

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

MAY 15, 2014

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

MEMBERS EXCUSED: John Rice, Vice-Chairman; Colby Gamester;

ALSO PRESENT: Rick Taintor, Planning Director

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I. APPROVAL OF MINUTES

- A. Approval of Minutes from the January 9, 2014 Joint Work Session – Unanimously approved.
- B. Approval of Minutes from the January 16, 2014 Planning Board Meeting – Unanimously approved.
- C. Approval of Minutes from the January 23, 2014 Planning Board Meeting – Unanimously approved.

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II. DETERMINATIONS OF COMPLETENESS

A. Site Plan Review

- 1. 2454 Lafayette Road (Southgate Plaza) – Amended Site Plan

Deputy City Manager Allen made a motion to accept the Amended Site Plan application as being complete. Ms. Moreau seconded the motion. The motion passed unanimously.

- 2. 195 Hanover Street (Portwalk) – Amended Site Plan

Ms. Moreau made a motion to accept the Amended Site Plan application as being complete. Mr. Hopley seconded the motion. The motion passed unanimously.

B. Subdivision Review

- 1. Deer Street and Russell Street (Harborcorp and Pan Am Railroad) – Lot Line Revision

Ms. Moreau made a motion to accept the Subdivision Application as being complete. Mr. Hopley seconded the motion. The motion passed unanimously.
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Chairman Ricci asked to take Item B. under Public Hearings Old Business out of order for the purpose of postponement.

B. 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 April 17, 2014 Planning Board meeting)

The Chair read the notice into the record.

Mr. Gladhill made a motion to postpone this application to next month’s meeting. Ms. Moreau seconded the motion.

The motion to postpone the Conditional Use Permit application to the June 19th Planning Board meeting passed unanimously.

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Chairman Ricci asked to take Item C. under Public Hearings Old Business out of order for the purpose of postponement.

C. 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 strip building, add a rain garden at the rear of the site, to replace the previously approved porous pavement in the rear of the site 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 Gateway District. (This application was postponed at the April 17, 2014 Planning Board meeting)

The Chair read the notice into the record.

Ms. Moreau made a motion to postpone this application to next month’s meeting. Mr. Hopley seconded the motion.

The motion to postpone the Amended Site Plan application to the June 19th Planning Board meeting passed unanimously.

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Chairman Ricci asked to take Item C. under Public Hearings New Business out of order for the purpose of postponement.

C. The application of **New England Marine & Industrial, Inc., Owner, and Subaru of New England, Inc., Applicant**, for property located at **200 Spaulding Turnpike**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a car dealership which includes a 19,150 ± s.f. building and various vehicle display areas totaling 32,000 ± s.f., with 119,451 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 237 as Lot 56 and lies within the General Business (GB) and Single Residence B (SRB) Districts.

The Chair read the notice into the record.

Ms. Moreau made a motion to postpone this application to July. Mr. Gladhill seconded the motion.

The motion to postpone the Conditional Use Permit application to the July 17th Planning Board meeting passed unanimously.

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I. PUBLIC HEARINGS – OLD BUSINESS

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

A. The application of **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 925 ± s.f. of impact to the wetland and 2,750 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 224 as Lot 10-12 and lies within the Single Residence A (SRA) District. (This application was postponed at the April 17, 2014 Planning Board meeting)

The Chair read the notice into the record.

Mr. Taintor advised the Board that this Tucker’s Cove Subdivision has a long history and a Court settlement to determine what regulations would apply. In 1995 there were very different wetland regulations so that inland wetland on this property is not jurisdictional under the 1995 Zoning Ordinance. In 1995 there was no conditional use for a tidal wetland buffer. Based on that information, the Department recommends that the Board determine that the subdivision is subject to the 1995 regulations.

City Attorney Bob Sullivan stated that he has been involved only on the discrete question of whether the inland wetland buffer zone applies or not due to vesting. In general, vesting refers to the situation where a project is not subject to changes in the zoning laws. The Board is familiar with how the Harborcorp project obtains vesting. The issue in Harborcorp and this property is “What is it that gets vested”. This has been a troublesome issue to deal with all along. Some people advocate that once a subdivision has acquired subdivision status it is not subject to any change in any law. The Crockett application was represented by Attorney Loughlin who brought forth three different theories why the Crockett line would be vested against the inland wetland ordinance. #1, the lot had obtained vested status before the adoption of the first inland wetlands ordinance so the Tucker’s Cove project would have vesting against the entire project. #2, commonlaw cases support the vesting. In the case of Tucker’s Cove the lots were created, purchased and sold, and are no longer owned by the original developer. He stated that the project is completed and Tucker’s Cove is no longer insulated by changes in the Zoning Ordinance. He felt that Attorney Loughlin is correct that until the final house is built under this project, they are subject to the common law case. #3, there was an agreement entered into in 1996, as a result of the law suit, and it ultimately stated that “The inland wetland buffer zone will not apply to the Tucker’s Cove Subdivision.” City Attorney Sullivan believed that to be true and the bottom line is there are three reasonable reasons why inland protection regulations would not apply. He has concluded that Attorney Loughlin was correct in all three theories and any one of them would insure that they do not have to comply with the current inland wetland buffer zone.

Mr. Hopley remembered a recent application for a project requesting an in-ground swimming pool that they denied and he asked if that would be subject to appeal. Mr. Taintor responded that the original subdivision is exempt but not subsequent lots. City Attorney Sullivan also added that it would only be protected if the project had originally shown the pool on the original plan.

Mr. Gladhill asked about a lot that stayed empty for 20 years that didn't show a home on it. City Attorney Sullivan confirmed that they would look at the original subdivision approved.

Mr. Gladhill asked if there is a vacant lot in Atlantic Heights that was never developed, is that subject to zoning because it predates zoning. City Attorney Sullivan stated that the Allenstown case actually involves a case where it would be similar to Atlantic Heights.

Mr. Hopley felt there were a few lots out there that could be developed and could apply here.

Chairman Ricci felt if they have water or sewer installed to them, that would be indicative of them being buildable lots. In the Allenstown case, the lots were buildable. City Attorney Sullivan responded that this case may come back before them so he may work out an analysis for future use. Portsmouth has very little subdivision activity because Portsmouth is so built out already.

Mr. Gladhill asked if they decide not to build a house, how long are they vested. City Attorney Sullivan said that the question is "when was the project completed." The project they are talking about tonight was not completed. Mr. Gladhill was a little nervous because they are setting a precedent tonight. He referred to Maple Haven and Panaway Manor. City Attorney Sullivan indicated they are not trying to set a precedent, they are trying to apply applicable laws to situations. He accepts that this project is vested. The analysis for the tough cases will come down to whether the project has received common law vesting or whether the project is completed. If every lot had a house built on it, it was his opinion that it would not be vested. Mr. Gladhill asked if the developer sold the lot to somebody else would it still be vested. City Attorney Sullivan confirmed that the Allenstown case says it is applicable to subsequent owners.

Councilor Thorsen said they are focusing on wetland requirements but it sounds like this is a decision that was made on the statutes in general. Could they build a building 100 stories high because they didn't have zoning? City Attorney Sullivan said the boundaries of a project have to be built to the Zoning Ordinance that was in effect at that time.

Mr. Leduc asked what they are citing for this subdivision. City Attorney Sullivan indicated there were three bases for vesting: The agreement that was entered into to settle the court case applies to Tucker's Cove and nobody else and it allows them to complete project that was approved.

Mr. Taintor was thinking about some very old subdivisions that were approved when there were no zoning laws in effect at the time, no plan was approved by the Planning Board and it was just filed at the Registry.

Deputy City Manager Allen stated, with all due respect to City Attorney Sullivan, he was somewhat uncomfortable with where they are on this now. He believes everything Attorney Sullivan says but with all of the examples that the Board has thrown out regarding other subdivisions and only getting this information for the first time tonight, he would prefer that they look at this a little bit more and his motion would be to postpone this for tonight and maybe at a work session he would like to be able to

kick out some of the other examples of precedent setting. He would make a motion to postpone with a work session to be set up to go over this particular issue.

Mr. Gladhill seconded the motion.

Chairman Ricci was also in agreement. He wants to do the right thing and if there are applications coming before them where they are not doing the right thing, he wants to make sure they understand everything. Mr. Hopley definitely agrees with Deputy City Manager Allen’s general postponement but in this case where there was the third element of this Agreement with the Tucker’s Cove folks with the City, he is wondering if they were on solid ground for this application and do they want to investigate the more global effect of what they have learned.

Mr. Gladhill noted that Attorney Sullivan noted in the third element that it was exempt from the law but they did not put whether there were any changes so it could be exempt from the 1996/97 Conditional Use Permit but it didn’t seem like the Agreement said that any changes to that law would be exempt. If they are talking about being frozen in time, he felt it was frozen in time from that law and not from changes.

Chairman Ricci felt that the Work Session makes sense and he is very uncomfortable about Pandora’s Box being open. It did not appear that any of the Board members were crystal clear and Attorney Sullivan was as clear as he could be. He would support a work session, not to paralysis by analysis, but because he wants to be fair to all of the applicants that come before them after this.

Ms. Moreau asked if it would be possible to actually get some of the information that was analyzed for this decision to review prior to a Work Session.

The motion to postpone to next month’s meeting passed unanimously.

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D. 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 gas regulator and enclosure and planters along Deer Street; modified screen wall along Maplewood Avenue; relocation of transformers on parking deck; addition of 4th grease trap on Portwalk Place; and addition of access controls to both parking levels; with related paving, lighting, utilities, landscaping, drainage and associated site improvements. 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. (This application was postponed at the April 17, 2014 Planning Board meeting)

Chairman Ricci stepped down from this hearing. Mr. Gladhill Chaired the hearing.

Mr. Gladhill read the notice into the record.

SPEAKING TO THE APPLICATION:

Patrick Crimmins, of Tighe & Bond, spoke on behalf of the owners. Also present was Tim Levine, Jeff Johnston and Attorney Peter Loughlin. They were present for amended Site Review approval for changes to the building design. The structure has mixed uses and changes are related to those uses. He displayed the previously approved plan next to the amended plan to review with the Board. They appeared before the Technical Advisory Committee on April 1, 2014 and received a favorable recommendation with stipulations. Last week the HDC voted on changes to the hotel although there are still some changes pending.

Mr. Crimmins reviewed the 29 items and showed how they have addressed each item on the plans.

Mr. Crimmins provided supplemental information with minor revisions relating to Stipulation #1. They provided two sketches. One is based on coordination with the Police Department and DPW, showing changes in bicycle rack placement due to a hydrant which was not on the Site Plan. Based on field coordination with DPW, the spaces have shifted due to restriping. They are now going to re-stripe them to match the existing condition because DPW doesn't want the two spaces to be moved. There will also be meters.

The second revision is to the species of trees along Hanover and Deer. They were previously ginkgo trees but their landscaper could not find acceptable ginkgo trees so she came up with a supplement of 5 cumulus berry trees. They appeared before the Trees & Greenery Committee and received an approval for this change.

There were 7 stipulations with their favorable recommendation from TAC and he addressed how those were addressed on the revised plans.

Mr. Leduc asked why the landscaping doesn't go around to Maplewood. Mr. Crimmins explained there is a large duct bank that prevents them from planting anything in that area so to supplement that they have added landscaping along the back.

Deputy City Manager Allen thought that it almost appeared that the building is a foot or two closer to the property line than the previous approved site plan. He asked if there is a change in sidewalk width or land width, particularly just past the garage opening, moving to the east, heading up Portwalk Place. Mr. Crimmins agreed that it appears it is slightly closer to the property line from the previous approval.

Mr. Hopley referred to Door 29 to the restaurant and stated that their second exit cannot go through the kitchen or the back of the house. It appears suspicious to him.

Mr. Barker asked how many parking spaces there were before the changes. Mr. Crimmins did not know but the current number meets the Zoning Ordinance. He thinks they may have lost 6 spaces.

Ms. Moreau mentioned the transformers on Maplewood Avenue and whether they have thought of a set of stairs so that they are not on the sidewalk level. Mr. Crimmins' understanding was that the transformers have to be set right on the deck for access by PSNH. Mr. Hopley noted they are on the upper parking lot level, 3'-5' above the sidewalk level.

Mr. Taintor wanted to review the staff recommendations. He mentioned that the plans have been changed to match the building drawings but lots of those building changes were made prior to HDC approval and those are not approved yet. The HDC is still going through them with the independent architect. Most of the hotel changes have been approved. Anything that is still up in the air with the HDC does not affect Site Review. However, some requests are subject to requests for rehearing or appeals. More important, the HDC has not begun to look at changes to the apartment building and is not expected to be completed before July. This may not be the Planning Board's final look at this, depending on the HDC. Having said that, the staff recommendations have been changed since the TAC meeting.

Councilor Thorsen felt they are talking about making changes to their current drawing and but are also in current construction. He asked if the construction was substantially already done or is everything still open for approval and, if not approved, it doesn't happen.

Mr. Levine stated it is a mixed bag. No changes were made to the parking spaces. The door openings are mostly in place. The 4th grease trap was put in per consultation with City Staff. Councilor Thorsen felt it would be good to know what the status of each item was. The City Attorney has recommended that they see this as the first time and not as though it has already been done.

Mr. Gladhill opened up the public hearing and called for first time speakers.

Joe Calderola, 170 Dennett Street, stated he is confused about the parking as the parking calculations don't show them as being lost. Secondly, he doesn't understand the legality of the fewer spaces.

Mr. Taintor responded that the Zoning Ordinance not only has a requirement for the minimum number of spaces but also has a requirement for the maximum number of spaces. The original plan approved the maximum ceiling that was allowed and this plan is still above the minimum.

Mr. Calderola was trying to make the point that the Board can still enforce the original number of parking spaces approved. Also, although it was not on the Agenda, he felt the screening wall on Maplewood Avenue is offense to many residents. He thought they could possibly reduce the wall and introduce planters.

Jerry Zellin, of Kensington Road, also wanted to talk about the wall. Ignoring all of the history, whether they can foresee it or not, the wall is something that people feel is pretty terrible. A more sensible strategy per the department was to swallow some of the unpleasant changes and mitigate on some things that could be improved. He feels it is reasonable for the City to request some significant improvements to the wall. He urged them to give that the highest priority.

Eric Weinrieb, of 9 Mill Road, sees the changes proposed as pretty reasonable and he recommended approving them as is.

Jeff Johnston explained that for retail expansion they build more parking than needed because there were two things they wanted to do. They wanted to activate the street level on Hanover Street by expanding retail space and the HDC was concerned about standing glass and they have opaque.

Mr. Gladhill called for second time speakers, third time speakers, and seeing none, he closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Leduc agrees with comments about the wall and asked if they can work on that. Mr. Taintor said they are looking at the design and not the site. It would be complicated but it probably couldn't happen tonight. That would be a postponement for a possible work session. Mr. Leduc believed it was unpleasant. Mr. Taintor also noted that most of the Planning Board members were not on the Board when the project was completed.

Mr. Levine said that the project is not completed. The brick wall is set back and a strip of planters and a trellis with plants will be added. This will be a green wall and there is an extensive planting plan that goes with it.

Mr. Leduc asked about the height for the current wall. Mr. Levine responded that it was required to screen the cars so you couldn't see them.

Councilor Thorsen felt that from a process point of view, they can put in stipulations that are not necessarily related to what is being presented. They could put in a stipulation about further consideration about what to do with the wall. He would support that so that they can get through the rest of the items. He would like to get the parking back but he is not sure they have standing to do that.

Deputy City Manager Allen made a motion to postpone. Mr. Leduc seconded the motion. Deputy City Manager Allen felt they are in a unique situation with an unprecedented project and situation where they are approving a site plan for something that is almost all built. They actually have the opportunity to go out there and see it rather than looking at a set of plans. The wall is a perfect example of something they should go out and look at. In this case the wall was on the plans and approved but there are a number of things that would make it worth while to have the Board go out to the site on a Site Walk. He stated that he would like to convene a site walk in the future.

Mr. Hopley felt that was a pretty good idea and he was going to address the fact that many Board members were not around when they wrestled with the wall, the floors, and the parking deck, and a site walk would be beneficial. They have the benefit of late daylight now to add more flexibility.

Mr. Barker felt that many changes are minor and wouldn't require a site walk. He has concerns about postponing. He asked if they could approve with stipulations. The items that were done without HDC approval are separate from what is being reviewed tonight.

Deputy City Manager Allen reiterated their unique position and added that he is concerned about where the sidewalk is and he feels it would be worth the Board taking a look at the site. He did not feel there was any reason to rush into this.

Mr. Gladhill said the HDC is meeting next Wednesday and the wall will be discussed. If they are feeling uncomfortable about the wall, they should discuss that and give some direction to the HDC. At this stage of the process, it would be helpful if issues with the wall would come out before Wednesday. The wall was previously approved but the gate to the transformer has not been approved.

Mr. Leduc asked if the discussion of the gate could impact the design of the wall. Mr. Gladhill felt that the HDC needed to know exactly what the Planning Board concerns were. Mr. Leduc felt that some Board members have concerns but there is a motion to postpone with a site walk recommended. He

wants to know where they can address the wall issue. He wasn't sure they have the ability to give guidance to the HDC.

Councilor Thorsen is in agreement with Deputy City Manager Allen that they postpone and take a look at the site. He is more of a 3-D person. He also understands that many issues are small so he suggested a motion separating the items.

Ms. Moreau said that she walks by the site every single day and agrees it would be very helpful to actually see the changes and would be in favor of a site walk and postponement.

The motion to postpone and schedule a Site Walk passed with an 8-1 vote, with Mr. Barker voting against. The date of the Site Walk will be determined by staff.

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IV. 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 **Christine & Craig Hodgson, Owners**, for property located at **165 Middle Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 175 ± s.f. addition, a 676 ± s.f. garage and a 675 ± s.f. driveway, with 3,450 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 168 as Lot 17 and lies within the Single Residence B (SRB) District.

Ms. Moreau recused herself.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinreib, of Altus Engineering, was present along with Craig Hodgson, the property owner. He stated this was a one-third acre parcel and the structure was built in the early 1900's and was part of the first Sanderson subdivision. There is an existing wetland behind the property. The only area on the parcel that is outside of the wetland buffer is a tiny little triangle. They are proposing to construct a 26' x 26' garage with a connector. This is the only place that is reasonably located on the parcel. The existing house has a front porch that is in the front setback. The new garage is as close to the front set back as possible. They are proposing as mitigation to put a stone drip edge around the property to take care of run off from the property. They are also proposing to let the upland buffer that is lawn remain natural. They are proposing to remove the existing driveway and add a driveway. During a storm event, they currently have to find a way to wedge a car up on the lawn to get both cars off the street.

Mr. Weinrieb stated that in order to grant a Conditional Use Permit, there are five criteria that need to be met. He reviewed those criteria with the Board.

Mr. Weinrieb said they appeared before the Conservation Commission yesterday and they voted to recommend approval with two conditions. One was that the new driveway be pervious and that the area they are proposing to naturally re-vegetate should have a more robust planting scheme. The entire

wetland system has a lot of invasives and they can plant more but those invasive will creep right back up.

Mr. Hopley noted on the plan for the culvert pipe it says "by others". Mr. Weinreib explained that when the subdivision was approved, that was exactly how it was stated on the plan. The Sanderson's granted the City an easement to the culvert and it is his understanding that it would be extended by the City.

Mr. Hopley was quite sure the code will require a non-combustible floor. Mr. Weinrieb believes it will be a walk out basement and a concrete slab.

Chairman Ricci said that he does not believe this is the option with the least impact. He would ask that 100% of the roof run off go to a dry well and half of the existing building go to a dry well. He doesn't think the stone drip edge will do a bit of good but a dry wall would truly minimize the impact. Mr. Weinrieb felt if the soils were different he would agree with him however the soils in the buffer area have very little ground cover. They will not get any infiltration out of that and it will not provide any mitigation. Chairman Ricci was not comfortable with that.

Deputy City Manager Allen asked how the stormwater treatment would work. Mr. Weinrieb stated they will have an underdrain system with the porous pavement. His preference would be conventional pavement, as he is not a fan of porous pavement, but the Conservation Commission requested porous.

Chairman Ricci asked if they explored going for a variance to move the addition forward and Mr. Weinrieb stated they did not. He stated this application is similar to a 2013 application in the Woodlands where they were adding a porch and they put in a drip edge, added plantings, and they were within 12' of the wetlands in Berry's Brook watershed. Mark West has identified this as a low value wetland that is isolated and it drains back into a closed drainage system.

Chairman Ricci stated that with the recent Lang Road project they required that every house would have a dry well. He felt that every application stands on its own and you can't compare them.

Mr. Taintor pointed out that the Conservation Commission met on this yesterday and there was a stipulation that the plans be revised and he recommended that the Board postpone this application so that they could see the revised plans. He also stated that Peter Britz was present to speak.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Allen asked Peter Britz to come up and review the two stipulations.

Peter Britz, the City Environmental Planner, stated that the Conservation Commission was very concerned about the new pervious surface and that the addition was as big as the size of the house. They were trying to off-set that with the drip edge and the plantings but he is now concerned about Mr. Weinrieb's statements about the soils. He is not sure how the drip edge would work without infiltration. He likes the idea of a dry well which could store a storm event and slowly infiltrate. Impervious surfaces are the concern rather than the habitat or values. The Conservation Commission

assumed the driveway, drip edge and plantings would provide infiltration and a better buffer in the back.

Mr. Hopley made a motion to postpone for further engineering. Mr. Gladhill seconded the motion.

Chairman Ricci asked why a dry well wouldn't work if there is a perimeter stone drip edge that will infiltrate.

The motion to postpone passed unanimously.

Mr. Weinrieb stated that a drip edge isn't meant to infiltrate. Treatment for run off in most cases has to be a drain or an underdrain.

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B. The application of **Roxanne S. Tooker Revo Trust of 2008, Owner**, for property located at **147 Walker Bungalow Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an wetland buffer to replace a failed septic system, with 1,321 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 202 as Lot 5 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Susan Fetras appeared on behalf of the Roxanne Tooker Revocable Trust. She stated this was a very small property of about ¼ acre of land behind a wetland that is poorly drained. The property is currently for sale and during inspections the septic was found to be in failure. One of the features of the lot is a lot of ledge which is also poking out onto the neighbor's lot. The existing system is a tank at grade, beside the garage, which goes into a small stone septic field. She designed an aerobic pre treatment system providing for a smaller leach field. There is nothing outside the wetland buffer that can handle the probes. There is also a water shut-off and water main that has a 25' state setback. The only place there was enough soil to place the septic was where the old tank is. The new tank is a lot larger as it included the tank as well as the treatment system. She pointed out the temporary impact to get the machinery in. The new leach field is higher in elevation than the old and as it can no longer use gravity and they will need a small sump. Unfortunately she could not get the system out of the 100' buffer.

She addressed the five criteria for granting a Conditional Use Permit. The house was built in 1957 and major renovations were completed in 2005 when it was rebuilt on its existing footprint. There is no area outside of the wetland buffer. The old system was undersized and the new system will provide more treatment. They are replacing the old system with a more technically advanced system. There is lawn there now and no trees will be cut down. This will help keep the ground water cleaner in the area.

Mr. Hopley asked if DES approval is required. Ms. Fetras stated she has already obtained DES approval. As this was originally a 2 bedroom home but is now a 3 bedroom home, the State was concerned that the lot was too small for a three bedroom under today's standards. Therefore, they were only approved for two bedrooms however she said it does not actually affect the 3rd bedroom. Mr. Hopley felt it muddied the waters.

Chairman Ricci asked her to explain the clean solution septic system. Mr. Fetras stated it is a 3 compartment tank. The first compartment serves the septic tank, the second compartment is an aeration section to keep it circulating and treatment action takes place, and the third compartment is used to settle out any suspended solids so that it doesn't get into the leach field. It is a very simple and direct system and provides for considerable reduction in the leach field.

Chairman Ricci noted that is says 3 bedrooms on the plans but the State required them to change that to 2 bedrooms. She responded that the revised plans will show 2 bedrooms.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Hopley made a motion to approve the Conditional Use Permit. Mr. Rice seconded the motion.

Councilor Thorsen had the same concern that Mr. Hopley did about the number of bedrooms and he felt he could not ignore it without saying something.

The motion to grant Conditional Use Permit approval passed unanimously.

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- D. The application of **Harborcorp, LLC, Owner**, for property located **on Deer Street and Russell Street**, and **Boston and Maine Corporation, Owner**, for property located **off Green Street**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:
- a. Assessor Map 118 Lot 28 increasing in area from 47,082± s.f. to 48,416± s.f., with no change in street frontage;
 - b. Assessor Map 124, Lot 12 increasing in area from 16,008± s.f. to 19,055 ± s.f. with no change in street frontage; and
 - c. Assessor Map 124, Lot 13 decreasing in area from 17,194 ± s.f. to 12,813 ± s.f. with no change in street frontage.

Said properties lie in the Central Business B District, the Downtown Overlay District (DOD) and the Historic District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Corey Colwell, of MSC Engineering and Land Surveying, spoke on behalf of the applicants. Also present was Attorney John Springer. Mr. Colwell stated that the purpose of the application is to relocate a property line between Vaughan Street, Green Street and the other two parcels owned by Harborcorp which are the current surface parking lot for the Sheraton. Harborcorp wishes to purchase this strip of land making their two lots 12' larger. They would set new iron boundary markers and the plan would eventually be recorded in the Registry of Deeds.

He also pointed out in Note 1, it reads that the parcels are located in the CBB but one is located in the CBA zone. He will add that to the plan to reflect the correct district.

Mr. Gladhill noted that will put them 13' from the railroad and he asked what a safe distance was when trains are going by. Mr. Colwell said the B&M Railroad allows them to go within 8' and they have been as close as 8' to the tracks in the past. This will end up about 10'.

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. Taintor stated the staff recommendation is to grant with 4 stipulations.

Ms. Moreau made a motion to grant Preliminary and Final Subdivision approval with the four stipulations. Mr. Gladhill seconded the motion.

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

1. The plan shall be corrected to show the boundary between the CBA and CBB districts, and Note 5 shall be modified to include the zoning table for the CBA district.
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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V. CITY COUNCIL REFERRALS/REQUESTS

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

A. 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 10.531 – Table of Dimensional Standards – Business and Industrial Districts, to establish dimensional 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 17, 2014 Planning Board Meeting.)

Mr. Taintor said the Board last talked about this in detail at the April 3rd Planning Board meeting and they voted to postpone pending City Council action on Character Based Zoning (CBZ), which has since been adopted. The City Council has also approved funding to extend the CBZ in the north end and down Islington Street. The proposal for the CBC district would actually increase the density along Islington Street which was not what the author intended. The only areas they would be looking at would be the existing Sheraton, the condos on Deer Street and the Harborcorp area, partly because the effect would be increased development potential on Islington Street and also in part because all areas will be looked at again for the extended CBZ.

Councilor Thorsen thought that another thing that helps this is the change to the 45' height and the Conditional Use process, which is what they were trying to do with these amendments. Even the author of these recommendations has agreed that they are no longer at issue.

Deputy City Manager Allen made the motion to vote to recommend against the Zoning Ordinance Amendments as defined in the Staff Memorandum dated May 15, 2014. Ms. Moreau seconded the motion.

The motion passed unanimously.

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B. Request by the City Council that the Planning Board evaluate the design review provisions established in Section 2.4 of the Site Plan Review Regulations. (This matter was postponed at the April 3, 2014 Planning Board meeting.)

Mr. Taintor said this was discussed at the April 3rd Planning Board meeting. His sense was that there was a consensus of the Board to review and accept the request before the public hearing. He recommends adding a new paragraph 4 which would read:

- 4. At a regular meeting of the Planning Board, the Board shall determine if the request for Design Review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and shall vote on whether to accept the request for Design Review and to schedule a public hearing. If the Board determines that the request does not describe the proposed project in sufficient detail, it shall notify the applicant of the specific deficiencies that need to be addressed.

Mr. Taintor explained they would need a 10 day public notice for a public hearing. The posting of the public notice is the important part. If they had a request for design review, they would review it and if they determined it was complete, they would vote to schedule a public hearing at the next meeting. A notice would have to be posted 10 days before the public hearing.

Mr. Gladhill asked if they would hear from the applicant at the first hearing. Mr. Taintor confirmed they would just be looking at the material and it would not be a public hearing.

Mr. Taintor advised the Board that they had a public hearing on this and closed it so they can proceed with a vote.

Mr. Barker made a motion to amend the Site Plan Review Regulations by inserting the new recommended paragraph 4 in Section 2.4.3 – Design Review (and renumbering the subsequent paragraphs accordingly) and incorporating language provided by Ms. Moreau. Mr. Hopley seconded the motion.

The motion passed unanimously.

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VI. PLANNING DIRECTOR’S REPORT

A. Status of Conditionally Approved Applications for Site Plan Approval (list provided)

Mr. Taintor said the Board often approved Site Plan applications with conditions and the Department made a list of Site Plan approvals that have not yet satisfied all of their conditions yet. There was one from The Hill that goes way back and they are currently in violation.

B. Status of Conditionally Approved Applications for Subdivision Approval (list provided)

Accordingly to the subdivision regulations, Mr. Taintor indicated that he needs to update them on when the conditions have been met. They found a lot of approvals that had expired, two are very old, one is under appeal, and others where the City is waiting for legal documents.

C. Update 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.)

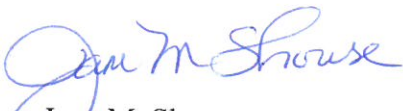
Mr. Tainter said he did not have an update at this time.

D. Non-Agenda Report: RT pointed out a Memo that was distributed to the Board regarding a grant the City was awarded to have national experts come in and help them implement the Complete Street Policy. On June 12th they are having a presentation and on June 13th they are having an all day hands on work session, invitation only. The Board is invited to come if they are interested.

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VII. ADJOURNMENT

A motion to adjourn at 9:30 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.

