

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

7:00 P.M.

JUNE 19, 2014

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

MEMBERS EXCUSED: n/a

ALSO PRESENT: Rick Taintor, Planning Director

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6:00 pm WORK SESSION – Vesting of Subdivision Plans

Chairman Ricci turned the Work Session over to City Attorney Robert Sullivan. The purpose of the Work Session is to continue the discussion relative to the lot owned by the Crocketts in Tucker's Cove. Attorney Sullivan passed out a one page Memo stating a few bases why some lots in that development were vested. There was a third basis that only applies to Tucker's Cove, which is a result of a Court Case and is unique to Tucker's Cove. It is not susceptible to a quick interpretation.

These vesting questions should never get to the Planning Board and should be made prior to Planning Board review. This particular vesting question reached the Planning Board because they filled out a building permit and it was determined that zoning relief was required. If the Planning Staff had made a vesting decision at the time of the filing of the building permit it never would have come this far. Attorney Peter Loughlin, representing the owners, brought the issue up at a later stage. Attorney Sullivan felt the Planning Board was justified with their concerns over this issue.

In a normal situation where a decision has been made by staff, the appeal process would also not come before the Planning Board. Therefore, the Planning Board does not have to become overly concerned with the issue. Last month, the Planning Board was having a discussion and he felt they should pick up where they left off.

Councilor Thorsen felt it should be remanded back to the Planning Department for a decision, which is a little different than what they were talking about regarding completeness. He asked how that all fits in.

Attorney Sullivan stated the vesting regarding the Crockett case deals with a change in the Zoning Ordinance after the development is approved and to what degree their plan is subject to changes in the zoning regulations.

Vesting is protection against subsequent changes in land use regulations. Before the project has begun or been approved, in general, the developer has to have a building permit in hand before the City Council passes first reading and posts notice of second reading. If that happens then it is vested against any changes the City Council is considering. Another similar process is where the Planning Board adopted a Design Review process and one effect was that once the Planning Board has held a public hearing, then what is on the plan is vested simply by operation of statute. Councilor Thorsen felt it sounded like two different types of vesting. This issue is relying on a prior approval and the issue of completeness is along the lines of when they gave the first approvals.

Ms. Moreau's concern was with what happens with other subdivisions in the future. They have done a lot of zoning changes, especially to the wetlands, and asked if there is a definition of when a subdivision is true and complete. She would like to see them spell out the details of how to meet that. Attorney Sullivan referred to his Memo and State Statute.

Mr. Taintor stated they had to define substantial completion for the Site Plan Review Regulations. There is a default definition in the Statute. That was Ms. Moreau's concern and, if there isn't one, they need to work one into their regulations.

Mr. Taintor pointed out the definition in the Site Plan Review Regulations and it is fairly specific and states that everything needs to be completed within 4 years.

Mr. Gladhill referred to the Memo and asked about exceptions to regulations and ordinances that protect public health standards and whether that would refer to wetland regulations. Attorney Sullivan stated he is personally offended by laws that suggest that once a subdivision lot is approved, the City can never do anything to change any conditions. He felt environmental-type regulations are the best argument for not being vested forever.

Mr. Gladhill noted that Attorney Loughlin's Memo excerpted that they were exempt from certain sections referencing the wetlands but that section is no longer in the current Zoning Ordinance. It seems the law they want protection from no longer exists. Attorney Sullivan said the argument is that at the time of the approval of the subdivision they were protected by the wetland buffer in effect at that time, which was smaller than it is now.

Chairman Ricci asked about stand alone lots that have been taxed as a buildable lot for year. How do they differentiate between them when at the time there was no wetland buffer. Attorney Sullivan responded they don't have a situation where an owner, relying on a particular regulation, has commenced a project. Chairman Ricci asked if that situation could grow legs. Attorney Sullivan felt that could be raised from two different sides. The City could make a determination at the time of the application of a building permit and even that would create aggrieved parties. Or it can come from the property owner or developer. The cases raise a lot of different things to look at and whether it was a buildable lot is one thing.

Mr. Gladhill asked how many subdivision lots from developments still exist. Attorney Sullivan indicated this is another nightmare they deal with regularly. Up to around 1950 anybody could record a subdivision for any lot with no regulations. They are seeing a lot of these lots because of the relatively recent State law regarding the un-merger of involuntarily merged lots. Mr. Taintor added that those lots weren't vested as they were not approved by the Planning Board so they would have to follow current regulations.

Mr. Taintor asked exactly what is vested and he brought up Elwyn Park. The zoning has changed to require smaller lots. Should a current subdivision be reviewed under the zoning that was in place at the time of creation? Attorney Sullivan believed it was the right of the developer to put one single family home on a lot. Mr. Taintor asked, with no wetland regulations yet and the subdivision not showing where the house was going to be placed, would they be allowed to potentially build a house in the wetland. Attorney Sullivan doesn't have an answer to that but someday that exact situation will come up and he will fight it to his death.

Attorney Sullivan noted there is so much wetland in the City, and many more wetland regulations than in the past, he is sure there are many, many lots that are now unbuildable that were buildable at the time of creation. He would use the argument that the current wetland regulation is effective and they cannot build.

Mr. Taintor felt a major issue with subdivisions is that buildings are often not shown on the approved plans. The Elwyn Park height limit was much higher at the time of development than it is today. This is something the Planning Department may look at. Attorney Sullivan felt that somebody could also come in and say they were vested. That is pretty much what happened with the Crockett situation and they accepted his opinion.

Attorney Sullivan felt if a subdivision plan approved by the Planning Board shows the location of the proposed houses, that would be a much better scenario and there would be an argument.

Mr. Gladhill asked if, for further subdivisions, there was something they could do with stipulations regarding future development in that subdivision. Attorney Sullivan did not believe they could contradict the statute. But, in one particular case, where there was one lot adjacent to a wetland, they could make one specific recommendation but not the entire vesting right.

Deputy City Manager Allen noted that for a recent subdivision approval on Lang Road they had them reflect where the buildings will be located because of septic system concerns. Mr. Taintor said that is being done more by practice. Attorney Sullivan said that in the past, the worst problem is that someone gets vested to build something even though it wasn't shown on the plan. He doesn't think it is fair for the City to change the rules after the fact but when things are never shown on the plans they are not necessarily vested.

Mr. Taintor felt another situation is a subdivision plan including a lot line revision that is approved and recorded that would then be vested from zoning at the time that the plan was approved. They recently rezoned the entire CB district to CBZ so he asked if everything is vested. Attorney Sullivan was only referred to private projects.

Chairman Ricci thanked Attorney Sullivan for participating in their Work Session. Attorney Sullivan felt it was always better to discuss these issues before they became a bigger problem.

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I. APPROVAL OF MINUTES

1. Approval of Minutes from the February 20, 2014 Planning Board Meeting – Unanimously approved.

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II. DETERMINATIONS OF COMPLETENESS

A. Site Plan Review

(None)

B. Subdivision Review

1. 347 and 335 Maplewood Avenue – Lot Line Revision

Ms. Moreau made a motion to determine that this application is complete according to the Subdivision Rules and Regulations and to accept it for consideration. Mr. Barker seconded the motion. The motion passed unanimously.

2. 520 South Street and on Sherburne Avenue – Lot Line Revision

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

III. PUBLIC HEARINGS – OLD BUSINESS

Mr. Gamester made a motion to take Items A & D under Old Business out of order for the purposes of postponement. Mr. Rice seconded the motion. The motion passed unanimously.

A. 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 in connection with a proposed subdivision, with 10,700 s.f. of impact to the wetland buffer and 5,800 s.f. of wetland buffer restoration. Said properties are shown on Assessor Plan 233, as Lots 112 & 113 and Assessor Plan 241 as Lot 25 and lie within the Single Residence B (SRB) District and the Office Research (OR) District. (This application was postponed at the April 17, 2014 Planning Board meeting.)

Deputy City Manager Allen made a motion to postpone this matter to the September Planning Board meeting. Mr. Gladhill seconded the motion.

The motion to postpone the Conditional Use Permit application to the September 18, 2014 Planning Board meeting passed unanimously.

D. 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 May 15, 2014 Planning Board meeting.)

Ms. Moreau made a motion to postpone this matter to the next Planning Board meeting. Deputy City Manager Allen seconded the motion.

The motion to postpone the Amended Site Plan application to the July 17, 2014 Planning Board meeting passed unanimously.

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B. 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 May 15, 2014 Planning Board meeting.)

The Chair read the notice into the record.

Mr. Taintor advised the Board that the applicant has submitted a letter withdrawing the application.

Deputy City Manager Allen made a motion to accept the applicant's request for withdrawal. Ms. Moreau seconded the motion.

The motion passed unanimously.

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C. 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 May 15, 2014 Planning Board meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech addressed the Board on behalf of the applicant and owner. They were last before the Planning Board in April and the application was continued for two reasons: to review minutes of the Conservation Commission and to conduct a drainage analysis which has been completed by Christian Smith of Beals & Associates. They did a very thorough drainage analysis which showed they were reducing the rate of stormwater runoff to the wetlands, reducing infiltration, improving the quality of the stormwater runoff to the wetlands through the bio-retention structure and stone drains around the house and further by replacing the impervious driveway with a pervious driveway. They went back to the Conservation Commission on June 11th and unfortunately the Commission made a motion to recommend approval and to not recommend approval and both motions failed. They are before the Board again to convince the Planning Board that granting the Conditional Use Permit is appropriate.

Attorney Pelech stated this is a 1940's subdivision which was done before subdivision approval was required. Mr. & Mrs. Tucker, the parents of the applicants, bought several lots, including this one, in 1979. It is assessed as a residential building lot for \$286,000. It is in a SRB zone and the plan shows the 100' wetland buffer and only a small portion of the lot is not within that buffer. They are

proposing to place the home in the front of the lot, in the wetland buffer, which is all lawn and driveway. The Conservation Commission did agree that this was the most appropriate place for the home. They have had 4-5 Conservation Commission meetings and as a result they have reduced the size of the home, they have added a bio-retention raingarden, added stone drainage around the perimeter, designed roof run off to go into the raingarden, and are replacing the impervious driveway with a pervious driveway. The mitigation of these measures is that the amount of stormwater run off into the wetlands is reduced, the rate is reduced and the water quality is improved.

One issue that repeatedly came up was about the basement affecting groundwater. Christian Smith will address that issue. He felt the affect would be negligible.

Attorney Pelech reviewed the Conditional Use criteria:

1. The land is reasonably suited to the use, activity or alteration.

The subject lot on Brackett Road is reasonably suited to the use as a single family residence. Almost all surrounding uses are single family residences and no variances are required. The property has existed as an undeveloped building lot for over 50 years and has been taxed as such.

2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.

The Conservation Commission has on numerous occasions indicated that this is by far the most appropriate location because of the total impact on the buffer.

3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.

The drainage analysis and sedimentation report concludes that the rate of run-off will be decreased, the volume of run-off to the wetlands will decrease as will rate and volume on abutting properties. There will be treatment where there is none now through the bio-retention center and through infiltration through the pervious driveway and the stone drip edges. Plus, the gutter system will be directing stormwater run-off that doesn't go through the storm drip edges, into the bio-retention center. Attorney Pelech believes they demonstrated to the Conservation Commission and the Planning Board that there will be no adverse impact on the wetland functional values.

4. Alteration of the natural vegetative state of managed woodland will occur only to the extent necessary to achieve construction goals.

One small tree may have to be removed but otherwise, it is a well maintained lawn with a driveway going to nowhere. The driveway will be changed from impervious driveway to a pervious driveway.

5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.

The Conservation Commission agreed that the proposal before them tonight was the alternative with the least adverse impact to areas and environments under jurisdiction of Article 10. The Conservation Commission was unanimous in determining this was the location for the home rather than at the rear of the lot, which would involve more impact.

Attorney Pelech referred to Article 10, 10.1014.21, "The purpose of a wetland buffer is to reduce erosion and sedimentation into adjacent wetlands, vernal pool or water body, to aid in the control of non point source pollution to provide a vegetative cover for filtration of run off and to protect wildlife habitat and to help preserve the ecological balance." He stated they are doing that and are improving the situation and are not disturbing the vegetative cover or harming any vegetative habitat. They comply with the purpose of the wetland buffer. Attorney Pelech felt the wetland buffer ordinance was to deal with situations such as this. This is the last undeveloped lot in the neighborhood. They do not have a vesting argument but all of the homes were built without being subject to a wetland buffer.

The second issue, which was overly discussed, was the effect of the basement on the flow of groundwater. Attorney Pelech didn't feel that was within their jurisdiction as they only deal with stormwater runoff into the wetlands. A basement of that size makes an insignificant difference on the flows of groundwater and the levels of groundwater in the area.

The wetland ordinance also states it is to maintain and, where possible, improve the quality of surface waters and groundwater by controlling the rate and volume of stormwater runoff and they are doing both of those. And preserving the ability of wetlands to filter pollution, retain and absorb chemicals and nutrients that produce oxygen, which they are doing with a bio-retention structure and stone drip edges and infiltration. There were many concerns about the basement but they do not believe any are valid.

The Zoning Ordinance, Section 10.1017.42, states the Planning Board shall evaluate an application for a Conditional Use Permit in accordance with *The Highway Methodology Workbook Supplement – Wetland Functions and Values: A Descriptive Approach*, NAEPP-360-1-30a, US Army Corps of Engineers, New England Division, September 1999, as amended. That Workbook Supplement has 13 functions and values and only one of them is related to groundwater. They are recharging groundwater that is not happening now. Attorney Pelech felt that the wetland in question was in part created when an elevated walkway was constructed which, in essence, formed a damming structure. That runs from Brackett Road, out to Newcastle Avenue, to allow school children to walk to school.

Attorney Pelech felt they should look at the totality of the circumstances. This lot has been inherited and has been in existence for 50 years, taxed as a buildable lot and without a conditional use permit they cannot use it. He feels this is a taking without compensation. He stated they meet the criteria and he doesn't understand why the Staff Memorandum recommended denial.

Also present are representatives of the owners, Steve Riker, of Sandpiper Environmental and Christian Smith, of Beals Associates.

Christian Smith indicated he was hired after the April hearing to conduct a stormwater analysis. He started with the pipe under the paved driveway that takes the surface water and conveys it underneath the paved road. They decided to overdue this analysis rather than brushing it under the carpet and used Alteration of Terrain standards, used the Cornell Extreme Precipitation Tables to develop the rainwater event from the 2 to 100 year storm event and under each event there is a reduction in both overall peak flow off the site as well as volume over the property to that evaluation point. It became clear to him

that the alternative of placing the home largely out of the 100' wetland buffer and creating the driveway through the forested area to access that would impact the wetland 100' buffer a great deal more than their current proposal. The current proposal leaves the entire existing tree line alone. The only things getting disturbed is lawn and a paved driveway. They used a conservative infiltration rate, he did some test pits 24" down and did not encounter water table. It was his opinion that the ground water would not be impacted by the implementation of the foundation. He was told that 1' a day is a rapid ground water flow rate. This one foundation is going to have an insignificant impact on groundwater although he agrees with the Board that this is not part of the Conditional Use Permit. They would be providing for a sump pump should there be a basement. There are 2700 gallons available in the retention basin and even a 100 year storm would not fill that. He also pointed out a knob of elevation that precludes anything from reaching the wetland that has the 100' buffer. The subcatchment line runs along the high point so everything that drains from this property into the wetland in question that does have the 100' buffer, is preserved and nothing is changing.

Mr. Barker asked if it is the applicant's position that building this house would positively impact the quality of the wetland. Mr. Beal responded it is not going to impact it whatsoever. Mr. Barker heard earlier that the impact would improve the quality of the wetlands. Mr. Beal stated it would improve the quality of the stormwater.

Mr. Barker asked how often the Board has approved a development 100% within the wetland buffer. Chairman Ricci was not certain but it certainly was not a common occurrence.

Mr. Beal added that to access the area that is outside the wetland buffer, there will be a lot more impact to trees than to the wetland buffer as it is maintained lawn and pavement.

Mr. Taintor advised the Board that Peter Britz was present to address what occurred at the Conservation Commission meetings.

Mr. Gladhill asked when Mr. Beal did samples of soil and when was the last major precipitation before that. Mr. Beal responded it was in late April and it was when groundwater tables were at their seasonal high level.

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

Dan Chasson, of Kensington, NH, speaking in support of the application on behalf of the Tucker family. He is married to one of the daughters. The family took notes of the concerns from previous meetings and they had additional work done to address those concerns. He wanted to add some background. The parents lived adjacent to this property and they were good citizens and good neighbors. The Tuckers bought this lot in the 1980's as an investment. There have been a few changes on the road, including the footpath that the City built in the wetland to the school. It created a berm that traps water. The lot across the street brought in dozens of loads of dirt to make it a buildable lot. Little Harbor School was built on what was open land and had a lot of impact on the area. The Zoning Ordinance has changed and the wetland buffer setbacks increased. The Tuckers have a significant emotional investment in this lot and want to construct a house on it. He acknowledged that the situation was not ideal, but only due to the passage of time. They think this proposal meets the criteria and the spirit of the ordinance. They went back to the Conservation Commission and their proposal did not pass (it tied) but he felt it was because of the potential water in the basement and there is no basis for that concern. The neighbor across the street, Jack Blalock, said he didn't have water in his basement.

Tom Fellestario, spoke in opposition. He is a professor at UNH and has a consulting company. He is a professional engineer, hydrologist and hydro-geologist. He felt it is not this Boards' job to determine how the property is being developed but rather that it meets the ordinances. The most important issue is that this proposal is in the buffer and it is worse than what is there now. The drainage analysis has some very gross statements about how this will adversely affect the wetlands and effect run off. When he looks at simple things like the drop edge, it has a finite volume and can only hold 1" of rain so when the higher storms come, where will the water go. He is the Director of the UNH Stormwater Quality Center. Looking at the design of the bioretention system, there are two glaring defects that are not used anymore. Compost is not used in these systems any more and they usually don't plant trees in them. Fundamentally and more importantly, the ground water elevation is almost where the wetland boundary is. If this house has a basement it will have an excavation of at least 6 – 8" below the underground water level. Their under holes would not have gotten to that elevation. They are putting water into the ground around the house on three sides. The groundwater level is going to have the bioretention system filled with water during that time of year and most of the drip edge. Therefore, there is not a lot of water to get into the system. His last point is that any dewatering around the foundation will be water in the wetland and that is a serious consequence.

Derek Durbin, Attorney for Denise and Michael Dodd, abutters on 254 and 244 South Street. Attorney Simmons appeared at the last meeting on his behalf and expressed a lot of the concerns that he does not have to rehash tonight. His clients would be impacted by a project on this property which is 100% in the wetland buffer. It is a very wet lot and has a very high water table. They are concerned about changes in hydrology in the area. He wanted to address some of the arguments that the applicants have made, which he felt were misleading. They have stated that this is essentially an unbuildable lot if this is not approved but he felt that was untrue. He felt they could design this in a different way that could be approved. The argument that they will in some way improve the area and there will be no impact is not feasible. He submitted a report by an expert who indicated that valuable information was missing, if felt the Board can come to the conclusion that the land is not reasonably suitable for the proposal, it is not the least impact alternative and that there will be impacts to the wetlands. The whole legal argument that they have been taxed as a buildable lot is not within the purview of the Planning Board. That is a legal argument. There is a fairness argument but this is not the forum where that should be made. He does not feel they should be persuaded by the applicants' arguments which he feels are being presented to draw attention away from the fact that their report and the proposal is lacking the information that would support approval of this project. This is 100% in the wetland buffer, and other people will be looking at this as precedent setting.

Jane Coffey, of 445 Ocean Avenue, lived at 252 South Street starting in 1952. She testified that the ground behind the house has gotten wetter and wetter. It always had a wet basement and she doesn't know exactly why but it is always wet there. She also wanted to clarify that the paved driveway they keep referring to is actually very broken up with grass growing up between the cracks. She opposes the project.

Attorney Pelech referred to Attorney Durbin's statement that this is a very wet lot. He feels maybe 10 – 15% of the lot is wet. They presented two different proposals to the Conservation Commission and this was the proposal that they preferred. Mr. Durbin's clients are on South Street, 10' above grade so it will not affect their property. This Board is charged with the responsibility of reviewing conditional use permits. He did not believe they were setting precedent with this application as every application is considered on their own merits.

Christian Smith addressed some points of Dr. Fellestario, who he has tremendous respect for. If there is no longer a compost component in the filtration mix recommended in the bioretention area then he is willing to remove it but that recommendation has not yet made it to Alteration of Terrain at DES which is the criteria they used. Also, no tree plantings are proposed, only bushes.

Dr. Fellestario stated he is working with a community up north right now who inherited a levy. Before there were flood plain regulations, they built a development behind the levy. They have been told they have to repair the levy for \$1M to protect those properties. One year ago, the City of Portsmouth commissioned the Planet Change Vulnerability Assessment, for which he was one of the authors, and that report states that by mid-century they will see 1' – 2' of sea level rise and by the end of the century there will be 6'. This property is in the 10 year flood plane before the century is out. The Tuckers will not be living there then and the people building the house may not be living there by that time but they are possibly creating problems for the future unless you consider some of the studies the City has already commissioned. Besides the adverse affect on the wetland due to the dewatering at its foundation, there are other things happening at this site that they should consider.

Seeing no further speakers, the Chair closed the public hearing.

DISCUSSION AND DECISION

Mr. Taintor addressed the question of why the Staff report recommended denial. Last month they had a recommendation from the Conservation Commission against the proposal and this month it was a tie vote. There was no indication of them changing their vote so he carried forth this recommendation.

Mr. Barker made a motion to deny the Conditional Use Permit. Deputy City Manager Allen seconded the motion.

Mr. Leduc asked if they wanted to hear from the engineer. Chairman Ricci stated that the public hearing was closed.

Councilor Thorsen stated he is not going to vote for the motion. He read the ordinances and it doesn't say they can't do a 100% development within a buffer zone. He therefore doesn't think a precedent has anything to do with the ordinance. All it says is that it cannot have any adverse impact. He is in a quandary because it has been habitual to assume that because they are building 100% within a buffer zone that it is automatically bad without consideration of any adverse impact. He heard them say there would be an improvement so why not allow them to build in the wetland buffer. The decision comes down to whether they believe the applicant or do they believe something else. He felt the Staff Report was just saying not to build anything in buffers regardless of any adverse impact to the property. He did not hear any evidence that would suggest adverse impact. If there is a reason to do more research, they should put this off to allow the applicant to mitigate further. He is trying to keep his emotions out of this and just sticking with the ordinance and evidence and lack of other evidence to counter it.

Mr. Gladhill pointed out that their advisory board, the Conservation Commission, can't even give them a recommendation for this. They are not beholden to that but they usually give them direction. He also does not feel this is has the least adverse effect as he feels the building can be built outside the buffer zone. He can't vote for this tonight based on the facts.

Mr. Barker agrees with everything Councilor Thorsen said and felt this will continue to come up. The applicant will continue to present proof of no adverse impact so they need to rely on the abutters to

bring up other evidence. They have the Conservation Commission and they are very lucky to have a hard working Planning Department that helps prepare them for these meetings. They should not have to rely on other members of Portsmouth to pay to produce other evidence. The wetland buffer is there to not cause an adverse impact to the wetlands. His bias is that any development will have adverse impact unless proven beyond a reasonable doubt. He does not feel he has been given the proof he needs.

Mr. Hopley asked if they wanted to hear from Peter Britz, the Environmental Planner. Chairman Ricci did not want to have him speak after they had made a motion.

Chairman Ricci stated that he has been on the Board a long time and he has never seen an application that has been 100% in the wetland buffer. He is sympathetic to the applicants. He will reserve his judgments on the engineering facts but it is his opinion that anytime you put someone on a vacant lot there will be impact. He is going to support the motion as this lot is not suitable for a single family home. Water tables are high. He does not believe he has ever seen a complete new structure allowed 100% in the buffer and they need to follow 2014 regulations.

Councilor Thorsen responded to Mr. Gladhill’s comment about the design of the development. If they thought there was a way that it would be better, they should tell the applicant. He has a hard time just off handedly saying they cannot build in the wetland without the data.

The motion to deny the Conditional Use Permit application passed with a 7-2 vote (Mr. Hopley and Councilor Thorsen voting in the negative).

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E. 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 May 15, 2014 Planning Board meeting.)

RT pointed out the overlay plans that were provided by the applicant.

Mr. Gamester recused himself. Mr. Leduc will be voting.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Patrick Crimmins, of Tighe & Bond, presented on behalf of the applicant. On May 29th a site walk was conducted by the Board. He displayed their amended Site Plan with the 31 changes. He provided the Board with a red ink overlay to assist them in reviewing the changes. Some of the changes deal with the building design and are under the purview of the HDC and many have been approved by that

Commission. Some changes include the square footages, most significantly the change in the restaurant along Hanover Street. Many doors were changed and relocated, there were changes to the parking deck layout, the enclosure around the entire generator and the location of the generators along Deer Street, utility revisions which were directives from the service providers to service the building, and the grease trap in Portwalk Place was a directive from DPW. Other changes include a change to some of the caliper and species of trees, a revised bike rack location due to a conflict with a hydrant, and planters were added on either side of the gas regulator (approved by the HDC).

Mr. Crimmins provided some additional information this month. Questions were raised about the building location and sidewalk widths. As-built location has been certified and the sidewalks are dimensioned per the building location. The final crosswalk details shall be approved by DPW. They designed a new crosswalk which spans the entire width of Portwalk Place, leading into the Vaughan Mall. It activates the streets and is a paver design with tip downs and thermo plastic striping. On the opposite side of street they are doing sidewalk reconstruction where the whole length of curb will be flush into the crosswalk. They are doing a small piece of sidewalk extension along Hanover Street. This proposal only eliminates 1 parking space (5 down to 4). They are coordinating with the City for a municipal light fixture on either side of the crosswalk.

Mr. Hopley asked if they have a gate design yet. Mr. Crimmins stated it is currently being reviewed by the HDC.

Tim Levine added there was a gate design, including a layout and location, approved by PSNH, and it was included in Planning Board packet. That was favorably regarded by the HDC but they had questions about what the rod iron gate should look like. They don't have a final approval yet but there was a consensus on the gate configuration.

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

Doug Roberts, of 247 Richards Avenue, attended the Site Walk and he looked at this from the street level. Maplewood Avenue is very uncomfortable and uninteresting and they should address the brick wall. There is no comparable crosswalk on Deer Street. The corner radius of the building should be safer. The six parking places that they removed would cost the City \$30,000 per space and the developer is now making a profit from them.

Joe Calderola, of 170 Dennett Street, displayed a picture of the brick wall along Maplewood Avenue. He has a problem with the scale of the wall. He felt the wall needs to be lower and more human scale with an artificial barrier further back.

Johnson Gilbert, of 15 Thornton Street, walks to and from town a lot. Maplewood Avenue is not very inviting and the wall discourages people from walking to that part of town. He likes Mr. Calderola's design and finds it calming. He is worried about losing parking spaces.

Barbara DeStefano, of 99 Hanover Street, praised the crosswalk and felt it would be a great improvement. She felt the pedestrian draw is supposed to be Portwalk Place. Also, the wall is not that tall and is only takes a few seconds to walk past it. Once all of the glass is exposed, one section of solid wall is not going to affect a pedestrian experience. The wall blocks the transformers and the cars. She felt the wall is a nice experience from the other side of Maplewood Avenue and does not think the wall is an issue.

Gail Fenton, of 110 Court Street, works at the Music Hall and is very familiar with downtown. She prefers this building to the Parade Mall office building. This shows that Portsmouth is growing and vital and they are keeping people downtown and increasing their revenues.

Kevin Walker, General Manager of the Cohen Hotels, has opened two hotels and in the first year just two months carried them for the entire year. He currently manages the Hilton Garden Inn. Not only does this mean more guests in town but more cash dollars. They have over 25 employees and will be hiring more. He would ask for their understanding. So many businesses will be positively impacted by this project and they already have huge groups looking to book at the hotel.

Caroline Gregory, of 671 State Street, is the General Manager at the Burger Bar. This development will bring jobs and tourism to the City, shopping and dining downtown and extra parking spaces. She talks to her customers on a daily basis and she hears approval and enthusiasm about the project.

Peter Weeks, currently of Newcastle, but a past 55 year resident of Portsmouth, thinks this Board was able to see first hand at the site walk that this project is a vast improvement over the Parade Mall. The brick wall does not bother him and felt the finished design will be very pleasing. He hopes they will give final approval tonight. This is an economic engine to vitalize the downtown.

The Chair called for second time speakers:

Joe Calderola didn't know if his proposal is the perfect answer to the brick wall but without changes it will be very hostile. He disagrees with the interpretation at the HDC meeting.

Seeing no further speakers, Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Ms. Moreau made a motion to approve as presented, for discussion, with the recommended stipulations. Deputy City Manager Allen seconded the motion for discussion.

Ms. Moreau's understanding was they are present to look at the changes that happened from the original approval and assumed that meant they only have authority over a change to the gate. Mr. Taintor stated they are being requested for approval of the changes but he doesn't know if they are only limited to those changes. Whether they want to look at other things is up to the Board.

Deputy City Manager Allen said they have seen a long history with this project and it was designed and approved at a time prior to a lot of enlightenment by the City, this Board and the residents. When he was at the site walk, he felt this City is coming up to speed on urban planning and the citizens are more familiar with the efforts of the Planning staff. After the Complete Streets training and walkable City seminar, if this project was before them now it would be vastly different. Looking at the Planning Board site issues he found Portwalk Place something that he likes. There is a feel to it and, understanding that it is not complete, when businesses move in and fill the façade, he completely agrees that as soon as you go around the corner to Maplewood, it becomes baron. Mr. Taintor had a study done of Maplewood Avenue that allowed for fewer lanes to allow bike lanes and road aesthetics which could lead to the ability to expand the sidewalk on Maplewood Avenue. The sidewalk is 9' but if it was wider there would be room for more trees and they could make the area more inviting. In

hindsight, if there was one thing he could have done differently, it would be to get the sidewalk another 6-8' wider and grow some street trees.

Mr. Gladhill reminded the Board that they were able to get them to shrink that wall and it was originally much longer. The Board also convinced them to remove their trash gates from that location. It now appears that PSNH is the problem. Maplewood Avenue is a gateway into the City but it is a 4-lane highway and people drive very fast. He would be afraid to sit outside a restaurant on that sidewalk.

Mr. Taintor felt that was something they could easily do if they wanted to. The whole idea of a "road diet" would be to bring it down to a 3-lane road. When Maplewood Avenue was designed, it was to get people out of town as fast as possible. The developers wanted the front of the development to be Portwalk Place but the City is trying to make Maplewood Avenue a more complete street and it is the only street in the downtown that has the speedway feel. If they could get trees lining the front of Portwalk it would be a huge improvement.

Councilor Thorsen asked if the idea is for the City to go from two lanes to one lane in front of Portwalk. Deputy City Manager Allen responded that the study he referred to gave 3 final options and a number of configurations that involved the entire corridor, which is why it is difficult to work with just one block at a time.

Chairman Ricci felt the focus of the project is from Portwalk Place, the Vaughan Mall and Deer Street and Maplewood Avenue is forgotten. He thinks the size of the building is something they underestimated and that they owe something to the people coming into town. The back side of this was not intended to be a main pedestrian way.

Councilor Thorsen thought they may need to have the developer address a walkway across Deer Street like what they are constructing across Hanover Street.

Mr. Hopley referred to the Maplewood Avenue study and he felt they would have to include from Congress Street all the way down to the railroad tracks in order to be successful. He agreed it cannot be done piecemeal. Mr. Taintor also agreed they would have to do the whole thing but they only have a concept at this time and not a design. The final plan would be something from all three concepts. Also, the intersection of Deer Street and Maplewood Avenue wasn't even looked at for design.

Mr. Hopley said with the Portwalk project, they would have to have some sort of contribution for the future. Chairman Ricci said that other applicants have done so and they are not setting precedent.

Mr. Levine wanted to speak briefly to the walkability of Maplewood Avenue. As the City grows out from Market Square, they have tried to take the friendliness of walking around in Market Square and pulled it to their development. They have tried to draw pedestrians in through the Vaughan Mall and extend the downtown area. The next area to be developed will go to Maplewood Avenue and the other side of Deer Street. It grows piece by piece. They have tried to bring as much as they could to the experience through the Vaughan Mall. He also mentioned that there is a huge underground duct vault that precludes them from putting in trees.

Chairman Ricci said that one of the Master Plan themes is a walkable City yet Maplewood Avenue seems much colder than it was before.

Deputy City Manager Allen pointed out that he was talking about widening the sidewalk and putting street trees on the widened area so the underground duct vault would not interfere. He made a stipulation that the developer contribute to the widening of the sidewalk along Maplewood Avenue, to be placed in an escrow account, in an amount based on an engineering design and approved by DPW. Mr. Taintor said they don't know what the number or percentage would be and it would be better if they had a number.

Mr. Barker asked if they could stipulate a dollar amount to be placed in escrow for the surrounding area, and not just the expanded sidewalk, and pick a dollar amount that seems reasonable to be used by a certain period of time. Chairman Ricci said in the past they knew what they needed to be done. Mr. Barker has walked the area several times and felt it is becoming a very nice area. The wall is the one area that stands out to him. Rather than widened the sidewalk, which is a big issue, why not add green to the other side. If they lowered the wall, moved it back and added greenery it would be a huge improvement.

Deputy City Manager Allen agreed that is nice for that little stretch of wall but he is looking at the entire block and widening the sidewalk for the entire block helps the entire corridor. He appreciated Mr. Calderola's graphic but this improves the streetscape for the entire City.

Councilor Thorsen suggested they stipulate a specific amount to be placed in escrow for the sidewalk and peripheral improvements and he suggested an amount of \$350,000. He suggested a 90 day period for completion.

Mr. Hopley liked this concept but 90 days would not be enough time and it should be at least 12 months. Deputy City Manager Allen added that DPW is extremely busy.

Mr. Leduc felt they may want to make it a percentage of the current value of the landscaping on the other side of the project for lack of an actual plan.

Mr. Taintor is concerned about an arbitrary number and he knows people would like to get this off the table but the project is not going to be approved by the HDC until at least one day before the next Planning Board meeting. They could just wrap it up next month.

Mr. Gladhill felt, in fairness, they should reach out to the two other development teams on Maplewood Avenue to see what they should contribute. He doesn't want to see Portwalk contribute and have the other developments benefit from it. He would like to see a figure that is equitable to all three. Chairman Ricci said a collaborative effort would benefit everybody. The two other developments would be the new building at 30 Maplewood and Harborcorp.

Attorney Loughlin stated the hotel is about ready to open and he was concerned about what effect this may have on their ability to open. Every one of the 29 changes is acceptable however what they have before them is a proposal to improve Maplewood Avenue which does not affect them. They liked Mr. Taintor's idea of two years ago about trees and widening sidewalks but it did not go forward. To pick a number out of the air tonight and to stipulate a delay tonight is not fair. Portwalk has indicated its willingness to work with the City for improvements on Maplewood.

Mr. Taintor felt that another suggestion would be to go through changes as the only thing that has been approved by the HDC so far is the hotel side of the development. They could segregate the hotel

changes and approve those. It would take them a little bit of time to do that tonight but it could be done.

Ms. Moreau felt they only have issues with that one side of the building and thought they could approve it with a stipulation that the City and developer negotiate and work in good faith about ideas brought forward tonight. If it comes to an impasse, they would have to come back to the Board.

Mr. Barker felt they need to approve the amendments tonight as the developer is being held up. They made many changes with no approval so he doesn't see how a postponement tonight would be a problem. He felt they are being derailed now to approve certain sections.

Councilor Thorsen said his main strategy for having a stipulation is that it was important to obtain some approval tonight. If they would put something in as a condition of an approval and the applicant was not in agreement then it would be up to them to delay. He would rather spell out whatever they need to get an approval tonight and let the applicant come back with any objections.

Attorney Loughlin stressed it is critical that they get their Certificate of Occupancy so they can open the hotel. They are anxious to work with the City and if they were certain they wouldn't get held up, and that falls upon the Inspection Department, they would have a month to work out some details on the Maplewood Avenue improvements. As the changes were self reported by Portwalk in February there is no real benefit to delay the project.

Mr. Taintor asked about a temporary or conditional C.O. and whether that would be affected by a delay on the Site Plan approval. Mr. Hopley said this case is a little different where there is an approved site plan that is being amended. He felt this would have to be dealt with prior to the issuance of the CO.

Mr. Taintor added that the HDC has approved most of the hotel portion but have to work on the condominium section.

Mr. Gladhill clarified that there is one item on the hotel that has yet to be approved, Condition #10 referring to a certification of the site plan, but that only effects the HDC review.

Tim Levine stated that for the crosswalk on Hanover Street, there was a stipulation with the original approval to work with DPW for a resolution and that is what was done here and it was very successful. They can do something similar with the concept plan. They also have a significant site bond in place.

Chairman Ricci suggested attaching a dollar amount as a baseline that can be adjusted later between the City and Applicant. He would rather not split it up and set a precedent. If they set a dollar amount, that would be their Planning Board bond to work with the applicant to come up with a good solution.

Councilor Thorsen likes that approach and he would like them to agree that the wall height would part of the discussion. Chairman Ricci would not support that. Mr. Hopley also would not support that. Chairman Ricci felt they need to focus on things other than the wall. To change it from what is there now would be a mistake.

Mr. Barker asked how they would work the dollar amount. Chairman Ricci felt it would work as a baseline for a mutual agreement and would be a placeholder until the City can work with the applicant and possibly come up with a much better solution. He would like to move this forward.

Ms. Moreau made the motion and looked for a suggestion for a dollar amount. Councilor Thorsen said \$350,000. Deputy City Manager Allen felt \$350,000 was on the high side. Chairman Ricci suggested \$250,000 and Deputy City Manager Allen agreed.

Deputy City Manager Allen added that the applicant would work with the City on a concept for widening the sidewalk, including street trees along Maplewood, Hanover and Deer as part of a larger project that the City would undertake on the Maplewood Avenue corridor, with a \$250,000 contribution but the final cost would be based on the actual cost, as agreed to by both parties.

Mr. Hopley asked about a way to use the site bond amount as the collateral.

Deputy City Manager Allen said the bond is based on a site cost estimate but this has not been approved. Chairman Ricci felt they just need to get the right language in place.

Ms. Moreau added the Site Review Bond would extend as a result of this. Mr. Levine said the site bond is \$2 M and most work has been completed. He felt it would be reasonable to retain \$250,000 of that bond for this approval. Chairman Ricci felt that gives the City some leverage.

Mr. Taintor also felt the stipulation should include that the agreement would need approval by the City Legal Department.

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

1. The applicant shall not begin any work on the Maplewood Avenue access doors to the transformer area until (a) the applicant has submitted an agreement executed by PSNH, showing exactly what is proposed (including a picture and profile) and assuring that they will build exactly what is approved, and (b) such details have been approved in writing by the Planning Director.
2. The HDC shall review the new door at the back of the expanded restaurant, to the right of the lower level of the parking garage, as well as all other similar doors, which may swing out onto the sidewalk, for safety concerns; also, the door shall be used for emergency egress only and subject to review to determine whether a new license from the City Council is required.
3. The applicant shall be responsible for restoration of pavement on Maplewood Avenue as directed by the Director of Public Works.
4. The capacity use surcharge shall be recalculated based on the reconfigured restaurant, hotel and retail space.
6. The proposed 4,600 s.f. restaurant shall have a Portwalk Place address.
7. The plan set shall be amended to include a final design and details for the crosswalk across Hanover Street between Portwalk Place and the Vaughan Mall, which shall be subject to approval by the Planning Director.
8. This Site Plan Approval is contingent on subsequent actions by the Historic District Commission with respect to the residential (apartment) portion of the site, including but not limited to the access gates to the transformer area.
9. The site design engineer shall certify that (a) the amended site plans show all changes that have approved or required by the Planning Board, and (b) no changes to the site have been made that have not been approved by the Planning Board.
10. Upon final action by the Historic District Commission, the site design engineer shall certify that the final site plans conform in all respects to the final plans approved by the Historic District Commission.

11. The applicant shall enter into an agreement with the City for the City’s design and construction of improvements to Maplewood Avenue, including sidewalk widening and street trees between Congress Street and the railroad tracks. The agreement shall describe the applicant’s contribution to the project and shall be the subject of good faith negotiation between the applicant and the City, with the applicant’s contribution based on its Maplewood Avenue frontage in proportion to the whole street improvement project. The applicant’s obligations in this agreement to be negotiated shall be secured by an estimated \$250,000.00, which sum may increase or decrease depending on project costs as they are developed. This stipulation shall be secured in the amount of \$250,000.00 and may be satisfied by the existing \$500,000.00 bond for the project executed on March 5, 2014, which shall be modified to incorporate this stipulation, or by an alternative security acceptable to the City.

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F. 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. (This application was postponed at the May 15, 2014 Planning Board meeting.)

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Eric Weinrieb, of Altus Engineering, was present with Craig Hodgson. Last month there were some issues the Board wanted them to address. One item was to provide a more robust landscaping plan. They prepared very detailed buffer plantings, turning lawn area into a very dense vegetative buffer and removing invasive species.

The driveway will be porous pavement and he provided a detail. With that detail, he identified that porous pavement has limitations and is not a “silver bullet” in stormwater management. They are identifying how it will be constructed and the maintenance requirements involved so that it has an effective use on the property. Since the underlying soils are marginal for infiltration they are proposing an underdrain to alleviate ponding of water that would lead to premature failure of the pavement. There is a drip edge and in these tight soils it doesn’t work as an infiltration area but works as a storage area to attenuate and reduce the peak rate of run off. He believes this application does impact the buffer and the entire project is in the buffer but it is an enhancement as they are eradicating invasive species and providing a much better treatment of the buffer.

Chairman Ricci asked what a pervious door landing platform was, shown on the plans at the back of the garage with an arrow. Mr. Weinrieb said there is a lower level access into the basement. It is not a paved surface. Chairman Ricci asked if the stone drip edge will cover the first flush. Mr. Weinrieb confirmed it will cover the first inch of rainfall.

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

Ms. Moreau asked for feedback regarding the Conservation Commission’s feelings on the new plantings. Peter Britz advised the Board that the Conservation Commission recommended approval with the stipulation that they prepare a more robust planting plan but they have not seen the plan. However, he has reviewed the plan and felt it does a nice job. He doesn’t think the Conservation Commission could ask for much better than what was provided. The Conservation Commission also wanted to make sure that a new impervious surface wouldn’t just send run off right into the rear wetland and the plan does a decent job with that. It will reduce the flow and the plantings will help pick up some of the attenuation that he talked about. He felt the trade off is that there is attenuation rather than infiltration which is basically saying the water will be slowed down but will not go completely into the ground and a lot will still make it’s way over land but not at the same time as rainfall.

Mr. Hopley made a motion to approve with the condition for site inspection regarding the site design. Deputy City Manager Allen seconded the motion.

Mr. Hopley felt this is a lot more complicated for a single family dwelling than they normally see and he felt it requires the over-site of an independent registered design professional and he would be okay with Mr. Weinrieb doing so but reports would need to be filed with DPW during and after the design was complete.

Deputy City Manager Allen was not sure about the planting issue and as this is a large and fairly significant development in the buffer area and mitigated by an elaborate planting design, he would like to have the landscape certified that it is completed. Without the landscaping, he would not approve this.

Mr. Weinrieb felt confident in the stormwater management aspects but suggested Mr. Britz could go out and inspect the plantings as part of the inspection for the City.

Mr. Hopley was agreeable to Mr. Britz doing the planting inspection. Mr. Britz was okay with doing that but the recommendation should indicate that the designer be part of the review as well.

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

- 1) That Eric Weinrieb, of Altus Engineering, shall perform inspections during and after completion of the stormwater management system to confirm that it is constructed properly;
- 2) That Peter Britz, City Environmental Planner, will perform periodic inspections of the plantings, in conjunction with the certified designer, to confirm that they are planted properly.

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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 **Paul B. Head, II and Holly Head, Owners**, for property located at **347 Maplewood Avenue** and **335 Maplewood Avenue, LLC, Owner**, for property located at **335 Maplewood Avenue**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:

- a. Assessor Map 141 Lot 25, consisting of 4,580 ± s.f., transferring 121 ± s.f. to Assessor Map 141 Lot 26, with no change in street frontage;
- b. Assessor Map 141 Lot 26, consisting of 6,111 ±, transferring 121 ± s.f. to Assessor Map 141 Lot 25, with no change in street frontage;

Said properties lie in the General Residence A (GRA) and Mixed Residential Office (MRO) Districts.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

James Verra, of Verra & Associates, appeared before the Board on behalf of the owners. They were seeking a Lot Line Revision for two parcels where the frontage and areas of both parcels will remain the same, the common property line between the parcels will be moving clockwise and the property line will move closer to 335 Maplewood Avenue. This is to get the retaining wall on the Head property where it is very steep. A variance was granted on May 20th by the BOA to allow a left yard setback of 3.08' where 4.353' exists and 10' is the minimum. He asked that they waive compliance with Section VI. 2.B of the Subdivision regulations and to approve the plan.

Councilor Thorsen understood that they were saying the setback does not currently meet the regulations and they have shortened it more. Mr. Verra confirmed that was correct. The common corner remains the same but the property line turns towards the east.

Mr. Gladhill asked about the new property line going right through the retaining wall. Mr. Verra said at the beginning of the street it does go through a little bit of the wall. They wanted to keep the front corner of the lot where it was. He started this project in November of 2009 and it has been a challenge. At the rear of the wall there is an 8' change in elevation and they have been trying to get the best fit.

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. Gladhill referred to Mr. Taintor's Memorandum that expressed concerns about zoning. Mr. Taintor said that the zoning district boundary line is currently drawn around the property line, which is typical, but what will happen is that the zoning boundary will not remain the same as the property line. Looking at the plan, it's not a big deal except the ZO says that when this happens, either zoning district can be construed as extending 20' to the other side of the district. The zoning map should align with the property map.

Ms. Moreau made a motion to waive compliance with Section VI.2.B. of the Subdivision Rules and Regulations. Mr. Hopley seconded the motion.

The motion to grant a waiver of compliance with Section VI.2.B of the Subdivision Rules and Regulations, regarding conformance with the dimensional regulations of the Zoning Ordinance and Subdivision Rules and Regulations passed unanimously.

Mr. Hopley made a motion to grant Preliminary and Final Subdivision approval with the three stipulations in the Staff Memorandum. Mr. Gamester seconded the motion.

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

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

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B. The application of **Neal I. Katz, Owner**, for property located at **520 South Street and on Sherburne Avenue**, requesting Preliminary and Final Subdivision (Lot Line Revision) approval as follows:

- a. Assessor Map 112 Lot 24 decreasing in area from 21,629± s.f. to 17,124± s.f., with no change in street frontage;
- b. Assessor Map 112, Lot 29 increasing in area from 5,090± s.f. to 9,595 ± s.f. with no change in street frontage;

Said properties lie in the General Residence A (GRA) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

James Verra, of Verra & Associates, appeared on behalf of Neal Katz, the owner of both parcels. The lot area of 528 South Street decreases and Sherburne Avenue lot increases. The Sherburne Avenue lot will now have a garage in the rear. The Sherburne lot will become more regular and will comply with the lot area requirements and frontage will remain the same. The property line on the side of the garage remains the same and the garage remains in the same location. He also requested that they vote to waive compliance with Section VI.2.B. of the Subdivision Rules and approve their plan.

Mr. Gladhill asked if this will allow them to build a single family house on the lot. Mr. Verra confirmed there is 70' frontage and a 10' side setback which would allow a 50' wide structure.

Ms. Moreau asked if their plan is to build on the lot. Mr. Katz confirmed that was correct.

Mr. Taintor pointed out that they can't build without a variance for the frontage.

Ms. Moreau asked if there were any wetlands on the property. Mr. Verra said none were visible to him.

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

Ms. Moreau made a motion to waive compliance with Section VI.2.B. of the Subdivision Rules and Regulations. Mr. Gamester seconded the motion.

The motion to grant a waiver of compliance with Section VI.2.B of the Subdivision Rules and Regulations, regarding conformance with the dimensional regulations of the Zoning Ordinance and Subdivision Rules and Regulations passed unanimously.

Ms. Moreau made a motion to grant Preliminary and Final Subdivision approval with the three stipulations in the Staff Memorandum. Deputy City Manager Allen seconded the motion.

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

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

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C. The application of **Janis Hancock, Owner, and David Hancock, Applicant**, for property located at **59 Taft 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 12' x 22' raised deck built on five 10" concrete posts, with 132 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 251 as Lot 11 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

David Hancock, owner, appeared before the Board and requested approval of his Conditional Use Permit.

Mr. Gladhill asked if the house and garage were sitting on two separate lots. Mr. Hancock said they were combined at some point so it is now considered one lot. .

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

Ms. Moreau made a motion to grant Conditional Use Permit approval as presented. Mr. Hopley seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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D. The application of **Michael R. Clark, Owner**, for property located at **325 Little Harbor Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer to demolish the “caretaker’s house” and fill, grade, loam & seed the area; convert three residential structures to accessory structures; and install a new septic system due to septic failure, with 1,414 ± s.f. of permanent impact to the wetland buffer and 4,788 ± s.f. of temporary impact to the wetland buffer. Said property is shown on Assessor Plan 205 as Lot 2 and lies within the Rural (R) District.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

John Lorden, of MSC Engineers, appeared on behalf of Michael Clark. He stated this is a unique property. It is an 11 acre island and the entire perimeter of the property is subject to the tidal wetland zone. This application deals with the southeast corner and they are proposing 5 areas of disturbance.

The septic leach field for the main residence is failing. The plan is to abandon the leach field, put in a new septic tank and add a pump chamber which will allow them to bring the effluent from the house up to higher ground, outside the tidal buffer zone. The second area is the caretaker’s house and they propose removing it completely and making it a pervious area. It will be graded, loamed and seeded. The other three buildings are guest quarters and are being proposed to be converted to a green house, a garden shed and storage shed for equipment. All will remain on the same footprint and will be built back up. They used a 10’ wide area of disturbance around the footprints.

They received a recommendation of approval from the Conservation Commission on June 11th and they recommended a planting of a conservation mix in some of the disturbed areas. They have a shoreland permit by notification from NHDES and an approved septic plan from NHDES. They are moving the leach field outside of the buffer zone, decreasing the amount of impervious surface and upgrading plantings.

Mr. Gladhill asked about the age of the caretaker house and the guest quarters. Mr. Lorden did not know but they are in very bad shape. Mr. Gladhill knows this is well outside the HDC but felt this property has history to it. He asked if the applicant would be opposed to having photos taken of the outside of the buildings and the construction for the Portsmouth Athenaeum.

Mr. Hopley advised them that they need to be mindful of the demolition ordinance and the advertising requirements which includes a 30 day hold period.

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. Gladhill made a motion to grant a Conditional Use Permit approval with a stipulation regarding plantings and taking pictures of the buildings. Mr. Hopley seconded the motion.

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

1. The applicant shall plant native vegetation in addition to the conservation seed mix in the disturbed areas.
2. Photographs shall be taken of the buildings prior to being demolished and donated to the Portsmouth Athenaeum

At 10:10 pm a motion was made to continue the meeting past 10:00 p.m. The motion was seconded and passed unanimously.

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E. The application of **Commerce Way, LLC, Owner**, for property located at **Commerce Way**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland for the reconstruction of Commerce Way, with 183 ± s.f. of permanent impact to the wetland and 43 ± s.f. of temporary impact to the wetland. The project will also enhance the wetland buffer area by adding 5,996 ± s.f. of pervious area and by constructing a 4,700 ± s.f. meadow planted with wetland conservation seed mix. Said property is shown on Assessor Plan 215 as Lot 1, 1-1 and lies within the Office Research (OR) District.

Patrick Crimmins, of Tighe & Bond, appeared before the Board. He stated this is a project that this Board has seen twice but all approvals expired as a result of some legal issues that they hope to resolve this summer. The existing road is in the Portsmouth Business Park. The road will be upgraded to City standards and ultimately turned over to the City. Some work is being done in the wetland buffer. The road turns very sharply and they are softening that turn which entails pulling it closer to the wetlands. They have approval from NHDES which has been extended to 2018. They are actually improving the buffer. The pavement is being removed for a reduction of 6,000 s.f. of impervious area in the buffer and they are adding 47,000 s.f. of meadow planted area with conservation mix. There is no change to the prior approval granted by this Board.

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

Ms. Moreau made a motion to grant Conditional Use Permit approval as requested. Mr. Gamester seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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F. The application of **Clifton Wentworth, Owner**, and **Hebes Scrap Metal, LLC, Applicant**, for property located at **246 Jones Avenue**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer for remediation of lead and PCB contamination, including fill, excavation and the installation of a asphalt cap per approved NHDES remedial action plan, with 24,930 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 221 as Lot 6 and lies within the Single Residence B (SRB) District.

John Ouellette, of Ransom Consulting, stated they are proposing to install an asphalt cap in the working areas of the scrap metal facility which has been in operation since the 1950's. This work has recently been approved by the DES. The main components of the site are lead contamination and PCP contamination. Both areas are outside of the cap, which is the grey area in the middle of the plan. The

contamination areas will be moved under the cap when it is built along with several lead contaminated sections. It will be an asphalt cap, graded down and ultimately it will go to a stormdrain and soil separator on the site. This will be monitored very carefully by EPA requirements on a quarterly basis for the duration of the site being active.

Jay Johanette, of Ransom Consulting, stated that following DES approval of their remedial action plan, they went forward and designed the cap. Approximately 28,000 s.f. of the cap is in the wetland buffer on the property. The cap system is asphalt pavement with a marker barrier to delineate the area of contaminated soil beneath the cap system. Stormwater from the working areas that will be on top of this asphalt pavement surface will be captured and sent through a treatment system before being discharged.

Mr. Gladhill asked about the process used to remove the contaminated soil. Mr. Ouellette responded that the soil doesn't have to be removed from the site. They are just going to be dug out, brought under and new soils will go into those areas. This site has been an active scrap yard since 1956 and before that it was a landfill for the City.

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 made a motion to grant a conditional use permit approval with the recommended stipulations. Mr. Hopley seconded the motion.

Mr. Barker asked if it would be possible to extend the testing further. Mr. Ouellette assured them it will be constantly monitored, 4 times a year, by the EPA, for as long as it exists, for stormwater run off. Also, all monitoring requirements will be forwarded to Peter Britz for his review.

Peter Britz said the reason he put the testing in for the City is that they designed the soil separator and the outfall goes right into the wetlands. He wanted to make sure there are no contaminates going into the wetlands. They will be testing for a longer period of time but they will have a sense if they test during wet weather whether any contaminants are going into the wetlands.

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

1. A maintenance plan and schedule for the water quality filtration unit specified on the plan shall be submitted to the DPW and the Environmental Planner for review.
2. The runoff from the site shall be tested at the location of the proposed outlet and plunge pool, during a rain event and the results be forwarded to DPW and the Environmental Planner. The testing shall include all the contaminants that are being targeted with the remediation to include lead, PCB's and other contaminants. Testing shall be done during a wet weather event annually for at least two years and continued until no contaminants levels exceeding state regulatory thresholds are found.

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G. The application of **Great Bay Community College, Applicant**, for property located at **320 Corporate Drive**, requesting Site Plan Approval to construct a 2-story building expansion with a footprint of 20,000 s.f. ±, and a parking lot expansion resulting in a net increase of 21 parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 315 as Lot 4 and lies within the Airport Business Commercial (ABC) district.

Patrick Crimmins, of Tighe & Bond, was present on behalf of Great Bay Community College. Also present were Matt Moore from Community College, Tracey Kozak from JSA Architects and Maria Stowell, from the Pease Development Authority. The project includes the demolition of an existing parking lot to the western side of the college and the construction of a 2-story 20,000 s.f. footprint expansion. The first floor will be a gym, locker room, fitness center and student bookstore. The second floor will be meeting rooms, offices and a student lounge. Site improvements consist of 588 parking spaces where there are currently 564, netting an increase of 24 parking spaces. The project results in a 28,000 s.f. increase of impervious area so they have designed some new deep sump catch basins with oil/water separator hoods to collect run off and provide pre treatment. That run off will be discharged to a new gravel wetland which will retain the run off so that it will not increase rate or volume and will also provide stormwater treatment. The new 8" sewer service will connect in Corporate Drive.

There will be new sidewalks around the expansion area, bike racks, new lighting, new landscaping by Robie Woodburn, and at the request of TAC they worked with Coast to make sure their bus route through the college was their preferred route. They asked to soften the radii of the exit out of the site which they did. This was given conceptual approval by the PDA Board on May 15th.

One item that was discussed at the PDA Board and was presented at TAC was traffic and parking. There are 588 parking spaces being provided. They do not meet the requirements specified in the PDA Land Use Controls but they are expected to support the needs of the college. Currently the parking is sufficient to support the college needs and there is a vacant lot next door that is used for overflow parking when needed. The gym will host student sporting events and graduation and outside community events, outside of peak traffic hours, so no impact on traffic is anticipated. Enclosed with their packet was a traffic generation report which was given to VHB, the PDA traffic consultant. Given there is no increase in enrollment, no traffic increase was reported.

The PDA Board put stipulations on this project. One was that prior to hosting a community event they receive PDA approval and that the parking conditions will be reviewed annually. They appeared before TAC and received two stipulations. The first was for consideration of a pedestrian connection but the college did not want to do that at this time. They revised the Site Plan design and included provisions that would allow for an easy construction of that connection at a future time if necessary. This was previously a sloped granite curb and they will install vertical granite curb. They also are setting the hydrant back 6' to allow for future sidewalk construction. The second stipulation was relative to the sewer design and the invert elevation at the manhole should be confirmed and the slope adjusted accordingly. That has been noted on the Site Plans.

Mr. Gladhill felt they did a good job adding new greenery to the new parking spaces and asked if there are any plans to put greenery in the existing parking. Mr. Crimmins said that was not being considered as part of this project and would come from a separate funding source.

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

Ms. Moreau made a motion to recommend Site Plan approval as presented. Mr. Gamester seconded the motion.

The motion to recommend Site Plan approval passed unanimously.

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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 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, and postponed indefinitely at the April 3, 2014 Planning Board Meeting.)

Mr. Taintor reported that he was unable to find the time to work on this and had no report.

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B. Request to consider a process for architectural design review outside the Historic District. (This matter was postponed at the April 3, 2014 Planning Board meeting.)

No report.

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VI. PLANNING DIRECTOR'S REPORT

A. City Council Referral re: Zoning Along Route 1 Bypass - Mr. Taintor indicated there has been discussion about the Frank Jones Center property and issues of whether the City should get involved in acquiring all or part of it for parking or other public uses. They have been talking about making a road connection between Borthwick Avenue to Bartlett Street for many years and have been talking to the current property owner about redevelopment in that area. The issue came up with the City Council to look at re-zoning the entire area and the City Council referred that to the Planning Board so he suggests they start looking at that at the July meeting. Deputy City Manager Allen added that this is fairly high on the priority list of the City Council so they will be attempting to expedite this.

B. Status of Conditionally Approved Applications for Site Plan Approval – Mr. Taintor stated there were no changes.

C. Status of Conditionally Approved Applications for Subdivision Approval - – Mr. Taintor stated the only change is the Harborcorp lot line revision which was approved and recorded last month. In February they changed their Subdivision Regulations so that the Planning Director will submit a certification to the Assessor when subdivisions are final so he just did his first one.

D. Draft Bicycle-Pedestrian Plan – Mr. Taintor said they should be receiving a draft report from their consultant, which will come to the Board. They are hoping the Board will adopt this as part of the Master Plan. They will probably hold a public hearing on this in the future as well. Deputy City Manager Allen said the map is still up on the website if anyone wants to make comments on it.

Mr. Taintor indicated that because the BOA denied the request for a re-hearing on the Subaru denial, a letter was sent to the applicant today indicating the Planning Department is suspending their Conditional Use Permit and Site Plan applications until the conclusion of any appeal on the BOA decision.

Jessa Berna, Associate Planner, was present tonight and will be taking more of a role with the Planning Board. She will be sitting up with the Board at their meetings.

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VII. ADJOURNMENT

A motion to adjourn at 10:35 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 October 16, 2014 Planning Board Meeting.