

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

MARCH 21, 2013

MEMBERS PRESENT: John Ricci, Chairman; Nancy Novelline Clayburgh, City Council Representative; David Allen, Deputy City Manager; Richard Hopley, Building Inspector; John Rice; William Gladhill; Karina Quintans; Colby Gamester; and Elizabeth Moreau, Alternate

MEMBERS EXCUSED: Anthony Blenkinsop, Vice Chairman

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

A. Approval of Minutes from the November 15, 2012 Planning Board Meeting – Unanimously approved.

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Councilor Novilline Clayburgh made a motion to take Item A, Public Hearings, Old Business, Items C&E, Public Hearings, New Business, Items A&B, City Council Referrals and Requests be taken out of order for purposes of postponement. Ms. Quintans seconded the motion. The motion passed unanimously.

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A. The application of **John L. Ahlgren and Bessie Palmisciano, Owners**, for property located on **Langdon Street**, requesting Final Subdivision Approval to subdivide one lot into four lots with the following:

- a. Proposed Lot 1 consisting of 5,022 s.f. and 63.35' of street frontage.
- b. Proposed Lot 2 consisting of 5,301 s.f. and 68.50' of street frontage.
- c. Proposed Lot 3 consisting of 4,965 s.f. and 43.23' of street frontage.
- d. Proposed Lot 4 consisting of 7,920 s.f. and 40.94' of street frontage.

Said lot lies within the Mixed Residential Business (MRB) where a minimum of 7,500' of lot area and 100' of street frontage is required and also within the Office Research (OR) District where a minimum of 3 acres of lot area and 300' of street frontage is required. (This application was postponed at the February 21, 2013 Planning Board meeting.)

The Chair read the notice into the record.

City Councilor Novelline Clayburgh made a motion to postpone this matter to the April Planning Board Meeting. Mr. Hopley seconded the motion. The motion passed unanimously.

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C. The application of **Corpus Christi Parish, Owner**, for property located on **Middle Road and Peverly Hill Road (Calvary Cemetery)**, requesting Amended Site Plan Approval to install 380' x 12' of new paved driveway and open concrete bins for storage of maintenance materials, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 242 as Lot 5 and lies within the Single Residence A (SRA) District.

The Chair read the notice into the record

Deputy City Manager Allen made a motion to postpone this matter to the April Planning Board Meeting. Ms. Quintans seconded the motion. The motion passed unanimously.

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E. The application of **Jean R. Johnson, Owner, and Thomas Johnson, Applicant**, for property located at **50 Martine Cottage Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland and a wetland buffer, to construct a 850' ± pervious driveway to access a proposed subdivided lot, with 247 s.f. of impact to the inland wetland and 7,900 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 202 as Lot 16 and lies within the Rural Residential (R) District.

The Chair read the notice into the record

Mr. Hopley made a motion to postpone this matter to the April Planning Board Meeting. Councilor Novelline Clayburgh seconded the motion. The motion passed unanimously.

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A. Letter from Aphrodite and Louis Georgopoulos regarding zoning of property at 1900 Lafayette Road. (This request was postponed at the January 24, 2013 Planning Board Meeting.)

Councilor Novelline Clayburgh made a motion to postpone this matter to the April Planning Board Meeting. Mr. Hopley seconded the motion. The motion passed unanimously.

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B. Letter from Jonathan N. Bursaw, Bursaw's Pantry, LLC, 3020 Lafayette Road, requesting to change the zoning on property from Mixed Residential Business (MRB) to Gateway District.

Deputy City Manager Allen made a motion to postpone this matter to the April Planning Board meeting. Councilor Novelline Clayburgh seconded the motion. The motion passed unanimously.

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III. PUBLIC HEARINGS – NEW BUSINESS

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

A. A public hearing to consider the request of Portsmouth City Realty Investment Trust and Airgead Realty Trust, Owners, to rezone parcels at 678 and 680 Maplewood Avenue from Single Residence B (SRB) to Business (B). Said parcels are shown on Assessor Map 220 as Lots 89 and 90.

Chairman Ricci pointed out the letter provided from Linda Harvey.

Attorney Bernie Pelech appeared on behalf of Portsmouth City Realty, along with Chris MacInnis, principal and applicant. Attorney Pelech described the property as unique, cut between a business district, the electrical supply house and I-95. It has been used for residential purposes, but due to the proximity to the Business District it has been difficult to continue to use this property for residential purposes. Attorney Pelech felt if the Planning Board considered the Master Plan (MP) and the conceptual plan that was submitted, they will see that rezoning this property would be in the City's best interest. The financial aspects would be beneficial and the benefits to the City would be substantial, increasing taxes in the amount of \$60,000 to the City. Attorney Pelech said it is in keeping with the Master Plan because it emphasized many things in the MP such as encouraging mixed use development near major corridors. There are discussions of work force housing, 28 units of 1-2 bedroom apartments, which would not overburden the school system with minimal impact to the City's infrastructure with water and sewer sufficient in the area to accommodate the units. The site is within walking distance to the New Franklin School. Work force individuals that could walk to town or utilize the ECoast bus stop in front of the property, and the market rate rentals would not be out of reach of work force individuals. The mixed use development emphasized in the MP would be implemented with one-third of uses non-residential such as business offices, perhaps a laundromat with residential upper floors.

A few months ago the applicants came before the Board, and wanted to include the Moretti property, but the abutters of the Moretti property were not in favor of the proposal. This proposal deals only with the property that fronts on Maplewood Avenue. The current proposal would buffer the Moretti property with a 300' PSNH easement along the back of the property that cannot be built upon. The proposal for work force housing as mentioned in the Master Plan would not be impacting any of the surrounding properties with I-95 to the north, 300' utility easement and Moretti property to the west, a large electric supply wholesaler and school bus depot to the south, and a couple of residents and the Odd Fellows Lodge across the street.

Altus Engineering put together a traffic report and traffic could be handled on Maplewood where the only ingress and egress would be.

Attorney Pelech felt this met the intent of the Master Plan, it is a good proposal, having worked very closely with the Planning Department Director, Rick Taintor, and he felt the Department Memorandum was positive.

Chairman Ricci opened up public hearing, and called for speakers.

Nancy Johnson of 81 Clinton Street said they live within close proximity of a 20 minute walk up Stark and down Myrtle. Ms. Johnson said both lots were purchased last month and zoned Single Residence B (SRB). The three lots across Maplewood are residents, and Kane St is SRB as well. The only exception in the area is Lot 88, which is grandfathered, and they have seen businesses come and go, and left empty. Ms. Johnson expressed concern that granting the zoning change would set a precedent and other surrounding lots may wish to develop businesses as well. Ms. Johnson said a neighborhood

people looking out for one another, and is concerned that the neighborhoods are being chipped away in Portsmouth and disappearing.

Fred Lewis of 238 Maplewood Avenue said he and his wife, Susan have lived there 36 years. Mr. Lewis said he sees the proposal as a possibility of devaluation of his property and neighborhood, with the commercial entity aspect setting up a precedent for establishing small businesses, even allowing convenience stores to pop up as well along that corridor. Mr. Lewis also disagreed with the traffic study saying additional traffic would be an added burden on Maplewood. He opposes the project.

Diane Frye of 217 Myrtle Avenue, an abutter to Moretti land, said was excited to be in an affordable residential area near a school for kids when she bought her house a few years ago. Ms. Frye expressed concern that the proposal will create congestion, traffic, overcrowded schools, and burden other services. Ms. Frye said she doesn't believe this is an appropriate location to rezone to mixed business., noting that the existing abutting business was fought by residents when first proposed, it changed hands several times, and was vacant requiring police patrol for a time at tax payers' expense. Ms. Frye said she thought the suggested increase tax revenue would barely cover one city employee salary, which would barely cover all the additional expenses. Ms. Frye said she feels allowing a zoning change would change the character of the neighborhood she invested in, and pays taxes on. Frye said she opposes the project, and suggested the developer consider building single family residences on the property instead.

Frances Densmore of Beechstone Apartments said she is concerned about the City as a whole, being a resident for the last 13 years. Ms. Densmore said Portsmouth is a very attractive, desirable community, but they have allowed large hotels and condominium developments with large footprints, and many stories as allowable, making us look like low hanging fruit of endless growth to developers. We need to take a deep breath and think about how much more we want to grow, which also burdens congestion downtown, and increases the necessity for more parking garages. Ms. Densmore questioned the proposal for 2-bedroom "affordable housing" which would only accommodate singles or couples with one child, or possibly two young children of the same gender, but asked why not propose residence keeping in character of the neighborhood for working families with 2-3 children, not condominiums. Lastly, Ms. Densmore asked why all of the trees behind the property have been cut when nothing had been approved yet.

Ralph DiBernardo of 1374 Islington Street, said he and his wife, Linda believe the concern for residential integrity in Portsmouth is not limited to the residential abutters of this proposal alone because commercial developments increase pressure to the surrounding area as well. Mr. DiBernardo said single family residents have a right to expect the City to protect their neighborhoods, and their investment in their homes. A commercial zoning change is incompatible and would disturb residents with more lights, noise, traffic, trash collection, and service vehicles. Mr. DiBernardo said it appears that some are so focused on development, and wouldn't mind if we were all commercial and apartments, but Portsmouth is only 15 square miles with a limited area for development. Commercial creep marginalizes residential areas, for example the problem with Elwyn Park where many homes fronting Lafayette Road no longer hold the same value as residential and have asked to be commercial. But the rest of Elwyn Park asked to vote down the zoning change. Mr. DiBernardo asked the Board to vote the proposal down.

Ed Miller of 5 Central Avenue has lived in his home for more than 10 years. He purchased house with desirability of access to downtown and the neighborhood location. He wanted to point out that it really is a neighbor hood and there are unique features of the businesses that need to be taken into account.

The businesses are not intrusive, they are quiet and have very little activity. The Odd Fellows Club meets only once a week, with only a half-dozen cars in parking lot, and are very quiet. Most of the business activity at Rexell Electric Supply is conducted very early in the morning, imposing very little traffic, and are very quiet. Mr. Miller said the bus company on Central Ave. also has little activity except when they leave early in the morning and when they return. Residents are aware that they live near business zoning, but there is a line, and those abutting businesses are all good neighbors, whereas the proposal for further development doesn't specify what those businesses would be, and the impact they might have on neighboring residents. Mr. Miller said he purchased his home knowing what the abutting businesses were. Mr. Miller said retail businesses would have a greater impact than the current abutting businesses. Mr. Miller said he believes the applicant purchased the property knowing it was residential property, but plans to convert it to a business as an investment, and in order for his investment to work it could diminish Mr. Miller's residential property investment. Mr. Miller said development should not be done at someone else's expense, and he opposes the rezoning.

John Flintosh of 187 Myrtle Avenue bought his house 3 years ago, and he and his wife have a young child and a dog which they enjoy walking in the neighborhood. Mr. Flintosh feels allowing a business without knowing what would be going in makes him uneasy. He is also concerned that the number of apartments may not be limited to 28, which is a lot already. Mr. Flintosh believes traffic coming down Central Avenue onto Maplewood will be affected with added congestion, and it will be dangerous for children in the neighborhood. Residents have already requested that traffic slow down in the area.

Pat Moretti of 63 Clinton Street, also representing his mother, Catherine Moretti of 261 Myrtle Ave said he has lived, worked, and appreciated the City he calls home. He recalled what the city was like prior to zoning with disjointed, intermixed neighborhoods and business until the City set up specific business and residential districts during urban renewal in the 1960's. City created business districts, office zones and neighborhoods, was better able to control growth and traffic. The City rarely allows commercial uses in residential areas, unless it made sense and improvements such as removing the heavy traffic of trucks which improved residential areas. Controls and balances were achieved to keep neighborhoods intact. Maplewood & Central Avenues were benefactors with Market Street Extension. Mr. Moretti said the highway exists and is accepted by residents, but only a few businesses are grandfathered, and additional expansion should not to happen as a full scale zoning change is too drastic and would greatly impact the residents of this area. Zoning was created to protect the City and its residents, and development should be kept within confines of current zoning. He is opposed to the change.

Howard Mangol of Court Street who also has a lot on Maplewood Avenue said he doesn't like the idea, never has, and never will.

Pamela Shore of 623 Dennett Street also owns property on 214 Myrtle Ave. Said she cannot believe they plan to shove so many units into this small lot, saying the density of project doesn't seem in proportion to area. She is also concerned how this would affect New Franklin School, which is constantly being encroached on by hotels and developments in the area, traffic on Woodbury, and buses. Ms. Shore noted that a lot of the speakers don't even live in this neighborhood, but people around the City are opposed to this zoning change. Changing from residential to business zoning enables developers to make money, but is not fair to residents. She encourages them to not change the zoning.

Joe Moretti, spoke on behalf of his mother, Catherine Moretti, who has lived at 261 Myrtle Avenue for over 55 years before I-95 came in and split her property in half. The 300 foot buffer Attorney Pelech

mentioned is lengthwise, but only 50 feet wide from her house. She would like to know if they can take the power lines down any time they'd like. Mr. Pelech said it would be difficult to make a profit off residential housing, but it has been a single resident house with multiple apartments, which generated income already. Mr. Moretti said he only received the document on Monday and didn't have a lot of time to look into it, but heard there is a proposal to put in 28 units if housing, and wonders how two cars per unit, as well as the commercial trucks would get in and out of the lot without doing something with the intersection. Moretti said his mother is very upset at the idea of squeezing in high density "work force" housing which could then be turned around and sold as Condos later for more money. The Moretti's said they didn't think it would be right for the neighborhood.

Susan Lewis of 1238 Maplewood Avenue said she agrees wholeheartedly with Joe Moretti. In 1976 she purchased a nice little home with magnificent trees planted on Frank Jones property. Ms. Lewis said commercial creep has been continuous, and it's wrong. She asked them not to ruin their neighborhood.

Lenore Weiss Bronson of 828 Woodbury Avenue said she is not a direct abutter but still someone who doesn't want this to happen in her neighborhood. She said Attorney Pelech had said there was nothing residential around the property, but she counted eight houses across the street of the lot on Maplewood and then seven more, plus more on Cutts Avenue. She said Attorney Pelech also talked about the Master Plan, but the MP emphasizes a residential quality of life, and open space, which has gone by the wayside of late. When the City was working on saving the Great Bog, the committee was asked to look for open areas in Portsmouth to preserve. She doesn't remember anyone ever having property zoning changed to accommodate a development project. Normally they go to the BOA for a variance, and are asked to meet the five criteria when claiming hardship before being considered for a zoning variance. She was given an article from the last time the developer was here and abutters spoke, and their request was denied. The engineer then stated there was no law prohibiting clear cutting the lot so they went ahead and did it since Portsmouth has no tree ordinances, but the spirit in which it was done concerns Ms. Bronson. He also said that nothing specific was being planned at that time, and that he didn't think anyone would want to put a house on that property next to the highway yet they are now proposing work force housing with 28 units there. She believes this is about someone making a lot of money. Other parts of the City like Christian Shores, Elwyn Park, South End, Woodlands are similarly zoned, but in the last year the Planning Dept. has created and put forward proposal to put businesses in currently residentially zoned neighborhoods so is concerned that this proposal will set a precedent. Rite Aid is never going away. These decisions and results are irreversible, but developer's desire to make money shouldn't take precedence over and destroy the integrity and quality of residential quality life. Ms. Bronson doesn't think it far-fetched for residents to be concerned with long term implications. Bronson presented letters opposing the proposal from Walter Lewis of 700 Woodbury Avenue, Patricia Taylor, Paula Glynn of Blue Heron Drive, and read a letter from former member of the BOA and Attorney Duncan McCallum of 536 State Street who is opposed with spot zoning. Letters were placed on file.

Eric Weinrieb is a resident of 9 Middle Road and is also President of Altus Engineering that prepared the developer's concept plan, but he also represents the next applicant, Catherine Moretti's subdivision, which puts him in a unique situation. On behalf of the developer, Mr. Weinrieb said he heard a lot about the negative sides of re-zoning this property, but he said people rarely come out when they are not against something, and the only people who speak out are those who object. Mr. Weinrieb said if nothing changed in the City, it would be all open space in this end of town. The property is sandwiched between I-95, businesses and is zoned residential, but Mr. Weinrieb said the business is not grandfathered, it is zoned for business. They are not proposing spot zoning, or gross change, just

moving the business district over to include this property up to the I-95 boundary. Mixed use is what business district required is, and 28 units is the maximum density that this lot could handle, but not necessarily what the Board would approve if rezoned. Mr. Weinrieb said it is a long process to design a project like this, and there's no easy way to go forward with rezoning. Mr. Weinrieb said it's a catch 22 – people panic if you come in without showing them anything, but they still panic when presented with a concept. He believes it is important to look at the big picture. The vibrancy of downtown is because it is a mixture of businesses, offices and residences. He encourages the Board to grant this on merits, claiming a lot of people in city who are not present would be in favor.

Chairman Ricci called for second and third time speakers.

Ed Miller of Central Avenue, 2nd time speaking against application said the point needs to be made that a lot of people in the City who would appreciate when a need is evident that changes may be necessary to meet that need, but the last time the applicant came before the Board to rezone the parcel, he went on record to say that if they knew exactly what would be there, it would be easier. However, to have this rezoned with no opportunity to assess how the new use would fit into their neighborhood carte blanche doesn't give residents opportunity to make an informed decision. Mr. Miller said he chose the location of his home because it is walkable to the Downtown area, and thinks someone else would like the lot in question too, despite the developer's claim that it is undesirable as a residence with limited use being between I-95 and a business. Mr. Miller went on the say might not be opposed to the proposal if they were to just construct residential units without any businesses. Miller said he was concerned that expanding the business zoning to the lot could potentially diminish property values and his residential investment.

Pam Shore of 623Dennett Street, also owner of a 4 unit apartment building on 214 Myrtle Street purchased as an investment for her children's college expenses, which was researched with no plans to change it, tear it down and make it bigger because it is not allowed in the residential neighborhood. It is not the neighborhood's fault if an investor purchases an undesirable piece of property to do something with it that is not allowed.

Chairman Ricci closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Allen moved to approve the request to re-zone for the sake of discussion. Ms. Quintans seconded the motion.

Ms. Moreau said she would not support the proposal, saying she drove around the neighborhood to get a sense of it. She believes single family residences could be built there or even smaller workforce housing without constructing a giant building.

Mr. Gladhill said he also drove down Maplewood Avenue, and thinks the house that is currently there fits in well with the neighborhood. Mr. Gladhill said SRB is a better fit for the lot than rezoning to business. The businesses in this neighborhood are the exception and not the standard. This idea and proposal would create the tallest building from Maplewood Ave to Woodbury Avenue until you get to Portwalk. There's also a concern that the creation of a lot for 28 residential units and a business would require a good sized sea of asphalt.

Mr. Rice said he would oppose the motion. While impressed with the opposition vocalized by abutters, he is also taking into consideration the development on Spinney Road. As land becomes harder to come by for single family development, there is substantial single family development going in next to highways. While it may not be the optimal spot for single family development because of the noise from I-95, he doesn't believe it is out of the question to have successful development, considering it is happening elsewhere.

Councilor Novelline Clayburgh said she also would not support the motion, noting that one of the things that makes Portsmouth great is the neighborhoods and the pride they have. If they made this a business site, she is afraid that would continue to creep into the residential zone, as has happened before, and so it is important to protect our neighborhoods. Councilor Novelline Clayburgh said she was glad to see people come out and speak against the issue.

Mr. Hopley is not in favor of rezoning, and said there are other options in the Zoning Ordinance that would impact the neighborhood less from a commercial standpoint. Keeping it residential could still lead to multifamily potential, townhouses would be possible if zoned General Resident A, B or C, or Mixed Residential, Office or Business, but he believes the business component lends greater impact on neighborhood.

Mr. Taintor clarified that the only reason the applicant is looking for business zoning for the residential development potential. Business is only zoning it could be changed to that would not raise spot zoning concerns because it is an expansion of an adjacent business district, it touches SRA and Business districts, but there is no other general residential district, not other garden apartment district, so you could not do townhouses. If there was an option of a general business the applicant would probably prefer that. It would be hard to prove a hardship before the BOA for other zoning, so Business or SRA would be the only zoning options.

Mr. Hopley asked if a townhouse would be permitted, and Mr. Taintor said multi-family would be if zoned mixed use, but not townhouses.

Chairman Ricci said he still was not supporting motion. Having heard everyone that spoke both for and against, including the engineers he said his decision was based on the importance of maintaining the bonds that are developed in small pocket neighborhoods, though he lives in a larger neighborhood himself. He also expressed concern when looking at the layouts and viewing a sea of asphalt and lights.

Deputy City Manager Allen said he made the motion for discussion purposes, and upon reviewing with the Planning Director, he sees what is shown on the concept plan is a worst case scenario and beyond approvable. Mr. Allen said he would envision something smaller going on the lot. Mr. Allen said he appreciated the neighborhood's concerns. The reason he made the motion was because Planning Director Taintor said the lot is abutted by a business district that encompasses three-quarters of Central Avenue, and bordered by I-95 with residential and utility easements bordering those properties. Mr. Allen said he was not sure if he can vote against his own motion, however.

The Board voted unanimously not to recommend the zoning change to the City.

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B. A public hearing to consider amending the Site Plan Review Regulations to provide for preliminary review of applications as authorized by RSA 676:4, II; to specify what constitutes a completed application as required by RSA 676:4, I(b); and to specify the threshold levels of work that shall constitute “active and substantial development or building” and “substantial completion of the improvements as shown on the subdivision plat or site plan,” as authorized by RSA 674:39, III.

Planning Director, Rick Taintor said this is a 3-part proposal for changes to Site Plan Regulations which started with the zoning change regarding building height. There was concern at the time from a couple of developers who already had received variances from the BOA for projects. However they had only talked informally with the HDC during work sessions, and no had application to Planning Board. Under State law applications for any development projects become vested only if they have had a notice of a public hearing with the Planning Board prior to notice of public hearing for the City Council second reading on the zoning changes.

In Portsmouth there are a number of different bodies involved, and many development projects start with the BOA. As an example, the project on Maplewood Avenue, and the project on the corner of State Street and Wright Avenue received parking variances from the BOA, but hadn't gone through the Technical Advisory process, or applied to the Planning Board for a site plan review. And because they went to the HDC first instead of going to TAC, they were unable to be exempted from the zoning change on height. Mr. Taintor said he thought the recommendation came from the Planning Board to exempt those two projects that had hearings before BOA, but when it got to the City Council, they voted against the exemption so those projects are now subject to the change in the building height determination. Since then the development community became aware of the issue and wanted to have a way to vest their projects earlier in process. State law does provide a way for applicants to do that with two phases of pre-application review before the Planning Board before formal application. One is called Preliminary Conceptual Consultation which is a general review of the project, and does not provide any protection. The second is called a Design Review Phase which deals with the site design to get to a certain degree of engineering so the Planning Board can give feedback on any issues that may come up during the formal application process, and allow public comments during a public hearing with no commitments from the Planning Board.

Mr. Taintor presented a draft amendment to Site Plan Regulations that would allow, at option of developer, either phase to allow a public hearing with the PB earlier than a developer currently has before starting the formal application process beginning with TAC. Taintor said it would probably not be used frequently, only with more complex cases involving the HDC, Conditional Use permits, and cases requiring variances. It would be more work for the PB to review these projects twice rather than once, but it would be a good way for the PB to get some meaningful feedback before it goes to TAC.

An alternative would be to change the Site Plan Regulations to allow the applicant to come to the PB with a full site plan review application scale of plans to get an initial review at an open public hearing before TAC. Mr. Taintor referred to page 8 of his memo outlining the first option with 31 days to get through process compared to the second option which could take two to three weeks, but would require a full site plan review early in the stages of development, and but may not be as appropriate before going to TAC, so the preliminary review may be a better option to get through the public hearing earlier in the process.

Deputy City Manager Allen reiterated that currently someone could not apply for a Public Hearing with the Planning Board without going to TAC first. Mr. Taintor confirmed that was a City regulation to allow the Planning Board the benefit of having TAC review a project before a public hearing, and

many communities don't have this regulation because it lengthens the process and the opportunity for an applicant to have a public hearing early in the process.

Councilor Novelline Clayburgh asked when the HDC usually gets involved. Mr. Taintor said the HDC can get involved at any time during the process, but since the PB process is a usually pretty tight, applicants typically go to the HDC first because it can be a lengthy approval process, they can go without a full set of plans, and applicants like to be in multiple work sessions before going to public hearing if it is a large project. However it can be a Catch 22 in some situations such as the 51 Islington Street project which went through HDC, and then PB had density concerns so it had to go back to the HDC. This amendment recommendation would allow the applicant to start the PB process without detailed engineering and then they could go to HDC so long as they come back to PB within a year.

Councilor Novelline Clayburgh asked if applicants would know that applying for a preliminary PB hearing would apply to all zoning in place which protects them from any zoning changes. Mr. Taintor said zoning changes would affect anything shown on the site plan, however building height is often not shown on the site plan so it would not be protected from a zoning change if not shown. Therefore the applicant would need to be careful to show everything on site plan to get that protection. Also, protection only lasts for one year from beginning of design review phase, so it wouldn't permanently protect them if they don't come back for final approval.

Mr. Hopley clarified that a plan wouldn't be protected if something wasn't included on a site plan submittal. Mr. Taintor said that was correct, it just protects them from changes that affect the site plan as submitted so applicants and the Planning Board would have to be careful.

Ms. Quintans asked how often this scenario has happened in the past. Mr. Taintor said he didn't know. The building height issue was the first time it came up since he has been Planning Director.

Mr. Hopley said as the old timer he really thinks the design community thought as long as a building permit application was filed prior to a zoning change they were protected, so there used to be a flurry of applications prior to a zoning change, but Mr. Taintor researched the issue and found that was not how it should be done. Mr. Taintor said the law is very clear that a development is only protected by a zoning change if the first notice of a Planning Board public hearing or a second reading for the project was made.

Chairman Ricci said he could not support or ask an applicant to bring a fully vested site plan for a public hearing before the Board at first pass, and thinks it erodes what they're trying to do with the initial grass roots set of plans. Mr. Taintor said page 2 of the draft Regulations under Design Review Phase, Item 3 they are asking to include all information that is required for a site plan application like lighting and traffic for the Board to identify issues that might come up, but not detailed engineering. Chairman Ricci said that made more sense.

Mr. Taintor added that the first statute allows pre-application review, but also requires the PB to determine the application is complete so should be added as the second change to the regulations. The first vote would be to say complete, and the second vote would be to vote on the application itself, unless the application is not complete, and sometimes they might vote on waivers on those items. The initial vote would be at the beginning of the hearing. Chairman Ricci said the PB would first read the application, then vote, and then go through regular process.

Mr. Allen added that a staff memo would have a check list listing the criteria and to show the Board what items have been received, and if not received, then the Board could vote for a waiver.

Mr. Taintor said the third change is to define the terms “active and substantial development” and “substantial completion” regarding exemptions from zoning changes after site plan approval. There is a five year exemption from changes to zoning regulations, site plan review regulations, and subdivision regulations which allows a development to proceed without the fear of regulations changing since many developments take years to build, provided that active and substantial development has begun within 24 months from date of approval and continues with the project to prevent anyone from being exempt if they stop the project. Once substantial completion is done, permanent exemption from the zoning changes would be in effect. The proposed changes on Page 4 shows definition of “active and substantial development” and “substantial completion” of building or improvements as shown on the site plan, as well as a check list.

Mr. Gladhill asked if the conceptual consultation and design phase would run like regular work sessions. Mr. Taintor said the preliminary conceptual consultation phase would be run like a work session, and the design phase would be a public hearing.

Chairman Ricci opened public hearing and asked for speakers.

Mr. Stephen Kelm, developer of Wright Avenue Rosa Parking Lot said they were caught in the middle of the building height zoning change that occurred over the past months. Mr. Kelm said the process had always been that you go to HDC first, then TAC and then the Planning Board, and that was the process they followed with Wright Avenue. They had a building designed and spent a year with the HDC, and thought their design was complete in December when the zoning ordinance was changed. They modified the building slightly, but it seemed unfair that an applicant could spend a year and then have regulations change their whole design. Mr. Kelm said it was nice that something is being done about it since the zoning change had potential to drastically alter their project. Mr. Kelm said he thought it is appropriate to have something in place to vest the applicant because it is impossible to do all the engineering upfront when not sure what will get approved. The HDC has a lot of authority over mass and height look of building which needs to be determined first, and it's helpful to get a feel for what they will approve before going through the rest of the process, so putting steps in place to help and vest an applicant going through the process is important.

Chairman Ricci closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

1. Mr. Hopley voted to amend the Site Plan Review Regulations by deleting existing Section 2.4.2 and inserting a new Section 2.4 – Preapplication Review, as set forth in the document titled “Site Plan Review Regulations – Proposed Revisions,” dated March 21, 2013, and Mr. Rice seconded. Motion passed unanimously.
2. Mr. Hopley voted to amend the Site Plan Review Regulations by inserting a new Section 2.8 – Determination of Application Completeness, as set forth in the document titled “Site Plan Review Regulations – Proposed Revisions,” dated March 21, 2013, and Mr. Rice seconded. Motion passed unanimously.

3. Mr. Hopley voted to amend the Site Plan Review Regulations by inserting a new Section 2.15 – Exemption of Approved Site Plan from Changes in Land Use Regulations, as set forth in the document titled “Site Plan Review Regulations – Proposed Revisions,” dated March 21, 2013, and Mr. Rice seconded. Motion passed unanimously.

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D. The application of **Catherine T. Moretti, Owner**, for property located at **261 Myrtle Avenue**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots with the following: Proposed Lot 1 having 21,474 ± s.f. (.4930 ± acres) and 121.60’ of continuous street frontage on Myrtle Avenue and Proposed Lot 2 having 93,050 ± s.f. (2.1361 ± acres) and 373.21’ of continuous street frontage on Central Avenue, and lying in a district where a minimum lot area of 15,000 s.f. and 100’ of continuous street frontage is required. Said property is shown on Assessor Plan 220 as Lot 87 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, addressed the Board. Also present was Joe and Patrick Moretti, sons of Catherine Moretti. The 114,524 square feet property is located at 2611 Myrtle Avenue, Map 220, Lot 87. The applicant is requesting preliminary and final approval of a subdivision into two parcels, one 21,474 square feet, and the other 93,050 square feet. There are no wetlands on property bounded by I-95, Central and Myrtle Avenues. The lot also abuts the property at 678 and 680 Maplewood Avenue considered for rezoning earlier tonight. This proposal is to remove the existing house for one lot subdivision. Mr. Weinrieb said he received the Planning Department Memorandum and respectfully disagrees with the alternative layout. They proposed a lot line with minimum frontage on Myrtle Avenue to meet the Subdivision Regulations is perpendicular with existing roadway. Section 2.2A, Lot Arrangements and Subdivision Regulations, says all side angles shall be at right angles to street line on quadrangles lots and all other lots, or radial to curves street lines and arrangement of lot placement at right angles shall be avoided where practical. This is not designed as a corner lot, it is designed to have all frontage on Myrtle. The Planning Board’s concern that further potential for subdivision with 300’ of frontage on Central would make frontage on the other lot 250 feet, whereas the applicant’s plan has an 300 feet frontage, which would still make a three lot subdivision possible, and although they have no immediate plans for three lots, with 93,050 on one of the parcels they would like to keep that options open so they could possibly build a road.

Mr. Hopley asked what the gray area showing a 5’ overlap on the northerly side of the parcel indicated. Mr. Weinrieb said Knight Hill Surveying surveyed the Moretti side first, with the other side done by another surveyor later, and they found an error in the Knight Hill survey, indicated by the grey area. Knight Hill has acknowledged the error and will be correcting it.

Chairman Ricci opened the public hearing.

Ms. Nancy Johnson of 81 Clinton Street said it would be nice to see property remain SRB zoning. Each lot exceeds the minimum and she sees no problem.

Ed Miller, 5 Central Avenue said he in favor of applicants request as it fits in nicely with the neighborhood.

Chairman Ricci closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Allen moved to grant Preliminary and Final Subdivision Approval as presented. Mr. Rice seconded, and the motion passed unanimously.

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F. The application of **Wright Avenue, LLC, Owner, and Stephen Kelm, Applicant**, for property located **on Wright Avenue and State Street**, requesting Site Plan Approval to demolish the existing building and construct a new 5-story, 9,138 ± s.f. footprint building, with parking and retail on the first level and residential on the upper levels, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 105 as Lot 18 and lies within the Central Business B (CBB) District and the Historic District.

Chairman Ricci read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Paul McEachern from Wright Avenue, LLC came before the Board on behalf of the applicant. Also present was Bruce Crawford of Ambit Engineering and Steve Kelm, Manager of Wright Avenue. There are some conditions that have been addressed by the applicant and the Planning Director has made comments on those. Mr. McEachern said he thought Comment 3 regarding a contribution to the expansion of the sidewalk should be determined by the City and the applicant rather than just setting a figure.

Ms. Moreau asked how many parking spaces are being lost in the municipal parking lot as a result of widening the sidewalk. Mr. Allen said the parking lot is a city project in conjunction with DOT, and a recent memo went to City Council. Originally design had 45 or 47 spaces, but as a result of fire department requirement for aisle width, they had to make some spaces up against building parallel rather than angled so it ended up being 37 spaces in the front public parking area.

Mr. Taintor indicated that the Department of Public Works has assigned street numbers 67, 73 and 77 State Street, and should be reflected on the revised site plan.

Mr. Taintor referred to the third item which Attorney McEachern mentioned and explained that an itemization of estimated costs had been prepared for the expansion of the sidewalk area and plaza for public safety issues, turning the head in parking into parallel parking. The total estimate is \$56,157.20, or less. They are recommending with DPW that the third condition read “That the applicant shall contribute 50% of the cost of the brick sidewalk between the applicant’s property and the City parking lot, up to a maximum of \$30,000.” The City expects the actual cost will be less than the estimate.

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 Site Plan approval subject to the conditions listed in the Memorandum. Mr. Hopley seconded and reiterated the numbers that the Planning Director just quoted.

Councilor Novelline Clayburgh asked if the change in zoning regarding building height effects this project. Mr. Taintor explained that Mr. Kelm has redesigned the project and it falls within the revised height requirements.

Mr. Gladhill explained that he would usually see this at the HDC first. They have had work sessions but no public hearing with a final approval. Therefore, for him, tonight’s vote will be as if it was approved by the HDC and he reserves the right to not vote in favor at the HDC. He asked about a condition that this project be approved by the HDC, however Mr. Taintor said that wasn’t necessary because it is a requirement.

Ms. Moreau had concerns about the size of the building. There is a very small, historic building right next door which will be dwarfed by this project. She was concerned about the density in this corner. This is already a very busy, high traffic area, and is concerned with how much will go on in and outside as a result of such a large building.

Councilor Novelline Clayburgh felt it helps when they see the drawings of what it actually looks like after completion. Chairman Ricci referred to the renderings in the plan set. Councilor Novelline Clayburgh said they saw something different the City Council level that showed what it would actually look like with surrounding buildings. She felt it was attractive.

The motion to grant Site Plan approval passed unanimously.

Conditions Precedent (to be completed prior to the issuance of a building permit):

1. The site plans shall be revised with the street addresses assigned by the Department of Public Works (67, 73 and 77 State Street) which shall replace the previous Wright Avenue address.
2. The applicant shall continue to work with DPW to coordinate the layout, grading, utilities and landscaping with the City.
3. The applicant shall contribute 50% of the cost of the brick sidewalk between the applicant’s property and the City parking lot, up to a maximum of \$30,000.

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Councilor Novelline Clayburgh made a motion for the Chairman to read Items G and H together. Mr. Rice seconded, and the motion passed unanimously.

G. The application of GSM Realty Trust, Owner, and 299 Vaughan Street, LLC, c/o Cathartes Private Investments, and the City of Portsmouth, Applicants, for property located at **299 Vaughan Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, to demolish two buildings and to construct a 90 space surface parking lot with 865 s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 124 as Lot 10 and Assessor Map 123 as Lot 15 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District.

H. The application of **GSM Realty Trust, Owner, and 299 Vaughan Street, LLC, c/o Cathartes Private Investments, and the City of Portsmouth, Applicants**, for property located at **299 Vaughan Street**, requesting Site Plan Approval to demolish two existing buildings and construct a 90 space municipal surface parking lot, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 124 as Lot 10 and Assessor Map 123 as Lot 15 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District.

Chairman Ricci read the notices into the record.

SPEAKING TO THE APPLICATION:

Patrick Crimmins, of Tighe & Bond, addressed the Board on behalf of the applicant. Also present was Tim Levine, of Olde Harbour, LLC representing the applicant 299 Vaughan Street, LLC. Asking approval for a temporary 90 space municipal parking lot. This is the same agreement that the City previously had for Portwalk parking lot that has since been removed. The parking lot will be in place for a minimum of 2 years and could extend to 10 years if agreed. The applicant is hoping it is the shorter length of time because they recognize it is not the best investment for their property, but good for time being. They have had extensive meetings with the City, meeting with DPW on February 1, 2013, Planning Department on February 5th and Environmental Planner, Peter Britz on March 12th. They went through TAC WS February 26, 2013, TAC public hearing on March 5, 2013 receiving approval with stipulations, and also attended Conservation Commission on March 13, 2013, also receiving approval with stipulations.

The site is on Vaughan Street, surrounded on three sides by buildings with Sanel Auto parts store at 225 Vaughn Street, 3S ArtSpace at 319 Vaughan Street, and 111 Maplewood Avenue on other side. Currently there are two buildings on the site, with entirely impervious area of paving in the front, and compacted gravel in the rear. It is an uplands developed site and consists of 1,000 s.f. of building, 2000 s.f. of compacted gravel, 300 s.f. of buffer within 100 foot buffer from North Mill Pond.

The proposed project is a surface parking lot, with a gated entrance to Vaughan Street. They are reusing the fixtures from Portwalk parking lot and proposing the same dark sky compliant light fixtures, however they are requesting a waiver for a detailed photometric plan as the fixtures were previously approved. They added bicycle racks for 10 spaces. There is a proposed ornamental fence along the 3S ArtSpace to prevent vehicles from moving into the loading dock area, and to prevent people from leaving without paying. It was noted that there was a recommendation to decrease the fence in front of the parking lot area. They are providing pedestrian access to and from parking lot with sidewalks, crosswalks and improvements along the right of way. They will be installing new brick sidewalks, striping and 6 spaces along front of site. In the rear they are showing two options. They originally wanted to construct a 6' chain link fence to prevent pedestrians from waking out the back and onto Green Street for liability concerns, but the City would like to create a pedestrian connection area. The applicant will work with the City attorney, and if there are no liability issues, they will create a stone dust path with lighting and signage.

The site currently has no storm water management with one-third sheet flow going into an existing drainage structure with no treatment to the North Mill Pond. Two-thirds of the site sheet flows to the front to a catch basin into municipal system. At request of DPW they will change the grade slightly to pitch more water from the site back into a rain garden planned at the rear of the site so that it is closer to 50/50 front to back. Porous asphalt is proposed along the front row of parking spaces. The site is

currently entirely impervious and the plan will decrease impervious by 25%. At the request of the City some landscaping will also be done along front and side of site.

Electric and telecommunications utilities are on site. Telecommunications will be used for the gate. The electric service is currently connected to transformer on a light pole, and there was a request to install a transformer elsewhere so they will work with PSNH and the abutter to insure that power is maintained to this temporary parking lot.

Regarding the Conditional Use, there is currently 3,000 s.f. of impervious surface in the buffer. The proposed condition will result in 1900 s.f. of pavement and 1100 s.f. of rain garden. Adding green space and storm water treatment will be a big improvement. The adjacent parcel belongs to the same owner, and 299 also has an option on this lot. They met with the Conservation Commission and have agreed to till, add 4" of loam, and plant a buffer enhancement area of coastal conservation seed mix between the North Mill Pond. Two additional stipulations from Conservation Commission have been since status report was submitted, one being adding 4" of loam, and the other being that this approval does not in any way grandfather the site from the need for conditional use permit for any future projects, and they would come back if and when they want to develop the site further.

Mr. Allen asked who would be responsible for following the Best Management Practices. Mr. Crimmins said he thought they would have same agreement as they had on the previous parking lot, and said they would agree to a stipulation to work with City to determine who would be responsible for maintaining it.

Mr. Allen said he would like to make sure bike staples are the City standard, and Mr. Crimmins agreed.

Mr. Rice stated there is an awful lot of unbroken asphalt in the parking lot, and while he appreciated conservation measures taken, he is wondering how temporary this parking lot is. He felt it would be insightful to have this vast pavement have some landscaping on inside braking up the parking spaces. Three years ago they were working with parking lots where they had 7 spaces and then an island with landscaping to break it up as a rule of thumb, but recently they have been hearing people say they can't afford to lose those spaces because of aesthetics so that doesn't seem to be happening any further. Mr. Crimmins said the issue of pavement, they will put all new pavement on the site, and the island would result in a loss of 4 spaces.

Tim Levine, of Olde Harbour, LLC said the Portwalk parking lot was temporary and it wasn't financially sound to invest in landscaping. This parking lot is also supposed to be short term and they do not anticipate this being a parking lot for very long.

Chairman Ricci 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. Taintor said in regards to the stipulations, they met with the Legal Department earlier in the day and the City Attorney opined that the liability issues are the same liability coverage exist in the offsite pedestrian area as exist in the parking lot so they agreed to go with the second option as shown on the plan.

Vote on Item G for Conditional Use Permit:

Councilor Novelline Clayburgh made a motion to grant the application as presented with two proposed stipulations. Mr. Allen seconded, and the motion passed unanimously.

Vote on Item H, Site Plan Approval – Waiver Request:

Mr. Hopley made a motion to waive the requirement to provide a photometric plan (Sections 2.4.4(3)(j) and 10.3(1)(d) of the Site Plan Review Regulations. NOTE: A vote of six members of the Board is required to grant a waiver). Mr. Allen seconded and the motion passed unanimously.

Mr. Gladhill asked if lights fall under HDC approval. Mr. Taintor said he didn't know. Mr. Levin said the lights and the parking gates were not part of the HDC process for the Portwalk.

Vote on Item H, Site Plan Approval:

Mr. Allen made a motion to grant Site Plan Approval with the stipulations as discussed. Councilor Novelline Clayburgh seconded.

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

1. The final site plan shall show a chain link fence preventing pedestrian access to Green Street.
2. The applicant shall prepare a Construction Management Mitigation Plan (CMMP) for review and approval by the City Attorney and Planning Department, said plan to include an action plan for the disposal of contaminated materials.
3. All required State environmental permits shall be issued prior to the commencement of construction.
4. The bicycle rack shown on the Site Plan shall be the City standard.

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V. PLANNING DIRECTOR'S REPORT

A. City Council Action on Zoning Ordinance Amendments Recommended by Planning Board

Mr. Taintor reported that at its meetings on January 24 and February 21, 2013, the Planning Board voted to recommend several Zoning Ordinance amendments to the City Council. The City Council voted at its March 4 meeting to schedule first reading on three of these amendments for March 18, 2013 and it would be good for Planning Board members to attend.

Concerns were raised about the proposed Neighborhood Commercial Use amendment, and therefore the Council did not schedule first reading with the other proposed amendments, but instead has scheduled a work session on this proposal for April 1, 2013. It is recommended that Planning Board members attend this work session to hear the Council's concerns and provide input as needed.

B. Upcoming Meetings and Work Sessions

March 28	Planning Board work session	Lafayette Road / Gateway / Office Research zoning
April 1	City Council work session	Proposed Neighborhood Commercial Use ordinance
April 24	Public meeting	Wayfinding project
May 2	Planning Board / Historic District Commission joint work session	Downtown Form-Based Code project
May 23	Planning Board work session	Master Plan
June 6-10	Multi-day public design workshop	Downtown Form-Based Code project

C. Planning Department Project Update

A new Planning Department Project Update is included in the Planning Board’s packet.

They distributed the Agenda and notice about the annual spring zoning conference.

Mr. Taintor also pointed out that they acted on one recommendation which was different than what he recommended and they did not include the standard subdivision stipulations on Moretti. There are three stipulations that are always including in subdivisions, and they are monumentation, recording of subdivision plan with deeds, provision of digital data. They will be included in the letter, but the Board should pause for a second before making motions.

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VI. ADJOURNMENT

A motion to adjourn at 9:30 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane K. Kendall
Acting Secretary

These minutes were approved by the Planning Board on .