

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

FEBRUARY 16, 2012

MEMBERS PRESENT: Paige Roberts, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector; MaryLiz Geffert; William Gladhill; and Brian Groth, Alternate

MEMBERS EXCUSED: John Ricci, Chairman and John Rice

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the November 17, 2011 Planning Board Joint Work Session with the HDC and Planning Board Meeting – Unanimously approved. (Councilor Novelline Clayburgh abstained)

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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*

A. The application of **Michael R. Clark, Owner**, for property located at **325 Little Harbor Road (Belle Isle)**, requesting 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. (This application was postponed from the January 19, 2012 Planning Board Meeting)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Bernard Pelech, Attorney for the owner, appeared before the Board, along with Corey Colwell, of MSC Civil Engineers. Attorney Pelech stated that in January they received preliminary approval. The Board requested some minor changes to the plans, which they have made. They met with City staff and he submitted to City Attorney Sullivan all changes that he required to the documents and he understands that the documents are in a form that are now acceptable to him. An access easement to Lot 2 had been requested however that cannot legally happen until the lot is sold so they agreed to have a condition subsequent placed on the final subdivision approval which says that prior to Lot 2 being conveyed an easement would be conveyed immediately before the Warranty Deed was recorded. Attorney Pelech asked the Board to condition their approval tonight on Attorney Sullivan's acceptance of those documents.

Corey Colwell, of MSC Engineers, stated there were four changes to the plans since last month. They added Sheet 3, to demonstrate how the vehicles and utilities would get to the island. They show easement rights, both existing and proposed, from Little Harbour Road, across the mainland and to the island. There are four easements. Easement A is an existing access and utility easement in place today, Easement B runs from the end of Easement A to the bridge also exists today. The new easements are C which is a 25' wide access and utility from the end of Easement B to the southerly terminus of the bridge. Easement D is the easement that Attorney Pelech just spoke about, which will be conveyed upon the sale of Lot 2. It clearly shows how any of the owners of Lot 1 or Lot 2 and utilities can run from Little Harbour Road to Lady Isle. The only other changes were the addition of Note 18 on Sheet 1 & 2 which deals with the bridge inspections which were required every 5 years. Sheet 2 was made recordable so it is a 3 sheet set. The fourth change was the addition of the monuments and the dates they were installed.

Mr. Hopley asked way the bridge wasn't included in any easement. Mr. Colwell explained it was because the Bridge was over State property and they do not own the land under the bridge. The State is not willing to grant an easement over its property for any private land owner.

Mr. Taintor notified that on Sheet C-3 the private road is labeled Lady Isle Road and on Sheets 1 & 2 it is called Belle Isle Road. He would like the plans to be consistent. Related to Mr. Hopley's question, last month they were unclear what the limits of the maintenance agreement would be. The plan is unclear. Mr. Colwell indicated that the intent is to go to Little Harbour Road. Its limit is shown on the plan because beyond that limit, within the easement, Lot 1 doesn't require the use of it. Mr. Taintor can't tell what the arrows are pointing to. Mr. Colwell will clarify that on the plan. Mr. Taintor asked if there is a metes and bounds description of the limit. Mr. Colwell stated there is not a metes and bounds to that limit. It was in their meeting with Attorney Sullivan that it came up that they demonstrate the limit of the roadway agreement and make it clear where the agreement between the two parties stops.

Mr. Taintor referred to Sheet 3 and making sure that this is shown as a private road. It is now labeled as a private road but it is also labeled Easement A, B, C and D. He asked if the private road meets the requirements of RSA 674:41 which require building permits have to have access by way of a street. Secondly, he asked how far does Lady Isle Road, the private road, go. It used to go to the water and

maybe now it goes across the water and up to that point where the use easement starts. Mr. Colwell stated that, in his opinion, this meets the definition of RSA 674:41 for the reason that the wording says that if it is a road recorded on a subdivision plan, when the plan is recorded it become binding. The private road is intended to go up to the limit of the Roadway Maintenance Agreement. Beyond that limit it is just a driveway for both lots. They could add a note under the limit of roadway to the plan to make it clearer. Mr. Taintor agreed that a note clearly stating the road extends from point A to point B and that it is a private road under RSA. Mr. Colwell stated that if two parties or lots are using it, it is a private road, and if one party is using it, it is a private access.

Mr. Taintor stated that they met early this week about this and then got the final draft of the easement agreement on Tuesday and Attorney Sullivan has not had a chance to review it yet. Attorney Pelech stated that the Private Roadway Maintenance Agreement that the Board requested has been agreed upon by Attorney Sullivan and himself. They did make one substantial change to it: because the second lot has not been sold yet, the Private Roadway and Maintenance Agreement is now between Mr. Clark and the City for the benefit of a future owner of Lot 2. The City is a signatory to that agreement until the 2nd lot is sold and the City can enforce it. They added language that it is a covenant that runs with the land and will be recorded. He also agrees that regarding RSA 674:41, when the subdivision plan was recorded to separate the land and the island, the Board granted waivers and found that it was a private right-of-way and it was shown on the 2005 subdivision up to the bridge. At the January meeting they granted the same waivers with regard to the remainder of the road.

Deputy City Manager Hayden asked if the Private Roadway and Maintenance Agreement covers every square inch that the two different parties need to share travel on the same roadway. Attorney Pelech confirmed that it runs from Little Harbour Road to the split on the island. It covers the bridge and the five year engineering report and incidental things.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden asked Mr. Taintor if it was correct that there have been discussions regarding this but there is a final draft that has not yet received the City Attorney's seal of approval. Mr. Taintor stated there are two documents. One is the use and maintenance agreement and it is clear that Bob has signed off on that. The easement deed requires technical changes but he has not received anything from Attorney Sullivan on that.

Deputy City Manager Hayden made a motion to postpone and indicated she would explain if she got a second. Councilor Novelline Clayburgh seconded the motion. Deputy City Manager Hayden felt that they had a lot of discussion at the last meeting about how very important it was that the City never wanted to end up with responsibility for this bridge, as through time the City has often ended up with other people's problems and they want to make it very clear legally. She would feel much better if they had the City Attorney telling them that this he has reviewed the final document and that it has his seal of approval.

Mr. Blenkinsop asked if they could make a motion with the easements being a stipulation. He felt that would get them to the same place and also would have moved it forward.

Deputy City Manager Hayden stated they would do that anyways but this goes back to last month where their stipulation stated that “all easements and agreements shall be reviewed and approved by the City Legal Department with the guidance that in no event, and under no circumstances, will the bridge become the responsibility or property of the City of Portsmouth and with further guidance that the bridge is over State land.” She felt the State land part is tricky and it was too important to grant approval on at this time.

Mr. Taintor indicated that if the Board decides to move ahead and approve this, he has some suggested stipulations. One would be to clarify whether it is Belle Isle Road or Lady Isle Road. If this was a public street the Planning Board would have the right to make that decision. As a private street, the Board still has the responsibility to approve the name of it so that issue should be addressed. If the name has changed from Belle Isle Road to Lady Isle Road, the easement and Maintenance and Use Agreement are going to have to be changed because they refer to Belle Isle Road. Also, the plan should show the limits of the private road and the limits of the Maintenance and Use Agreement. Also, the note they discussed describing what the road is and that it is meant to be a street as defined by RSA 684:41. Deputy City Manager Hayden is happy to add those stipulations.

Mr. Hopley stated that, given these facts and that it will take time for staff to review the documents carefully, he felt there are enough loose ends to postpone this matter.

The motion to **postpone** Final Subdivision approval passed unanimously.

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B. The application of **Young Men’s Christian Association (The Seacoast Family Y), Owner**, for property located at **550 Peverly Hill Road**, wherein Preliminary and Final Subdivision Approval is requested to subdivide one lot into three lots as follows: Proposed Lot 10A on Assessor Map 244 having 1,103,695 s.f. (25.34 acres) and 331.13 ±’ of continuous street frontage off Peverly Hill Road and Proposed Lots 1 and 2 each having 15,000 ±s.f. and 100.13’ ± of continuous street frontage on Peverly Hill Road. Said property is located partially in the Single Residence A (SRA) District where the minimum lot size is one acre (43,560 s.f.) and the minimum street frontage requirement is 150’ and partially in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and the minimum street frontage requirement is 100’. (This application was postponed from the January 19, 2012 Planning Board Meeting)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was present on behalf of the applicant. They were postponed last month and referred to TAC and the Traffic & Safety Committee to talk about the proposed driveway location along Peverly Hill Road and the safety of that driveway.

Mr. Chagnon indicated that they appeared before TAC on January 31, 2012 and they approved a plan to do a speed study to determine the 85th percentile actual speed on Peverly Hill Road. They also requested that they prepare a report regarding safe sight distance for the Planning Board. That report was prepared and delivered on February 15th. The data was collected and speeds were measured on the street and copies of the report prepared by Traffic Engineer Stephen Pernaw were provided to the Board members. The report states that he put in speed monitoring equipment to determine the prevailing travel speeds and he determined that the median speed was 32 mph and the 85th percentile speed was 38 mph. He then performed sight distance measurements at a proposed driveway location per AASHTO standards. One driveway, shown on the north side of Lot 1, allowed for 325' of sight distance looking left and 320' all season and 500' in the summer looking right. They looked at using the 38 mph speed to determine the AASHTO sight distance requirements and based on the formulas, looking left 291' is required and looking right 267' is required. Mr. Pernaw concludes that the best location along the site frontage for access to the two proposed lots is shown on the revised plan and that exceeds the AASHTO sight distance requirements.

Mr. Chagnon stated they appeared before the Traffic & Safety Committee this morning and they approved the driveway location. They had two stipulations: That the deed for the parcel stipulates that the driveway be located in this location as shown on the plan and that any driveway design accommodates turning around on the lot. This is shown on their revised plan.

Mr. Gladhill referred to Page 2 of the speed survey and he noticed there are a lot of numbers but no breakdown as to what the numbers actually are. Mr. Chagnon explained the SSD is stopping sight distance equals $2.47 \left(\frac{V^3}{g} \right) + 2.45 V T$ (the constant). V is the velocity in mph. T is reaction time in seconds, or 2 ½ seconds. Another V on the right side with a g underneath with is the grade of the street. Mr. Gladhill asked at what point in this math is someone putting on the brake to stop. Mr. Chagnon responded they are beginning to stop when they first see there is something potentially in the way of their travel. Sight distance measurement is eyeball to eyeball. He believes the 2 ½ seconds is the time it takes the driver to see something and react to put his foot on the brake pedal. Mr. Gladhill had doubts about the equation and the results.

Deputy City Manager Hayden asked if she was correct in assuming that if she is going at the 85th percentile, meaning 15 % are going faster than 38 mph and 85% are going 38 mph or less, she needs 291' to stop and what is available to her is 325' so she has a buffer of 34'. Mr. Chagnon confirmed that was correct.

Mr. Blenkinsop noted the report was done in February (not April) and asked about the other sight distance measurements in the middle of page 2, it says if you look left it says 325' and looking right it says 320' all season and 500' summer. Why is there an all season looking right but not looking left. Mr. Chagnon explained that when you look to the right, Peverly Hill road curves to the left going away from the site and you can actually see over land that is off of the road however in the winter, if there is a snowbank, you may not be able to see. Looking left they do not cross the fog line so there is no difference between winter and summer.

Mr. Hopley asked for an explanation of the term "fog line". Mr. Chagnon explained that was the white line painted on the roadway.

Mr. Taintor asked, in terms of the standard measurement for sight distance, how far back from the property line is the measurement taken from. Mr. Chagnon stated the standard that was used was the AASHTO standard, which is that the eye of the driver at the driveway is 18' from the white line. It is measured from the road and not from the property line. Deputy City Manager Hayden thought it would be where you would be closer to the pavement edge. Therefore, as a practical matter, it is a better condition.

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 preliminary and final subdivision approval with the recommended stipulations the Parking and Traffic and Safety recommended stipulations. Ms. Geffert seconded the motion.

Councilor Novelline Clayburgh recalled that at last month's meeting the concern of the neighbors was to place the driveway at the far end of the property, near the Tae Kwon Do studio. She asked if they can assume the neighbors are satisfied with this plan as they are not present tonight. Acting Chair Roberts didn't believe they can assume that but believed Councilor Novelline Clayburgh's point was a good one in terms of following up.

Deputy City Manager Hayden noted that on the previous hearing for Belle Isle they had a private roadway agreement that provided joint responsibility for the joint roadway. She is always unenthusiastic about shared driveways because over the years it causes misunderstandings. She wondered if there might be a stipulation to provide protection through the years for the two property owners. Ms. Geffert felt that was a great comment. Mr. Taintor felt they could adapt the language from Belle Isle hearing to say that the driveways be subject to a Use and Maintenance Agreement, to be reviewed and approved by the City Attorney prior to the recording of the Subdivision Plan. Deputy City Manager Hayden explained that what she was trying to do was protect future buyers of this property. Ms. Geffert asked about needing an easement as well. Mr. Taintor confirmed he would add that as well. Ms. Geffert asked if they were they comfortable as a Board because they are not going over State waters or talking about something the City will never have to maintain as it is clearly a driveway. Deputy City Manager Hayden did not have a problem approving this tonight. The only other alternative to a shared driveway would be a different configuration of the land and they all understand why they want to do this particular configuration. It may not be ideal but all of the ideal parcels have been developed. The neighbors came out and made good points, the applicant did good diligence with TAC and Traffic & Safety.

Mr. Taintor suggested some wording for stipulations. The first two come from the Parking and Traffic and Safety Committee Meeting this morning.

1.) Lot two shall be subject to a deed restriction prohibiting the construction of any additional driveway and this restriction shall be listed on the Subdivision Plan.

2.) The driveways for Lot One and Lot Two shall be provided with a turn around on the lot so that the vehicles shall not be required to back out onto Peverly Hill Road.

3.) The cross slope of the driveway within the City right of way and extended "X" feet back from the property line shall not exceed $\pm 2\%$.

4.) All easements and deed restrictions shall be reviewed and approved by the City Legal Department prior to the filing of the final plat.

5.) All property monuments shall be set as required by the Department of Public Works prior to the filing of the final plat.

6.) GIS data shall be provided to the Department of Public Works in the form required by the City.

7.) The final plat and all easements shall be recorded concurrently at the Registry of Deeds by the City or determined appropriate by the Planning Department.

8.) The lots shall be subject to a Use and Maintenance Agreement that shall be approved by the City Attorney and shall be recorded concurrently with the subdivision plat.

Mr. Blenkinsop and Ms. Geffert were both agreeable to the stipulations.

Mr. Gladhill was still wary of the 291' and felt it was very close.

Mr. Groth asked about the $\pm 2\%$ because it looked like the slope of the road had about 3%. Mr. Taintor explained this is the cross-slope, going from the road into the lot.

Mr. Taintor stated by need to figure out what number "X" is in stipulation #3. Mr. Chagnon believed it would be about 5'. Mr. Taintor suggested inserting "5' or as determined appropriate by the Department of Public Works".

The motion to grant Preliminary and Final Subdivision approval passed with the following stipulation with Mr. Gladhill voting in the negative:

- 1.) Lot two shall be subject to a deed restriction prohibiting the construction of any additional driveway and this restriction shall be listed on the Subdivision Plan.
- 2.) The driveways for Lot One and Lot Two shall be provided with a turn around on the lot so that the vehicles shall not be required to back out onto Peverly Hill Road.
- 3.) The cross slope of the driveway within the City right of way and extended 5' (or as determined appropriate by the Department of Public Works) back from the property line shall not exceed $\pm 2\%$.
- 4.) All easements and deed restrictions shall be reviewed and approved by the City Legal Department prior to the filing of the final plat.
- 5.) All property monuments shall be set as required by the Department of Public Works prior to the filing of the final plat.

- 6.) GIS data shall be provided to the Department of Public Works in the form required by the City.
- 7.) The final plat and all easements shall be recorded concurrently at the Registry of Deeds by the City or determined appropriate by the Planning Department.
- 8.) The lots shall be subject to a Use and Maintenance Agreement that shall be approved by the City Attorney and shall be recorded concurrently with the subdivision plat.

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C. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **off Spinney Road**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, including a stormwater retention pond, a vegetated buffer, and a level spreader. Said property is shown on Assessor Map 167 as Lot 5 and Assessor Map 170 as Lot 24 and lie within the Single Residence B (SRB) District. (This application was postponed from the January 19, 2012 Planning Board Meeting)

D. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **off Spinney Road**, requesting Preliminary and Final Subdivision Approval to subdivide two lots into nine lots, including a public right-of-way, with the following: Lot 5 on Assessor Plan 167 having 216,166 s.f. (7.258 acres) and Lot 24 on Assessor Plan 170 having 329,641 s.f. (7.54 acres) to be divided into nine separate lots, ranging in size from 5,000 s.f. to 329,641 s.f. and all with a minimum of 100' of continuous street frontage on Spinney Road or the new proposed public right-of-way. Said properties lie in a Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100' of continuous street frontage. (This application was postponed from the January 19, 2012 Planning Board Meeting)

E. The application of **Lynn J. & Frances T. Sanderson Revocable Trusts, Paul J. Sanderson, Trustee, Owners**, and various other property owners, for property located **off Spinney, Middle, Thaxter, Sewell and Kensington Roads**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested on Assessor Map 167 as Lot 5 and Assessor Map 168 as Lot 17, and abutting the new proposed public right-of-way in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and minimum street frontage requirement is 100'. (This application was postponed from the January 19, 2012 Planning Board Meeting)

1. Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson Trustee, Owner
Property located off Spinney, Middle, Thaxter, Sewell and Kensington Roads (Assessor Map 167 as Lot 5 and Assessor Map 170 as Lot 24)
Lot area decreasing in size from 12.74 acres to 11.92 acres
2. Craig S. and Christine Almond Hodgson, Owners
Property located at 165 Middle Road (Assessor Map 168 as Lot 17)
Lot area increasing from .18 acres to .30 acres
Street frontage increasing from 75' to 125' off Middle Road
3. Neal L. and Darlene L. Ouellett Revocable Trust, Neal L and Darlene L. Ouellett, Trustees, Owners
Property located at 124 Kensington Road (Assessor Map 152 as Lot 20)

- Lot area increasing from .22 acres to .43 acres
Street frontage remaining at 100'
4. Jeremy D. Martin, Owner
Property located at 199 Middle Road (Assessor Map 168 as Lot 14)
Lot area increasing from .28 acres to .51 acres
Street frontage remaining at 100'
 5. Patrick B. and Karen A. Lyons, Owners
Property located at 185 Middle Street (Assessor Map 168 as Lot 15)
Lot area increasing from .13 acres to .80 acres
Street frontage remaining at 50'
 6. David and Patricia Gress, Owners
Property located at 14 Sewall Road (Assessor Map 170 as Lot 20)
Lot area remaining at .31 acres to .31 acres
Street frontage decreasing from 135' to 125'
 7. Michael Jacques, Patricia Newman and Caroline A. Newman Revocable Trust, Caroline A. Newman, Trustee, Owner
Property located at 342 Spinney Road (Assessor Map 169 as Lot 5)
Lot area increasing from .51 acres to .54 acres
Street frontage decreasing on Spinney Road from 171.3' to 162.59'
 8. Joseph G. and Carol S. McGinty, Owners
Property located at 300 Spinney Road (Assessor Map 169 as Lot 6)
Lot area increasing from .69 acres to .70 acres
Street frontage decreasing from 150' to 141.26'
 9. Patricia O. Sanderson Revocable Trust, David Sanderson, Trustee, Owner
Property located at 248 Spinney Road (Assessor Map 169 as Lot 4)
Lot area increasing in size from 1.31 acres to 1.46 acres

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Taintor advised the Board that on January 21, 2012 a letter was received from Altus Engineering requesting that the Planning Board hearing on these items be postponed to allow them to address comments and issues raised at the TAC Work Session and by the Conservation Commission. Mr. Taintor believes the request would be to postpone to a date certain, or the March meeting.

Eric Weinrieb, of Altus Engineering, confirmed that they would like to postpone tonight but would also like to have the opportunity to present the project. At the last meeting, they made a quick presentation to allow them to move on to TAC. Tonight he would like to acknowledge that their work is still in process but they would like to have the opportunity to present new information.

Mr. Weinrieb indicated that Paul Sanderson, Trustee of the Trust, was present with him. They are proposing a nine lot subdivision which includes 12.75 acres in total with a large wetland in the middle. This is one of the last large parcels in downtown Portsmouth with a lot of development around it. The parcels along Middle Road were subdivided off 100 years ago. Sewell and Fells Roads were

developed post World War II in the early 1950's and they all pre-date current zoning. There are a lot of abutters and a lot of interest in the project.

On January 31st they attended the TAC meeting and as a result they have submitted revised plans this evening which address a lot of the TAC comments as well as comments from the Conservation Commission. On February 3rd they had a site walk with the Conservation Commission and interested abutters.

Mr. Weinrieb stated that the Sanderson family has owned this property for 170 years. Attorney Loughlin uses some of the land in the center for a personal tree farm. There are four Sanderson siblings who own the land. The Fells/Thaxter area, which was developed post World War II, increased the wetlands and changed the area hydrology. Prior to 2001 that area also had a lot of drainage problems; however, after the City sewer and water separation project those problems have gone away. Mr. Weinrieb stated it is their intent to make sure there is no additional drainage. Their design was designed to make sure it continues in that manner. The City requires a 10 year storm event and they have used a factor of safety of 10 so they are designing for a 100 year storm event so that they are not adversely impacting abutting properties. They have been before the Planning Board for several lot line revisions over the years.

When they started this process, they developed all sorts of concepts. When it was time to submit plans, they came up with a scheme that follows the theme of the neighborhood with two frontage lots on Middle Road that will fill in the "missing tooth" on that road; they will fill in with three frontage lots on Spinney Road; and a small subdivision that will mimic the lots on Fells, Thaxter and Sewell although the new lots will be a little bigger. Last May they had a neighborhood meeting and they offered all of the abutters an opportunity to purchase any land that abuts their property that did not impact the proposed subdivision plan.

They hired Joe Noel who mapped the wetlands and they are in the process of preparing a Wetlands Functions and Values Assessment of the property in time for the Conservation Commission hearing. The existing conditions boundary survey has been completed by James Verra and Associates. They have completed an extensive drainage study modeling the 2, 10, 25 and 100 year storm events. They also submitted some waivers with the application to reduce the roadway pavement width from 32' down to 24' and to reduce the cul-de-sac outside radius from 50' to 47'. They have asked for a third waiver for open drainage on one half of the roadway, which they felt was best for a green development to allow infiltration and work better with the slope. TAC has requested that they withdraw the waiver for the open drainage so they will now do closed drainage on both sides of the road with sloped granite curb.

Mr. Weinrieb pointed out on the plans that sewer is not in the area of the three proposed frontage lots on Spinney Road and currently ends at Sewell Road. They will be extending the sewer and DPW has requested that the sewer line be in the road. As they have extra land, they will widen the easement right-of-way and put it in there. He displayed the revised plan and pointed out the revisions. He pointed out the change in curbing all around the cul-de-sac which modifies the grading. As a result of input from the Conservation Commission, the stormwater management and detention area has been moved 50' away from the wetland buffer and it is now only on one lot.

For stormwater management, they are proposing an open drainage system and a bioretention rain garden area in the middle. The water now runs along the back of the houses on Sewell Road. The stone wall has worked as a dam over the years so water does not flow across the area, resulting in wet back yards. They have created a swale along the back to collect the water and provide stormwater management so they can mitigate the runoff and the volume in the peaks and they then did a land swap to allow a stormwater culvert to run out to the closed drainage system in Sewell Road.

There are no sidewalks proposed and the site will be served with underground electric. They have gravity sewer coming from Middle Road and public water extending from Spinney Road.

Mr. Weinrieb did not go into the Conditional Use Permit as he just wanted to introduce the project to the Board. They are going back to TAC on February 28th and they are going back to the Conservation Commission.

Mr. Taintor asked if they thought they would be ready to be on the March Planning Board Agenda. Mr. Weinrieb felt it would be better to postpone to the April meeting.

Councilor Novelline Clayburgh asked about the water in John Lyons' back yard and the residents on Sewell Road and whether the new revisions would address that. Mr. Weinrieb stated they are sensitive to the neighbors in the area and they have designed it beyond the requirements of the City. Mr. Lyons has indicated there is no easement across his property but they will follow up on that and will show that there is in fact an easement but there will be no adverse impact to his property.

Mr. Hopley stated that the City has just done a substantial upgrade to sidewalks along Middle Road and South Street yet Eric said there would be no sidewalks for a new subdivision. Mr. Hopley thought they were required. Mr. Weinrieb indicated they are not required and they did not suggest them because there are only four lots that would access the cul-de-sac. He did not believe people used sidewalks in these types of neighborhoods and they use the streets instead. Mr. Hopley disagreed. Mr. Taintor stated that the residential street standard cross-section in the Subdivision Rules and Regulations shows a 5' sidewalk on each side of the street but there is a footnote that says "Sidewalks required as designated by Site Review Committee." Mr. Taintor thought that was odd because they don't ordinarily refer subdivisions to site review. That would be something that TAC would make a recommendation on and it would come back to the Planning Board.

Deputy City Manager Hayden asked if the two lots on Middle Road have driveways on the cul-de-sac because there is not enough frontage or sight distance. Mr. Weinrieb explained that they felt it would be nice to have a driveway off of the back. The house would face Middle Road and it would create a nicer architectural design to see a house without a driveway.

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 Item C, Item D, and Item E to the April 19, 2012 Planning Board meeting. Mr. Blenkinsop seconded the motion.

The motion to postpone Item C, Item D and Item E to the April 19, 2012 Planning Board meeting 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*

A. The application of **New England Glory, LLC, Owner**, for property located at **525 Maplewood Avenue**, requesting Site Plan Approval to construct a 2,409 s.f. 9-bay 1-story garage and storage building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 209 as Lot 85 and lies within the General Residence A (GRA) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, presented on behalf of New England Glory. Mr. Weinrieb stated this was a 1.91 acre lot commonly known as the Cutts Mansion. There are two structures on the property which include a total of 12 apartment units. They are proposing to construct a carriage shed style garage to help clean up the site. Parking is currently a scattering of parking on various surfaces.

The proposed garage will not have any utilities except electricity. It meets all of the setback and height requirements. As it is a fairly good size lot, the building coverage is currently 7.5% and they are going up to 10.2% where 25% is allowed. Open space is currently 63% and they will drop down to 61% and only 30% is required.

The garage was originally designed with individual units but they have since eliminated the interior petitions to open the building up. He displayed the plan and pointed out the site layout. One tricky issue on the property is an elevated concrete platform that you drive over which acts as a bridge on one side. That does not meet loading for a fire truck. They received a recommendation from TAC that it be brought up to a 50,000 pound load limit to allow fire truck access across it to service the existing building as well as the new building.

Deputy City Manager Hayden asked how big the velocity reduction stone apron was and whether it was flush. Her reason for asking was because the will be pushing snow across it. Mr. Weinrieb explained that they will leave it down 1” so that the snow plow will not rip it up. They use them all the time on open drainage sites and they do well with time. They do better than other sites by keeping grass from growing up to the edge which would prevent water from draining.

Mr. Hopley asked how many stories the proposed garage was. Mr. Weinrieb stated it was a single story with a pull down in the center for storage up above. Mr. Hopley asked about it not having any interior walls. Mr. Weinrieb confirmed there would be no partitions between the units. There are doors in front for each individual unit. TAC was concerned that it would be too tight to get car doors open inside. Mr. Hopley asked how that works with the hatches. Mr. Weinrieb confirmed everyone will have their own hatch.

Councilor Novelline Clayburgh asked if adequate maneuvering room for cars using the garage has been addressed. Mr. Weinrieb confirmed that they widened up the stone apron area and made the landscaped area all pavers instead so that they could drive over the drainage structure.

Mr. Hopley assumed the driveway around the north side is gone. Mr. Weinrieb stated that was someone else's land. Mr. Verra recommended to New England Glory that they acquire quiet title to that land but the other owner did instead. Therefore, they are exclusively accessing this site over the bridge. Mr. Weinrieb stated it has been that way for several years.

Ms. Roberts asked exactly what the concrete structure was. Mr. Weinrieb really couldn't explain it. It's an elevated slab with some conduit runs to feed utilities. Water runs into it and there is a deep hole that the water runs into and disappears. Other than that, he really doesn't know and he can't speculate.

Councilor Novelline Clayburgh asked if there were any plans to develop the front part of the parcel on Maplewood Avenue. Mr. Weinrieb was not aware of any other future plans.

Ms. Geffert asked if the access from Cutts Street is permitted even though it goes over someone else's lot line a little. Mr. Weinrieb explained that they did acquire quiet title on that section.

Ms. Geffert understands that, based on the parking requirements for this number of units they are meeting those requirements, but the plans do not specifically say that this garage is to service this property. She is worried about the garage being used for other commercial purposes. Maybe she was just being overly cautious. Mr. Taintor explained that there is a general rule that things represented on plans are deemed to be commitments. He understands her concern but it is no different than any other parking structure.

Mr. Gladhill asked if the snow storage area on the southeast side of the parking area is flat. Mr. Weinrieb confirmed it was flat.

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 modified stipulation from TAC so that it reads that the design of the upgrade shall be done concurrently with the design of the garage and they will issue a permit for both the garage and the bridge upgrade simultaneously. They do not want the garage finished with no bridge.

Deputy City Manager Hayden seconded the motion.

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

1. The concrete platform shall be structurally upgraded to hold at least 50,000 pounds prior to the issuance of a Certificate of Occupancy; and that design shall be submitted concurrently with the design of the garage so that the City can issue a Building Permit for both the garage and the bridge upgrade simultaneously.

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B . The application of **Constitution Realty of Portsmouth, LLC, Owner**, for property located at **300 Constitution Avenue**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for 19,750 s.f. of impact within an inland wetland buffer, including the construction of an infiltration pond and restoration of previously impacted areas with loam and seed. Said property is shown on Assessor Map 274 as Lot 5 and lies within the Industrial (I) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Erik Saari, of Altus Engineering, appeared with Mark McNabb, representing the owner and Robbie Woodburn, the project Landscape Architect. This property is a 5 ½ acre parcel which is zoned Industrial. The proposal includes a 32,000 s.f. building with two floors and a 12,500 s.f. mezzanine. This parcel has some history. A portion of the front was part of the City right-of-way on Constitution Avenue. When they built Constitution Avenue they moved the road around a ledge outcrop, creating a wider right-of-way. This recently went through the City Council and the Planning Board and that parcel has been sold and added to this parcel. In the fall this property had an application before the Planning Board for earth product removal which was granted in October. They have appeared before TAC and the Conservation Commission and received approval from both.

They will have 226 parking spaces circulating the site which is accessed by two driveways on Constitution Avenue. They are set up to accommodate large trucks as 25% of the use of this site will be warehouse in the back. He pointed out the warehouse portion with the loading docks. The are setting the site up for two uses. Sheds USA will be relocating their existing facility and doubling their size and increasing their staff. The second user is AAI who are relocating from Hampton. There will be about 100 jobs at this location.

Mr. Saari stated that they went through quite a bit of study on the drainage, trying to determine what would be the best application for the site. It is very unique in terms of soils and they have a lot of ledge and deep, deep valleys of soil between the ledge. They ended up curbing all around the site and closed drainage systems that would send the runoff to the front and the back. In the front they have a glorified swale which they are calling a detention pond. In the rear is an infiltration pond which is designed to infiltrate twice the minimum requirements for groundwater recharge. Some of the construction for the stormwater facility is within the 100' wetland buffer. They have approximately 19,900 s.f. of impact to the buffer, more than half of which is restoration. As the Board may

remember, the site was highly disturbed in the past. About 1/3 of the site was completely re-graded and they stacked up huge boulders for an unknown reason. The area will be loam and seeded with a conservation seed mix and plantings will be added to enhance the buffer and they will let it grow back naturally.

Mr. Saari stated that the utilities are straightforward and will come in from Constitution Avenue. They will need a pole license for a new pole to allow them to extend underground power to the transformers in the back. They have gas further down Constitution but Unitel is looking to bring a new line up to them. They are using energy efficient LED lighting which are all full cut off. They are trying to make the site as dark as possible at the perimeter with a good amount of light in the middle. They are not lighting anything up in the front and they kept everything dark in the back.

Mr. Saari displayed building elevations. There will be a brick shelf on the bottom and the rest is EIFS with a good amount of glazing to provide daylight inside the building.

Robbie Woodburn, Landscape Architect, stated the Landscape Plan is fairly straightforward. Along Constitution Avenue they provided a row of red oak and river birch. They gave an ornamental planting along the front of the building to mirror the building to the ground. They are lucky that this is a handsome building so they are not trying to hide it. They have mixed ornamentals at both entries, trees along the side of the building to soften the building, a dense evergreen screen to the north to separate them from the commercial uses next door, and evergreens around the side and the loading docks to screen those uses. The front is lawn with a micro-pool in it filled with a wetland seed mix and the rest would be mowed lawn. In the rear, in the wetland buffer, they will have a conservation mix along with a varied planting of natives.

Ms. Roberts reminded the Board that they have two separate items for this property – Site Review and Conditional Use.

Deputy City Manager Hayden indicated that if she hadn't been out there or seen the aerial, they would think that there are a lot of existing trees out there. She felt a different note should be on the plan for the contractor and also so that people won't wonder what happened to all of the trees (that were not there).

Mr. Groth noted there were 226 spaces for 100 jobs and he asked why they need so many spaces. Mr. Saari responded that is only one more than the minimum requirement. The minimum requirement, without going for a variance, is 225. However, he also pointed out that it's not just employees. They will have people making deliveries, visitors, and the potential for a shift change with an overlap.

Mr. Hopley asked if manufacturing was part of the warehouse area. Mr. Saari did not believe there was any manufacturing.

Ms. Geffert requested a bike rack on both sides of the building as they have entrances on both sides. Mr. Saari stated they do not have an issue with that and they will squeeze a second one in.

Mr. Hopley asked if the fire hydrant on the utility plan was existing. Mr. Saari confirmed it was. Mr. Hopley asked if the Fire Department requested that it be closer to the driveways. Mr. Saari confirmed

that the Fire Department had their issues with it; however, they will have fire department connections at the building itself and they are building a dedicated fire line to service the sprinklers and those connections. The Fire Department did not have an issue with the final plan.

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 the Conditional Use Permit. Mr. Blenkinsop seconded the motion. There were no stipulations.

The motion to grant Conditional Use Permit approval passed unanimously.

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C. The application of **Constitution Realty of Portsmouth, LLC, Owner**, for property located at **300 Constitution Avenue**, requesting Site Plan Approval to construct a 32,519 s.f. commercial office and warehouse building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 274 as Lot 5 and lies within the Industrial (I) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Saari indicated that they have a waiver request for a second driveway for site circulation and public safety. They would not have the opportunity to construct a turn around so the alternative was to construct a driveway that goes around the building. Also, they have two uses with two entrances so it's easier for each business to exit the driveway closest to their entrance.

Ms. Roberts asked if they saw the staff memo regarding the elimination of curbing around the landscaped island. Mr. Saari stated they eliminated it from the Site Plan because that is what they build from. They did not update every single sheet at that time as they anticipated there might be additional changes as the result of tonight's approval.

Deputy City Manager Hayden asked Mr. Saari to comment on the traffic report. Mr. Saari advised the Board that TAC asked them to look into the traffic. They used information from NHDOT, the Walmart Traffic Study from 2006 as well as the Southgate Plaza study from 2010. Using the IT manual, they came up with impacts that were fairly negligible. The PM peak hour when everyone is leaving work is expected to generate 100 trip ends. They split on Constitution and 2/3 will go to Banfield Road and it is the tendency for traffic to move away from Route 1. The other 1/3 goes to Route 1. The biggest impact was turning right onto Constitution which would add 67 cars per hour or one car per minute, and they split at Banfield so they only have 28 cars going each direction over the entire hour. That is the worse case scenario and they felt it was negligible. The biggest issue in the

background is Water Country. They discounted those numbers as they are seasonal. They centered on what would happen on an average day.

Mr. Taintor followed up by stating that they had a discussion at DPW today and he agreed that the traffic impact is relatively minor on the road system that they have but they need to put this into context a little. The development related traffic generation at AM and PM peak hours adds 11% to the traffic on Constitution Avenue at the Lafayette Road end and 18% at the Banfield Road end. Clearly Constitution has plenty of capacity to handle that traffic but the two roads that it feeds into are over utilized, especially Banfield Road which has increased 40% over the past 10 years. They concluded that Banfield Road will require significant upgrades in the next ten years and should be included in the CIP coming up. The development is not responsible for that and there are a lot of other things that are causing that in the City. They will focus on that more in the future.

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

Ms. Geffert moved to grant a waiver from Section 3.3.2(3) of the Site Plan Review Regulations to allow two driveways on the lot. Mr. Gladhill seconded the motion.

The motion to **grant** the waiver passed unanimously.

Deputy City Manager Hayden asked if they were all set with DPW reviewing the sight distance data. Mr. Taintor confirmed they were all set.

Deputy City Manager Hayden made a motion to approve Site Plan Approval with the stipulation to eliminate the curbing around the landscaped island on all plan sheets. She also wanted to give guidance to staff that they will share with the appropriate City staff that they probably want to focus on upgrades to Banfield Road in the near future in the Capital Plan. Mr. Blenkinsop seconded the motion.

Ms. Geffert asked if she would add an additional stipulation about the additional bike rack. Deputy City Manager was happy to stipulate that they add another bike rack to the south side of the building.

Mr. Groth made an observation that the parking requirements may warrant exploration. They are looking at 100 parking spaces that may not even be used, which is almost 20,000 s.f. of space that could be left undisturbed and would protect the wetland buffer. Mr. Taintor noted that in the revised Zoning Ordinance they have the option for a developer to provide less parking than is required as long as they show that they can provide it in the future. He felt Mr. Groth made a good point and they should be looking at that.

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

1. Sheets C-4, C-5, C-6, C-7, C-8 and L-1 shall be revised to show the elimination of the curbing around the landscaped island in the northeasterly portion of the parking lot, consistent with Sheet C-3.

- 2. A second bike rack shall be added to the south side of the building.

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D. The application of **North Mill Realty Trust, Owner, and 3S Artspace, Applicant**, for property located at **319 Vaughan Street**, for Conditional Use Permit Approval under Section 10.1017 of the Zoning Ordinance for 919 s.f. of impact within a tidal wetland buffer, including the construction of a patio, a seating wall and a walkway. Said property is shown on Assessor Map 124 as Lot 9 and lies within the Central Business (CB), Downtown Overlay District (DOD) and the Historic District.

E. The application of **North Mill Realty Trust, Owner, and 3S Artspace, Applicant**, for property located at **319 Vaughan Street**, requesting Site Plan Approval to construct a 690 s.f. rear deck and a 900 s.f. entry canopy to an existing building which will be converted to performance, gallery, studio and restaurant uses, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 124 as Lot 9 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District. (This application was postponed at the January 3, 2012 TAC Meeting).

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, appeared with Steve McHenry, of McHenry Architects and Chris Greiner, of 3S Artspace. Mr. Chagnon stated that this project was a site redevelopment and reuse of an existing building with minor additions including a small bump-out on the Vaughan Street side of the building, an entry addition and ramp, and a 2-story addition in the back. At ground level there would be a patio and above that a 2nd story deck addition that would notch into the existing building. The proposed use is a performance space, a gallery, a restaurant and some artist studios on the 2nd floor. In addition, the project calls for a canopy on the south and west side of the building to allow for a covered ramp. The ramp is due to a change in floor elevations of about 18". The site currently has a wide open front along Vaughan Street. They will build a new brick public sidewalk along the frontage and they will create striped public parking spaces. They will use the space between the sidewalk and the building as a concrete waiting area. They will recycle the bituminous paved area into a green space for a pad mounted transformer. That will allow them to remove the power pole and significantly improve the streetscape. There will be a patio which will be an adjunct to the restaurant facility. There will be a sidewalk constructed along the back.

There are two applications before them. The Conditional Use Permit is for 919 s.f. of impact. On the east side there is a corner of the North Mill Pond which has a 100' buffer requirement. It is tidal so there is also a NH wetland buffer. The property is currently developed within that 100' buffer. The building is very close to the property line. The 919 s.f. impact is 652 s.f. for the proposed patio, 42 s.f. for a proposed seating wall to provide some seating and to act as a delineator to keep people in the patio area. Also, during a performance intermission people can go outside to get a breath of fresh air. The rest of the impact is for a walkway which acts as a secondary form of egress in accordance with the Life Safety Code, which requires a pathway to get them to a public street. This requires them to

use some property of the abutter and they have worked out an agreement with the abutter to allow them that access.

Mr. Chagnon reviewed the five criteria for the Conditional Use Permit application. He stated that primarily this area is the most suitable part of the property to put a deck. The second story deck will be adjacent to the artist studios and this will provide some light and air outside of the building and they would propose that is not the same as putting it on the street side. They would like to have the view of the Mill Pond. Also, they feel this area is currently utilized. They are adding a minor area to that for the deck and the patio below and that is a reasonable request. There is a 50' vegetative buffer that will remain in place. The slope is gentle up until it falls off into the pond. They feel that is a suitable buffer for any runoff that would be created and that is primarily the impact that is created with impervious areas. They propose that this resource would not be impacted due to several items. This impervious area starts off with the second story deck and as soon as a deck is created you have effectively created an impervious area and the patio below is a secondary impervious area. The runoff that is falling on the deck is not the same runoff you would get from a parking lot. It is just rain water that is coming down. They do not expect to have a pollutant load that would be the same as a parking lot in the buffer zone. Secondly, the sidewalk area will be constructed with porous material. They would also be creating additional buffer planting in that portion of the lot. They would try to work with the abutter, if interested, to improve the buffer plantings.

One of the things they have done is eliminate some impervious area. That is not directly adjacent to the buffer but, overall, the actual impervious area of the development reduces slightly when they are done. They are changing bituminous to a green area in the front. This area currently butts up to a loading dock and has a catch basin at its low point which drains directly to the Mill Pond. This is going to provide some filtration of water coming onto the roof and the patio, which is a net benefit. This walkway is the minimal necessary to get people from point A to point B. Because of the difference in floor elevation they need the distance of sidewalk to provide for a ramp. They feel this is the least impacting alternative. In a global sense, they are re-using the building and it would be much more damaging overall to tear it down and start over.

Mr. Chagnon stated that the Conservation Commission met and reviewed their application. They made a recommendation to approve with two stipulations that they provide a buffer planting in "area A" and that they make the sidewalk porous concrete. Both of those conditions are reflected in notes on the revised plans.

The second approval they are seeking is Site Plan Approval for the re-use of the building. Mr. Chagnon reviewed the plan set.

The Existing Conditions shows the pavement areas, the existing utilities. The Layout and Landscaping Plan shows proposed improvements. The Utility and Grading Plan showing the addition of a grease trap for the proposed restaurant, re-use of a sewer connection, re-use of the sprinkler connection, a new water service, expansion of the gas service and removing the pole and adding a pad mounted transformer for a new electric service. The plan set also has detail sheets and the building elevation.

TAC recommended approval on January 31, 2012 as presented with stipulations. They have addressed some of those stipulations with notes on the plans. Two items were left to be carried forward. One is

the access easement with the abutter, but they would like to change the wording and take the word “easement” out because the abutter is agreeable with a number of conditions. One condition is that if 3S Artspace does not use the property then the license would go away and a subsequent building owner would have to renegotiate that with them. The license would only run with 3S. They are also concerned about parking on their site during performances so 3S will work with them to control the parking lot. A letter of understanding is what is being proposed.

The other stipulation is regarding the parking regulations and he has no problem with that.

Mr. Gladhill asked what would happen if the abutters sell their property. What would happen to the license. Mr. Chagnon stated that was a good question. The license would be between the abutters and their heirs and assigns but it would not be 3S and their heirs and assigns. Ms. Roberts confirmed it would run with the property at 1 Raynes Avenue. Mr. Chagnon confirmed that was their intent.

Mr. Blenkinsop stated that a license is completely revocable. He was confused over how they will make it binding. Mr. Chagnon was sure they could come up with a format that the City Attorney would sign off on. He would request that the stipulation require an appropriate form and not specifically an easement. Mr. Blenkinsop confirmed that an easement to 3S Artspace would be acceptable as long as it didn't run with the land so that if 3S Artspace went away the easement would end. Mr. Chagnon stated that the abutter is sympathetic and is willing to work with 3S Artspace but they do not want to grant something where they would have no say in a future use.

Ms. Geffert stated that the City regulates use rather than ownership so this causes a problem. There has to be a right that runs with the land and it could be conditioned on use. From the perspective of the Planning Board, if for any reason that right goes away then the back entrance would no longer meet safety standards.

Deputy City Manager Hayden asked what would be the impact if the agreement or license went away.

Steve McHenry indicated that the layout of the interior space would have to change quite a bit. They would have to create a hallway inside on both levels that would go the full length of the building in order to get the requisite separation between the two means of egress to get out. It's do-able but it would be expensive and disruptive to the interior space.

Deputy City Manager Hayden liked the little tornado lights and felt they were very whimsical. She asked if the wall lights are only directing light down. Mr. McHenry confirmed they are all pointed down and are dark sky friendly.

Although it has nothing to do with this Board, Mr. Hopley asked if they have enough fixtures. Mr. McHenry stated that they do and there was a photometric plan included.

Mr. Taintor referred to the Photometric Plan and was unsure how to interpret the W-L fixtures that seem to have pretty intense illumination into the building. Mr. Chagnon indicated that was an error. Mr. Taintor also noted there were no lights at all on the patio or deck. Mr. McHenry confirmed the only lights would be on the underside of the deck, facing down.

Mr. Groth asked how the parking works off the site. Mr. McHenry stated there is no parking requirement on site for this use at this time short of the in lieu parking fee that would be assessed.

Mr. Taintor confirmed that there is parking required for the restaurant use and their in-lieu payment has been figured for 28 spaces and is noted on Sheet C-2, Note 4. Today that would be \$2200 per space. That is the reason for the recommended Stipulation 2 as by the time the restaurant is built there may not be a parking requirement. At the time that they pull a building permit the zoning may have changed and may not be required to pay the in lieu fee. Mr. Groth asked if people are expected to parking in other garages and sites and walk to the site. Mr. Taintor confirmed that was correct. It would be just like the Music Hall, for example.

Deputy City Manager Hayden asked about bike racks and if there was any room. Mr. McHenry stated that they do not show them on the plan but they are open to that.

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

Vote on Conditional Use Permit Approval:

Deputy City Manager Hayden made a motion to grant Conditional Use Permit approval with the two Conservation Commission stipulations. Councilor Novelline Clayburgh seconded the motion.

Ms. Geffert pointed out that this land has been heavily utilized and it is not pristine land.

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

1. The proposed sidewalk at the rear of the building shall be pervious pavement.
2. Appropriate buffer plantings shall be added to "Open Space 'A'".

Site Plan Review:

Councilor Novelline Clayburgh made a motion to approve Site Plan review with stipulations as recommended. Deputy City Manager Hayden seconded the motion.

Mr. Taintor suggested changing it to read access easement, license, or other form of agreement acceptable to the City Legal Department. Deputy City Manager Hayden wanted to make sure they are clear this is not a small issue. It may be a code issue but, as she understands it, if they cannot get this access to the abutting property, they may have to redesign the interior to such an extent that it kills their deal, which would be very unfortunate.

Mr. Hopley felt that the architect, Steve McHenry, did a good job and looking at his conceptual plan he has tried to optimize the exiting. Ideally exits opposite each other are very desirable because you have

what they call remoteness where the theory is if the problem is in one area of the building then you can hopefully go to the other area of the building. The code is very specific and defines what remoteness is and it would require some real careful forethought if they didn't get the back egress.

Deputy City Manager Hayden noted that it doesn't really matter that much to the Board from a Site Review perspective whether it is an easement, or access agreement, but rather it matters to the project and from a code perspective.

Ms. Geffert felt it was good on one hand to create a requirement that encourages the abutter to achieve the right result but, on the other hand, she doesn't want to tie the hands of 3S. She felt it should be stated for the record that they encourage the abutter to achieve the correct result for 3S.

Deputy City Manager Hayden wouldn't mind changing the stipulation so that it read "An access easement, license, or agreement shall be prepared with the abutter, for review and approval by the City Attorney."

Mr. Blenkinsop stated that, to be consistent, they should require a bike rack as a stipulation. That was agreeable to the maker of the motion and the second.

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

1. An Access Easement, License or Agreement shall be prepared with the abutters, for review and approval by the City Legal Department.
2. The applicant shall comply with the parking regulations that are in effect at the time of the issuance of a building permit.
3. A bike rack shall be added to the Site Plan.

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F. Proposed amendments to the Planning Board's Site Plan Review Regulations.

Mr. Taintor reminded the Board that they started this discussion at last month's meeting but ran out of time. This is required to be a public hearing.

The first item is a clarification of what is subject to or exempt from Site Plan Review requirements. The one change is to reduce the threshold of a parking lot expansion from 7 parking spaces to 5 parking spaces, which is consistent with the residential threshold that they have of three dwelling units.

The second item is clarification that all three criteria must be met for a project to be deemed exempt from Site Plan Review.

Item three is important because people have difficulty reading site plans on the easel so they are requiring PDF copies of all applications and plans so that they can be projected on a screen. It would also allow them to carry them around on their portable devices.

Item four is to add more specificity about the information required to be shown on the building elevations, specifically height.

Item five adds a “complete street” provision saying that all site development shall be designed and constructed to consider the safety, interests and convenience of all users – drivers, bicyclists, transit users and pedestrians of all ages and abilities. We currently focus on processing traffic.

Item six moves the location of the traffic analysis provisions. They currently are in the drive through section and they have relocated to be wherever traffic impact analysis are required. They have taken away the exclusive emphasis on vehicular level of service.

Item seven deals with a second driveway and it takes away the words “recommended by TAC” as it is the only provision in the regulations that gives TAC the ability to grant a waiver and it really should be a recommendation to the Planning Board.

Item eight is to move the traffic impact study requirement out of the drive through and back to the earlier part of the regulations.

Mr. Taintor stated that some of these are just housekeeping and some are a change in policy and trying to de-emphasize vehicular traffic. They are fairly simple.

Mr. Gladhill referred to Item 1-C regarding 5 spaces and asked if someone else already has the pavement and drew a couple more lines or is that actually adding more pavement. Mr. Taintor confirmed it is expanding more pavement for more parking spaces.

Deputy City Manager Hayden felt they were great improvements. A lot of them are things that they “trip” over periodically. She also appreciated Mr. Taintor doing all of this hard work and putting them in such an easy form to understand.

Ms. Roberts opened the public hearing and called for speakers. Seeing no one rise, she closed the public hearing.

Deputy City Manager Hayden made a motion to amend Site Plan Regulations as presented. Ms. Geffert seconded the motion.

The motion passed unanimously.

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IV. NEW BUSINESS

A. Proposed amendments to the Zoning Ordinance.

Mr. Taintor indicated that they are working on a number of changes to the Zoning Ordinance, some of which they should be able to move right along to the City Council and some may require more discussion.

- (1) Section 10.515.10, Building Coverage and Yards. There are lots of emergency generators coming into the City. So that people do not have to go to the BOA for a variance, they felt it was appropriate to exempt those ground mounted generators from yard requirements.
- (2) Section 10.516.40 Projections into Required Yards. This deals with decks, porches, eaves, overhangs, etc. He felt they may want to take some more time to discuss those.
- (3) Section 10.535.20 Central Business A & B – Transitional Requirements. The only change would be to increase the allowable building coverage from 60% to 75%. They created this transitional section for places like Klines Furniture or Old Port Traders which abut residential districts. It seemed like 60% was a little too restrictive in the CBB.
- (4) 10.633.20 Exemptions from Certificate of Approval for HDC. They added several items of exemptions from HDC review and also specified that when somebody requests a Work Session they present something in advance.

Mr. Taintor stated that for the Flexible Development sections they felt it might be useful to have a work session with the HDC to talk about these things. All of these items have to do with designs.

- (5) 10.740 Mixed-Use Planned Development. This is a big item and is to provide for a planned development option in the mixed residence and mixed business office districts. They talked about an increased residential density in the MRO district but after some thought they thought that might not give enough control so they are proposing a new PUD. This would be designed for the more urban areas and would allow for a high density of development, subject to fairly strict design standards. It would be a Conditional Use for the Planning Board. They may be using the Conditional Use Permit more because anything that goes to the BOA for a variance ends up coming back to the Planning Board for the implementation. This would give more flexibility of design and achieve higher quality redevelopment of some older properties. Some examples are Old Port Traders, Washburn Plumbing, and 127 Parrott Avenue.
- (6) 10.750 Neighborhood Commercial Uses

The issue of allowing neighborhood stores has come up a number of times. This would allow neighborhood stores by Conditional Use Permit. Again, subject to strict controls and performance standards.

Mr. Taintor felt that these three items could go to a work session on a separate night with the HDC.

Deputy City Manager Hayden asked if projections into required yards could be another one subject for that work session. Mr. Taintor agreed.

- (7) 10.813 Mixed Use Buildings in Business and Central Business Districts. They currently have a provision for the business district only where residential uses are allowed provided at least 1/3 of gross floor area is non-residential. What has happened with recent financial standards is that it is very difficult to do that and they really need to get down to 20% in a mixed use building or banks will not

finance it. They are look at replacing that with a provision that at least 65% of street frontage on the ground floor be dedicated to non-residential uses and possibly expanding that to the areas of the Central Business District that are not in the Downtown Overlay District. Mr. Taintor felt that they need to look at this more. It doesn't work for a three story building but this is the type of concept they are going towards.

(8) 10.1232 Sign Districts. Mr. Taintor stated they are suggesting moving the Business District from Sign District 3 to Sign District 4 because of where the business districts are.

(9) Wall and Parapet Signs. They are currently very restrictive with wall and parapet signs and this would loosen up the regulations and allow them to be used in more situation.

(10) 10.1251.10 Aggregate Sign Area. This has been very difficult to interpret and compute. They are suggesting to delete the provision based on lot frontage and determine aggregate sign area based on frontage and also to remove the area of free standing signs from that.

Ms. Roberts asked how they would address the free standing sign then. Mr. Taintor confirmed that they would have an absolute maximum limit of 100 s.f. This might end up being marginally more than what they have but it's difficult to tell as they are having so much trouble interpreting them now.

(11) 10.1251.20 Projecting Signs in the CB District. They are suggesting reducing the allowable area for a projecting sign in the Central Business District from 16 s.f. to 12 s.f. There have only been four signs that have been permitted above the 12 s.f. limit. The median is 6 s.f. They are suggesting reducing the allowable area to 12 s.f. and replacing the maximum projection (no closer than 6" to the building) to saying the projecting sign shall project no closer than 1' to the travelled way. That would give more flexibility for a slightly smaller sign.

(12) 10.1271.10 Signs on More Than one Façade of a Building. This is a clarification to help them interpret the Zoning Ordinance in terms of how they look at sign area where a use has more than one exterior wall facing a street.

(13) 10.1530 Definitions. These are just clarifications.

In summary, Mr. Taintor suggested that the Board consider recommending to the City Council for moving forward in the ordinance process Items 1, 3, 8, 9, 10, 11 and 12. He would like to schedule a work session with the HDC on Items 2, 4, 5, and 6. He would like to bring back Items 7 and 13 for more work.

Deputy City Manager Hayden would agree with Mr. Taintor. They could have a healthy discussion with the HDC and if they want more design control this would be a good start. Items 1, 3, and the sign items all look fine to her.

Ms. Geffert agrees and would make a motion that they recommend to the City Council that they consider amending the Zoning Ordinance with regard to Items #1, 3, 8, 10, 11 and 12. Mr. Blenkinsop seconded the motion.

Mr. Gladhill asked if the parapet sign change would have to be consistent on all sides of the building or could it be varied. Mr. Taintor stated it could be varied.

Mr. Groth did not know where the sign districts are. Mr. Taintor indicated that the Sign Districts are on page 16. Mr. Groth had a concern that the wording might have unintended consequences. Mr. Taintor stated that a wall sign is defined as being on a wall and a parapet sign as being on a parapet and a roof sign which would be above the parapet or on the roof (which they prohibit).

Mr. Groth asked about the projecting sign amendment which says no closer than 1’ to the travel way and he asked if that was a vehicular travel way. Mr. Taintor suggested that particular wording because Commercial Alley and the Vaughan Mall don’t have curbs. But he felt they could add vehicular to the wording.

Deputy City Manager Hayden asked if the motion was acceptable or should they cite the specific ordinance. Mr. Taintor felt it was fine because they are referring to his Memorandum.

Ms. Geffert was agreeable to adding “vehicular”, as was Mr. Blenkinsop.

Councilor Novelline Clayburgh asked if a change in the ordinance will require three readings with a public hearing. Mr. Taintor confirmed that was correct.

Deputy City Manager Hayden confirmed that these amendments just clean things up for the administrators.

The motion passed unanimously.

Deputy City Manager Hayden indicated they will look at days for the joint Work Session and will avoid March 3rd as that is school vacation week.

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V. 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.*

A. Request of Northern Tier Real Estate Acquisition and Development, LLC, for property located at 172 Hanover Street to remove the glass atrium on the Vaughan Mall side of the property.

Mr. Taintor stated this was a request to remove the atrium but not the base or floor at the same height that it is now and they are proposing to use it as an outdoor dining deck. They would be doing a substantial amount of work on the side of the building so they would have to go to HDC and they would have to come to the Planning Board for Site Plan Review. There are a number of issues that still have not been resolved and they just received this request last week so they are recommending that this be postponed to the March 15th Planning Board meeting..

Mr. Blenkinsop made a motion to postpone to the March 15, 2012 Planning Board meeting. Deputy City Manager Hayden seconded the motion.

The motion to postpone to the March 15, 2012 Planning Board meeting passed unanimously.

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B. Subsurface Investigations in Site Plan Review Regulations.

Mr. Taintor reminded the Board that they discussed this at a work session last month. His recommendation to the Planning Board was to recommend to the City Council that an archaeological sensitivity study be carried out as described. However, there is a bill going through the legislature about trying to do something with this. Because they don't know what the may happen with the new legislation, they fell they should hold off on taking any action so that they are consistent with the new legislation.

Councilor Novelline Clayburgh made a motion to postpone. Mr. Gladhill seconded the motion.

The motion to postpone passed unanimously.

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C. Request of New Hampshire Department of Transportation for an easement under the Scott Avenue bridge in support of the Memorial Bridge project.

Mr. Taintor stated this is a brand new item which was received last week. The NHDOT needs a generator and transformers for permanent operation of the lift bridge. Some other issues have come up recently, particularly an abutter and impacts to their property. There is no pressing need for the State to get these easements so he could recommend that the Board vote to postpone consideration of this proposal to March.

Mr. Blenkinsop made a motion to postpone to the March meeting. Councilor Novelline Clayburgh seconded the motion.

Mr. Gladhill asked if the State needs an easement or whether this is just a courtesy. Mr. Taintor confirmed they need an easement on the City property.

Councilor Novelline Clayburgh asked if the City has a choice on this. Mr. Taintor felt it was in consideration of the abutters that they not move ahead until they get to talk to them.

The motion to postpone to the March 15, 2012 Planning Board meeting passed unanimously.
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D. Request of David Choate, III, Grubb & Ellis Northern New England, for an amendment to Section 10.836.20 of the Zoning Ordinance regarding drive-through lanes for retail/commercial buildings outside of the Central Business District.

Mr. Taintor explained that this is an issue that has been discussed internally, with applicants, and at the EDC regarding the restriction on the number of drive through lanes per facility. For certain types of businesses it makes sense to have these restrictions but banks are the area that has become questionable. Mr. Taintor felt that this needs to be looked at and he would recommend that this be postponed to the March meeting..

Mr. Blenkinsop made a motion to postpone to the March 15, 2012 Planning Board meeting. Councilor Novelline Clayburgh seconded the motion.

The motion to postpone to the March 15, 2012 Planning Board meeting passed unanimously.

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VI. PLANNING DIRECTOR’S REPORT

Mr. Taintor mentioned Steve Griswold’s letter regarding off street parking and first floor business occupancy uses in the CBB. They will look into this further. This arose because of some areas on State Street which are outside of the Downtown Overlay District.

Mr. Taintor also mentioned the letter from Chairman Ricci to the House of Representatives Municipal and County Government Committee regarding HB 1861 which would eliminate all Regional Planning Commissions so he expressed out concern about that.

Mr. Taintor up-dated the Board on a couple of applications which are still pending:

- 28-30 Dearborn Street – This has gone through multiple BOA meetings. He thought they were going through TAC next month but that was postponed so they won’t be back before the Planning Board until April at the earliest.
- 1390 Lafayette Road (Yoken’s) - The City is working with applicants for the redevelopment of this site. They also have an option to acquire the gas station on the corner because DOT would like them to adjust that intersection so trucks can make the turn more easily onto Peverly Hill Road.

They are doing this plan in stages. The first stage is simply for a Rite Aid Pharmacy. However they are also going to the BOA for variances for two more buildings on the front of the lot and their ultimate plan also includes more development in the back of the site. They will be coming before the Board with a plan that has four driveways into the site for one building. That will require multiple waivers from the Site Plan regulations. It is possible they will be seeing a Site Plan application at the March meeting and an additional application for a bank and retail building in April. This type of phased development will be something new for them.

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VII. ADJOURNMENT

A motion to adjourn at 10:22 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 May 17, 2012.