

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

NOVEMBER 15, 2012

MEMBERS PRESENT: John Ricci, Chairman; Paige Roberts, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; John Rice; Anthony Blenkinsop; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill;

MEMBERS EXCUSED: MaryLiz Geffert;

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

- 1. Minutes from the July 19, 2012 Planning Board Meeting – Unanimously approved.
- 2. Minutes from the August 16, 2012 Planning Board Meeting – Unanimously approved.

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Mr. Rice made a motion to take Item B New Business and Item B Old Business out of order for the purpose of postponing. Mr. Allen seconded the motion. The motion passed unanimously.

A. The application of **Michaels Realty Trust and ESUM Realty Trust, Owners, and 4 Amigos, LLC, Applicant**, for property located at **1390 and 1400 Lafayette Road** requesting Amended Site Plan Approval to amend a condition of approval which was granted on August 16, 2012 by the Planning Board regarding the installation of curbing or other barriers to prevent vehicles from entering or exiting the parking spaces on the adjacent parcel from the shared driveway. Said properties are shown on Assessor Map 252 as Lots 7 and 9 and lie within the Gateway (GW) District. (This application was postponed from the October 18, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

Mr. Allen made a motion to postpone this matter to the December Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone Amended Site Plan Review to the December Planning Board meeting passed unanimously.
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B. The application of **Craig Welch and Stefany Shaheen, Owners**, for properties located at **77 South Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, to construct a 20' x 16'8" carport with 2nd story deck to an existing building, with 3,272 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 102 as Lot 48 and lies within the General Residence B (GRB) District.

The Chair read the notice into the record.

Mr. Blenkinsop made a motion to postpone this matter to the December Planning Board meeting. Mr. Rice seconded the motion.

The motion to postpone Conditional Use Permit review to the December Planning Board meeting passed unanimously.

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II. PUBLIC HEARINGS – OLD BUSINESS

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

Mr. Rice made a motion to read in together Items A Old business and Item C New business and vote separately. Mr. Hopley seconded motion. The motion passed unanimously.

A. The application of **Richard P. Fecteau, Owner**, for property located at **120 Spaulding Turnpike, Two Way Realty, LLC, Owner**, for property located at **100 Spaulding Turnpike**, and **Five Way Realty, LLC, Owner**, for property located at **80 Spaulding Turnpike**, (to be consolidated into one lot), requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, involving demolition and construction, driveways, septic systems and construction of a stormwater management system, with 42,331 s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 236 as Lots 33, 37, and 38 and lie within the General Business (GB) and Single Residence B (SRB) District. (This application was postponed from the October 18, 2012 Planning Board Meeting.)

C. The application of **Two Way Realty, LLC, Owner**, for property located at **120 Spaulding Turnpike**, requesting Site Plan Approval for the demolition of an existing building, retrofitting of an existing building for auto reconditioning, expanding the dealership parking and display area, and reconstructing the right-in/right-out access from the turnpike, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 236 as Lots 33, 37 and 38 (which lots have been voluntarily consolidated) and lie within the General Business (GB) District and Single Residence B (SRB) District.

The Chair read the notices into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, addressed the Board. Also present was the applicant, Rick and Jennifer Fecteau, representing Port City Nissan. The property is located at 80, 100 and 120 Spaulding Turnpike. The 3 properties have recently been consolidated and are in the GB and SRB districts. The developed area of the site is in the business district and the open space is in the residential district. Mr. Weinrieb stated this is a challenging district because the back property line runs along the PSNH easement and there is a 100' wetland buffer restricting some of the site.

The applicants went to the BOA a few years ago to try and expand before purchasing the adjacent lots however that was not approved. Purchasing the adjacent parcels gave him an opportunity to expand. The existing condition survey has been updated. GZA mapped the wetlands, MSC did an update of the existing conditions survey and Robbie Woodburn did a very detailed landscape plan with rain gardens. Salmon Falls Architecture did a great job on the renovations to the existing dealership and will be doing the same on the conversion to the detailing facility. On April 19th the BOA granted variances to expand the facility with stipulations that the variance would not take effect until the 3 lots were merged, which they have done, and they allowed two signs on the property. One sign is existing and an additional pylon sign will be added at the other end. Another condition was that the front of the detailing facility could not be allowed for parking display. In the testimony at the BOA, it was said the site design would be an improvement to past problems with the residential neighborhood. They have designed a one way access into the site so that truck carriers can come in, unload, back up and continue northbound on the Spaulding. Historically they have had to come in on Farm Lane, back into the site or actually unload on Farm Lane. This is a drastic improvement to the neighborhood.

Mr. Weinrieb stated that the site currently has very little stormwater treatment for water running off the site. They tried to improve on what was there and provide the best design possible on the expansion areas. There was a sheet flow off the front of the site which they captured by steeping the slope and creating a retaining wall, pre-treating of the first flush and improving the stormwater quality before it discharges into the wetlands. The new portion of the site will treat the stormwater into a raingarden. Everything drains towards the Turnpike and stormwater management areas and will be caught by the two raingardens.

The site is an improvement to the tax rolls as it takes two under-utilized buildings, revitalizing one and tearing edownt the other for parking and vehicle storage for an existing on going facility. They are providing safe and night sky lighting and eliminating a nuisance to the Farm Lane neighborhood. They are providing improvements to the stormwater management area and removing on-site septic systems. They are replacing them with a pump chamber and oil/water separator and pumping it over to the gravity system from the building, over to the gravity line on the western end of the property. They realized they were in the Hodgson Brook watershed so they reviewed that study and met with Candice Dolan and he believes their design meets their goals.

The site lighting plan shows very little lighting, not to the abutters, but to their edge of pavement into the wetland and the buffer area behind the site. The planting plan by Robbie Woodburn shows nice dense planting on the raingardens so that they do not end up with sparse plantings in the raingardens. The renderings show a vast improvement to the building to the south with new overhead doors.

Mr. Weinrieb addressed the criteria of the Conditional Use Permit. This site where they are proposing the improvements is not a natural area and has been disturbed by PSNH or is pavement. There is no

alternative location outside the wetland buffer that is feasible and reasonable for the proposed use as the site is so encumbered there is no other location to expand the use outside the buffers. There will be no adverse impact on the wetland function values. Mr. Weinrieb believes this development will improve the wetland function values of surrounding properties since there is limited stormwater treatment from the site today. The proposed paved areas will have full treatment and they will be reducing the peak rate of stormwater as well as treating it. They are also eliminating the septic system. The alternative of the natural vegetative state or managed woodland will only occur to the extent necessary to achieve the construction goals. There is only scrub growth at the rear of the impact areas and nothing on the site that is in a natural site. The proposal is the alternative with the least adverse impact to the area and the environments under the jurisdiction of the ordinance. He did not believe there were any further areas to expand within the business district that are outside the buffer.

They met with the Conservation Commission in October and received approval with 2 conditions. One was to add snow storage signs identifying the limit of their snow storage area and also that the 25 foot buffer shall remain in a natural vegetated state.

In support of site plan review, Mr. Weinrieb noted there were two conditions recommended in the Staff Memorandum. There was some concern through TAC regarding the number of driveways and access from what is considered their main access today. He doesn't believe that one is actually a driveway but rather is a cross easement. However, they are asking that the two driveways remain on Farm Lane and the new driveway which serviced the two other lots also remain. TAC was split on how they felt about this so there was a compromise that they would come back to the Board after one year to see if there were any issues with the driveways and whether they could make the plan final. Secondly, he misunderstood where TAC wanted the pavement arrows so he will revise those.

Mr. Blenkinsop asked Mr. Weinrieb to point out the primary entry and exit points. Mr. Weinrieb felt they created a primary entrance off the Spaulding turnpike. Depending on people's habits, they may go out the back exit and up Farm Lane. He would envision a split between people exiting through the Farm Lane and the easement. There will be a new pylon sign at the Spaulding Turnpike driveway.

Chairman Ricci asked if they considered pervious pavement. Mr. Weinrieb explained that they did, briefly, but the soils are pretty poor and they looked at what was the best use for the site. Chairman Ricci assumed that the soil conditions would prohibit 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

Vote on Conditional Use Permit:

Mr. Allen made a motion to grant Conditional Use Permit approval with the two recommended stipulations. Mr. Hopley seconded the motion.

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

1. That the snow storage area outside the buffer shall be clearly marked on the site.
2. That the 25 foot buffer shall remain in a natural vegetated state.

Vote on Site Plan Review:

Waiver:

Mr. Blenkinsop made a motion to grant a waiver from Section 3.3.2(3) of the Site Plan Review Regulations, to allow three driveways on the lot: one providing direct access to the Spaulding Turnpike; a second providing full access to Farm Lane; and a third providing access to Spaulding Turnpike and Farm Lane across the adjacent parcels at 150 Spaulding Turnpike (Assessors Map 236 Lots 35 and 36). This waiver shall be for a one-year period starting upon the completion of site improvements.

Mr. Rice seconded the motion.

Site Plan Review:

Mr. Blenkinsop made a motion to grant Site Plan Approval with the recommended stipulations. Mr. Rice seconded the motion.

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

1. The site plan shall be revised to eliminate the two painted arrows near the driveway to 150 Spaulding Turnpike, and to add directional arrows painted on the pavement to direct vehicles to exit via the Farm Lane driveway.
2. The approval of two-way use of the driveway through the adjacent parcel to Farm Lane shall only be for a one-year trial period starting upon the completion of site improvements. At the conclusion of the trial period, the driveway shall be modified as shown on the "Alternate Entrance Sketch", dated October 30, 2012 unless the owner has applied for and been granted amended site plan approval to maintain two-way use of the driveway.

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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 request of Christopher McInnis to rezone parcels at 678 and 680 Maplewood Avenue and 261 Myrtle Avenue from Single Residence B (SRB) to Business (B). Said parcels are shown on Assessor Map 220 as Lots 89, 90 and 87.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, was present along with Christopher McGinnis who currently owns the two parcels which are zoned SRB and has a Purchase and Sales Agreement in place on the Moretti property.

The request is to rezone the land from SRB to Business (B). He first wanted to clarify a few things in the Staff Memorandum. The building on the lot is currently a multi family home, rather than single family, and their proposal is not to rezone the entire Myrtle Avenue parcel. The section which includes the Moretti home would remain separate. The Business district surrounding the lot is a bus business, an electrical supply business and the power substation. The two parcels are sandwiched between I-95 and the Business district and is not a good residential area. The goal of the rezoning request is to take the entire area, which has a PSNH easement running through the middle of it, and make it more like the surrounding neighborhood. All of the land fronts on either Central Avenue or Maplewood or I-95.

Mr. Taintor also wanted to clarify a couple of points in the Staff Memorandum. On Page 5, the Table under 678 Maplewood Avenue should state 2-3 family dwelling. Also, the proposed area to be rezoned is 3.74 acres. The maximum development potential under existing zoning is still 7-8 single family dwellings but, because the existing dwelling is 2-3 units, it would be a net increase of 3-5 units.

The last correction is on page 6 regarding the amount of area to be rezoned. The proposed business zoning would allow up to 65 dwelling units if done as part of a multi-family development, rather than 78 as stated. Using the same assumptions, the maximum development on the site would be 78,000 s.f. rather than 88,800 s.f.

The Chair opened up the public hearing and called for public speakers.

Ed Miller, owner of 5 Central Avenue. He spoke in opposition to changing the zoning. His concern is that this as a residential area with a few noted exceptions of business encroaching into the area. The area west of I-95 is a very densely settled residential area. The impact on their neighborhood would not be in their best interest and would affect their property values. At the current zoning of SRB there is the potential for someone to buy a lot and make a request to transition that lot to another use rather than blanket a general request for the entire area. He thought it would be more prudent to let individual applicants come in and make their own requests. The bus company is a good neighbor but every morning at 5:00 a.m. they can hear the buses accelerate at the stop sign on Central Avenue. There is also noise from Buzzy's on the By-pass and to expand the business district into the neighborhood would be bad. He felt there area plenty of areas in the City where businesses could be located. He does not believe this rezoning request would be in the best interest of the City or the neighborhood.

Kenneth Smith, of 298 Myrtle Avenue. He was opposed to this, not because he is against development in the City but because this parcel is a buffer for the entire neighborhood. Putting in a commercial development would cause traffic problems. There is a school at the end of Myrtle Avenue so children are walking up Myrtle Avenue everyday. This property has been the subject of purchasing options several times but something this obtrusive would not be good for the neighborhood. Increasing the traffic in this area would be intrusive. He asked them not to approve a zoning change.

Diana Fry, 217 Myrtle Avenue, on the corner of Central. Her home is a place that gets a lot of traffic. She agrees with all of her neighbors. The traffic problem is a concern. People don't come to a complete stop at the stop sign. Balance is the top priority as this is primarily a residential area with a small pocket zoned for commercial use. This would change the balance of the neighborhood. The neighbors are looking for a quality of life and this would not be appropriate.

John Flintosh, 187 Myrtle Avenue, lives behind the bus depot. One huge selling point of buying their house two years ago was the walkability feature. They walk their small son up to New Franklin school

every day, as do many other people on Maplewood Avenue. 65 new residents with cars would create a lot more traffic. He is opposed to rezoning the area.

Diane Kozikowski, 287 Myrtle Avenue. She is a direct abutter to the Moretti property. She supports the sale of this land for residential use only. She is not in agreement with changing the zoning to business. This is a small and wonderful neighborhood right next to the New Franklin School. Adding 65 apartments or a business would be a nightmare. She loves her home and cares greatly about its value. She believes changing the zoning will depreciate its value and appeal.

Dave Lear, 260 Myrtle Avenue. He is opposed to rezoning to a business district. He thinks it will significantly impact the property values of the neighborhood. It will change the integrity and feel of the neighborhood which is surrounded by residential. Clearing out this property for commercial use would add to ground water run off. Traffic and public safety is also a concern.

Charlie Schultz, 240 Myrtle Avenue. He moved to the neighborhood in July. He agrees with his neighbors and friends who oppose the re-zoning. They have a puppy and a baby on the way and this would destroy the neighborhood.

Julianne Flintosh, 187 Myrtle Avenue. They have a 7 year old and they moved from the New York area specifically so their son could walk down the street and not have to worry about traffic. She is concerned about adding traffic and more units and losing the value of the area. She is opposed to this request.

Eric Weinrieb spoke in response to some abutter concerns. Some issues he heard are planning issues, i.e., impacts to wetlands, drainage and traffic and would be handled through the site plan process. There is no reason why the Moretti's couldn't clear cut the whole area tomorrow. That is not a threat but just the facts. He doesn't think anyone would want to buy a house right next to the highway and it would be an unfair disadvantage not to allow it to change to a business area. These people are correct that this is a neat little neighborhood off the beaten path. However, there is nothing proposed for redevelopment and this is just a re-zoning request. He felt it was a reasonable use, sandwiched in between the highway. There doesn't have to be any traffic on Myrtle Avenue as the access could be from Maplewood Avenue.

The chair called for second time speakers:

Ed Miller, 5 Central Avenue. He thinks it is probably disingenuous to say no one would want to buy that property just because it is along I-95. Edmond Avenue has homes abutting I-95 and those are nice little homes. There are plenty of people who are willing to live next to a highway. He supports the applicants' desire to develop this property and make money but not to rezone it to business. He is not opposed to the applicant selling off lots and having the purchasers come before the City and ask for the ability to do something with each individual lot by exception. There are examples where that has happened and worked in this neighborhood already. He also pointed out that the businesses that are in the area are all user friendly. The bus company is an annoyance first thing in the morning but is quiet the rest of the time. The electrical Supply is a good neighbor because their customers use pick up trucks that come in from Maplewood Avenue and they work during discreet hours and are very quiet. The Odd Fellows has a Lodge on Maplewood Avenue but they are only there once a week and have very few cars and are quiet. When you have an opportunity to look at a business that wants to come in, it's easier to determine how it will fit into the neighborhood.

Kenneth Smith, 298 Myrtle Avenue. To say that a business would not impact the neighborhood is just plain wrong. There is a No Truck zone going up Maplewood Avenue so they would have turn around and go down Myrtle Avenue. They don't have sidewalks and the current businesses are very low traffic. People walk up to the school all year long to use the tennis courts and the playground. He understands a lot of things can be reviewed in Site Review but there will be issues with the power lines to limit the placement of buildings. To add more traffic to their neighborhood is wrong.

Christine Ruhnke, 898 Maplewood Avenue. She wanted to mention that just north is the New Franklin School and she is concerned about a business district so close to the school. The other two schools in town are surrounded by homes.

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. Blenkinsop stated that he would want to hear a compelling reason in order to support rezoning. What he heard was that nobody would want to live there yet everyone that lives there is contradicting that. He did not hear anything compelling.

Councilor Novelline Clayburgh felt that when you move into a neighborhood, you can find out what surrounding land can be used for. These neighbors would have known that five single family homes could be built. She felt they should keep it the way it is. It is not fair to the people who live there.

Mr. Gladhill indicated that the Board was provided a map that showed the school and gave a better view. He thought that helped show how this land fits better with the SRB district, especially the rezoning of the multi-family house on Maplewood Avenue. He did not hear any compelling reason to change the zoning. He would be interested to know whether the electrical supply business pre-dated the zoning or how that came to be there as it looks out of place with the neighborhood. In any event, he did not see any reason to rezone the area.

Mr. Hopley shared the same opinions. He feels their map shows the predominant use in the area is residential and the exception is the two major businesses. The potential that could come from a blanket business occupancy is pretty compelling and he will not be supporting the change.

Ms. Roberts also did not see where any compelling reason was presented. She would have had to hear a very strong argument to support it and she did not. She will not be supporting the rezoning request. .

Mr. Rice indicated that he did not have a chance to walk the site but noted the easement for power lines on the site. He agrees with the Board in terms of no compelling reason to change the zoning based on the character of the neighborhood and that people bought these properties with confidence it was zoned SR and not B. They have heard other discussions that have enhanced that. He would be voting with the other Board members against the rezoning. Having said that, he would like to point out that there are power lines in the middle of the site and as a real estate agent he has found it almost impossible to sell single family homes under power lines.

Mr. Allen made a motion to recommend the denial of the rezoning request to the City Council, for the reasons that everyone has stated. He also agreed that the larger overhead map shows that the area is definitely a residential area.

Councilor Novelline Clayburgh seconded the motion.

The motion to recommend denial of the rezoning request to the City Council passed unanimously.

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D. The application of **MacLeod Enterprises, Inc., Owner**, for property located at **1190 Lafayette Road**, requesting Amended Site Plan Approval for site improvements to an existing 121 room hotel, which will include paving, lighting, utilities, landscaping, drainage and other associated site improvements. Said property is shown on Assessor Map 252 as Lot 8 and lies within the Gateway District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Lorden, of MSC Engineers, addressed the Board. Also present was Kevin MacLeod. Mr. Lorden stated this is an existing 120 room hotel with circulation around the building. There was a former building in the front of the lot which has been torn down. There are two existing driveways, both with full access to and from the Route 1 By-Pass. There are currently 125 full size parking spaces on site. There is some landscaping on the side and in front of the building but essentially it is a giant sea of pavement. They want to improve the site and also coordinate with the site next door.

They are proposing upgrades to the parking areas, landscaping, lighting, grading and drainage. They are maintaining circulation around the building and parking all around the building. They are keeping a designated area for the front check in and the building itself will remain unchanged.

The southern driveway will be moved slightly and will become a shared with the Yoken's development. The northern driveway will be kept but will be restricted to a right-in and right-out only. There is a double row of parking along the front of the building and with the addition of the driveway and not wanting to back out into the travelway, they have lost a whole row of parking. They received a variance for additional parking between the building and Route 1 and Mr. MacLeod was also able to secure a conveyance of .34 acres of land from Yoken's for additional parking and travelway. They are proposing 135 spaces of which 130 are standard sized parking spaces and 5 are oversized spaces for trailers, RV's or trucks which will be dedicated with signs.

Regarding grading, Mr. Lorden stated that everything drains down to the back corner. They are decreasing impervious by over 11,500 s.f. and reducing both the peak rate and volume for all storms, including 100 year storm. Treatment is being provided by two infiltration chambers, one in the front and one in the rear. Additional flow in the back will be treated by stormceptor. The Drainage and Plan set will be reviewed by the State for the Alternation of Terrain Permit based on the amount of disturbance.

They are not changing much with regard to utilities. There is one hydrant that is being relocated and on hydrant that need to be moved a few feet due to the new sidewalk.

They are proposing all new light poles and fixtures which are dark sky compliant. They will coordinate with the approved lights on the adjacent site so they will have the same poles, same fixtures, and same color.

They will have a major upgrading to landscaping throughout the site. They coordinated with the development next door and are using a lot of the same trees.

They were granted three variances in September. One was to allow 135 parking spaces where 143 are required and the second was to allow 25 spaces between the building and Route 1. Lastly, they were allowed two small incursions of impervious area within a 10' green buffer.

They are requesting a waiver for two driveways where one is allowed.

Mr. Hopley was very interested in how Yoken's managed their on site traffic and they were careful to make sure people were adequately directed to Route 1. They have done that on the driveway which is closest to Route 1 with two signs and they had the neighboring development sign at the shared driveway at the stop sign to take a left. He noted their traffic flow is going to send people westerly and he doesn't see any signs telling them where they can go. As he approaches their stop bar, and he notices they don't have a stop sign, they should have some directional signs. He also requested a stop sign at that intersection with possibly a mini-island. The paint is going to wear away over time and people will blow through the three way intersection. Mr. Lorden did not believe there was any place to put a stop sign without removing some of the parking spaces.

Mr. Rice agreed that one issue that the site currently has is a large expanse of pervious pavement with no landscaping. He appreciates that they now have some but as they have so many parking spaces, he asked if they could break the pavement with a landscaped island. In many instances they look for a landscaped island every 7 spaces in a parking lot. Mr. Lorden explained that is something they would have loved to provide but they just don't have the room for parking on site.

Mr. Taintor shared that he talked to David Desfosses about the truck parking area. They have already straightened out the curb and they have the wheel stops and signs behind the curb, however, Mr. Desfosses suggested that they consider doing pavement markings indicating that these are reserved for truck parking and they could get rid of the signs and the wheel stops.

Mr. Ricci asked what the need for the stop bar was with no stop sign. Mr. Lorden admitted there would be none and the traffic could just continue to flow. They felt giving them a chance to stop would show a little more effort. Mr. Ricci thought it might cause confusion. He also wondered if it might make better sense to have directional signs when they leave the canopy. His concern is this site will have a huge influx in the summer and driving patterns in the summer are historically hellacious. Mr. Hopley noted that was right near where he was talking about. Chairman Ricci felt everything else was well laid out and that the tractor trailer spaces are a good idea.

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 a waiver from Section 3.3.2(3) of the Site Plan Review Regulations, to allow two driveways on the lot. Mr. Rice seconded the motion.

The motion to grant the waiver passed unanimously.

Mr. Blenkinsop made a motion to grant Site Plan Approval with the two stipulations in the Staff Memorandum, a stipulation regarding the final drainage study and a stipulation regarding directional signs.

Mr. Allen recommended that they have an independent on-site engineer provided by the applicant due to the complex drainage system.

Mr. Hopley seconded the motion.

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

1. All easements shall be reviewed and approved by the City Attorney and the Planning Department prior to the issuance of a building permit.
2. A Construction Management and Mitigation Plan (CMMP) shall be coordinated with the adjacent property (1390 Lafayette Road).
3. The final Drainage Study will be submitted to DPW for review and approval prior to the issuance of a building permit.
4. Directional signs to Route 1 North and South shall be added at the landscaped island next to the stop bar to assist vehicles when they exit from the canopy.
5. The Owner shall pay for the services of an oversight engineer, to be selected by the City, to monitor the construction of the drainage system.

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E. The application of **100 International, LLC, Applicant**, for property located at **100 International Drive**, requesting Amended Site Plan Approval for the addition of 45 parking spaces adjacent to the existing parking lot, a 150' long grass lined treatment swale and any other associated site improvements. Said property is shown on Assessor Map 306 as Lot 2 and lies within the Pease Industrial Zone.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Shawn Tobey with Hoyle Tanner Associated was present representing 100 International LLC. Mr. Tobey indicated this is a proposed parking lot expansion project on a 13.82 acre site which contains a multi tenant office building that is a little over 110,000 s.f.. There are 333 existing parking spaces. The owner of the building has recently signed new tenant which will cause and increased demand for parking. They propose to add 45 additional parking spaces. They are also adding a final wearing course on a section of pavement that never received a final course when the building was constructed in anticipation of adding additional parking. They will be reconstructing portions of the sidewalk from International Drive leading to the building to meet ADA regulations. They will also extend the sidewalk into the new parking area to provide better pedestrian access to the building. Since they are increasing the overall parking count, they will add one accessible parking space and all wil spaces met ADA regulations.

Regarding landscaping, they will relocate existing trees that will be affected by the parking expansion to an area outside of the proposed work and they will add 9 new trees and scrubs in the middle of the landscaped island. There is an existing grass berm to act as an additional buffer.

The proposed drainage has been kept separate from the existing drainage. It will all sheetflow across the parking into two curb cuts to a 150' long grass treatment swale which will also provide groundwater recharge because it is lined from the bottom.

They will relocate three existing poles into the center island and they will add three additional luminaries on the back side to provide coverage for the new parking 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. Rice made a motion to recommend Site Plan approval to the Pease Development Authority. Ms. Novelline Clayburgh seconded the motion.

The motion to recommend Site Plan Approval to the Pease Development Authority passed unanimously.

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IV. CITY COUNCIL REFERRALS/REQUESTS

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

A. Letter from Attorney James Nocas, Jr., representing a property owner of the General Porter Condominiums requesting to construct a garage along the rear boundary line of property located at 32 Livermore Street abutting a cemetery. (This matter was postponed at the October 18, 2012 Planning Board Meeting).

Jim Nocas addressed the Board on behalf of the General Porter Condominiums. When he received the Department Memorandum it occurred that his lens on this issue had been very focused on his client's property but he now realizes this is much greater than his client's garage. The City has a lot of old cemeteries and the State has a prohibition against any construction within 25' of those known burial grounds and they don't have to be deeded burial grounds. He mentioned St. John's Church and the African Burial Ground. He stated that the citizens of Portsmouth cannot go to the State and get a variance as the statute is absolute. They would have to go to the legislature and have the statute changed. The statute quite wisely provided for local control and provides the City with the opportunity to take control of this issue.

Mr. Nocas spoke to Dr. Boivert, the State Archaeologist, about the significance of the burial grounds and his client has stated he does not want to interfere with any burial remains but would like to use his surface area. The Board has the opportunity to recommend to the City Council an ordinance which may in fact be necessary for Chestnut Street or all sorts of other areas in the City that are next to a burial ground. He would ask them to seriously consider taking local control of this issue. Mr. Taintor's Memorandum has given them various suggestions to allow them to do this.

Mr. Gladhill noted that the law was passed in 1984 and he asked about minutes from that legislative bill. Mr. Noucas has had his son researching this and cannot find anything. The only history he had was conveyed to him by Dr. Boivert who indicated there was a native American burial ground that was discovered and the situation that it creates is the respect for the remains that are in the ground but the burden is then created where they have to identify next of kin and, then, if he can't, someone has to be appointed to represent the remains. The response to that was to pass this absolute prohibition against any construction within the 25' buffer zone, but giving local communities the ability to address it. Mr. Gladhill asked if any local communities have done this. Mr. Noucas did not know.

Mr. Taintor thought Mr. Noucas brought up a huge point about the law effecting municipal projects. He was only thinking about private property. He would like to know how the State would treat the African Burial ground project.

Mr. Rice felt that the State could look at the park and the statutory that would be built on top of the African Burial Ground as a tombstone or a marker and therefore would be acceptable. Mr. Taintor asked about Bow Street. Mr. Gladhill believed there was an exemption for roadwork.

Mr. Hopley referred to Mr. Noucas' letter stating that they could build upon the ground without disturbing the ground. He did some quick research in the building code and he would need more information about that construction method. To do a wood foundation and simply place it on grass would require some convincing on his part.

Mr. Blenkinsop believed the purpose behind the State Statute was a good one and it was intended to protect the remains of individuals who may have been buried outside of the fence. When he looks at the options in the Memo, he felt that Option #3 makes the most sense, to make the applicant who wants to construction something be required to do due diligence and provide some safe guards. At a minimum, a Phase 1-A Archaeological Investigation should be required. He thinks as a City they should take the position that if someone does due diligence, they should be able to proceed.

Mr. Rice would tend to agree but when he takes it a step further, thinking about the historic district trying to preserve a sense of place, putting a structure in that 25' buffer is not preserving a state of place. The statute also preserves a sense of place around the graveyard by not denigrating the graveyard. Somebody could put up an aluminum Home Depot structure and that would not be appropriate.

Mr. Blenkinsop did not think the point of the State statute was to preserve a sense of place but rather to protect bodies buried outside of the boundary of the cemetery. That's why he thinks some level of archaeological investigation would give them some comfort and then they could go through the Planning process to see if they would allow it.

Mr. Gladhill agreed with Mr. Rice's comments. If they were to pursue the avenue of archaeological findings, he would be interested to know how other Cities have built so close to gravestones. Chairman Ricci suspected there weren't any regulations at that time.

Mr. Noucas pointed out that if you look at the houses along Livermore Street, his client is the only one who hasn't built right up to the cemetery, although probably not since 1994. They also don't know if there actually are any remains in this buffer. If there is some reasonable due diligence on an archaeological basis, they may find out there is nothing there. This is a difficult balance of interests.

Ms. Novelline Clayburgh recalls that as far as they know there are not any remains under the area that Mr. Noucas' client wants to build on. Mr. Noucas clarified that they do not know. She asked if this would have to get the approval of the HDC? Mr. Gladhill confirmed that the HDC will have to review the design if approved. Mr. Taintor added that they also wanted to have the garage on the property line which would require a variance.

Mr. Allen stated that he tends to agree with Mr. Blenkinsop on Option #3 however he almost thinks they did a Phase I-A when they inadvertently came across the African Burial Ground. Phase I-A does the research up front but not the shovel in the ground intrusion so it's not a fool proof guarantee and he doesn't know how to get around that. When the City is doing a construction project downtown they have the archaeologist on call and they make a visit every day to the site.

Mr. Blenkinsop agreed that Phase I-A is basically reviewing records but they could change Option #3 to include having an archaeologist on site or leave as it is realizing that the Planning Board would have the option to have an one on-site.

Mr. Gladhill was thinking City wide and asked what a buffer is. There should be some buffer but not necessarily the whole 25'. Mr. Noucas stated they have a 10' rear setback anyways and he suspects it would be difficult to get a variance next to a burial ground.

Mr. Roberts is feeling ambivalent. Option #3 still creates concerns for her and may not be adequate protection for the reasons the Board has addressed. She is aware this is a densely packed district, or outside the district also. Not making a change doesn't allow much room to maneuver for some property owners. As an archivist, she is aware of how much doesn't make it into the records.

Mr. Taintor felt that one approach might be to expand Option #3 and use it as is for construction that doesn't involve excavation but if it does it would require Phase I-A or I-B. The excavation is where they are intrusive. The other point he wants to keep in front of them is that they have a non-zoning ordinance about cemeteries that says you can't unbury people unless certain things happen. If they want to have certain things without variables, they may want to include it in the cemetery section. Any ZO regulations can be changed by the BOA.

Mr. Blenkinsop felt they could talk about some objectives tonight but this is going to fall to Mr. Taintor to put something on paper for them to look at. He feels the original Option #3 should include 1A and 1B. If there was no excavation it would be up to them to determine what they want. He felt it should apply to all City cemeteries and they should not start separating out certain ones. At a subsequent meeting they can review subsequent language.

Chairman Ricci would like to work with Option #3. In the City's case with road project which requires monitoring every morning and special conditions exist, he doesn't have a problem with. If there is nothing there he feels it would be okay to dig. If they find something, then they would have to make accommodations for that.

Mr. Gladhill asked if Mr. Taintor could provide another map of the City with all of the cemeteries on it. He wanted everyone to be clear that not all historic cemeteries are in the HDC. They need a good inventory of their cemeteries and that would help them determine what to do.

Ms. Novelline Clayburgh added that what makes this request different is that there is no digging or excavation. She’s wondering if they change the ordinance, they should consider language saying construction is allowed as long as the surface is not disturbed.

Mr. Hopley felt that the reality is that virtually anything they build is going to disturb the ground. You don’t build on grass or gravel. He felt there will probably be some disturbance in any case.

Mr. Rice mentioned his “sense of place”. When he thinks of a point of grave cemetery and a garage build along the property line, they could easily destroy the historic character and this is a very slippery slope.

Mr. Blenkinsop felt they will still have their zoning setbacks, unless it gets a variance. With Option #3 they would have a process to overcome that hurdle. That is why he thinks Option #3 is the way to go.

Mr. Taintor stated he will take a stab at what he outlined, with the Board’s comments, and bring it back to the next meeting. Mr. Hopley really does not believe they can put something on top of grass with out disturbing anything underneath the surface so that may not require very much consideration.

Mr. Noucas does not want to get into the engineering side of building a structure on top at this point. This whole issue is based on the possibility that there are remains but there is no proof that there are remains within the 25’ setback. They are simply trying to get past a prohibition by the State to undertake due diligence to proceed with their property the same way that other people in the City can proceed with their property.

Mr. Taintor proposed that he will draft a couple of options for the Board to review. Chairman Ricci asked Mr. Hopley to review the building code to determine what could be built without excavation.

Mr. Allen made a motion to postpone to the December Planning Board meeting. Mr. Gladhill seconded the motion.

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

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B. Review of Zoning Ordinance Table of Uses and Zones to expand where assisted living facilities can be located. (This application was postponed from the October 18, 2012 Planning Board Meeting.)

Mr. Taintor stated that last month he presented a proposal that involved allowing some of these uses by special exception in business districts and by conditional use permit in the residential districts. Several issues were raised by Board members. There were three issues in particular and he believes he addressed those.

One concern was maximum building height which he changed from 40’ down to 35’ as there was a concern about allowing taller buildings in residential districts and it could be overwhelming for the neighborhoods when there are larger buildings. The second concern was maximum facility size for an assisted living center or residential care facility in a residential district and Mr. Taintor revised that to no more than 40 residents whether in assisted living units or nursing care beds. The last concern was the required mix of uses which now states an assisted living center shall contain at least 1 skilled nursing care bed for every 8 assisted living units.

Mr. Taintor indicated that there was a discussion on pages 20 & 21 of his Memorandum regarding maximum facility size. It was fairly interesting that more than half of the units nationwide are up to 10 beds, 16% are up to 25 beds, and 28% are up to 100 beds, so practically all of the facilities in the country are under 100 beds but, in fact, almost all of the residents live in the larger ones. That tells him that looking across the country there is a market for facilities for up to four units although they are not the ones that are the most profitable. It is a way to insert small scale assisted living facilities into residential neighborhoods, provided all of the other safeguards are met.

Mr. Taintor could not find any standard for the mix of nursing care units to assisted living units. Some facilities were many more nursing care units than assisted living units and some were the other way around. So he decided to come up with the number of one skilled nursing care bed for every eight assisted living units.

Mr. Hopley referred to page 21/22, Table 2 and 2A which has all of the residential districts, starting with the rural residential district which is deeply seated residential, and then SRA and SRB which are fairly instituted single family homes, GRA and GRA which have a mix of multi families and then the garden apartment/mobile home. He was trying to figure out why he would not permit something in a general residential district but could get a conditional use for a more restrictive district. Mr. Taintor explained that was because it would require 2 acres to be allowed in General Residential A, B or C and it would be an illusory requirement because there aren't any lots of that size available in those districts. There are a few lots in total for these facilities but they are more likely to get a couple of large lots that have not yet been subdivided in some of the other districts.

Mr. Hopley asked if the difference between a Special Exception and a Conditional Use Permit is that one goes to the Board of Adjustment and one goes to the Planning Board. Mr. Taintor indicated that the reason is that the Planning Board tends to look at subdivisions for residential neighborhoods as well as site review for commercial developments and he sees this as more of a subdivision. He might have selected Conditional Use for all of them but when you are in the business districts they already have situations where they are allowed by special exception. For instance, the residential care facility is allowed in the business, gateway, general business and office research by special exception already. He tried to treat the business districts consistently. Mr. Hopley wanted to make sure there was enough protection in the residential districts.

Mr. Gladhill felt that an assisted living facility for up to 5 residents could be in a regular home and no one would even know what it was from the outside however a big facility with 40 residents would be very noticeable. He suggested that they use the same language from their RDI-PUD that the development shall be constructed in a manner that is harmonious with its surroundings. Chairman Ricci agreed it would be good to have the consistent language.

Councilor Novelline Clayburgh had been skeptical about this because of the existing nursing homes in the community, however, this is a demand that they have for their City and they do not have enough units at the moment. This is an issue that they really need to address and something has to be done to accommodate the people who will need this in the near future.

Mr. Taintor liked Mr. Gladhill's suggestion to add the design standards and to look at their previous discussions regarding that. He would like to have guidance from the Board on whether there are other things they have serious concerns about that he should also be looking at. Chairman Ricci indicated the Board appeared to be happy with Mr. Taintor's Memorandum.

Mr. Taintor confirmed he will bring it back to the Board at the next meeting for further review.

Mr. Rice made a motion to postpone to the next meeting. Councilor Novelline Clayburgh seconded the motion.

The motion to postpone to the December 20, 2012 Planning Board meeting passed unanimously.

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C. Proposed Zoning Ordinance Amendment – Building Height.

Mr. Taintor indicated that the building height issue has come up due to the Portwalk Development and the way they used the City’s building height definition in an innovative and creative way. It is a loophole that no one would have ever expected.

He explained how the building height was determined. You measure at 5’ intervals around the building and you define the building height at the mid-point between the ridge and the eave to create an average. That average must not exceed 50’ in the CBA or 60’ in CBB. Because that is the average, there are parts of the building that can be higher than 60’ in CBB and if you measure a sloping roof, the peak of the roof can be higher than 60’. Therefore, the ordinance allows parts of the building to be taller than the height listed in the ordinance right now. The purpose of the ordinance is two-fold. One is that the measuring of 5’ intervals around the building is designed to establish a building height on a sloping site. For example, if you are on Bow Street, the front of the building is at one level and the back of the building is 2 stories below the front, so you average those to determine the height. The other reason is to encourage a variety of roof lines. If they didn’t have the ability to measure half way between the eaves and the ridge then you would be encouraging every building to be a flat roof building.

There is an illustration in the ZO showing the different ways you can measure building height. Three illustrations talk about sites that are sloping in various ways. The problem with Portwalk was that they were able to create a low fence line, screening the parking lot deck, and by averaging that 10’ high deck they were able to average that in with other parts of the building so the building at the corner of Hanover and Maplewood ended up being 70’ high, which was never intended. Looking at the Connie Bean center, if they constructed a one-story building in the parking lot and attached it to the existing building, the could create a 70’ – 100’ tall building in the front, facing the Memorial Bridge.

To address this they have made three changes. They have defined the term “street wall” which is the wall that is closest to and parallel to the street and say that height cannot exceed the height that is 10’ below what the maximum building height. They also a 1 foot height increase for each 1 foot horizontal setback. Lastly, the maximum height above street level cannot exceed the height in the zoning ordinance and the reason for this is to avoid the canyon effect.

The final item is to establish the maximum height above the street as the height is defined in the ordinance. In CBA the building cannot exceed 50’ above the street. They basically wanted to set a maximum height so that no matter how you designed your roof lines, the building could not go more than 50’ above the level of the street for CBA and 60’ above the level of the street for CBB.

In summary, the proposed amendments are designed to manage the apparent building height as seen from the street and the maximum building height above the street with the existing definition of building height remaining unchanged.

Mr. Hopley asked if this has been put to the Portwalk test. Mr. Taintor stated that the 70' wall could not happen. It would drop to 50' on Hanover Street and it would be 50' all around the edges. That is a very good question about how they would measure. Maybe they need to have the maximum building height within 100' of the street. Portwalk is a unique site as it has a big differential in street height.

Mr. Taintor advised the Board that there was some urgency to move forward. He would like them to try to make changes at this meeting.

Mr. Gladhill confirmed that height is a very hot issue with the HDC. He felt there are three architects on the HDC which would love to provide input and should be included in this discussion.

Councilor Novelline Clayburgh understood that this proposal would prohibit any building from being higher than 50' or 60' so this should take care of the problem and they will never have another 70' building. Mr. Taintor responded that they can step it up but they would have to identify which street it fronted on. They might want to say what distance back from the street that they stop counting. They could say no building can be above 60' above a street that it is within 100' of and that would allow them to step it up. The Portwalk Hotel would only be 60' above Deer Street but it would be 70' above Hanover Street which is on the same lot but they wouldn't be able to see it. Mr. Gladhill asked about the mechanicals. Mr. Taintor confirmed those are roof appurtenances with limitations on size.

Chairman Ricci felt they have to cut this loose or they will never be done with it. There is always going to be the one rare occurrence but you cannot write an ordinance that will address every situation. Mr. Taintor felt the once change they discussed about 100' back would take care of that issue.

Mr. Rice made a motion to recommend this amendment to the City Council with the one change. Mr. Hopley seconded the motion.

The motion passed unanimously.

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V. OTHER BUSINESS

A. Request for a one year extension of Site Review approval for property located at 195 and 215 Commerce Way which was granted on November 17, 2011.

Mr. Taintor indicated this was an administrative action and no hearing or application is required.

Mr. Blenkinsop made a motion to approve a one year extension. Mr. Rice seconded the motion.

The motion passed unanimously.

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B. Appointment of Capital Improvement Plan Sub-Committee.

This meeting will be held on November 28th at 11:00 a.m.

Appointed: Chairman Ricci, William Gladhill, Anthony Blenkinsop

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VI. PLANNING DIRECTOR'S REPORT

N/A

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VII. ADJOURNMENT

A motion to adjourn at 9:44 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 23, 2013.