

MINUTES

PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

APRIL 17, 2014

**MEMBERS PRESENT:** John Ricci, Chairman; Jack Thorsen, City Council Representative; David Allen, Deputy City Manager; William Gladhill; Colby Gamester; Elizabeth Moreau, Michael Barker, Jay Leduc, Alternate and Justin Finn, Alternate

**MEMBERS EXCUSED:** John Rice, Vice-Chairman; Richard Hopley, Building Inspector;

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

I. APPROVAL OF MINUTES

1. Approval of Minutes from the November 21, 2013 Planning Board Meeting – Passed Unanimously.
2. Approval of Minutes from the December 19, 2013 Planning Board Meeting – Passed Unanimously.

Chairman Ricci stated there are six items that have received requests for postponement. He asked for a motion to read those items out of order, for the purpose of postponement. Ms. Moreau made a motion, Mr. Barker seconded the motion and the motion passed unanimously.

B. The application of **Borthwick Forest, LLC, Owner**, for property located **between Islington Street and Borthwick Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a road from Borthwick Avenue to Islington Street with a proposed subdivision, with 10,700 s.f. of impact to the wetland buffer and 5,800 s.f. of impact to the wetland buffer. The properties are shown on Assessor Plan 233, as Lots 112 & 113 and Assessor Plan 241 as Lot 5. The Single Residence B (SRB) District and the Office Research (OR) District. (This application was postponed at the March 20, 2014 Planning Board meeting)

Request to Postpone

Mr. Gladhill made a motion to postpone this application to the June meeting. Mr. Barker seconded the motion. The motion to postpone the Conditional Use Permit application to the June Planning Board meeting passed unanimously.

D. The application of **Christine V. Crockett, Owner**, for property located at **209 Gosport Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 2,081 ± s.f. (footprint) dwelling and a 14' wide driveway (12' paved), with a 2' wide unpaved driveway to a wetland and 2,750 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 214 within the Single Residence A (SRA) District. (This application was postponed at the March 20, 2014 Planning Board meeting)

Ms. Moreau made a motion to postpone this application to the May meeting. Mr. Gamester seconded the motion. The motion to postpone the Conditional Use Permit application to the May Planning Board meeting passed unanimously.

F. The amended application of **2422 Lafayette Road Associates, LLC**, for property located at **2454 Lafayette Road (Southgate Plaza)**, requesting Amended Site Plan Approval to demolish 21,022 ± s.f. of existing retail space, add 11,000 ± s.f. footprint of new retail space to the existing retail/restaurant space, add a rain garden at the rear of the site, to replace the previously approved porous pavement with a gravel pad for a garden center, and make related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 273, Lot 3 and lies within the Single Residence A District.

Ms. Moreau made a motion to postpone the amended Site Plan application to the May meeting. Mr. Gamester seconded the motion. The motion to postpone the amended Site Plan application to the May Planning Board meeting passed unanimously.

I. The application of **Portwalk HI, LLC and Hanover Apartments, LLC, Owner**, for property located at **195 Hanover Street (Portwalk, Phase III)**, requesting Amended Site Plan Approval for 25 itemized revisions including, but not limited to, increased floor area for restaurant, residential and retail uses; reduced number of off-street parking spaces; relocation, addition and removal of various doors; addition of planters and planters along Deer Street; modified screen wall along Maplewood Avenue; relocation of trash enclosure on parking deck; addition of 4<sup>th</sup> grease trap on Portwalk Place; and addition of access controls to building. Said property is shown on Assessor Map 125 as Lot 1 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD), and the Historic District.

Ms. Moreau made a motion to postpone the amended Site Plan application to the May meeting. Mr. Barker seconded the motion. The motion to postpone the amended Site Plan application to the May Planning Board meeting passed unanimously.

A. Proposed amendments to the Zoning Ordinance as follows:

- (1) Create a new Central Business C (CBC) district, encompassing the area currently zoned Central Business B west of Maplewood Avenue and Middle Street;
- (2) Create a new Central Business Piscataqua (CBP) district, encompassing the area currently zoned Central Business A north and east of Market Street and Bow Street;
- (3) Amend Section 10.1011 – Table of Dimensional Standards – Business and Industrial Districts, to establish minimum standards for the proposed CBC and CBP districts

(including reducing maximum building height in the CBC district to 35 feet); and to establish maximum building footprints of 4,000 sq. ft. in the CBA district, 30,000 sq. ft. in the CBB district, 3,000 sq. ft. in the proposed CBC district, and 4,000 in the proposed CBP district;

- (4) Amend Section 10.440 – Table of Uses, to assign the same permitted uses and restrictions to the proposed CBC district as currently designated for the CBB district; and to assign the same permitted uses and restrictions to the proposed CBP district as currently designated for the CBA district.

(This item was referred to the Planning Board by the City Council at its January 13, 2014 meeting and postponed at the April 3, 2014 Planning Board Meeting.)

Ms. Moreau made a motion to postpone to the May meeting. Mr. Finn seconded the motion. The motion to postpone the City Council referral to the May Planning Board meeting passed unanimously.

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B. Request to consider a process for structural design review outside the Historic District.

Ms. Moreau made a motion to postpone to the June meeting. Mr. Gamester seconded the motion. The motion to postpone the City Council referral to the June Planning Board meeting passed unanimously.

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H. The application of **7 Islington Street, LLC, Owner**, for property located at **40 Bridge Street**, requesting a second one-year extension of Site Plan Approval to construct a 4 story 5,450 s.f. (footprint) mixed use building with related paving, lighting, utilities, landscaping, drainage and associated site improvements. This application for the project was originally granted on April 19, 2012, and a one-year extension was granted on February 1, 2013. Said property is shown on Assessor Map 126 as Lot 52 and lies within the Central Business B (CBB), Downtown Overlay District (DOD) and the Historic District.

Ms. Moreau made a motion to withdraw this application. Mr. Barker seconded the motion. The motion to grant the request to withdraw the application passed unanimously.

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**II. PUBLIC HEARINGS – OLD BUSINESS**

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

Ms. Moreau made a motion to read Item A under Public Hearing Old Business and Item G under Public Hearings New Business together and vote on them separately. Ms. Moreau made the motion, Mr. Finn seconded and the motion passed unanimously.



A. The application of **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland buffer, to construct a 15' wide paved driveway, with 4,885 s.f. of impact to the wetland buffer. Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District. (This application was postponed at the March 20, 2014 Planning Board meeting)

G. The application of **Ertugrul Yurtseven, Owner**, for property located at **292 Lang Road**, requesting Final Subdivision Approval to subdivide one lot into five lots with the following:

- a. Proposed Lot 4 having 87,819 ± s.f. (2.02 acres) and 179.68' ± of continuous street frontage on Lang Road.
- b. Proposed Lot 4-1 having 521,414 ± s.f. (11.97 acres) and 290.89' ± of continuous street frontage on Lang Road.
- c. Proposed Lot 4-2 having 54,965 ± s.f. (1.26 acres) and 161.19' ± of continuous street frontage on Lang Road.
- d. Proposed Lot 4-3 having 61,336 ± s.f. (1.41 acres) and 154.80' ± of continuous street frontage on Lang Road.
- e. Proposed Lot 4-4 having 84,574 ± s.f. (1.94 acres) and 209.71' ± of continuous street frontage on Lang Road.

Said lot is shown on Assessor Plan 287 as Lot 4 and lies within the Single Residence B (SRB) District where a minimum lot area of 15,000 s.f. and 100' of continuous street frontage is required.

The Chair read the notices into the record.

**SPEAKING TO THE APPLICATION:**

Christopher Berry, of Berry Surveying and Engineering, appeared on behalf of the applicant. A few months ago the Board voted to send this application to the TAC. They found that they needed a Conditional Use Permit for the area off of Lang Road, they have worked with the Conservation Commission and they filed a State Permit for disturbance in a prime wetland buffer. The Planning Board asked them to provide drainage schemes for the lots and infiltration for the lots. All of those items were brought to the TAC for their approval. Also provided was a Stormwater Maintenance Plan, as well as other items that the Conservation Commission required them to provide. This is a proposed 5 lot subdivision with one lot for open space and one lot for the existing home.

Chairman Ricci stated that he appreciates the stormwater management that they have proposed and further stated that he will be requesting this for all future residential subdivision applications. People put up single family homes and do not deal with the drainage. One may not sound like a lot but two or three make a big difference. He commended them on their efforts.

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

**DISCUSSION AND DECISION OF THE BOARD**

Vote on Conditional Use Permit:

Deputy City Manager Allen made a motion to grant with the stipulations included in the Staff Memorandum. Ms. Moreau seconded the motion.



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

1. The applicant shall provide a restrictive covenant which requires that the current and future property owners comply with the stormwater system operation and maintenance manual provided with this application. This covenant, subsequent to review and approval by the legal department, shall be filed for each single family residential property in the proposed subdivision for 292 Lang Road at the Rockingham County Registry of Deeds.

Vote on Final Subdivision Approval:

Deputy City Manager Allen made a motion Vote to determine that the application is complete according to the Subdivision Rules and Regulations, and to accept the application for consideration. Ms. Moreau seconded the motion.

Chairman Ricci asked if DPW would be doing any inspections on the stormwater for this property. Deputy City Manager Allen responded that they could have them do that. It is not A-typical but it could be done and he agrees it is a good idea. Chairman did not want to make it a condition of approval but maybe the applicant could cooperate with that. Mr. Berry stated that if all three houses are built at the same time, which they plan to do, this will require a Notice of Intent, Stormwater Pollution Preventative Plan and they would be required to make inspections and would be happy to provide DPW with copies of those reports. Deputy City Manager Allen stated they should be able to handle that administratively.

The motion to determine that the application is complete according to the Subdivision Rules and Regulations, and to accept the application for consideration passed unanimously.

Deputy City Manager Allen made a motion to grant final subdivision approval with the four stipulations in the Staff Memorandum. Ms. Moreau seconded the motion.

The motion to grant final subdivision approval passed unanimously with the following stipulations:

1. All drainage and driveway easements shall be subject to review and approval by the City Legal Department prior to the recording of the plat.
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.
4. The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

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Ms. Moreau made a motion to read in Item C under Public Hearings Old Business and Items B & C under Public Hearing New Business together and vote on them separately. Mr. Gamester seconded the motion. The motion passed unanimously.

C. The application of **Searay Realty, LLC, Owner, and Public Service Company of New Hampshire, Applicant**, for three properties located at **445 Route 1 By-Pass, off Borthwick Avenue and off Barberry Lane**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to remove two existing buildings, the paved driveway and the existing substation and to construct a 12,250 s.f. gravel substation area with associated equipment, poles, fence, gravel accessway and paved driveway apron, with 48,945 s.f. of permanent impact to the wetland buffer plus 5,525 s.f. of temporary impact to the wetland buffer and the removal of 17,120 s.f. of impervious surface from the wetland buffer. Said property is shown on Assessor Plan 234 as Lots 2, 2A & 7-7 and lies within the Office Research (OR) District. (This application was postponed at the March 20, 2014 Planning Board meeting)

B. The application of **Searay Realty, LLC, Owner, and Public Service Company of New Hampshire, Applicant**, for property located off Barberry Lane, 445 Route 1 By-Pass and off Borthwick Avenue, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:

- a. Assessor Map 234, Lot 2 decreasing in area from 428,615 $\pm$  s.f. to 207,614 $\pm$  s.f., with no change in street frontage;
- b. Assessor Map 234, Lot 3 increasing in area from 35,590 $\pm$  s.f. to 223,360  $\pm$  s.f. with no change in street frontage; and
- c. Assessor Map 234, Lot 7-7 increasing in area from 153,620  $\pm$  s.f. to 186,851  $\pm$  s.f. with no change in street frontage.

Said properties lie in the Office Research (OR) District with minimum lot area of 43,560 sf (1 acre).

C. The application of **Searay Realty, LLC, Owner, and Public Service Company of New Hampshire, Applicant**, for properties located at **445 Route 1 By-Pass, off Borthwick Avenue and off Barberry Lane**, requesting Site Plan Approval to demolish an existing substation and two existing buildings, construct a new substation including a 12,250 s.f. gravel area with associated equipment and poles, and construct an adjacent mobile substation; with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 234 as Lots 2, 2A, 3 & 7-7 and lies within the Office Research (OR) District

The Chair read the notices into the record.

**SPEAKING TO THE APPLICATION:**

Patrick Crimmins, of Tighe & Bond, appeared before the Board on behalf of the applicant. Also present was Patrick Penault and Kevin Duhaime from PSNH. They are present for three different approvals. They received a favorable recommendation from the Conservation Commission for the Conditional Use Permit application with a unanimous vote. They also received a favorable recommendation from the TAC for the Site Plan application. He displayed a plan showing the three lots bound by Borthwick Avenue, the Route 1 By-Pass and Barberry Lane. The substation will be located in the front of the lot, in the OR District. A substation is not an allowed use however they received BOA approval for the use. The front lot does not currently conform to zoning regulations so they are reconfiguring the lots. PSNH has the three properties under a Sales Agreement. They propose to take the 3 existing lots and make them 3 conforming lots. This project meets all setbacks except one side setback. They are providing 46' where 75' is required but PSNH is the abutting lot. He displayed a plan showing the existing buildings on the site with an overlay showing the proposed substation. They are proposing a gravel yard with a paved driveway off of Route 1. They will not



require any water, gas, or telecommunications. The only utility needed is a sewer connection for an oil containment system. The transformer requires mineral oil and they provide a primary and secondary containment as a precaution. The primary is a line berm ditch that is installed below the stone and it collects anything that may spill. It is then discharged to a 10,000 gallon oil/water separator unit that would be connected to the sewer. They are providing screening along the Route 1 By-pass with a row of arborvitae. There is less room as you move around the site so they are proposing a 3' retaining wall along the front with 8' arborvitae along the on top. The existing substation will be removed once the new substation is constructed. They will construct a mobile substation yard for the purpose of routine maintenance and emergency repair to bring in a temporary transformer and connected to allow for the routine maintenance. This would normally happen every 12 year. To get the mobile into the yard they need to back in and they provided truck turning templates and will need to obtain a NH DOT driveway permit.

Mr. Crimmins stated that the entire site is almost completely in the buffer area. The existing disturbance is 39,000 s.f. with approximately 19,860 s.f. of pervious disturbance. There is another 19,000 s.f. of impervious which is the building and pavement. They are proposing to remove all of the impervious area except the driveway apron off of the by-pass. That will result in a net buffer disturbance increase but an overall impervious reduction. They will increase disturbance to 48,945 s.f. but 46,745 s.f., the majority of that, is a stone or a gravel are impervious. The net buffer impervious impact is an additional 9,765 s.f. but the reduction in impervious area on the site is over 17,000 s.f. therefore it is an improvement for the site although they are increasing buffer disturbance. They will be planting a buffer conservation seed mix that will not be mowed more than once a year for a buffer between the wetland and the substation area. Also, they will remove any invasive species. Mr. Crimmins then reviewed the five criteria for granting a conditional use permit.

Mr. Crimmins stated that they provided renderings to the BOA to get a sense of the enhanced screening they are providing along Borthwick Avenue and the Route 1 by-pass. He pointed out that the landscape berm wraps around the side and is an improvement to the site. He displayed different views of the screening.

Mr. Crimmins stated they received a favorable recommendation from the TAC on April 1<sup>st</sup> with stipulations. They have revised their plans to address all of those stipulations and he reviewed the status of those stipulations with the Board

Mr. Crimmins stated that on April 4<sup>th</sup> the project team met with the abutter who had a concern with screening. They had a discussion about the right-of-way related to the electromagnetic field (EMF) and he felt that PSNH did a very good job explaining those levels to the abutter. They also discussed the view of the substation and he showed photos of the view from the abutter's deck. It will be difficult to screen any of the higher equipment on the site because the abutter's house looks down on the site. However, regarding the ground level items, there is a nice natural screening. The abutter was satisfied at the end of their visit. They also went down Barberry Lane to see what the views were from those homes and it was felt they were far enough away so that there would not be a problem.

Mr. Crimmins discussed the fence and why PSNH did not want to use a black vinyl fence. They don't believe it would be good practice for this substation. PSNH has their standards for very specific safety and security reasons.

Mr. Gladhill appreciated that they walked around the neighborhood in the wintertime and not the summertime. They mentioned they are unable have much landscaping because of the gates. He asked

about the small green space between the two driveways. Mr. Crimmins stated that was not available because of the pole locations and the overhead wires.

Ms. Moreau asked if it would be possible to add another tree on the Borthwick Avenue side of the property as there appears to be a gap. Mr. Crimmins stated that is really the top of the berm and that side is a slope that goes down to the wetland. He could work with the landscape architect to make an attempt to turn the corner a little bit for better screening.

Ms. Moreau asked how tall the trees will get. Mr. Crimmins confirmed that that are arborvitae and grow to 7' to 8'. Due to the overhead wires they have to keep the clearance low.

Ms. Moreau understands that they are against doing the black coated fence. She has seen tennis courts that use a green mesh within the chain link fence that makes it blend in more. She asked if they would consider doing something like that. Kevin Duhaime, of PSNH, indicated that they have found it becomes a vandalism issue and then turns into a maintenance issue. They have had to take it out in many places. They also depend on the City Police to keep an eye on their substations so too much screening also becomes an issue.

Mr. Leduc asked if they consider this location typical or a-typical, due to the traffic and corner location. Mr. Crimmins stated that this location was generated by a previous discussion they had with TAC. They did a lot of due diligence and were trying to move forward with a site on Cate Street but the recommendation from TAC at a Work Session was that Cate Street was not a good site due to future development. That is how they landed back using this site. There already is a substation on the lot and they are just making it a little bigger. Mr. Leduc asked if they are showing full grown trees in their renderings or will the trees be smaller initially. Mr. Crimmins confirmed they are showing the full 8'. They could stipulation that they plant the full grown trees they could do that.

Deputy City Manager Allen referred to the water line and noted they will not keep a water line into the site. That typically requires a disconnection at the corporation and he asked if they are going out into the by-pass on that. Mr. Crimmins did not know where the connection is which is why the note states they will work with DPW. Deputy City Manager Allen felt the note should state that they disconnect to the corporation.

Mr. Taintor added, as a matter of information, they are adding three lines crossing the bypass and two are crossing the U-Haul site and one crossing between the U-Haul and the Frank Jones Center. Mr. Crimmins stated they are connecting into the infrastructure that is across the street.

Chairman Ricci asked if they are proposing any security lighting. Mr. Crimmins stated they are not.

Kevin Duhaime, of PSNH, stated they will have yard lighting but it will always off unless someone is working on in the yard on an emergency situation. They will have thermal cameras working 24/7 in lieu of security lighting.

Chairman Ricci liked the positive environmental impacts and he asked if they can work with the Trees & Greenery Committee to address the sheet of arborvitae which is finds uninviting. This is a gateway into the City and he would like to see a variety of plantings.

Chairman Ricci stated that he does not like versalock walls and asked if it could be made out of stone, to make it more natural and more industrial looking. Mr. Crimmins felt that was a great suggestion.



The Chair opened the public hearing and called for speakers.

John Whitman, 26 Foch Avenue. He is the abutter that PSNH met with. He appreciates their comments tonight. He has a few prepared remarks. He lives closest to this development, in a small well established neighborhood with dead end streets. Their concerns are visual, tangible and material. The proposed substation will be visible from their home for half of the year. If approved, they would ask PSNH to provide some screening to the rear. Because this is an electricity substation, it is not a very visually appealing structure. Their chief concern is the new operated power line that will run along the right of way 100' from their house and deck. PSNH has not yet decided on the design of this system but do acknowledge it could involve 70' poles and a far more formidable presence. They have electromagnetic concerns. PSNH was very responsive to those concerns and did bring a meter to the house to measure low readings. Many studies have been done on this and scientists are divided. Some studies show it can result in childhood leukemia. Lastly, there is a concern among homeowners about property values.

Paul Mandle, of 1490 Islington Street, agrees with everything Mr. Whitman said. He felt the Board should make PSNH guarantee that the substation will not be visible to the residential neighborhood. He also was surprised that the Conservation Commission granted approval (sic) for the amount of impact.

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

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

##### Vote on the Conditional Use Permit:

Ms. Moreau made a motion to grant conditional use permit approval. Deputy City Manager Allen seconded the motion.

The motion to grant conditional use permit approval passed unanimously.

##### Vote on Preliminary and Final Subdivision approval:

Ms. Moreau made a motion to determine that the application is complete according to the Subdivision Rules and Regulations and accept the application for consideration. Deputy City Manager Allen seconded the motion.

The motion to determine that the application for Subdivision Approval is complete according to the Subdivision Rules and Regulations and to accept the application for consideration passed unanimously.

Mr. Moreau made a motion to grant preliminary and final subdivision approval with the recommended stipulations. Deputy City Manager Allen seconded the motion.

The motion to grant preliminary and final subdivision approval passed unanimously with the following stipulations:

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

Vote on Site Plan approval:

Ms. Moreau made a motion to grant site plan approval as presented. Deputy City Manager Allen seconded the motion.

Ms. Moreau wanted to ask them to make the changes that Chairman Ricci requested.

Councilor Thorsen agreed. He wasn't sure how you hide wires but certainly the substation could be screened better. They could possibly plant different trees.

Deputy City Manager Allen made a stipulation that they revise the landscape plan and have them appear before the Trees & Greenery Committee for review.

Mr. Gladhill would like to see what the site looks like from the abutters lot after construction to determine if the screening is sufficient.

Chairman Ricci suggested that they make a stipulation that the applicant appear before the Trees & Greenery Committee and talk to DPW to look at the rear of the site from the Barberry Lane side. Also, that one year from completion of construction the applicant shall meet with the Trees & Greenery Committee to review the plantings and how they are working. He would like to be sensitive to the Barberry Lane side neighbors. They need the language that insures that the neighbors are protected and an assurance that it is reviewed in one year.

Mr. Barker asked about the Route 1 by-pass side. Chairman Ricci suggested that the landscaping on the landscaping on the by-pass as well as the Barberry Lane site be reviewed by the Trees & Greenery Committee. He also stipulated that the applicant provide a bolder, natural landscaping wall in front and that the landscaping be reviewed with the Trees & Greenery Committee one year from the issuance of the CO.

The motion to grant site plan approval passed unanimously with the following stipulations:

1. The applicant shall appear before the Trees & Greenery Committee for review of proposed landscaping. The goal is to provide a bolder landscaping screen along the Route 1 By-Pass and to provide additional screening from the abutters along the rear of the property. A follow up review with the Committee will be held one year from the completion of construction to confirm that the screening goals have been met.
2. Prior to the Trees & Greenery Committee meeting, the applicant shall meet with the abutters to discuss concerns and receive input

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E. The application of **Francis Sullivan, Owner, and Janice Stanley, Applicant**, for property located on **Brackett Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 2,464 ± s.f. (footprint) dwelling with proposed pervious driveway, with 4,020 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 206 as Lot 17 and lies within the Single Residence B (SRB) District. (This application was postponed at the March 20, 2014 Planning Board meeting)

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Steven Riker from Sandpiper Environmental Services, was present representing Francis Sullivan. Attorney Bernie Pelech was also representing Mr. Sullivan however, due to a previous commitment before the Newcastle ZBA, he would be arriving a little late. Mr. Sullivan was also present.

Mr. Riker stated that this plan was developed by Tom Brouillette, of Exeter, who still hand draws his plans but is a licensed land surveyor. Mr. Riker pointed out the boundary lines on the plan and indicated that the lot slopes from front to back, or north to south. He performed a wetland delineation on November 19<sup>th</sup> and he pointed out the wetland boundary and also pointed out a small wetland area that is not subject to the City of Portsmouth 100' wetland buffer due to its size. There is an existing disturbed area with an existing tree line and there is also an existing storage shed on the property. The 100' wetland buffer is shown with a dotted line and encompasses 80-90% of the lot. The appropriate front, side and rear setbacks are shown on the plan. As part of this proposal, he provided an alternative plan. There is a separate area in the very rear of the lot that is outside of the 100' wetland buffer and his plan shows what a house would look like in that area with a driveway that would run from the existing asphalt driveway to the proposed house site. This proposal has 4,800 s.f. of impact to the wetland buffer essentially for access to reach the house.

Mr. Riker stated they were before the Conservation Commission on January 9<sup>th</sup> for a work session and he presented this plan and discussed options with putting a house outside the buffer, the impacts to the buffer to provide a driveway to get to that house and also discussed putting a house in the area of the lot that is already disturbed and utilizing the existing driveway for both of those proposals. The Conservation Commission provided feedback and they returned on March 12<sup>th</sup> with a 2,464 s.f. house proposed in the front of the lot and it utilized the existing driveway however they offered to replace that driveway with pervious pavement technology. There was a lengthy discussion at the Conservation Commission on March 12<sup>th</sup> regarding that proposal, they gave the applicant more feedback and they returned again on April 9<sup>th</sup> with the proposal they have now. They reduced the size of the house from a footprint of 2,464 s.f. to 1,841 s.f. The Conservation Commission also had concerns with regard to stormwater as a result on the western side of the home as there is a proposed 3' wide stone drip edge that extends from the side of the building outward and it collects stormwater falling from the roof using gravity. The drop edge is essentially crushed stone under laying with some sand. It provides a storage area for stormwater that comes off the roof. The other side of house has a gutter and down spout system using gravity, discharging into a 388 s.f. raingarden proposed in the front of the property. The Conservation Commission suggested the raingarden so they designed one. They couldn't make the raingarden any larger based upon the fact that they would have to disturb more vegetation to make it bigger. It also could not go in a westerly direction as it would be in the driveway, They want to use gravity to get to it so it cannot extend any further north of the house.

Mr. Riker stated that this proposal has a raingarden, pervious paver technology driveway and a stone drip edge on the western side of the house, all to control stormwater.

Mr. Riker handed out a Memorandum from Attorney Pelech to the Board members. Mr. Riker read the Memorandum into the record which addressed the property and its limitations, the Conservation Commission meetings, the Conditional Use Permit criteria and his position that the Conditional Use Permit should be approved. (See Planning Department File for full contents of letter).

Mr. Gladhill noted that the reason for a basement is to have a workshop and asked if there was any reason they couldn't lift the house up another floor. Mr. Riker confirmed that the applicant wants a basement. He also stated that if a slab was poured, it would still extend into the ground over 4' to be below the frost line. He felt there would still be something in the ground, whether it is on a slab or on pilings. Mr. Gladhill was looking for another alternative, which is one of the criteria in the ordinance. The workshop doesn't have to be in the basement. Mr. Riker indicated that they discussed this with the applicant and he would like a certain amount of living space as well so if he didn't have a basement he wouldn't be able to have a workshop unless they moved it to the first floor or second floor and they would then need to expand the size of the house. Mr. Gladhill felt they could go 2 ½ or 3 stories.

Councilor Thorsen asked the Chairman about the several regulations and explanations of the applicant regarding wetlands and having a basement underground and whether they agree or do not agree in general that the basement is at issue. It seemed to him that the Conservation Commission would have granted this if they didn't have a basement but asked, if it was not within their purview to make that type of decision, then why would the Board not grant it if they can't make a connection between the regulations and the use that is being proposed. Councilor Thorsen felt it was really a simple question and he would like to understand more of why they wouldn't grant the approval and what that decision would be based on. He understands this is wetland area and the Board could deny on that basis, however, looking for a reason to grant, he doesn't believe the basement should be part of the discussion and if it is not, he was looking for some other reason why they would or would not grant.

Chairman Ricci responded that for him personally the basement has no bearing on his thought process at all. When considering these applications, two things always come to mind: Bob Sullivan telling him 'purer than Caesars wife', the want to keep things pure, and the other one is opening Pandora's box. He felt this application could have long term impacts on applicants that could come before them because of a previous application. Chairman Ricci said that is what this application means to him. This application shows the whole house is in the buffer and that has serious impact to him, basement or no basement. Councilor Thorsen indicated that was the type of response he was looking for because he felt they could get caught up on an issue that was not really the main issue and Chairman Ricci appeared to be agreeing with that.

Mr. Moreau was curious whether any drainage analysis was done regarding run off. Mr. Riker confirmed they did not do a drainage analysis based on the fact that this was a single family lot and it was obvious where the water will drain on the site.

Deputy City Manager Allen asked for Peter Britz to give his impressions from the discussion that took place at the Conservation Commission meeting.

Mr. Taintor also added that the long letter from Attorney Pelech was all new information and no one has had a chance to review it.



Peter Britz, City Environmental Planner, confirmed that he had just seen the letter but he will do his best to give a response. He first gave the Board some background on this application. He stated that it first came before the Conservation Commission as a work session. Chairman Ricci makes a fair point that this house is completely in the wetland buffer as designed. He felt that one of the reasons why the Conservation Commission thought there was some value in pursuing it and allowing the applicant to go forward with the application was that there currently was a driveway and lawn on the site in the buffer. The concept that they were most supportive of was the fact that anything they do should not make the situation any worse than it is now. The applicant did a good job of reducing the impacts for stormwater run off from the sense of what is going to fall on the lot. The reason that the argument centered around the foundation was not about the quality of the water coming off the building but rather it was about the volume. The ordinance does say in the purpose section that the rate and volume of stormwater run off needs to be considered. It is the volume that is the issue here. If you think about putting a square cube in a 5 gallon bucket that is full, that cube is going to make the bucket overflow. If they put a foundation into the groundwater, and if you look at the plan, it is only 2' from the house down to the groundwater levels. The general consensus of the Conservation Commission was the height of the ground water, based on where you put the basement, would impact the ground water and displace water. Some of the residents came and spoke just about the nature of high ground water on the site and standing water when it rains and puddles and Jack Blalock's property. The thought was that the applicant could design a basement that would be dry, and they would need sump pumps if it was not, and where the sump pump water would go was another concern. The bigger concern, as Mr. Britz saw it, is that the ability of groundwater to be absorbed is less because they are taking away a certain amount of volume. If they put footings in they would not create a big tub or cube in the ground. That is why the discussion centered around that issue. The applicant did a good job with the rain garden and drip edge to infiltrate water. There was some concern also that water might not infiltrate because of high ground water and there were questions about whether there was a drainage analysis study and it might be a reasonable request. There were also members of the Commission who wouldn't have voted for the application either way. Mr. Britz stated that he was not sure that the Commission would have voted for this even without a basement. There were members who would not have voted for it, no matter what, there were members that would have supported it without the foundation and members who would have supported it either way. However, the only motion that was made was to grant with no stipulations regarding the basement, so a basement would have been allowed, and that motion failed.

Councilor Thorsen noted, from a volume point of view, they were putting in a void in the ground water area. From a percentage point of view, he asked what percentage of reduction they were talking about. Mr. Britz confirmed that was why they would have to have a specific drainage analysis and he could not give him the percentage. Mr. Britz stated his concern is that there already is a lot of water on the surface and it is already pretty low. This basement could possibly be insignificant in the general scheme of things but they would not know without a drainage analysis.

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

Attorney John Anthony Simmons, appeared for Attorney Derek Durbin, who was counsel for the Todds, who are abutters. He referred to a letter that Attorney Durbin had provided to the Board and was included in their packets. He apologized for the Todds who were unable to attend as they had family business that required their attention. Attorney Simmons did not have the benefit of the Pelech Memorandum and requested a copy for his files.

He referred to Attorney Pelech's argument of this lot being taxed as a buildable lot which he believes has no relevance on the overall issues and the City is free to tax as they see fit. The applicant could have sought a reclassification or abatement or any other remedy over the past. In terms of the classification of what the Conservation Commission's actions were, he thanked Mr. Britz who was present at the meeting and clarified those actions. Attorney Simmons reviewed the record and he believes the characterizations of the Conservation Commission's concerns widely missed the mark and he believes Mr. Britz has already corrected that. It was not just the basement issue that was the result of the denial letter but rather it was the entire effect of the project as well. Regarding the wetness on the land being created by Newcastle Avenue, Attorney Simmons took a walk through the area today and there are culverts that drain water out of the area so he finds it difficult to sustain the argument that this would otherwise be a dry lot. From his walk of the site, he found it to be a very wet site. Attorney Simmons also felt that there seemed to be a little bit of "I want something much bigger but I'll settle for something smaller" and he has never found that to be a very compelling argument. To argue that they can put a house on the other side of the walk, which as a result of his site walk he does not consider to be a reasonable alternative, he felt the Conservation Commission rightly excluded that from its consideration. Chairman Ricci advised Attorney Simmons that his 3 minutes were up.

Attorney Bernard Pelech, representing the applicant, stated that the issue before the Conservation Commission was whether or not they should have a basement and he felt that was very clear. The minutes have not been made available but it was a long protracted debate about whether or not the house could have a basement. That centered around the effect of the basement. At first, three Commission members automatically assumed that the basement would be wet and they would then have to use a sump pump, which the applicant agreed to do if it was wet. However, their builder did not believe the basement would be wet and Jack Blalock, who lives across the street, has said that he has a dry basement. If the basement is wet and they have to use a sump pump, they will pump underground into the rain garden. Then, the focus was on the effect of the basement on the groundwater, which the Chairman of the Conservation Commissions indicated he did not believe was within their purview. The effect of the basement on the groundwater would divert the groundwater but it is not going to affect the quality of it. Attorney Pelech clarified that he did not represent that Newcastle Avenue was the reason this wetland was created. Rather, he said it was in part created by that and if they took a site walk they would see that the walkway that leads from Brackett Road up to New Castle Avenue which was built on City Easements so that the children could get to Little Harbor School, does have a damming or berm effect and there are two culverts that run underneath it. Unfortunately the two culverts don't exactly mitigate the effect of the dam. It channelizes the run off but it does not completely alleviate what was probably there before. The issue is they don't have an effect on groundwater other than making it go around the basement. The other side of the coin is if they cannot build a house there, the Conservation Commission has already said that they don't want a house built on the back of the lot, then they have a non buildable lot that has been taxed at \$286,000 for the last 30 years. He felt that was a confiscatory taking. Attorney Pelech felt that the Courts have held that you could not just tell someone that they cannot use their property that has been in existence for 50 years as a building lot and say you cannot build on it. He felt this was, by far, the most reasonably feasible alternative. Whether the house has a basement or not is not the issue. The issue is the effect of stormwater run off on the wetlands and he felt they had demonstrated to the Conservation Commission that this would not have any effect on the wetland itself. The issue became whether they could have a basement or not and it only came up at the very last meeting.

Mike Coffey, who used to live at 86 Haven Road, and now lives in Rye, stated that he has been very close with the Tucker family and has helped around the property many times. He stated that when it rains, there is water and several days later it dries up. The footpath and culverts have restricted the



water flow. In Mr. Tucker's elder years, he was not able to maintain the property and lots of trees have fallen and it is in disrepair. Mr. Coffey had called the City on several occasions and Everett Kern came down and asked him to clean out the catch basin which was restricting the water flow. The culverts are higher than the actual ground by several inches so whatever water doesn't go anywhere stays there until it dries up. He is not sure whether they ever cleaned the catch basins or culverts or not. He knows for the most part it is relatively dry. If it rains it is a little bit wet but it dries up. Mr. Coffey also commented on the stormwater run off. Little Harbor School is right around the corner and has a massive roof and parking lot and they have witnessed the water gushing off the roof and going into Little Harbor. It is more of an impact than developing this piece of property with everything that Mr. Sullivan is supposed to do as far as mitigating all of those problems.

Francis Sullivan, the applicant, stated that he has been walking this land for 6 months and there was never a drop of water on it until about two weeks ago in the vernal pools. Secondly, when he started this project back in October, Peter Britz walked the area with him and Mr. Britz said that he thought it was a very good idea and he thought there would be no problem because as far as he was concerned there were no wetlands.

The Chair called for second time speakers.

Attorney Simmons found it an unreasonable conclusion that there are no wetlands when the map is delineated with the wetland buffer. He felt the fact was self-explanatory and self evident. He believed that he left off in his comments with the "What I really wanted" argument and he continued by saying that he can see the rational basis of Councilor Thorsen's comment about the basement largely being a red herring and he does not think the basement argument is un-germane or completely tangential and it really is not the main point. The main point is that they have a project that is being proposed entirely in the wetland buffer and he felt the concerns of Board members would be the ones that he would have, which is when a project is so blatantly contrary to the spirit of the ordinance, you really have to start asking yourself what type of allowances you are going to have to make to allow someone to come in and make a proposal entirely within the wetland buffer. Of course, one can envision other lots that situationally may have to dip into the buffer a little or maybe have a back porch, made to be pervious, that has to dip into the wetland buffer a little bit. Those projects are imminently more reasonable than coming in and building a home entirely within the buffer zone and he would encourage Board members to look at the record before them. The record has a denial from the Conservation Commission, and he feels that the characterization of why they came to those conclusions which were presented this evening miss the mark. He also pointed to the Staff Memorandum, which was submitted on May 14<sup>th</sup> by Planning Director Rick Taintor, whose recommendation was to deny or to grant with no basement. Obviously, his clients feel they got it right the first time by denying it. This project is just too much impact in the wrong spot and he hastened to add that on Page two of Attorney Durbin's letter, he noted there is no drainage or stormwater calculation provided. Attorney Simmons asked how they can come before a Board with a project of this impact, situated entirely in the buffer, without calculations. He also encouraged the Board to look at the finding in Mr. Tom Ballestero's letter provided by Attorney Durbin. Mr. Ballestero is the director of the UNH Stormwater Center. He understood from Mr. Riker that they do not want to disturb any more of the vegetative buffer that is there but they are not proposing any additional vegetative buffer and the rain garden concept seems to be imminently doomed for failure, particularly when you are talking about sump pumping water into it. Attorney Simmons wanted to be fair and reasonable and stated that he was not a wetlands person and cannot point to anything in the record but it seems reasonable with the water table as it is, that there must be water there. The neighbor indicated that he has a dry basement but anyone that digs wells can tell you that water may be 50' in one spot and 100' in a spot nearby. Whether there is or isn't water



there, he does not believe the raingarden proposal is the fix-all to the problems. The size and overall scope of the project is the problem. He also mentioned that Attorney Durbin's letter speaks to the remainder of the issues and he would finish by saying that the Staff Memorandum lists Section 10 of the Zoning Ordinance and Attorney Simmons certainly felt that the project failed under criteria 1 & 3. The land is not reasonably suited to the use that is being proposed and there certainly is an adverse impact on the wetland function values of the site surrounding the property and, at the very worst, under that criteria, the applicant has not carried its burden to show that there is no adverse impact. He would hope that would be glaringly problematic for the Board members.

Attorney Bernie Pelech handed out his Memorandum that was previously read into the record by Mr. Riker which also included attachments and colored plans. Attorney Pelech stated that it was interesting to hear that this application was blatantly in violation of the ordinance as these applications come before the Board quite frequently and Mr. Simmons was obviously not familiar with Portsmouth. Practically speaking, he felt that most undeveloped land in the City have wetland problems and require relief from this Board. This is a situation that the Conditional Use Permit application was designed for. Attorney Pelech stated that the Conservation Commission and the Planning Board have approved structures much closer to a wetland of a much higher value than this in the past so this application is not something that is out of the question. If the application is denied, the owner can plant a vegetable garden and hopefully the property won't be taxed at \$286,000 as a buildable lot as it has for the past 30 years. Attorney Pelech stated that Attorney Simmons was not at the Conservation Commission meeting but Attorney Durbin was. Unfortunately none of the Planning Board members were at the Conservation Commission meeting when the debate went on and on about whether there should be a basement. It was specifically stated by one or more Commission members, were it not for the basement, they would support this application. They got into Roberts Rules of Order and the parliamentary procedure because there was a motion to approve with a condition that there be no basement, an amendment was proposed but the person who seconded the motion withdrew their second and there was no longer a motion on the table. They then needed somebody to make a motion. The Chairman was quite exasperated by the fact that no one would make a motion and finally Vice-Chairman Blanchard made a motion to recommend approval without the condition that there be no basement and that is the motion that failed to pass by a 3-2 vote. This was not outright denied by the Conservation Commission, as has been represented, because the Conservation Commission does not have the ability to approve or deny anything and only makes recommendations which the Planning Board is not bound by. The upshot of the whole situation is if this is approved by this Board without a basement, then the applicant could go back and ask for a small addition for his woodworking shop that he was planning to have in the basement and he would have to put his utility somewhere else, possibly the attic. They were trying to minimize the square footage of the footprint and the impact on the buffer. There is no evidence whatsoever that a basement would have any effect and nobody could demonstrate, even the people on the Conservation Commission who have credentials, that a basement would have impact on stormwater run off. It was admitted that it would affect ground water but there was no indication that it would in any way effect stormwater run off or the water quality of the stormwater running into the wetland system. Attorney Pelech maintains that whether or not there is a basement is not within the Board's purview because it has no effect on the quality of the wetlands and stormwater run off going into the wetlands. The Memorandum goes through what the ordinance says but if you take a look at the colored 11" x 17" sheet that he provided, he would ask where else could somebody put a house on the property outside of the blue line. A house could be put at the rear of the property but the Conservation Commission said "No Way" because they would have to clear almost 1,000 s.f. more and put 1,000 s.f. more disturbance in the wetland buffer. And they would virtually have to cut down all of the vegetation on the lot. Therefore, the Conservation Commission did agree that this was the best location for the house and the issue was whether it should have a basement or



not. The applicant has done whatever they asked them to do. They wanted a raingarden so they gave them a raingarden. They wanted the house to be smaller so they made the house smaller. They are taking out a paved driveway and putting in a porous driveway. He did not know what more the applicant can do to make this lot buildable. The house is small and has an 1,800 s.f. footprint, including a garage and porch. By today's standards, that is not a big house and is in keeping with the character of the neighborhood. Attorney Pelech felt they are in a catch 22 and he submits this is the best location for a house and he respectfully would suggest that the basement is not an issue that affects water quality of the wetland.

The Chair called for third time speakers.

Attorney Simmons stated that he has known Attorney Pelech for quite some time and respects him as an attorney. However, he finds Attorney Pelech's comment directed towards him to be beneath him. He doesn't have to be as familiar with Portsmouth as he is to be familiar with the ordinance. The ordinance has a standard that his client has a burden to meet and this application is blatantly a contradiction to that ordinance. He believes Attorney Pelech or his client want to characterize how it was received at the Conservation Commission and two things remain abundantly clear. First, on April 14<sup>th</sup> the Conservation Commission wrote a decision letter which was a denial. He was not at the meeting and he does not presume to give a "tit for tat" of what was in somebody's head. He does know that in the end, the Commission voted to deny. If they were strongly in favor they could have made different motions and made different recommendations but those are not part of the record and they are not before the Board. He understands that their opinions are advisory and he again points to the Staff Memorandum which says the reason for the denial was concern for the impacts of new house, driveway and raingarden completely in the buffer. This isn't just about the buffer and Councilor Thorsen rightly pointed out that the basement would be a red herring. He would also note that Mr. Gladhill tried to suggest alternatives to the basement and the applicant seems to be taking the position "Nope, that is not what we want to do". The facts are before them, the ordinance is the applicants' burden and he simply has not met it and has not presented information to overcome the many problems of this project.

Attorney Pelech stated that the Planning Department Memorandum is completely off base and he suggested that the Board table this matter until the minutes of that meeting are available and they can see what the Conservation Commission said. They did not say that the effect of this building in the buffer was not appropriate. The whole issue was the basement. He suggested that everybody read the minutes and they can come back next month and figure out what really happened.

Mr. Sullivan stated if he builds a house, he has to put something under it. He fails to see what that is going to do to the surrounding water table.

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

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

Deputy City Manager Allen stated that he would prefer to table this application to the next meeting. There are some questions that they would like to get answers to and there is new information that was presented tonight by the applicant. There is some merit to producing the Conservation Commission minutes. He made a motion to postpone to next month.

Mr. Leduc seconded the motion and agreed that the Conservation Commission recommendation was somewhat confusing and he would like to see some more details.

Councilor Thorsen stated that he agrees with that. He asked how long the wetland ordinance has been in place. Mr. Britz responded that it was created in 1995 with a buffer of 75' and in 2000 it went to a 100' buffer. One of Councilor Thorsen's concerns in this situation is a sensitivity that there is nothing else that can be done with the property and there is a fair use and enjoyment issue that needs to be taken into consideration. It is not just a matter of applying the ordinance to force a certain type of design but is more like applying the ordinance to completely quash doing anything with the property in this one case. This is a situation where it is not like the property owner is over laying into a wetlands buffer area but it is almost like the wetland buffer area has encroached on to the property. Even though they are able to do that from an ordinance point of view, speaking in a very general sense, he felt this particular property requires them to step back and think about actual property rights, the fact that there is no other course of action to take and that they have owned this property for 35 years. They may very well come to the very same conclusion that they might have had and may not want to open Pandora's Box and they don't want that side of it. He is glad they are going to postpone this as he needs to go think about it himself and he asks the board to also consider factoring that into the question.

Mr. Gladhill referred to the argument of owning the property before the ordinance changed. He stated that laws change and everyone has to try to do what fits within the current ordinance. Looking at the line of thought that they owned the property before the 100' buffer was created so they should have deference to that, then is someone owns property in the Historic District before the Historic District Ordinance was adopted, should they then be more lenient towards them. He will not be thinking that way and he will take other things into consideration.

Chairman Ricci stated that any further information is no good to him. There is a house that is 100% in the wetland buffer and drawings that don't show proposed grades or silt fencing and the data that they typically require on these drawings is not even here. That aside, he is sympathetic to property owners and their rights and that is why there is a legal system. He is just very fearful of this. There was an application earlier tonight for a single family home and he stated that his greatest fear with single family homes is if they don't require a drainage analysis, they will eventually have 10 homes or 100 homes and that will create a huge impact. He feels that every single home that is approved should have a complete drainage analysis, zero run off and ground water recharge. He has been on this Board for 11 or 12 years and he is sympathetic but when you are 100% in the buffer and were to receive an approval from this Board it would handcuff this Board for many years to come.

Mr. Leduc asked if they should request additional information for the items that are missing. Chairman Ricci said it was the Board's choice. Mr. Leduc requested the Conservation Commission meeting minutes for the next meeting.

The motion to postpone this Conditional Use Permit application to the May 15, 2014 Planning Board meeting passed unanimously with a request for the Conservation Commission meeting minutes.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

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

A. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland to remove a retaining wall, install a sewer line, construct a wooden wall, pave and loam and seed, with 450 s.f. of impact to the wetland. Said property is shown on Assessor Plan 140 as Lot 1-11 and lies within the General Residence A (GRA) District and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Brian Regan, of 27 Walker Avenue, Kittery, Maine, stated they revised the wall to be a natural stone wall. They are moving a concrete wall and adding granite stairs.

The wall has to be removed to put a sewer line in. They are in the process of locating where the manhole will go. The wetland plan showed where they are moving the cars to satisfy the wetland requirements.

Deputy City Manger Allen stated that the applicant is working with the City Sewer Department and this will be a public benefit to the whole area. He has been working closely with them. Mr. Regan stated this will be a joint venture with some of the other neighbors. Deputy City Manager Allen added that he currently has a pump system and this will allow some other residents to also tie in.

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

Michael Stassic stated that he lives on Dearborn Street, across the street from the wall, and has been following this project. He is pleased with this aesthetically and functionally.

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

**DISCUSSION AND DECISION OF THE BOARD**

Ms. Moreau made a motion to grant the conditional use permit with the recommended stipulations in the Staff Memorandum. Mr. Finn seconded the motion.

The motion to grant conditional use permit approval passed unanimously with the following stipulations:

1. A pre-construction meeting shall be held with the applicant, the applicant's contractor, and staff from the Planning Department and the Department of Public Works to ensure that the construction of the project proceeds as specified on the plans provided to the Historic District Commission and the Planning Board and meets the construction requirements for work in a City street.
2. The proposed seeded area shall have a border of plantings and boulders or similar protection which will keep cars and plowed snow from the proposed new planting area adjacent to the North Mill Pond.

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Ms. Moreau made a motion to read Items D & E together and vote on them separately. Deputy City Manager Allen seconded the motion. The motion passed unanimously.

D. The application of **319 Vaughan Street Center, LLC, Owner**, for property located at **319 Vaughan Street**, and **299 Vaughan Street, Owner**, for property located at **299 Vaughan Street**, and **3S Artspace, Applicant**, requesting an Amended Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer to construction a functioning exit path to a public way from an exit door on the rear of the building, with 1,500 s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 124 as Lot 9 and lies within the Central Business A (CBA) District, the Downtown Overlay District (DOD) and the Historic District.

E. The application of **319 Vaughan Street Center, LLC, Owner**, and **3S Artspace, Applicant**, for property located at 319 Vaughan Street, requesting Amended Site Plan Approval to remove and revise exterior architectural elements, revise emergency egress at the rear of the building, remove all seating walls, revise patios at gallery entrance and rear, revise transformer location, and revise grading at entrance and rear, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 124 as Lot 9 and lies within the Central Business A (CBA) District, the Historic District and the Downtown Overlay District (DOD).

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Tim Levine, of Old Harbor, LLC, appeared on behalf of the applicant, 3S Artspace. John Chagnon was sick and unable to appear this evening. Steve McHenry was also present. They received a unanimous recommendation from the Conservation Commission. The reason for the amendment is that in the prior approval, the egress path from the back of the building was originally planned to go out through the abutters property to the street. That was unfeasible so they revised the egress path to cross over 299 Vaughan Street. The path now crosses over the buffer zone so they need amended approval.

Steve McHenry, of McHenry Architecture, stated there were two reasons for their request. One was due to a scaling back of the building features and one is a scaling back of the landscape features. In an effort to get the project underway, they want to expedite the process by saving money on landscaping and building features. They have gone to TAC for review and they recommended approval of the amended site plan with 7 stipulations. Mr. McHenry reviewed the stipulations and how they addressed them on the revised plans.



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

**DISCUSSION AND DECISION OF THE BOARD**

Vote on amended conditional use permit:

Ms. Moreau made a motion to grant as requested. Mr. Barker seconded the motion.

The motion to grant amended conditional use permit approval passed unanimously.

Vote on amended site plan approval:

Ms. Moreau made a motion to determine that the application was complete and to accept it for consideration. Mr. Barker seconded the motion.

The motion to determine that the application for amended Site Plan Approval was complete according to the Site Plan Review Regulations and to accept it for consideration passed unanimously.

Ms. Moreau made a motion to grant amended site plan approval with the easements being reviewed by the City Legal Department. Deputy City Manager Allen seconded the motion.

Deputy City Manager Allen asked about the “funky” angle coming off the sidewalk along the back of the building. Mr. Levin stated it is temporary. The easement is a legal requirement so that 319 Vaughan Street is always assured they will have a recorded easement. It says that easement may be temporarily relocated at the request of the Fire Department. While 319 is a parking lot it was logical to have the path come out to the parking lot.

The motion to grant amended site plan approval passed unanimously with the following stipulation:

1. The proposed easements shall be subject to review and approval by the Legal and Planning Departments, and shall be recorded prior to the issuance of a building permit.

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**V. OTHER BUSINESS**

A. Request from Cumberland Farm, Inc., for property located at 1475 Lafayette Road, for a one year extension of Site Plan Approval which was granted by the Planning Board on May 16, 2013.

Mr. Taintor stated this was their first one year request and it doesn't require a public hearing.

Ms. Moreau made a motion to grant a one year extension. Mr. Gladhill seconded the motion.

The motion to grant a one year extension of Site Plan approval passed unanimously.

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B. Request from Ambit Engineering, for property located on Langdon Street, for a one year extension of Final Subdivision approval which was granted by the Planning Board on May 16, 2013.

Mr. Taintor confirmed this was their first one year request.

Deputy City Manager Allen made a motion to grant a one year extension. Mr. Gladhill seconded the motion.

The motion to grant a one year extension of Subdivision approval passed unanimously.

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**V. PLANNING DIRECTOR'S REPORT**

Planning Director's report on proposed amendment to the Zoning Ordinance to require conference centers, convention centers and event centers to provide one off-street parking space per 2 persons of rated capacity. (This item was referred to the Planning Board by the City Council at its January 13, 2014 meeting, postponed indefinitely at the April 3, 2014 Planning Board Meeting with the request for an update at the April 17, 2014 Planning Board Meeting.)

Mr. Taintor stated they have not made any progress on this.

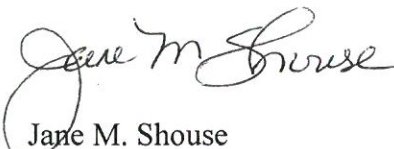
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**VI. ADJOURNMENT**

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

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Respectfully submitted,



Jane M. Shouse  
Acting Secretary for the Planning Board

These minutes were approved at the September 18, 2014 Planning Board Meeting.