

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

DECEMBER 20, 2012

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

MEMBERS EXCUSED: Anthony Blenkinsop;

ALSO PRESENT: Rick Taintor, Planning Director

.....

Chairman Ricci introduced Karina Quintans and welcomed her as the newest member to the Planning Board.

Chairman Ricci recognized ML Geffert her five years of distinguished service and presented her with a gift from the Planning Board.

Chairman Ricci also recognized Paige Roberts who has served on the Board for 12 years and as Vice Chairman for the last 5 years and thanked her for all of her work on the Planning Board and the HDC.

I. OTHER BUSINESS

A. Presentation and adoption of Capital Improvement Plan

City Manager John Bohenko thanked Ms. Geffert and Ms. Roberts for all of their service to the City and acknowledged the time and effort they have put in to achieve some very positive results.

City Manager Bohenko stated that he will be presenting the City's proposed 6 year Capital Improvement Plan for FY 2014 – 2019. The process started this past fall with a Memorandum to all Department Heads, requesting they submit their capital needs for the next 6 years. The Planning Board Sub-Committee, consisting of Chairman John Ricci, Anthony Blenkinsop, and William Gladhill, met with him and various Department Heads to review the requests. For FY 14, Department Heads submitted approximately \$1.9 million that would directly affect the FY '14 general fund budget. Last year the City Council approved funding of \$1,022,500 for these improvements during the fiscal 2013 budget process. In FY '14 City Manager Bohenko stated he would be proposing that the City Council fund the general fund portion of the capital plan at the sub-committee's recommendation of \$1.5 million. As in prior years, the Board as developed this Capital Improvement Plan with the goal of targeting a stable of City property tax revenues to capital projects. In general the Board has recommended a target of between \$1.2 million and \$1.5 million in general fund monies for capital investments on an annual basis. In four of the five past years the City has expended well below this

goal in response to fiscal constraints. As a consequence, projects that are important to maintaining the quality of life in the City have been pushed out or delayed. Also, over the long run it is more costly to defer spending on capital needs. As a result, this year, a total of \$1.5 million is recommended to assure the City can meet it's obligation to maintain its infrastructure and quality of life for its residents. It should be noted that the projects that are bonded require separate vote by the City Council at 2/3 vote in a public hearing. In addition, those projects identified in the out years, fiscal '15, '16, '17, '18 and '19 are for planning purposes with actual funding not required in fiscal '14. The total Capital Improvement Plan scheduled for fiscal '14, including general funding for bonding and enterprise funds, is \$34.4 million, of which \$18.2 million will be leveraged with federal, state and other sources such as public/private partnerships. Therefore, for every dollar that the City is spending in capital projects, approximately .53 cents comes back from other sources other than the local tax payer.

City Manager Bohenko asked the various staff members to present the details of the CIP for the period 2014 – 2019. After the presentation he asked that the Board vote to recommend that it be forwarded to the City Council for their review. The City Council will be reviewing this document in a Work Session on January 23, 2013 with the public hearing scheduled for February 4, 2013. Final adoption of the CIP is scheduled for their February 19, 2013 meeting.

The following staff presented the CIP: Steve Achilles, Assistant Fire Chief; Corey MacDonald, Deputy Chief of Police; Steve Bartlett, Business Administrator, School Department; Peter Torrey, Trustees of Trust Funds; David Moore, Community Development Director; Rick Taintor, Planning Director; Steve Parkinson, Public Works Director; Alan Brady, IT Coordinator; Terry Desmarais, City Engineer, Sewer and Water Division; Peter Rice, Deputy Director, Public Works.

Mr. Rice referred to the Land Acquisition Page where there was an accounting procedure with \$2,500. City Manager Bohenko responded that there are a couple of ways that they have money set aside for land acquisition. There is a Conservation Fund and the \$2,500 actually augments that fund to allow them to try and go after a grant to match funds such as the Seacoast Land Trust. This money allows them to immediately go in and take advantage of funds that may become available.

Councilor Novelline Clayburgh asked about the Amoskege Fire Engine and whether that was a bequest that the Fire Department received. City Manager Bohenko stated there was an estate that provided money to the Fire Department which allowed them to utilize the funds as they saw fit. The funds were used to purchase that antique pumper. They hope to restore it through a public/private partnership. It has a wonderful history. Councilor Novelline Clayburgh asked if that was the same arrangement as the Prescott Park snack facility. City Manager Bohenko confirmed that was correct and that they would be raising \$250,000 towards their donation towards that to leverage any City funds.

Mr. Rice made a motion to adopt the Capital Improvement Plan forward it to the City Council with a favorable recommendation. Councilor Novelline Clayburgh seconded the motion.

The motion passed unanimously.

Chairman Ricci thanked City Manager Bohenko and City staff for a fantastic document and another year and job well done.

.....

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 **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 November 15, 2012 Planning Board Meeting.)

Mr. Rice made a motion to postpone to next month. Ms. Roberts seconded the motion.

The motion to postpone Site Plan approval to the January, 2013 Planning Board meeting passed unanimously.

.....

Chairman Ricci indicated that Mr. Boisvert, the State Archaeologists, was present and in respect for Mr. Boisvert’s time, he would like to take that matter of order and hear it next.

Mr. Gladhill made a motion to take the matter out of order. Councilor Novelline Clayburgh seconded the motion. The motion passed unanimously.

.....

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 November 15, 2012 Planning Board Meeting).

Attorney James Nocas addressed the Board, representing the owners of 32 Livermore Street. Attorney Nocas stated he has appeared numerous times before the Board and does not want to be redundant. He is asking the Board to recommend to the City Council to take local control over the State 25’ cemetery setback so not only can his client can build a garage on his property but since the last meeting, Mr. Taintor has provided a memo showing all of the cemeteries in the City which is 23 pages long. This matter affects every single abutter to every single cemetery in the City so this is a difficult issue to balance between the private property owner’s right to use his property and to protect remains that may be buried underneath that property. He felt it was important to note that they have the capability to allow people to work within that 25’ setback through reviews such as Archaeological 1-A or 1-B or, as was mentioned at the last meeting, by monitoring the project like they did on Chestnut Street. There are less restrictive means in which the underground interests could be protected other than an actual prohibition. There was an issue last time about the African Burial Ground and it was highly unlikely that anyone would enforce that statute with regard to the burial ground but the point was, the way you read the statute, it does say it is an absolute prohibition. A less restrictive means can be done through local control and that is what they are asking the Board to do.

Attorney Noucas noted that Rick Hopley raised the issue at the last meeting about his clients being able to build a garage without a foundation or freeze line. Mr. Hopley mentioned a provision in the International Building Code that allows exemptions for structures under 600 s.f. that allows the use of slabs on the ground. But Attorney Noucas stressed that this is not just about one building and should be looked at the broader picture.

Mr. Taintor provided an update to the Board. They have been talking about this for quite a while. At the last meeting, he laid out 5 different alternatives to show the range of options that they may have.

The first allows accessory structures within the 25' setback provided there is no excavation but if they did that they should also recommend an amendment to the City ordinance because the basic issue with adopting a Zoning Ordinance rather than going with the State law is that a variance can be granted to a Zoning Ordinance. The second option was to adopt the 25' setback and that would mimic the State law but allow the variance. The third would allow construction within the 25' setback subject to a Conditional Use permit. The fourth option was to adopt a different setback only for cemeteries in the HDC. The last option was to do nothing and leave the State law controlling. Mr. Taintor added that Attorney Noucas was suggested that there could be a 10' setback instead of a 25' setback.

Mr. Taintor explained the map of cemeteries within the City that he provided. He explained that the City's GIS database identifies cemeteries by points. In many cases those points are within actual cemeteries and the border of the cemetery that defines the buffer is shown in red and the State's 25' buffer is shown in yellow. Some boundaries are estimated as they don't know what the boundary of the burial place is. This map gives them a sense of the number and range of the City cemeteries and these are the areas that could be affected.

Attorney Noucas added that his reference to a 10' setback was the existing set back for accessory buildings and he was not suggested that they adjust from 25' to 10'.

Mr. Taintor introduced Dr. Richard Boisvert, NH State Archaeologist of the Division of Historical Resources. He thanked him for coming and asked him to address what the concerns would be from the State's point of view about the City adopting a zoning ordinance as allowed by State statute and what would he like to see the City consider.

Dr. Boisvert was only a little familiar with what brought this matter up so he will not speak to specifics but he will speak to the State regulations and how changes to any municipality might have additional effects. In his responsibility as State Archaeologist he has many things on his plate and one is dealing with human remains and unmarked graves. Obviously his life is a lot easier if unmarked graves stay in the ground and it is not just a matter of convenience to him. The State has regulations and law because they respect the burial places of our dead. RSA 635 is the criminal penalties for disturbing the graves of the dead without proper authority. If someone wants to move a loved one from one cemetery to another they have to get authority to do so and it happens all the time. If another person who is not a next of kin excavates a body, is a Class B felony. The prohibition to construct a building within 25' of a cemetery doesn't give any details as to why. The primary reason is that they do not want to disturb the dead. Many people are not aware that 200 – 300 years ago many people were buried, intentionally, beyond the walls of the cemetery. These people were frequently slaves, native Americas or people not afforded the privilege of being buried in the cemetery. There are also times when the walls of a cemetery are constructed after the cemeteries and graves are laid down.

Dr. Boisvert stated that keeping the 25' buffer protects those dead and this would affect all cemeteries in town. He feels the situation should be left as it is right now. He does not see this precedent being set as advantageous to keeping the graves in tact as they come out accidentally. The third set of regulations that apply are RSA 227-C:10, which is the treatment of the unmarked graves or the core of his involvement in this. That dictates that there are two processes. There is one process for native Americans and for non native Americans. Because there is so little known about the decedents for Native Americans may not have ancestors that can be identified. For non-native Americans, it is set out that there must be an attempt to find the next of kin. As an example, the African Burial Ground is doing this and it is a very thorough procedure. The State has been through this a number of times. In Epping an individual accidentally back hoed out an entire cemetery in a subdivision and it took a whole summer to sift through it and find next of kin. The search for next of kin is not pro forma. If remains are found, the first decision is whether the remains can be left in place or do they need to come out and that is a judgment call that lands on his desk. If it is possible to leave them in place, then that is what happens. If it is a case of human remains eroding out of a river bank, then they are removed because they are going to come out eventually anyways.

Dr. Boisvert stated that recovering burial can be quite complicated and extensive. The bones are not nice and hard like you see on TV. Sometimes they are very soft and it could take days to properly recover a burial. In the case the town of Freedom, he spent five days of excavation and one solid day of simply removing the bones. In the case of the African Burial Ground, the costs were borne by the City. Monitoring is good because it catches things but, backing up one step, on that particular project an archaeological survey was done and it was clear to the extent that the survey was done, that the plans changed and coffin lids were pulled up by the back hoe. If something is built under a variance, there will be situations where plans change, intentionally or unintentionally.

Dr. Boisvert also indicated that landowners have rights. The owners of the graves are the next of kin and they have rights and even the deceased have rights to be left there. There could be situations where people move forward in good faith and still end up exposing human remains and invoking the involvement of the State Archaeologist. It could even evoke criminal penalties. It is, in his mind, more appropriate to leave the regulation as it is.

Deputy City Manager Allen noted that one point that was brought up by Attorney Noucas was that something as simple as removing a shrub or planting something would not be allowed under this regulation. Dr. Boisvert indicated that people who have the authority to do so can move the graves and also put in lighting, etc. and cemetery commissions do this all the time. That is all allowed as it is part of managing a cemetery and that is supposed to happen. There may be a cemetery association and it would fall under their responsibility. The RSA says "except when such construction and excavation is for central services approved by the governing body or municipality in concurrence with cemetery trustees when the case of a state highway by a Commission of the Department of Transportation." In other words, if you need to have the road there and then properly maintained, then yes they may construct it. It just has to be done with no damage. He put this question to the Attorney General's Office and was advised this is exactly what they would have said.

Mr. Gladhill asked if Dr. Boisvert was aware of any local municipality that has enacted their own regulations on the 25' setback. Dr. Boisvert was not aware of any in his 25 years with the State.

Mr. Rice asked Dr. Boisvert if he has encountered any situation with a town who has waived the 25' buffer or shrunk it. Dr. Boisvert referred to towns have done repaving and some ditching. The Town

of Lee has a cemetery on either side of a brook that came back and made everything mushy. They came and asked to put in a drainage system and that falls under something that is necessary.

Mr. Taintor followed up on Mr. Allen's question. What is the meaning of the word "building", especially with respect to the African Burial Ground where many houses are within the 25' boundary. Are they allowed to do standard repairs on those buildings which would fit into standard maintenance. Dr. Boisvert thought this law was written long after those buildings were constructed so those situations would conform to any legal understanding but that's as far as he would attempt to interpret that. He felt they would have to speak to the AG office as he feels uncomfortable going any further.

Councilor Novelline Clayburgh mentioned that they had talked about the fact that this structure was not going into the ground at all. Mr. Hopley noted that Attorney Noucas has provided provisions of the residential building code which would allow some minimum excavation. However, Mr. Hopley felt that you certainly can't build on top of grass. Dr. Boisvert added that it's not only what may happen at the time of the construction activity but it would also entail impaction, run off, or other things that could have consequences. He is looking at a State-wide situation and what are the potential real world scenarios. There is a very wide array. There were things that seemed harmless at the time but created unintended but very real consequences later. He also wasn't even going to get into the visual intrusion aspect of it. This is a community with a great sense of history and they take the time to promote and protect the history of their community so he would leave them to make those decisions. He deals with the below ground resources.

Mr. Taintor pointed out that Dr. Boisvert suggested that his expertise is not an interpretation of the law but in the concerns that the law addressed. If we have specific concerns it may be appropriate to address any questions to the Attorney General's Office. Chairman Ricci agreed that they should look into that side of it as well.

Mr. Gladhill asked about whether potential criminal prosecution should be considered. They could allow less than a 25' setback but also enforce the criminal liability. They could be the first municipality to do this and set a precedent.

Deputy City Manager Allen stated that as this is a referral from the City Council and they are looking for the Board's input, he would make a motion to recommend not changing the Zoning Ordinance and keeping the City to work within the State statute as it is written.

Ms. Geffert seconded the motion.

Councilor Novelline Clayburgh noted from the pictures and Attorney Noucas' comment that of the six abutters, only the General Porter Condominiums does not have a structure on or within 25' of the cemetery boundaries. She wondered if they should take that into consideration as there are already violations. Chairman Ricci felt that would be like opening a Pandora's Box. If they open it for one person it always seems like it will get opened for others.

Mr. Rice has been thinking about this at great length and they have deferred a decision on this four times so it is obviously troubling to them to allow construction in the buffer zone. He contemplated a 10' buffer within the Historic District as there had been construction right up to the cemetery boundary. But, thinking of the erosion of a sense of place and this compelling testimony, he believed they are better doing nothing.

Ms. Roberts doesn't in any way question the intentions of the applicant or Attorney Noucas but she is greatly troubled by considering changing the 25' buffer and she also agreed with Mr. Gladhill about being concerned about setting a State wide precedent and be the first municipality in the State to take a different route from what the legislature suggested.

The motion to recommend to the City Council to not change the Zoning Ordinance and continue to have the City work within the State statute as it is written passed unanimously.

.....

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. (This application was postponed from the November 15, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, represented the Shaheens. Mr. Chagnon stated that the proposal is to construct a car port and a second story deck on the rear of the existing structure. The project is in the 100' buffer to the South Mill Pond and results in 2,972 s.f. of impact in that buffer however only 483 s.f. is permanent impact for the structure and the associated steps. This project was approved by the HDC on December 5th and the Conservation Commission reviewed the project at two meetings and recommended approval last week. The project consists of a 20' x 20' addition on the back, which will be 67' from the Mill Pond. The building is currently 80' from the Mill Pond. There will be a driveway constructed off of Johnson Court for car port area which will have a gravel floor. The project was originally designed to come in off the back side and drive around and enter the proposed car port from the north side. They started out that way due to the grades and to provide full head room in the garage. That would have meant more buffer impact. The applicants were able to work with the site and the wishes of the Conservation Commission to not have an operable garage door and they will now operate the doors by hand and they placed the deck at an elevation that will require them to access from the outside through a set of steps. The applicants have made some significant concessions to decrease the buffer impact on this project. The rest of the site improvements include the brick driveway approach to the car port. There is currently a paved parking area at the end of the site and it is some distance from the house and is currently twice as large as the proposal. They plan to take have of the paved area out and re-slope it and add a rain garden. They will introduce a porous paved shoulder to help infiltrate run off. Currently run off from Johnson Court as well as the west half of the structure comes down to a low point and just discharges over the lawn to the pond. The project proposal is to slow that down with some porous material, direct it to the rain garden, let the run off, especially the first flush infiltrate into the ground, and then discharge over a level width spreader into the pond.

Mr. Chagnon confirmed their approval is for a Conditional Use Permit and he reviewed those five criteria with the Board.

Chairman Ricci stated that Peter Britz, the City's Environmental Planner, was present for questions.

Mr. Allen asked if there was any reason why they didn't go with porous pavement on the two driveways. The one paved area they are cutting back next to the rain garden has impervious brick and stone pavers. Mr. Chagnon responded that it was the applicant's preference for ease of maintenance. They felt it was more appropriate next to the street to keep the water moving and eliminate ice.

Ms. Roberts saw a discrepancy in the buffer impact between the narrative statement written December 5th that talks about permanent buffer impact of 483 s.f. and on the plan it looks like permanent impact of 1,012 s.f. Mr. Chagnon explained that the plan also serves as their NH Wetland Board application and they have a different take on what is considered impact. The Sate impacts include the area that is going to be changed from a shoulder to a permeable shoulder. It is already impacted which is why it is not included in the City's calculation.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rice made a motion to grant Conditional Use Permit approval as requested. Councilor Novelline Clayburgh seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

.....
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 **Jeffrey W. St. Laurent Revocable Trust, Owner**, for property located at **188 Buckminster Way**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, to construct a 2 ½ story addition to an existing home; to replace an existing wooden deck with a garage and construct a 2nd story deck and staircase over the new garage, with 7,496 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 282 as Lot 6-15 and lies within the Single Residence A (SRA) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Corey Colwell, of MSC Civil Engineers and Land Surveyors, appeared before the Board with Mark Jacobs, the project Environmental Consultant, and the owners, Jeffrey and Marguarite St. Laurent. They provided two drawings showing existing and proposed plans. Mr. Colwell stated the proposal was to construct a 2 ½ story addition and construct a retaining wall and re-grade the rear yard, all within the 100' wetland buffer zone of the adjacent wetlands. The applicants plan to construct the addition to the rear of the existing dwelling. The footprint of the new construction is approximately 900 s.f. The addition would contain some garage space, living space on the upper levels and a 2nd level

deck. In the rear yard they are proposing a stone retaining wall and some regarding from the addition to that yard. Currently the yard is very steeply sloped and runs 10% - 15% from the back of the house to the wetlands. Also in the back yard there are many sink holes which they believe are the result of some stumps placed during road construction in the early '90's. The purpose of the retaining wall is to soften that slope, to re-grade the yard and go from flat to maybe 1% instead of the current slop down to the wetlands. About 383 s.f. of pavement is proposed for access to the garage bay. The limits of the work will be at least 30' from the wetlands as this lot and all lots within this subdivision have a covenant in the deeds of a 30' no disturb buffer. That covenant was placed on this subdivision by the Planning Board back in 1992.

The closest part of the new addition is 56' from the wetlands. The building is currently 75' from the wetlands. Much of the addition is being constructed over a concrete pad and a small landscaped area and lawn. All of the proposed construction and regarding activity is taking place in previously filled uplands from the early 1990's.

Mr. Colwell addressed the five criteria. He will leave the third criteria for Marc Jacobs to address. They went to great length to explain all five items to the Conservation Commission. Mr. Colwell stated that the land is zoned SRA, the property currently contains a 2 ½ dwelling, the proposal is to enlarge the home for a growing family and to make the backyard suitable and safe for children at play. Most activity takes place in previously filled upland areas of the site. The only exception is 645 s.f. of some scrub shrub vegetation to be removed in the corner of the back yard. For those reasons, they believe the land is reasonably suited for this proposal.

Item two deals with no alternative outside of the wetland buffer. Mr. Colwell stated that the 100' wetland buffer on this property encompasses one half of the house, the entire westerly side yard, and much of the easterly side yard the entire back yard. The addition cannot be put in the front yard due to the septic system. The addition could not be constructed on the sides due to setbacks. Therefore, the only suitable location is to the rear of the house within the 100' wetland buffer. The area of this proposed construction is currently occupied by a wooden desk, a concrete pad and lawn and landscaped area. All has been previously disturbed.

Item four addressed the alteration of the natural vegetative state. As indicated, the only natural state to be removed is 645 s.f. of vegetation at the 90 degree corner of the retaining wall. The 645 s.f. of vegetation represents 1% of the lot area. They have made every effort to reduce the alteration of this natural vegetated state, the loss of the vegetation will be replaced with 2,250 s.f. of area behind the wall which is currently lawn which will be abandoned. Over time the lawn will become naturally vegetated, increasing the natural vegetated state of the property.

Item five questions whether the proposal is the alternative with the least impact to areas and environments under the jurisdiction of the environmental protection section of the ordinance. Their entire proposal, with exception of the 643 s.f. of vegetation to be removed, is on previously placed fill. It is unsuitable materials for a safe yard. There are many sink holes up to 2' or deeper. The buffer would actually be enhanced for three basic reasons. The yard would be re-graded to reduce the existing steep slope to the wetlands. Run off will run at a reduced rate and provide infiltration at the wall. The retaining wall would provide a buffer between the house and the natural wetland, encouraging wildlife habitat, corridors and the succession of natural plant community. Lastly, the lawn area would be reduced by 250 s.f. and replaced with native species.

Marc Jacobs, the wetland scientist for the project. Mr. Jacobs stated that originally he delineated the wetlands in November of 2011 and he has continued to work with the engineer closely since then. The wetland in the rear is the Great Bog and was designated as prime wetland in 2003. The wetland was ranked first by the consultants who prepared that for the City and for wetland function. Most functions and values are water dependent which is to say a direct impact on the wetland would have an impact on the functions and values. Their project is confined to the wetland buffer so the potential for adverse impact would probably occur to wetland wildlife habitat or nutrient attenuation. The retaining wall has the potential to deter migration corridors for the some of the wildlife that use the wetland occasionally. Additionally, regarding nutrient attenuation, the retaining wall will allow the grading of the rear yard in a manner that will slope more gently and the wall will be backfilled with materials that will allow infiltration and which attenuate nutrients which are now just racing through the wetlands. This improvement will allow some infiltration which will treat some of the run off and slowly be discharge through weep holes at the base of the wall. Mr. Jacobs did not believe there would be any adverse impact to the Great Bog from this project.

Mr. Colwell stated that this proposal was submitted to the Conservation Commission and they voted to recommend unanimously with two stipulations. Erosion controls to plan and no construction within 30' buffer. Erosion control measures have been added to Sheet 2.

Mr. Taintor noted that they are proposing to pull the tree line back about 20' to the edge of the wall and he asked if that is the edge of the canopy or the limit of where they are proposing to cut trees. Mr. Colwell confirmed that was the limit of where they are proposing to cut trees and represents the 645 s.f. He pointed out that there are no mature trees in that area. It is saplings and scrub shrub. He thought that for a wall of this size, the Board often wants to see a construction detail for the safety reasons. He wanted to raise that for the Board's consideration.

Councilor Novelline Clayburgh asked why there is a road on Heather Drive. Mr. Colwell explained that was part of the original subdivision in 1992 and Heather Drive was a connector drive to another group of lots that were proposed but never build to preserve the Great Bog.

Chairman Ricci stated that applications like this concern him. He doesn't know what the fence on top of the wall is. He knows the area pretty well. The addition is almost equal to the house itself. He asked if any consideration given to taking the roofs of both structures and putting them into a drywell. He thought it might be a good application to take the impervious run off from the roofs and put them in a drywell. If you want an addition, they should consider putting the impervious into a dry well and he thought they could truly decrease their run off. Secondly, he looks at a wall with a 10' grade different with young kids and wondered if that was better or worse than a yard with a 10' slope. There are a lot of deer that go through the back and this will change their habits and patterns. He also mentioned that silt fences in these residential areas don't work well. Frogs and small rodents can't get through them and they have been asking for a row of wood chips or the silt socks.

Mr. Colwell indicated that they presented installing gutters for run off and installing a dry well but the Conservation Commission didn't like the idea of gutters and liked the idea of a natural drip edge and gradual slope. So, they abandoned it for that reason. Chairman Ricci felt if they can control run off into a drywell then they can eliminate that additional run off carrying fertilizers into the wetland. Mr. Colwell stated the applicants are agreeable to a drywell. Chairman Ricci stated that he wanted to be very sensitive with this area. He would like to incorporate the existing house and proposed house into a drywell. Second, he asked if they know what type of fence is going up. Mr. Colwell stated it is a post and rail. That discussion came up at the Conservation Commission also.

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. Allen made a motion to grant Conditional Use Permit approval with stipulations that the applicant shall submit a detail for the retaining wall for approval as well as no disturbance within the 30’ buffer area shown on the Site Plan and that the applicant add a drywall system and silt sock rather than silt fence. Chairman Ricci requested that the process on the dry wall require that Staff and DPW review that.

Councilor Novelline Clayburgh seconded the motion.

Ms. Roberts stated that she would be voting against the motion. She felt the proposal seems to be very far from a compelling case in any way in terms of the issues of getting a conditional use permit. It is nearly 2,600 s.f. of new impervious surface next to the City’s most valuable wetland.

Mr. Gladhill asked why the houses were built so close to the wetlands. Chairman Ricci responded that it was 20 years ago and there were hardly any wetland regulations.

The motion to grant Conditional Use Permit approval with the following stipulations passed with Ms. Roberts voting in the negative:

1. The applicant shall submit a detail for the retaining wall for approval by the Planning and Inspection Departments.
2. During construction there shall be no disturbance in the 30-foot undisturbed buffer area as shown on the site plan.
3. Roof run-off from the existing house and proposed addition shall be directed into a drywell system, to be reviewed and approved by Planning staff and DPW.
4. Silt socks shall be used in place of silt fence.

.....

B. The application of **Donald and Patricia Lane, Owners**, for property located at **333 New Castle Avenue**, and **James and Valerie Wicks, Owners**, for property located at **363 New Castle Avenue**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval between two lots as follows: Lot 2 as shown on Assessor Map 207 decreasing in area from 13,458 s.f. to 12,895 s.f. and decreasing in continuous street frontage on New Castle Avenue from 154.32’ to 152.22; and Lot 3 as shown on Assessor Map 207 increasing in area from 7,333 s.f. to 7,896 s.f. and increasing in continuous street frontage on New Castle Avenue from 55.07’ to 57.17’. Said properties are located in a Single Residence B (SRB) District where the minimum lot size requirement is 15,000 s.f. and minimum street frontage requirement is 100’.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, was present along with John and Patricia Lane. Mr. Chagnon stated that the properties have been occupied for sometime with an understanding of where the lot line was between the two properties. Recently when the Wicks' property came up for sale and a survey was done, a discrepancy was found and the deed does not reflect the occupation on the ground. They need to go through this process to relocate the lot line. The larger lot will have a slight decrease in area which required a variance to make a non conforming lot more non-conforming to area. Staff recommendations recommended a waiver.

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

DISCUSSION AND DECISION OF THE BOARD

Motion on Waiver:

Ms. Geffert made a motion to grant waivers from Section VI.2.B of the Subdivision Rules and Regulations regarding conformance to the dimensional requirements of the Zoning Ordinance. Mr. Hopley seconded the motion.

The motion passed unanimously.

Motion on Application:

Ms. Geffert made a motion to grant Preliminary and Final Subdivision Approval with the recommended stipulations. Mr. Hopley seconded the motion.

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

1. The final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
2. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
3. GIS data shall be provided to the Department of Public Works in the form as required by the City.

.....

C. The application of **Rebecca E. Hennessy and Bryan L. Campbell, Owners**, for property located at **93 Walker Bungalow Road**, and **John C. Russo, Owner**, for property located at **107 Walker Bungalow Road**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval between two lots as follows: Lot 1 as shown on Assessor Map 202 increasing in area from 20,000 s.f. to 42,020 s.f. and increasing in continuous street frontage on Walker Bungalow Road from 100' to 150.16'; and Lot 2 as shown on Assessor Map 202 decreasing in area from 61,456 s.f. to 39,436 s.f. and decreasing in continuous street frontage on Walker Bungalow Road from 175.40' to 125.24'. Said properties are located in a Single Residence B (SRB) District which the minimum lot requirement is 15,000 s.f. and minimum street frontage requirement is 100'.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Jack McGee, Attorney, addressed the Board as the representative for John C. Russo, owner of land to be transferred to the Hennessy's. Attorney McGee indicated that the lots in question have an interesting history. In 1956, Erving Stickney created 2 building lots. 93 Walker Bungalow Road was 200' by 100' and 107 Walker Bungalow Road had the same dimensions. In 1956 Mr. Russo subsequently bought 93 Walker Bungalow Road. Eventually Mr. Russo moved to #107 and he sold off #93. Mr. Campbell and Ms. Hennessey are the owner of #93, which used to be the Russo homestead. In 1962 Mr. Russo met with Mr. Stickney and he needed more land to effectively build his house at #107. He wanted to expand his lot an additional 25' so that he could fit in the #107 two framed building. What they ended up doing was describing what Attorney McGee would call a "cap" which wrapped around the original.

Mr. Campbell and Ms. Hennessy are desirous of obtaining the portion of the "cap" which runs along the northerly and southerly side of their boundary. That is the plan that is being presented for approval and it meet all of the requirements. The current driveway that services #93 Walker Bungalow Road actually crosses over Parcel A. There has been a license agreement in the past but this approval Mr. Campbell and Ms. Hennessy will actually own their driveway.

David Hislop, the land surveyor, was present if the Board had any questions.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Rice made a motion to grant Preliminary and Final Subdivision approval with stipulations. Councilor Novelline Clayburg seconded the motion.

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

1. The final plat and all resulting deeds shall be filed concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
2. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
3. GIS data shall be provided to the Department of Public Works in the form as required by the City.

.....

IV. CITY COUNCIL REFERRALS/REQUESTS

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

B. Review of Zoning Ordinance Table of Uses and Zones to expand where assisted living facilities can be located. (This application was postponed from the November 15, 2012 Planning Board Meeting.)

Mr. Taintor stated that the Board had asked him at the November meeting to add some design standards or guidelines to his previous draft. The revised section on site and building design is on page 15 of the Staff Memorandum. These are standards that the Board can use in granting a Conditional Use Permit for such uses to address the compatibility with the neighborhood.

The first states that the site and building shall be designed and developed to respect the integrity of adjacent single family neighborhoods and to minimize conflicts with the character of the existing neighborhood. This was in a section that is called Assisted Living Center and Residential Care Facility Uses in Residential Districts and applies to SRA, SRB and the GA/MH districts.

The second proposed item is that the development shall preserve the natural character of the land to the extent feasible and shall be landscaped so as to enhance its compatibility with the surrounding neighborhood, landscaped or naturally vegetated buffers may be required to protect adjacent residential uses.

The third item is the Planning Board’s consideration of an application of a Conditional Use Permit for an assisted living center or a residential care facility shall include design review to insure the compatibility of the development’s architectural design with the surrounding neighborhood.

Mr. Rice thought the amendments were very well written.

Mr. Gladhill was very pleased with the three sections.

Chairman Ricci also agreed and was glad they postponed the matter to include these items.

Mr. Rice made a motion to recommend as presented in the Staff Memorandum to the City Council. Councilor Novelline Clayburgh seconded the motion.

The motion passed unanimously.

.....

C. Letter from Jean and Gordon Willis requesting the transfer of ownership of Artwill Avenue to the City of Portsmouth.

Mr. Hopley recused himself from this hearing but did share with the Board that this street was named after his father Arthur and his twin brother, William.

Mr. Taintor explained that this was a request from the three property owners who use this easement. This is the case from 1972 when the City Council took two contradictory actions. One was to not accept Artwill Avenue because it doesn’t comply with street standards and the other was to pick up trash and provide snow plowing even though the street wasn’t being accepted. The easement/street was not built to any City construction standards and is deteriorating and needs to be fixed so as to not damage snow plow equipment. There is no turn around at the end and essentially is a big driveway. Mr. Taintor had some difficulty with this request and wasn’t sure whether they should refer this to the

TAC or to DPW. Things that should be considered are whether the cost of \$37,000 to bring the street up to standard should be paid by the City or assessed to abutter owners and whether the layout of the street should be revised to include a turn around. The second picture he provided from 2000 shows that the road does extend and is used as an RV storage. The question is whether the property owners would be willing to transfer to the City an easement or right of way for some sort of turn around for public works and fire department equipment could turn around at the end. They are being asked to solve something that was not created with proper planning. If the owners want to continue to have public services, they are going to have to have some sort of upgrade to the road.

Mr. Allen concurred with Mr. Taintor. He is a little concerned as this is so far out of normal City standards that they might set a precedent. He thinks they should bring it to Public Works.

Ms. Roberts also agreed with Mr. Allen. She felt the Board has a long standing policy of not accepting projects with dead end streets. The issue of the turn around would be a major issue and the major cost of upgrading sounds like a lot.

Mr. Allen made a motion to refer this to DPW for a report back at the next meeting. Ms. Roberts seconded the motion.

The motion passed unanimously.

.....

V. PLANNING DIRECTOR’S REPORT

Atlantic Heights area. There is a lot more interest in upgrading structures and more property owners are coming to us to take advantage of the special provision in the Zoning Ordinance that allow them to take advantage of reversion to the 1919 subdivision plan. They have recently done two and a third has come in this week.

Coastal Resilience Project. This is looking at the impacts of sea level rise and climate change on the coastal areas of Portsmouth and they consulted a consultant team who id about to have a final report and they will have some sort of public outreach forum. This will feed into the Master Plan for recommendations for infrastructure improvements and zoning changes. Peter Britz is coordinating this project.

Downtown form based zoning project. They have hired a firm to look at the historic core of downtown and come up with more specific design standards for infill and design projects. This will give more guidance to developers, the HDC and the Planning Board. Nick Cracknell is working on this project.

Wayfinding project. Juliet Walker, the City Transportation Planner, is overseeing this project. They have received 9 proposals and they should be selecting a consultant in the next couple of weeks and hope to have Phase I in place by the end of June to start placing signage. There will be opportunities for public comment.

Transportation Policy Committee. The Mayor established the Committee to look at policies and principals for the City’s approach to transportation. They have been making presentations and will eventually be making a recommendation to the City Council.

.....
VI. ADJOURNMENT

A motion to adjourn at 9:40 pm was made and seconded and passed unanimously.

.....
Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on April 18, 2013.