These buildings seek to fit into the context of the neighborhood without imitating the context.

In terms of the affordable Housing issue, they had hoped to have the owner's attorney present with information about the threshold that was going to be proposed to create the numbers that qualify for affordable housing and the additional units. A letter from The Bean Group was handed out, which included an analysis of comparable units in the area. The bottom line is that the lease amounts would be \$1950 - \$2000/month. What makes this affordable is a certain percentage of that and they feel 75% would be the deeded amount that would be in the easements as part of the property.

Councilor Spear noted that they removed the sidewalk along Dennett Street. Mr. Chagnon responded that there is a sidewalk on the other side of Dennett Street and the sidewalk they proposed in front of the unit was part of the previous design and was a subject that had come up briefly because it was on City property but the City didn't want to maintain it. They felt it was appropriate to eliminate it because they are going to a central access for each building.

Deputy City Manager Hayden asked if there was a discussion for a crosswalk to go across Dennett Street. Mr. Chagnon believes it is lined up appropriately and they could put a cross walk but he wasn't sure they would want a painted crosswalk because it isn't an intersection. Deputy City Manager Hayden asked about the sidewalk Woodbury. Mr. Chagnon indicated there is a sidewalk on the project side. Previously, because the project had a sidewalk along the front, there was a connection issue so they were going to cut the corner and add an easement.

Mr. Hopley felt they needed to get kids over to the sidewalk to help them get to New Franklin School. He asked why they couldn't run a sidewalk from the access point down Dennett Street to the intersection.

Councilor Spear agreed with Mr. Hopley. He also noted that the City may want to recommend a different style of bike rack.

Mr. Taintor had raised the issue at TAC about a pad for the bus stop and he thanked them for putting that in but he wondered about wintertime and if they would have to walk into the street to get into the pad and also who would be responsible for shoveling it. Mr. Chagnon did not know if Coast shovels them out. Mr. Taintor felt it would be something to think about.

Mr. Taintor also noted that the Site plans show a continuous fence around the property but the renderings show a wall which is broken up in several places. Mr. Chagnon stated that the rendering is what has been decided on by the owner for a fence detail. They need to open up some areas for water flow which is why they revised it.

Mr. Taintor asked about architecture and referred to Sheet A-1 where they talk about siding system 1, 2 and 3. Mr. McHenry explained they have been going back and forth on the siding material and what is shown on the renderings is fiber cement board, different patterns of the same material. That is subject to change to pre-stained wood but that decision has not been made yet. Mr. Taintor presumed they could provide some samples and photographs.

Deputy City Manager Hayden asked Mr. McHenry to speak to the accessibility of units for handicapped. Mr. McHenry indicated that there has to be an accessible unit on each floor. There is not an elevator into the buildings by, by law, there has to be an accessible unit within the project.

Deputy City Manager Hayden asked about the color of the metal roof. Mr. McHenry stated there has not been a final decision made on the color.

Chairman Ricci stated that he was much happier with the revised layout and plans. He asked how roof run-off gets from the roof to where it needs to go. Mr. McHenry confirmed they have gutters and downspouts and it is a closed drainage system. Mr. Chagnon clarified that there are no gutters on the buildings so the left and right roof pitches flow directly to the rain gardens in the front. The middle pitches flow to the catch basin in the driveway entrance. The rest flows over the lawn to the raingardens. The entire parking lot flows to the underdrain soil filter pond in the back. Chairman Ricci asked about the detention basin in the northwest corner with no outlet. Mr. Chagnon responded that it has a swale outlet. If it fills up over a 2 year storm, it will overflow to the bypass. Chairman Ricci asked about the emergency spillway on the north corner. Mr. Chagnon explained that the spillway directs the flow over the banking down to the bypass drainage. Chairman Ricci felt that this plan works much better than the plan they saw a few months ago.

Deputy City Manager Hayden referred to the Landscaping Plan and asked if there was a sight distance problem with the balsam fir on the corner at Woodbury. Terrence Parker, of terra firma landscape architecture, stated that the balsam fir is about 15' x 30-40' tall. They tried to set those back from the corner. Because Woodbury Avenue is a busy road, they are trying to give some screening to the residents. Deputy City Manager Hayden asked if there was any irrigation with this project. Mr. Parker confirmed there will be irrigation as part of the project but it is not on the plan yet. The owners are in the landscape business so they have a program to maintain this.

Mr. Taintor went back to the balsam fir on the corner and referred them to the Zoning Ordinance requirement of a sight distance triangle that needs to be kept open. Mr. Parker felt that the fir was outside of the triangle.

Ms. Roberts wondered about plans for landscape for the play area in the back. Mr. Parker stated they are proposing a hedge at the back of the property but it will mostly be lawn and existing trees.

Deputy City Manager Hayden asked if there are any conflicts between snow storage and the plantings. Mr. Parker stated that the owners will maintain the site. They have left the areas clean where they anticipate snow storage which would be by the dumpster and straight back to the bypass side of the parking lot. Most snow storage is to the side of the parking next to Bartlett Street and to the left of the dumpster.

Mr. Gladhill asked if the rents will include utilities. Mr. McHenry confirmed that their numbers are rent only.

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

Bob Lister, of 69 Diamond Drive. Mr. Lister stated they have concerns about traffic, aesthetics, pedestrian traffic, and the architecture not in keeping with the neighborhood. They don't expect the builders to build a Victorian or 1920's home but they feel that this is more of an attachment to the Holiday Inn as opposed to a residence in a residential neighborhood. He reminded everyone that they met recently to discuss a vision for the downtown potential growth and he feels they need to do the same in the residential neighborhoods. He appreciates the process a project goes through but in addition he hopes they will consider the remarks of the residents in the neighborhoods. Like any other neighborhood, they are being very protective and, in general, they are not pleased with this proposal.

Nancy Johnson, of Clinton Street. She thanked the developers for meeting with the neighborhood. She is not in favor of increasing the residential density. She would like to see 6 units but doesn't see the need for the increased density. Traffic is relatively heavy at this site and not all streets have sidewalks. Historically there were 3 single family dwellings so 3 duplexes would be great. If the RPI RUD is allowed, she would like to see the driveway further down on Dennett Street as the current curbcut was for a single residence house. She also would like to see a sidewalk along the project side to allow the children to walk safety out of the driveway and along Dennett Street. She would like to see the dwellings more house-like rather than the non-harmonious design they are proposing.

Tammy Byron, of 633 Dennett Street. She is in support of this project. She has been looking at a vacant lot and debris since 2001. Her concerns are the busy street, the on street parking that will happen on Dennett Street and, as a result, trucks will have trouble making the turn from Bartlett to Dennett. She felt the 9 units is too much and would rather see 6 units. She felt that nothing could be worse than what the lot is now as the lot nothing but stumps, rocks, sand piles, backhoes and dump trucks. She is concerned about the maintenance and upkeep for this project as there was a house on the lot previously and the house was vacant, the basement was filled with water and eventually it was torn down. She would hate to see that happen with this property.

Pamela Shore, 623 Dennett Street. She is thrilled that there will be people living on this lot and she can't wait for it not to be an empty lot. However, she is very concerned about the density of the project. 9 units will create problems with parking. The 3 on street parking spots on Dennett will cause problems with trucks turning. They have the amount of parking spaces required by City but there is no room for any visitors or friends to park so they will end up parking on both sides of Dennett Street. There are two school bus stops with 10 children at each bus stop every morning. The school buses will have a challenging time at those turns. She was happy with the builders and the architects, who have assured the neighbors that they will be using better building materials. She liked the landscape plan.



She asked if there was a guarantee with this landscaping. Mr. Taintor explained that the developers will have to post a bond to guarantee the survivor of plants through two growing seasons. Ms. Shore indicated that at the neighborhood meeting they said rents would be \$1200 – 1400 and now they say they will be \$1900. Mr. Taintor explained that the market rents would be in the \$1900 to \$2000 range and the affordable units would be 75% of that. In summary, Ms. Shore stated that the lot is currently a mess so she would like to see something built there. Making the project smaller would create a great project and 6 units would be respectful to the neighborhood.

Lenore Weiss Bronson, 828 Woodbury Avenue. She did not believe these plans are even close to harmonious with this neighborhood. She is from Frank Jones neighborhood and they will feel the effect of increased traffic. This is an extremely dangerous corner for children. She can't imagine paying \$2,000 for a unit. Most importantly, she found out about the RDI-PUD recently and that the State of NH would monitor the low income units in perpetuity. She was concerned because the City Legal Department was not familiar with this. It boggles her mind that Traffic and Safety approved this. She sees no legal basis for the 9 units.

Wade Babish, 273 Woodbury Avenue. He met with the builders and architects and he commends them on the reduction in size. He is concerned about the volume of traffic. With the Memorial Bridge being closed, traffic is down but when the bridge opens up again traffic will triple. Reducing the height and size of the units satisfied him but, plain and simple, they are ugly and look like an extension of the Holiday Inn.

Mr. Chagnon stated that the Board is well aware of the time and effort that went into creating the RDI-PUD. It was done 5 years ago to address issues of affordable housing in the City. Being the first ones should be commendable. He was confident that Attorney Sullivan will be able to come up with the mechanisms. The Housing Partnership in Portsmouth develops affordable projects and monitor the criteria which warrants the affordability. Mr. Chagnon did not feel there would be a lot of increase in traffic. There is no sidewalk on this side of Dennett Street so these folks will live under the same circumstances as residents further down Dennett Street and will be safe. Parking is currently allowed on that side of Dennett Street and they were asked to put the solid yellow fog line in to formalize the parking and the Traffic Committee looked at that.

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

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

Mr. Taintor reminded the Board that there are certain findings the Board needs to make to grant a Conditional Use permit and there are certain requirements that the applicant must meet to be eligible and, in short, they are not at that point yet. The applicant needs to formally propose affordability levels and the Board needs to determine whether the residential density increase that is proposed is consistent with the level of affordability that is provided. Additionally, there needs to be covenants and legally binding agreements that restrict the cost of occupancy of the affordable units and a development agreement to be approved by the City Attorney so they cannot vote to approve the Conditional Use Permit tonight which also means they cannot grant the Site Plan either as it is dependent upon the Conditional Use Permit.

Motion for Conditional Use:

Councilor Spear made a motion to postpone to the January meeting. Mr. Gladhill seconded the motion.

Deputy City Manager Hayden wanted to clarify for one of the speakers that it is the responsibility of the applicant to develop the affordability aspects, not the City Attorney. It is up to the Applicant to convince this Board that it is worth the extra density. The upside to the extra density is that this Board gets to do something it doesn't typically get to do, which is to look at neighborhood compatibility.

Ms. Geffert would like to see revised plans with the updates they heard tonight. The Board has expressed a desire to have sidewalks, a landscape maintenance plan, a bike rack change and she wasn't clear on DPW's input on a crosswalk at Bartlett so she would like some feedback on that.

Councilor Spear stated that all of the homes on the side of Dennett Street without any sidewalks are all single family homes. This is for nine units so it does merit a sidewalk.

Mr. Gladhill asked for examples of the materials being used in the construction of this building. He would also like to see some rents in the neighborhood surrounding this site.

Deputy City Manager Hayden thought the Board needed to be careful about encouraging the applicant to spend a lot of time and resources modifying their plans before they look at affordability information. She is surprised they haven't seen anything because that is at the crux of the whole RDI-PUD.

Ms. Geffert agreed and felt if they were coming back in January, all of the affordability data needed to be worked out first.

Chairman Ricci liked this layout much better and felt that the landscaping will be a huge improvement to the neighborhood. Although this architecture may not be his first choice, he somehow feels this is a transition between Route One and Dennett.

Mr. Hopley was on the edge regarding the aesthetics but does feel there has been a great improvement over the last design. He felt the level of vegetation helps soften the dramatic lines of the architecture. Regarding the sidewalk, he felt it would be very easy to connect the project to the Woodbury Avenue sidewalk. He wondered if the bus stop should be on a hard surface with a shelter. Lastly, he felt someone should look at the turning movements of tractor trailers coming out of Bartlett Street and making a left turn onto Dennett Street.

Ms. Roberts wanted to echo the point about affordability. She is concerned about not seeing any details about the affordability because that is at the crux of several aspects of the RDI-PUD.

The motion to postpone Conditional Use Permit approval passed unanimously.

**Site Plan Approval:**

Councilor Spear made a motion to postpone Site Plan Approval to the January meeting. Mr. Gladhill seconded the motion.

The motion to postpone Site Plan Approval to the January meeting passed unanimously.

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C. The application of **Portwalk Office, LLC, Owner**, for property located at **195 Hanover Street**, requesting Site Plan Approval to construct a 5-story, 71,500 ± s.f. (footprint) building, to include a 124 room hotel, 92 dwelling units, 10,335 s.f. of restaurant use, a surface level parking deck and a one-story underground parking garage, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 1 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District. (This application was postponed from the November 17, 2011 Planning Board Meeting)

The Chair read the notice into the record.

ML Geffert recused herself from the hearing.

**SPEAKING TO THE APPLICATION:**

Attorney Peter Loughlin appeared on behalf of the applicants. Attorney Loughlin stated that the Parade Mall was probably the ugliest scar ever carved in the face of the City of Portsmouth was created on his watch as City Attorney and he has regretted it ever since. The building was a typical 1970's supermarket shopping center and absent site review control, probably nothing could have been done about the design. They had acres and acres of surface parking without a single tree. He now sees his involvement in this project with a developer who has removed this scar from the face of Portsmouth and is doing a first class development job as bringing some personal redemption to him.

There have been a number of legitimate questions on this project regarding Site Review controls. They have repeatedly heard statements that they need to have retail on Maplewood. Over the past 40 years, the subject property has always had surface parking on the roadway along Maplewood Avenue, without any softening, until this developer put in the temporary landscape for the temporary parking lot. Also for the past 40 years there has been no real retail extending down Maplewood Avenue or along the entire Gateway. This developer has proposed to develop 5,000 s.f. of retail space at the corner of Hanover and Maplewood, despite the fact that in this developer's best judgment that is not a good business decision given the lack of market for retail space. This developer has also agreed to wrap the retail space at the Deer Street end around to Maplewood Avenue. They will have a green wall with benches and the removal of the entrance to the parking garage to make Maplewood more pedestrian attractive. Attorney Loughlin suggested that the City does not have authority to require retail space on Maplewood and he felt this obsession with retail space on Maplewood Avenue is like trying to put a square peg in a round hole.



Looking at the Northern Tier Study, the real connection to the Northern Tier is not Maplewood Avenue, it is the Vaughan Mall which the developer has continued to extend by splitting the Parade Mall site in half with a private roadway. There is too much attention on Maplewood Avenue rather than the vibrancy that Portwalk Place will create. They are also providing all required parking for their project.

The Planning Department memo stated it was the intent of the ordinance that should be focuses on and there are cases on that from the Supreme Court. Attorney Loughlin stated it was very clear from those cases that it was not the intent of the ordinance and it is what the ordinance says. The most recent case was with the Town of Plymouth and that was the argument. This application meets every requirement in the Zoning Ordinance and Site Review Regulations.

Attorney Loughlin suspects there is no other HDC with the level of training and sophistication that Portsmouth does and many people do not realize the amount of detail that goes into this level of design. The HDC is responsible for the design of the building and it is not an obligation that this Board needs to assume. The project received unanimous approval from HDC last night.

The developers are not natives of Portsmouth. They have worked with the Boards of Portsmouth for many years. They have done quality development and have a good reputation. This is the final phase of this project. He did not feel that requesting additional retail space was a reason to postpone this project.

Gregg Mikolaities, of Appledore Engineering addressed the Board. He indicated that they submitted three documents: Revised Site Plans, the results of the Archaeological Sensitivity Assessment for Lot 3 and a comprehensive response to what they heard last month. They reviewed the TAC stipulations and 16 comments from the last Planning Board meeting and they have addressed all of them.

Mr. Hopley asked whether they had made any attempt to get the trash operation off of the public sidewalk. He felt they could bring it into their property and not affect the public way. Mr. Mikolaities responded that there were three trash door and they removed two sets with one remaining. Mr. Hopley felt there seems to be a door into this room from their parking lot with a set of stairs because of the elevation difference and then there is a set of doors out across pubic sidewalk. Why not keep the garbage on the private way in the parking lot.

Deputy City Manager Hayden asked who will be parking on the lower deck parking. Mr. Johnston indicated that the whole 270 spaces will be used for both the hotel and residential. For the 124-key hotel they are also still planning to use the surface deck as well as some underground spaces as well as valet parking. The valet parking on the lower level does not have stacking opportunity. The parking deck could have stacking on a Friday or Saturday night. Deputy City Manager Hayden asked if she lived in a unit, would she have an assigned space. Mr. Johnston was unsure at this time. The market they have built to up to this point as been one per space but there are some people with two cars. They are trying to limit it to one space per unit. Deputy City Manager Hayden asked if all of the spaces on Lot 3 for either the hotel, retail, restaurant or residences of Lot 3. Mr. Johnson confirmed that was correct but added that if a conference was going on across the street and there was an opportunity for valet parking they will use those spaces. Part of having downtown urban parking is having the

opportunity of shared uses. Deputy City Manager Hayden asked there are 12 spaces currently being used by The Hill on Lot 3 and she asked if that was an agreement between Portwalk and The Hill so they will have to provide them on this new plan after the City surface lot is removed. Mr. Johnston confirmed that there is an agreement with Parade Office LLC that 12 spaces for The Hill have to be someplace on that lot. Therefore, of the 286 spaces, The Hill will have 12 spaces.

Deputy City Manager Hayden noted that the underground parking was gated and a pass key will be needed to enter. She wondered if that is also what happens at the main entrance on Portwalk Place. Mr. Johnston believed there would be a porter there as that is the front door to the hotel. On Hanover Street, there will be a gated system with just an arm and someone would need a swipe card or a code to enter. Deputy City Manager Hayden wanted to clarify that although there may be a lot of parking being developed, it is for the development and there is not public component to it. Mr. Johnston confirmed that the majority is for the project. However, for those busy Friday and Saturday nights, they will have valet available for the restaurants and they expect they will be able to maximize that and the public can use that valet system on a first come, first serve basis.

Mr. Gladhill asked if he was on Hanover Street and he turns into the parking garage, will there be signage indicating it is private parking and will there be plenty of room to back out onto Hanover. Mr. Johnston confirmed there will be a private parking sign and there is also a flat landing area of 20' before it heads down into the garage.

Ms. Roberts wanted to follow up on the Archeology Report which ends with some recommendations in terms of test pits and asked what their plans were. Mr. Johnston stated they are prepared to stipulate that they will follow the recommendations which they had done by Independent Archaeological Consultants. There are three areas of sensitivity during their excavation and AIC will be on site during those time. Ms. Roberts asked if they would submit a report to the City.

Deputy City Manager Hayden stated that this was a complex project and every time she reviews it she gets a slightly different understanding of it. Previously she focused on the Site Review Regulation but this time she focused at the Zoning Ordinance, Article 11, Parking Standards and she is unconvinced that this project meets this zoning provision which has to do with the location of parking. (See page 51 of the Zoning Ordinance). It stated that required off street parking spaces shall not be located between a principal building and a street. Looking at the plans, the building is a U and there is a thin "green" brick wall and between the principal building and the brick wall is the parking deck which is open to the sky. Therefore, she does not understand how the parking meets this provision.

Attorney Loughlin understands from the ordinance that it is all one building with a parking structure underneath. On Maplewood Avenue they have part of the building where the hotel wraps around, retail space and the green wall, which is all part of the single building being built on the site. This creates a barrier between the roadway and the parking. Someone driving down the roadway does not see a sea of asphalt. Deputy City Manager Hayden did not agree that the Zoning Ordinance says anything about visibility. It defines "building" as any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of persons, animals or chattel. (Article 11, Section 10.1113.2) In the 2008 plan, there was a building along Maplewood Avenue and she believes there has been some confusion about saying the Board wants retail space. What the Board wants is

activity on that street, which is a building where people will come. Attorney Loughlin argued that this was all built on one foundation and was part of the principal building.

Tim Levine displayed a model and pointed out that the whole structure is built on a single foundation, the deck is constructed with support columns and is part of the overall structure. Deputy City Manager Hayden asked if there was no underneath parking deck and it was open to the sky and it was at grade with Maplewood, did they feel that would also meet zoning? Mr. Levine did not believe that would meet zoning but this is a structure and is different.

Councilor Spear asked, for discussion, if they agree that the whole thing is a building, in the Zoning Regulations for the Downtown Overlay District the ground floor of any building shall consist of non-residential uses rather than retail. Mr. Levine responded that there are no residential used on the first floor. There is a lobby for the residential apartments and everything else is commercial. Deputy City Manager Hayden again pointed out that she does not agree that it is all one building.

Mr. Johnston referred to the definition of “structure” on page 222, which states that any production or piece of work, artificially built up or composed of parts and joined together in some definite manner. He feels that describes their building.

Chairman Ricci had a concern on Hanover Street where people are turning into the area for private parking and he asked any thought had been given to signs that may say private parking. Summer traffic can be difficult and he can see where tourists will turn in and it could be an issue. Mr. Mikolaities responded that they will not have a big parking sign so it won't be advertised. They would be agreeable to a stipulation for signage. Chairman Ricci just wanted to bring up that concern. Mr. Johnston added that they could have a sign on Portwalk Place pointing to the public parking. Chairman Ricci did not want to make an issue of it and maybe no signage would be best.

Deputy City Manager Hayden asked if they need an EPA Stormwater Permit for this. Mr. Mikolaities confirmed that is in place for the whole project. Deputy City Manager Hayden asked if the traffic signal cabinet is still not resolved. Mr. Mikolaities indicated they would do whatever DPW wanted. Deputy City Manager Hayden asked if there were any other options other than put it on the edge of the sidewalk or right up against the building. Mr. Mikolaities confirmed it can be put right up against the building and it can be trimmed out to not look like a box.

Deputy City Manager Hayden asked if TAC looked at the Maplewood Avenue benches from a snow plow perspective. Robbie Woodburn explained that the benches are set up on top of the wall and are on the private property. There will be small shrubs of various species will be planted in the wall. Deputy City Manager Hayden asked about the trees on the Hanover Street side and their crown spread. Ms. Woodburn explained that the trees were specified by Appledore. On Hanover Street the trees are Scarlet Oaks. Mr. Crimmins stated that the landscape plan has a detail that gives the width from the face of the building to the tree guard and they are 6.1' from the tree guard within the planter to the face of building and it is 4.8' from the building to a flush granite band for that planter and the remaining portion is the grate. He did not know the crown width however these were the trees that were previously approved. Ms. Woodburn started that in urban conditions trees generally don't grow their full size. Mr. Taintor felt that what they want to know is that the scarlet oak will be 6' from the building wall. Ms. Woodburn felt that they could sub in other trees with a thinner canopy. Mr. Taintor

noted that there are 4 hornbeams in the planter which are deciduous. Ms. Woodburn explained that the intent is to break the planter from time to time and not put the trees in the planter. Mr. Taintor also noted that there was a stipulation from the Trees & Greenery Committee that the trees on the four facades all be varied so that they don't all a continuous type of tree.

Mr. Taintor stated that late today they received an email from Dave Allen with questions regarding utilities and infrastructure. Attorney Loughlin indicated they are willing to stipulate that they will work with the City to complete those to their satisfaction.

Mr. Gladhill noted that the City Council had postponed a decision on moving the parking spaces. Councilor Spear advised that the City Council wanted an action from the Planning Board first.

Mr. Hopley noted on Sheet C-5A where they call out of the room adjacent to the trash is a transformer on one side and a pad mounted generator on the other side. He cautioned the project there are very restrictive noise regulations which may be difficult for them to achieve as they are on the property line.

Mr. Taintor made a minor point that in the same area where Mr. Hopley was referring to there is a parking space that can't be counted because there are doors opening into it. There is another parking space that cannot be counted which is adjacent to the corner parking space adjacent to the lower garage. There is no way to back out without hitting the bicycle rack.

Mr. Hopley asked about the Private Street Agreement. He had a real problem with the note on the drawing that talks about the agreement to have the police come on the private way. It appears that that same note is item #1 in the agreement. He felt the note should refer them to the Agreement. Mr. Mikolaities explained that they put the note on at the request of the Police Department. Mr. Hopley also noticed that the Agreement included everyone except the fire trucks and ambulance to come on the private way so that should be looked at. Attorney Loughlin explained that this is a private street however probably 95% of all streets in the State of NH the public only has an easement over them. Most of us think that the City owns the street. The reality is that the way the street functions with the agreement is no different than how any other street functions in the City. Mr. Hopley still felt that it should be consistent and more corrected in places.

Deputy City Manager Hayden remembered a door conflict from last month and asked if that had been corrected. Mr. Johnson confirmed it was on the Hanover garage where the staircase that goes down to a sidewalk. That has been coordinated and is now shown on the elevations.

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

John Springer, Attorney for Harborside Associates, owner of the Sheraton Hotel and the lot across the street from this project. Attorney Springer stated they are opposed to this project for several reasons. One reason is the overall zoning issue. The purpose of the CBB zone is to promote a wide range of business and to promote pedestrian circulation. The Master Plan objectives include high quality mixed use redevelopment along major corridors leading to the downtown, encourage retail at the street level and redevelop the Northern Tier with mixed use pedestrian development and integrate with the downtown. They do not think this project meet those standards. He understands there is a

development at 30 Maplewood that does meet those standards. From a selfish standpoint, Attorney Springer's client has the next parcel down and what happens to bring pedestrians down from Congress Street has a great effect on what his client can do in the future. They believe this effects the whole City. He walks up Maplewood Avenue often and he never sees other pedestrians. It is a baron strip. This is a very talented development team but the idea that the green wall will bring people down the street is fiction. They designed the project so that the front of the building faces the Residence Inn. Although Mr. Loughlin stated that the way to the Northern Tier is really through the Vaughan Mall but it does nothing for Maplewood Avenue. It will not complement 30 Maplewood Avenue or the Northern Tier. He noticed the transformer is right on the property line and he is concerned that it may not comply with the noise ordinance. It also will detract from people sitting on the benches.

His next issue was parking. Mr. Taintor covers this issue pretty well in his Memorandum. If the owners change the use of the inside of the building it may change the parking requirements which may create a problem.

He notes that the Archaeological Report does not mention test pits. Dennis Robinson did an article several months ago that after the first phase of this project there was no archeological review at all. During the second phase they excavated 2 privies and reported that they had 3500 artifacts from the site but it was pointed out there was very little oversight beforehand. The problem is that if they don't project those now, they are gone forever, and he does not think it is too much to ask that the AIC report be reviewed by an independent expert or the State Historic Preservation Office.

Attorney Loughlin responded that the Zoning Ordinance and the purpose of the ordinance. He did not believe it was the Master Plan but rather the rules were the Zoning Ordinance which they completely comply with. He felt that Attorney Springer was loosing sight of the purpose of Site Review which is to make sure an application comply with the regulations. It is not to design the building or put uses in a certain way. Attorney Loughlin stated they will stipulate to the noise ordinance. Many properties have emergency generators and they will comply with the noise ordinance. They will also stipulate to the parking requirements and they will always comply with that requirement. Regarding the Archaeological Report, they will have somebody there for testing and they will abide by what the archaeological process is. He doesn't want to imply that Mr. Springer's client did or did not go through the process, but he does find it ironic that he is worried about this application. This entire site was completely bulldozed in the 1970's.

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. Patenaude made a motion to approve Site Plan subject to stipulations. Deputy City Manager Hayden seconded the motion for discussion purposes.

Deputy City Manager Hayden did not believe it complies with zoning. The principal building is the "U" and she believes there is parking between the principal building and the street, which is not allowed under zoning. She would like a legal opinion from the City Attorney. A lot of drainage issues have come up and maybe should go back to TAC. The trash doors are a big issue for this Board with



grease and trash being dragged across the sidewalk which will be depressed and, more importantly, it is potentially a problem to future changes in the roadway. Her preference is to see this postponed.

Councilor Spear felt it was true that this has been a surface lot for 40 years and this may be an improvement but that is a very low bar and not what they should be measuring from. This is a building and to make it more pedestrian friendly with pedestrian friendly oriented businesses they would have a higher bar. The applicant has said there are no pedestrian uses on either side of Maplewood however over the past few years there has recently been development down Hanover and there is a progression of redevelopment coming down Maplewood. If they approved the building as presented they would make a clear statement that this is the end to pedestrian vitality for the City. The only doors on the length of Maplewood are for the trash and he believed that would be a mistake. The purpose of Downtown Overlay District is to ensure continuity of pedestrian oriented businesses along streets and he felt this does the opposite. In closing, he stated that he likes everything else about the project. He believes Phase I and II have added a lot to the City. It is just the Maplewood side that bothers him.

Chairman Ricci stated that he is in favor of what has been presented. He sees two parking lots on either side of Maplewood Avenue and he sees people who are either already downtown or those that are going to go to the Northern Tier and will go through Portwalk Place. He doesn't see Maplewood getting a lot of use. He supports pedestrian friendly use wholeheartedly but he thinks Portwalk Place is what gets you to the Northern Tier. He is not wild about the trash doors but he recognizes that happens sometimes in urban environments.

Mr. Hopley also felt that the project is great but there is still room for improvement. To say that Maplewood will never have pedestrian traffic is an overstatement. He doesn't want to shut Maplewood off in that respect. He is also troubled by the zoning interpretation of the parking adjacent to the street. He wonders if they should err on the side of caution and try to get a legal opinion on that.

Ms. Roberts agreed with Councilor Spear and their vision for Maplewood Avenue. Their vision is not where they would like at this point but there is potential for the roadway to be narrowed and uses will become more mixed. She is not sure they can assign full responsibility for that shift to one application. She is concerned about the legal issue on parking so they are not in a position to make a decision tonight.

Mr. Gladwill also agreed. He is in support of this project. There has been a lot of talk about a canyon effect on Maplewood and by opening up Maplewood they can improve that. He felt a legal interpretation would be appropriate at this time regarding parking.

Deputy City Manager Hayden understood that the developer is in a rush to get this approved they have gone through a lot of HDC meeting. This is probably the most important project that will go on downtown. She does not think the zoning question is a small one and there are issues that should go back to TAC. She has a long laundry list of items that should go back to TAC. She asked the Board to postpone for a month. Once this is approved, it will be built and will be there for a very long time. She wants to feel good about this but did not believe it was there yet. In 2008 the plan was a building on Maplewood and was completely different. She also believed the trash issue could easily be changed but the applicant did not change it. This is the gateway into the City and the trash should be located somewhere else.



Mr. Patenaude was willing to reconsider the motion but two people are leaving the Board tonight and two new people will be coming on board with no knowledge of this project. He felt this project is a lynchpin to the downtown and is very pedestrian friendly. He doesn't mind postponing a little bit but not much longer. He will withdraw the motion to approve so that the remaining conditions can be resolved. Deputy City Manager Hayden agreed to withdraw her second to the motion to postpone.

Mr. Hopley felt that Dave Allen's Memorandum needs attention along with having the trash come across the public right of way. The big issue is to review the Zoning Ordinance and the street agreement. Deputy City Manager Hayden felt it should be referred back to TAC, particularly relative to the drainage issues. Mr. Taintor suggested that the motion to postpone might include specifically a referral to the City Attorney on the zoning question, a referral to TAC on the drainage questions and any other issues. Deputy City Manager Hayden felt there was confusion on the landscaping plan, stipulating that a change in use require a change in parking requirements and creating a covenant to run with the property, review of the truck turning radius by the fire department. The generator needs to go back to TAC and the Private Street Agreement needs to be reviewed by the City Attorney.

The motion to postpone to the January Planning Board meeting passed unanimously. The matter was referred to the Technical Advisory Committee to review drainage concerns, the generator and other technical issues and will be placed on the January 3, 2012 TAC Agenda. This matter will also be referred to the City Attorney for a review of the zoning issue regarding parking and the Private Street Agreement.

Other concerns include confusion on the landscaping plan, the placement of the trash collection area on Maplewood Avenue, the legal mechanism for linking the maximum allowed number of parking spaces to changes in use, and review of the truck turning radius by the Fire Department.

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Deputy City Manager Hayden made a motion to read Items D &E together. Mr. Roberts seconded the motion. The motion passed unanimously.

D. The application of **750 Lafayette Road LLC, Owners**, for property located at **750 Lafayette Road**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows: Lot 7 as shown on Assessor Map 244 increasing in area from 52,287 s.f. to 88,848 s.f. and with 296.90' of continuous street frontage on Lafayette Road (Route One By-Pass); and Lot 8 as shown on Assessor Map 244 decreasing in area from 118,072 s.f. to 81,511 s.f. and with 293.85' of continuous street frontage on Lafayette Road (Route One By-Pass). Said properties are located in the Gateway District where the minimum lot size is 43,560 s.f. and minimum street frontage requirement is 200'. (This application was postponed from the November 17, 2011 Planning Board Meeting)

E. The application of **750 Lafayette Road, LLC, Owner**, for property located at **750 Lafayette Road**, requesting Site Plan Approval to demolish the existing building and construct two new buildings; Building "A" consisting of 12, 198 s.f. of restaurant/retail space with drive through and Building "B" consisting of 17,802 s.f. of retail space; with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 244

as Lots 7 and 8 and lies within the Gateway District. (This application was postponed from the November 17, 2011 Planning Board Meeting)

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Erik Saari, of Altus Engineering, appeared for the owner. Also present was Chad Kageleiry, of Summit Land Development, representing the applicant. Mr. Saari stated that they appeared before the BOA for a second free standing sign on one lot and that variance was granted on Tuesday so they are withdrawing their subdivision application without prejudice. That allows them to consolidate both of the lots and make things a lot cleaner. The lot line is still shown on the plans and would have to be removed but nothing else will change. The only other change they made to the plan was that they removed one parking space for the new sign. They made some very minor changes to the plans including one drain manhole rim elevation to 11.90 at the request of Chairman Ricci and the new utility poles are shown on the plan pursuant to the waiver that this Board granted last month. They did get their Alteration of Terrain permit from DES and he has been told that the wetlands permit will be coming probably on Monday.

Mr. Hopley referred to Sheet C-5 and asked if this sheet had revisions in the notes that would be affected in the body of the plan. Note #1 refers to Note #30 which doesn't make sense. Ms. Saari confirmed that he added a note so the remaining notes were renumbered. He will correct those.

Deputy City Manager Hayden asked why there are three dumpsters. Mr. Saari noted that with two restaurant uses they anticipate a high trash output. They had to show them detached in angle fashion so the trash truck could access them. They are fenced.

Deputy City Manager Hayden asked about snow storage on Route 1 and if there was any conflict between the landscape buffer, snow storage and stormwater management. Mr. Saari explained that most of the stormwater management occurs in the bottom with side slopes that extend up to the parking lot. On top of that is a 4' wide snow shelf which is the area where the majority of the snow will sit. The trees are lower down the slope and will survive some snow load. Deputy City Manager Hayden asked if there was any discussion about any different type of fence abutting the PHA housing in the rear. She was worried about the stability of a vinyl fence over time with people trying to walk through. Mr. Saari stated they felt that was the material with the most longevity. They have not had any feedback from PHA regarding other materials but have not heard back from them. They have showed them the plan and their engineers, CLD, reviewed the drainage plan and had no issues with that. Deputy City Manager Hayden asked if they would go back and specifically ask the Housing Authority management about the fence.

Mr. Taintor followed up on the landscape plan. He raised the point last time about addition some landscaping around the potential future drive through area. He would like to leave some flexibility for the Planning Department to review final disposition of landscaping in that corner to make sure they achieve the goal of blocking headlights coming around that corner. Mr. Saari confirmed that they added additional plantings.

Chairman Ricci asked if all roof runoff goes into the closed drainage system. Mr. Saari confirmed that it does.

Ms. Roberts asked about the future potential drive through and the traffic. She asked about the logistics of a car coming in Greenleaf Drive and making a tight turn by the dumpsters. Mr. Saari explained that the drive through is not part of this proposal as they have pulled it due to lack of tenant interest, but he has run a truck movement on that corner and there is plenty of room. Mr. Taintor asked if a drive through were proposed in the future they would have to go to the BOA for a special exception and back to the Planning Board for an amended review.

Deputy City Manager Hayden asked if they were doing anything now to preclude the best location for a grease trap in the future. Mr. Saari confirmed that they show two grease traps on Sheet C-5.

Deputy City Manager Hayden liked that they have the trees out along Route 1. She was wondering about the back property line and whether there was enough room to have some nice big canopy trees. Robbie Woodburn pointed out the property line and the grading and it is an area where drainage collects and there is not a lot of material that is going to survive that wetness. They could put some elms along the fence but the idea was to soften the fence with the evergreens and not with big tree canopies. Deputy City Manager Hayden asked if they would be opposed to adding a couple of elms. Ms. Woodburn felt they could add a few and she agreed that it made sense from an aesthetic point of view.

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**

### **Item D. Subdivision Application:**

Councilor Spear made a motion to withdraw the application. Mr. Hopley seconded the motion.

The motion to withdraw the Subdivision application passed unanimously.

### **Item E. Site Plan Application:**

Deputy City Manager Hayden made a motion to approve with the stipulations listed in the Memorandum and also that the applicant consult with Portsmouth Housing Authority Management specifically about the type of fence that would survive best over time which would be administratively approved by the Planning Director, and to add some elm tree or other canopy tree along the back fence line that will thrive in that location. Mr. Hopley seconded the motion. Mr. Taintor requested final landscaping approval by the Planning Department.

Ms. Geffert asked to have the notes on the Utility Plan revised to make sure they read correctly.

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

Conditions Precedent [to be completed prior to the issuance of a building permit]

1. The Lot Line Revision plan shall be removed from the site plan set.
2. The site plan set shall be revised to reflect the merger of the existing lots into a single lot.
3. The applicant shall consult with Portsmouth Housing Authority Management about the type of fence that would best survive over time, to be administratively approved by the Planning Director.
4. The applicant shall add an elm tree or other canopy tree that will thrive along the back fence line.
5. The final landscaping plan shall be subject to review and approval by the Planning Department.
6. The notes on the Utility Plan shall be revised to correct cross-references.
7. The applicant shall prepare all required easements for review and approval by the City Attorney.
8. The applicant shall prepare a Construction Management and Mitigation Plan for approval by the City.

Conditions Subsequent [to be completed prior to release of site plan security]

9. During excavation a remediation specialist shall be present on-site to perform soil screenings of potentially contaminated soil where prior contamination has been found, including but not limited to the site of the former Mobil filling station, the entire area beneath the former building footprint, and the area to the southeast of the former building footprint where the gasoline storage tank was removed. If contaminated soils are found, remediation of soil will be performed to approved state standards for soil remediation.
10. The applicant shall provide a copy of the amended NHDES Groundwater Management Permit for the site showing the amended groundwater well sampling configuration and sampling requirements.

Condition Subsequent [to be completed following release of site plan security]

11. The applicant shall submit a report to the City Environmental Planner (Peter Britz) and DPW Engineering Tech (David Desfosses) one year after planting has taken place, to include: (1) the condition of the planting bed before planting; and (2) the four maintenance requirements listed in the typical rain garden detail on Sheet C-8 of the Plan Set. Said report shall be submitted annually after the first year until further notice from the City.

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As it was after 10:00 pm, Deputy City Manager Hayden made a motion to continue with the Agenda after 10:00 pm. Ms. Geffert seconded the motion. The motion passed unanimously.

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**II. PUBLIC HEARINGS – NEW BUSINESS**

A. The application of the **City of Portsmouth, Owner**, for property located at **1 Plains Avenue**, requesting Site Plan Approval for reconfiguration of the parking area, construction of a new playground and improvements to the ballfield, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 242 as Lot 2 and lies within the Municipal (M) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

David Moore, Community Development Director, was present along with Cheri Ruane, RLA, of Weston & Sampson, and Dana Mennan of Weston & Sampson. Mr. Moore stated that the City has carried out a number of major renovations to their parks and playgrounds over the past 12 years. As always, there has been a significant amount of neighborhood input. They have City staff working on this project along with the Little League, the Recreation Board, who has viewed this favorably and the Trees & Greenery Committee, who also weighed in with recommendations.

Cheri Ruane, introduced herself as a landscape architect. She explained that this is a premier little league field and gateway to Portsmouth. With the recent improvements to Route 33 there is a significant opportunity to create more meaningful cohesive landscaping around the ballfield. The proposed improvements include the creation of a formal one way parking lot with handicapped spots and a drop off area, drainage improvements around the parking lot and ball field which will sheetflow water into a detention area that will then infiltrate into the subsurface system. They are creating an organized and coherent pedestrian circulation around the park. They are improving the impertinences around the baseball field itself with a new back stop, new bleachers and pervious pavement around the support building and bleachers and bike racks and recycling bins for a more pleasing site for visitors.

Ms. Ruane indicated they are also relocating the existing playground adjacent to the field so that caregivers will have close visual proximity and continuity for pedestrians to move though the park and playground without crossing a roadway. The pedestrian circulation continues down to Route 33 and they are also including significant edge improvements with post and rail fencing, new vinyl chain link where ball players warm up and post and rail fencing is proposed around the corner where Islington and Route 33 connect. There are additional tree plantings going in and the removal of invasive trees to be replaced by trees supported by the Trees & Greenery Committee. The pedestrian entrance off of the Route 33 entrance will be turned into a passive picnic grove with lawn and canopy shade trees.

Mr. Gladhill asked if there would be any restrictions on the parking spaces at any time. Ms. Ruane confirmed they will be available at any time and will not be gated but they will not be plowed in the winter. It was noted at the TAC meeting that people using the old school building could make use of those spaces.

Mr. Gladhill asked if the existing stone monuments will have any landscaping. Ms. Ruane confirmed they are staying the same.

Chairman Ricci asked where the batting cage is being relocated to. Ms. Ruane stated it is being relocated to the corner of Plains Avenue, behind the existing row of shade trees.

Mr. Patenaude asked is there will be any security to prevent vandalism of the new public improvements when there are no games in play. Mr. Moore advised that this site will continue to operate like all other recreation sites of this type. There are no gates governing the times beyond what you would see at any of the other little league sites.

Mr. Taintor had a question about the TAC stipulation to remove the tactile surfaces and they were only removed in one location. Ms. Ruane confirmed that was an oversight and the other surface will be removed.

Deputy City Manager Hayden liked the pictures of the trees to see what they look like. The Board may want to think about having people list the crown width on plans as well as height because it is helpful.

Ms. Geffert asked them to explain how the drainage will work because she remembers there was quite a discussion over a previous application at 1808 Islington Street for a subdivision and it was very wet. Ms. Ruane indicated they popped the covers of the catch basins and they are very familiar with what is happening out there. There are two very old catch basins on Plains Avenue with a line that appears to connect them that is compromised as the road is settling. They are disconnecting that line and reconstructing these as new inlets for stormwater. They will run into the new detention area which has capacity for stormwater and infiltration. There is a flared end for overflow which will connect, run through a pipe to an existing catchbasin structure that connects to the new drainage that was installed as part of the Route 33 project. They anticipate a significant improvement in the drainage for that area.

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. Hopley made a motion to grant Site Review approval with the two stipulations in the Memorandum and a stipulation that the notes on D-3 and D-4 discuss that they will increase the capacity of the bleachers but that means they will also have to increase the number of accessible spaces by one. David Moore already knows this and it will be easy to do but that note should be added to the note that is already there. At least one additional handicapped space with companion seat shall be provided. Ms. Roberts seconded the motion.

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

1. The tactile surfaces at the entrance to the overflow parking area shall be removed from the Site Plan.
2. The final positions for the utility poles must be approved by the utility companies, and shall be shown on the Site Plan.
3. On Sheet D-3, Detail #1 – Seating Plan, shall be revised to indicate that 3 handicapped and 3 companion seats shall be provided.



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B. The application of the **City of Portsmouth, Owner** and the **Prescott Park Arts Festival, Applicant**, for property located off **Marcy Street (Prescott Park)**, requesting Site Plan Approval to construct a 1,097 s.f. addition to the existing pavilion building and to construct a 416 s.f. support building to replace three small accessory structures, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 104 as Lot 1 and lies within the Municipal (M) District and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Jeff Murray, of CMA Engineers, was present with Steve McHenry, of McHenry Architecture, and Ben Anderson, Executive Director of Prescott Parks Arts Festival. Mr. Murray explained their need to expand the existing pavilion to increase the capacity of the restrooms. This has been a long term planning process to increase the size of the building and to improve their sound and merchandise structures. They are proposing a 1,097 s.f. addition to the existing pavilion and a new 416 s.f. support building to replace two existing buildings totaling 343 s.f.. The proposed improvements are increasing the pavilion with similar construction. They are providing new entrances to the women and men’s rooms and modifying the existing concession area with a full service kitchen. The support structure will be located in the approximate location of the existing sound and merchandise area. The drains will be tied into the existing drainage system. There are existing catch basins and drainline and they discharge directly off site through the wall and they will tie that in with gutters and roof leaders. As this is a full service kitchen, a grease trap will be provided in the existing paved area. They will provide a clean out as well as a new septic service and new water service.

Mr. Murray described some of the other site improvements. They will remove the existing utility poles and provide a new underground electric service from Marcy Street. The location of the underground service is still being finalized. They are extending the brick sidewalks to the new entrances of the new bathrooms. The sidewalks will be constructed to the new City standards. The project does require a Shoreland Protection Permit and a Wetlands Permit. Those application shave been submitted and they await DES approval. They received a favorable recommendation from the Conservation Commission and approval from the HDC. Mr. McHenry handed out additional renderings.

Ms. McHenry confirmed they received HDC approval last night. The design intent is a Georgian revival looking building. They wanted to stay consistent with that was there in the past and they wanted to save as much of the buildings as possible and add to it on a very tight site. They have changed the character of the columns and the roof has a little more ornamentation to bring down the massing and make it fit in better. It has a small storage area on the second floor. The need for consolidating the three old wooden structures was dire and the sound needed a better vantage point.

Chairman Ricci asked what was on the plans between the restrooms. Mr. McHenry stated it was a door so that someone could access and maintain both without going outside.

Councilor Spear noted that the line for the women’s room is longer but they picked the same number of fixtures for both. Mr. McHenry felt doubling the women’s room would solve the problem.

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 made a motion to grant Site Plan approval. Mr. Gladhill seconded the motion.

The motion to grant Site Plan approval passed unanimously.

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Chairman Ricci recused himself from this application and turned the gavel over to Vice Chair Roberts.

C. The application of **Lonza Biologics, Inc., Applicant**, for property located at **101 International Drive**, requesting Site Plan Approval to demolish an 8’X 14’ shed and construct a 4,800 s.f. one-story freezer addition including reconstruction of access drives and parking, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 305 as Lot 0006 and lies within the Airport Business and Commercial District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Bradlee Mezquita, of Appledore Engineering, appeared for the applicant. Mr. Mezquita explained that there is already a significant development at the PDA for Lonza. They are doing a very small addition and they have an option on the “Iron Parcel” across Goosebay Drvie which can be used as a lay down area. The freezer expansion is 4,800 s.f. built directly adjacent to the existing building. There will removal of parking pavement for the construction of the building. The concrete pad to the side will for the emergency generator. They will have temporary trailers in the same location they were for their last project. They received a favorable recommendation from TAC and the PDA provided 9 conditions which they have addressed in the most recent plan set received by the Planning Board.

Mr. Hopley asked if it is a blank wall that the new addition is going against. Ms. Mezquita confirmed that was correct. There is an elevated sidewalk that is up high and the freezer building will tuck right under it.

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. Hopley made a motion to recommend Site Plan approval to the Pease Development Board of Directors, with no stipulations. Mr. Patenaude seconded the motion.

The motion to recommend Site Plan approval passed unanimously.

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D. The application of **Bellwood Associates Limited Partnership, Owner, and Palace Entertainment Holdings, LLC, Applicant**, for property located at **2300 Lafayette Road**, requesting Site Plan Approval for the installation of a new water park tube slide with pool, 28' x 18' electrical building and 20' x 20' mechanical building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 273 as Lots 5 & 7 and lies within the Gateway (GW) and Industrial (I) Districts.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Steve Oles, of MSC Civil Engineers, addressed the Board. Also present was Andy Nitschelm, General Manager of Water Country, and Bernard Pelech, Attorney for the project. Mr. Oles explained that they are proposing a new water slide which was originally approved in 2007 and reapproved in 2008. Obviously, that slide was never built. They have gone through TAC and addressed the three comments brought up by that Committee. Mr. Oles displayed the Site Plan showing the new attraction which has a 7' walkway up to the slide and an emergency accessway to the park via the request of DPW for emergency personnel. They are providing a hydrant off of West Road which was part of the 2008 approval, they are removing 90' of fence between the original project and the new slide, are adding arborvitae for landscaping and are providing an additional 400' of fencing around the new slide area.

Mr. Taintor asked if they have met with DPW to determine their capacity use surcharge. Mr. Oles explained they have not scheduled that meeting yet.

Deputy City Manager Hayden asked if Stipulations #1 and #2 were all set. Mr. Taintor confirmed that they were.

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. Hopley made a motion to approve with the stipulation that DPW will review the water records for capacity surcharge permitting.

The motion for Site Plan approval passed unanimously with the following stipulation:

1. The project will be subject to a capacity use surcharge as determined by DPW.
- .....

E. The application of **Commerce Way, LLC, Owner**, for property located at **Commerce Way**, for Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, for the reconstruction of Commerce Way roadway, including an increased curve radius for traffic and safety purposes, resulting in 43 s.f. of permanent wetland impact and 183 s.f. of temporary wetland impact. Said property is shown on Assessor Map 216 as Lot 1-1 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 to the Board for Conditional Use Permit approval for a proposed roadway improvements project located at Commerce Way. Mr. Crimmins explained that the road is currently private but the intent is to upgrade it to City standards and then turn it over to the City. This application was before them back in 2008 and was approved and the application has not changed since then.

Mr. Crimmins stated that the roadway improvements include repaving, new sidewalks, improved drainage system with new catch basins which include deep sumps and oil separate hoods, water main construction and landscaping and lighting. In 2008 they worked extensively with DPW on this design to make sure it meets the City standards. There is a sharp corner with a 40 degree radius which they have softened to a 75' radius. In order to do that they need to construct a retaining wall within the wetland system, resulting in 43 s.f. of permanent wetland impact and 183 s.f. of temporary wetland impact. They have NHDES approval from 2008 and that approval is still valid. They are present tonight for their lapsed Conditional Use Permit approval. Mr. Crimmins stated this will enhance the buffer as they are removing 5,999 s.f. of impervious area. They will include new catch basins with deep sumps and oil separate hoods to improve the drainage on the street.

Mr. Crimmins reviewed the five criteria:

1. The land is reasonably suited to the use, activity or alteration – This is an existing road and is being constructed in its existing location with the exception of where they are shifting the radii to construct the well. It will actually enhance the buffer area through the reduction of impervious area and drainage.
2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration – There is no alternate location outside the wetland buffer.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties – This is a very small impact on a very large wetland. They also have included a detailed construction sequence on the plan for invasive species and, as part of yesterday's Conservation Commission approval, they agreed to sloped granite curb to allow the habitat to cross the street.
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 43 s.f. and are only bringing the road up to City standards so that the City will accept it.

- 5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section – This goes back to what he has said previously. There is a small impact and the street will be brought up to City standard. They are improving the buffer area.

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 made a motion to grant Conditional Use Permit approval. Mr. Patenaude seconded the motion. Mr. Taintor pointed out that this will be coming back to the Planning Board for review of the final roadway design.

The motion to grant Conditional Use Permit approval passed unanimously.

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F. The application of **Michael R. Clark, Owner**, for property located at **325 Little Harbor Road (Belle Isle)**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots with the following: Proposed Lot 1 having 276,867 ± s.f. (6.36 ± acres) and Proposed Lot 2 having 218,736 ± s.f. (5.02 ± acres), and lying in a district where a minimum lot area of 5 acres is required. Said property is shown on Assessor Plan 205 as Lot 2 and lies within the Rural (R) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Corey Colwell, of MSC Engineers, appeared on behalf of Michael Clark. Mr. Colwell explained that this is a proposal for a two lot subdivision of what is known as Lady Isle, or Belle Isle. The island is 11.38 acres in the rural zone with no frontage requirement. Currently there is a 2 ½ story dwelling, the caretakers house, several cottages, guest quarters, a horse barn and a carriage house. The island has paved access via Little Harbor Road and is on City water. Previously, the Sister of Providence ran a school on the island. In 2004 the Planning Board granted a 2 lot subdivision of the “mainland” with a waiver that a private street across the property to the south of the island to Little Harbor Road, with the stipulation that no municipal services, other than emergency services, shall be provided by the City along the private street.. It is a private driveway that serves to the island.

Mr. Colwell stated their proposal is to subdivide the island into two lots. The existing dwelling and remaining buildings would be on Lot #1, containing 6.36 acres. Lot #2, or the undeveloped western half of the island, with the exception of a barn, would contain 5.02 acres with access over Lot #1 and across the proposed 25’ wide access and utility easement. They are also proposing a no build buffer on Lot #2 to protect the water views of Lot #1. This leaves ample buildable area on Lot #2 for a dwelling. The subdivision was reviewed by DES and they issued approval on December 7, 2011. They noted all building restrictions on the plan to give Lot #2 a well defined building envelop.

Deputy City Manager Hayden stated that periodic reports were to be provided to the Fire Department about the bridge and the last one they are aware of is 2005. Mr. Colwell was not aware of additional reports being issues.

Mr. Taintor noted that one of the difficulties with the plan is seeing what is around it. There are requirements which include the adjoining property owners and the location map showing the properties within 2,000 feet. Mr. Colwell stated that those requirements were complied with. There are no abutters as they are defined as abutting or across the street. In this case they are surrounded by water. Mr. Taintor asked Mr. Colwell to double check on the abutter requirement. Mr. Colwell would be happy to add the abutters if Mr. Taintor so desired.

Mr. Taintor stated that they note on the plan that access to the island across the mainland parcel is by a waiver. Attorney Bernard Pelech stated that in July of 2005 the mainland parcel was divided and a waiver was granted and the private road was accepted and shown on the approved subdivision plan. Mr. Taintor assumed that the same waiver would be required for the new lot which would be going across somebody else’s land. There was some discussion on whether this would require a waiver, and whether this was a private roadway or a driveway.

Deputy City Manager Hayden asked, hypothetically, if she bought the new lot and the bridge failed after a period of time, how would that be handled. Attorney Pelech stated that Lot #1 currently owns the bridge but Lot #2 would have access over it. Deputy City Manager Hayden felt it was a very unusual situation, having a second lot created over a shared driveway and over a bridge. She felt something should be in place for access to Lot #2 and also access to utilities. She also felt they should send this to TAC for technical issues and to Legal for review.

Mr. Colwell looked into the minutes of some old meetings. The Planning Department addressed the issue about what if something happened to the bridge. Reports were required to be filed with the City and he felt a stipulation could be that a report be filed on an annual basis by a structural engineer. Additional supports were added to the bridge in 2005. The span used to be shore to shore and now they are in three sections so it is three times stronger.

Attorney Pelech felt that a shared maintenance agreement would handle the issues.

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 made a motion to postpone, pending referral to the Legal Department for a review and also to TAC for a look at sewer and water and whatever structural bridge reports may exist. Mr. Gladhill seconded the motion.

The motion to postpone passed unanimously.

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**III. PLANNING DIRECTOR'S REPORT**

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**IV. ADJOURNMENT**

A motion to adjourn at 11:05 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 March 15, 2012.