

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**OCTOBER 16, 2014**

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

**MEMBERS EXCUSED:** Jay Leduc, Alternate;

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

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**I. APPROVAL OF MINUTES**

- A. Approval of Minutes from the September 18, 2014 Planning Board Meeting – Unanimously approved.
- B. Approval of Minutes from the June 19, 2014 Planning Board Meeting – Unanimously approved.

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**II. DETERMINATIONS OF COMPLETENESS**

A. Site Plan Review

- 1. 430 West Road (DEH Ventures, LLC, and CHI Engineering Services)

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

The motion passed unanimously.

- 2. 361 Islington Street (Rye Atlantic Properties, LLC)

Ms. Moreau made a motion to determine that the application is complete according to the Site Plan Review Regulations and to accept it for consideration. Mr. Barker seconded the motion.

The motion passed unanimously.

Ms. Moreau made a motion to take Items D & F under New Business out of order for the purposes of postponement. Mr. Barker seconded the motion. The motion passed unanimously.

D. The application of **Jane A. Shannon Revocable Trust, Owner, and Brian Shannon, Trustee, Applicant**, for property located at **194 Wibird Street**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between three lots which are currently shown on Assessor Map 148 as Lot 1, and which were restored to their premerger status by vote of the City Council on April 21, 2014, and have been designated by the applicant as Lots 1, 2 and 3. The applicant proposes to merge Lots 2 and 3 into a new Lot 2, and to revise the lot lines between Lots 1 and 2 as follows:

- a. Lot 1 increasing in area from 5,943 s.f. to 8,990 s.f. with 59.60' of continuous street frontage on Wibird Street.
- b. Lot 2 decreasing in area from 11,335 ± s.f. to 8,287 ± with 57.52' of continous street frontage on Wibird Street.

Said properties are located in the General Residence B (GRB) District which requires a minimum lot size of 7,500 s.f. and 100 ft. of continuous street frontage.

The Chair read the notice into the record.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Rice made a motion to postpone to the November Planning Board meeting. Deputy City Manager Allen seconded the motion.

The motion to postpone Preliminary and Final Subdivision approval to the November 20, 2014 Planning Board meeting passed unanimously.

F. The application of **Public Service Company of New Hampshire, Owner**, for property located on **Borthwick Avenue, 445 Route 1 By-Pass, and Barberry Lane; Northern Utilities, Inc., Owner**, for property located at **139 Barberry Lane; HCA Health Services of NH, Inc., Owner**, for property located on **Borthwick Avenue**; and **the City of Portsmouth, Owner**, for property located on **Borthwick Avenue**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to (1) construct a 10,000 ± s.f., 10' x 10', gravel switch yard with associated equipment and structures, 8' chain-link fence, gravel access way, retaining wall and paved driveway apron and (2) install a 2,250 ± linear foot 115 kV transmission line with a 90' wide path, with 17,140± s.f. of temporary disturbance and 88± s.f. of permanent disturbance to the inland wetland and 37,397 ± s.f. of temporary disturbance and 10,361 ± s.f. of permanent disturbance to the wetland buffer. Said properties are shown on Assessor Plan 234 as Lots 1, 2, 3, 7-4A, 7-7, and 7-3 and lie within the Office Research (OR) District and Municipal (M) District.

The Chair read the notice into the record.

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Marsilia made a motion to postpone to the November Planning Board meeting. Mr. Barker seconded the motion.

The motion to postpone Conditional Use Permit approval to the November 20, 2014 Planning Board meeting passed unanimously.

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**III. 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.*

Mr. Gamester stated a concern has been expressed regarding whether it was appropriate for him to sit on this application. He spoke with City Attorney Sullivan who suggested he state the concern to the Board & the public. The concern is that Peter Loughlin hopes to purchase the non buildable lots and he does a lot of work for Attorney Loughlin, however, he also has a separate law practice.

Ricci asked board members whether they have any conflict with Mr. Gamester sitting. Councilor Thorsen asked if he would have any pecuniary gain. Mr. Gamester confirmed he would not.

Ricci asked if anyone from the public had a conflict.

Becky McBeath, of 243 Middle Road, was a member of the NH Bar and felt the ethics went to the appearance for impropriety. Mr. Loughlin is a friend of hers and it has been a conflict for her to speak against this project because of that.

Ms. Gamester recused himself. Mr. Finn will be voting.

A. The application of the **Frances T. Sanderson Revocable Trust and Lynn J. Sanderson Revocable Trust, Paul G. Sanderson, Trustee, Owners, and Spinney Road Land Holdings, LLC, Applicant**, for property located **off Spinney Road and Middle Road**, for Preliminary and Final Subdivision Approval to subdivide two lots into five lots with a new public right-of-way, with the following: Lot 5 on Assessor Map 167 having 263,937 s.f. (6.06 acres) and Lot 24 on Assessor Map 170 having 183,362 s.f. (4.21 acres), to be consolidated and subdivided into seven separate lots, including a public right-of-way, as follows:

- a. Proposed Lot #1 consisting of 15,121 ± s.f. (0.35 acres) and 114.71’ of frontage on the proposed right-of-way.
- b. Proposed Lot #2 consisting of 15,432 ± s.f. (0.35 acres) and 103.10’ of frontage on Middle Road.
- c. Proposed Lot #3 consisting of 29,511 ± s.f. (0.68 acres) and 100’ of frontage on the proposed right of way.

- d. Proposed Lot #4 consisting of 29,475 ± s.f. (0.68 acres) and 100' of frontage on the proposed right of way.
- e. Proposed Lot #5 consisting of 16,075 ± s.f. (0.37 acres) and 100' of frontage on the proposed right of way.
- f. Proposed Lot #6 (non buildable) consisting of 209,762 ± s.f. (4.82 acres) and 66.30' of frontage on Thaxter Road.
- g. Proposed Lot #7 (non buildable) consisting of 106,549 ± s.f. (2.44 acres) and 82.11' of frontage on the proposed right of way.

Said properties are located in the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100 ft. of continuous street frontage. (This application was postponed at the September 18, 2014 Planning Board meeting.)

The Chair read the notice into the record.

### **SPEAKING TO THE APPLICATION:**

Attorney Jon Springer was present representing Spinney Road Land Holdings. Also present was Chris Berry, Christian Smith, Paul Sanderson, and Peter Loughlin. Following last month's meeting they had a detailed meeting with City Staff and some abutters. At the meeting, there was a comment made that said the reason there are so many problems with this property is that all of the good land in the City are already developed and this land is a swamp. He took exception to that. Peter Loughlin did a follow up letter discussing the land. The comment also stated that only marginal and bad land is left which is why there is a problem with this subdivision, however, Attorney Loughlin stated many reasons why that was not the case. He felt it was important for the Board to understand that this is a good piece of land.

Their meeting was 2 ½ hours, and was the second month in a row they had had such a meeting. Present were Rick Taintor, Jessa Berna, Peter Rice and Jerry Zelin. They discussed the private drainage structure and the public roadway. At the City's request, they have made Sanderson Drive public and the raingardens and drainage structures private. To effectuate that request they had to revise the plans. One of the raingardens will be privately owned by the individual home owners. They have talked about how to effectuate this, spent a lot of time talking about it, John Lyons has raised many issues, and they have addressed virtually all of Mr. Lyons requests and all of the City's requests. To address the issue of the care and maintenance of the raingarden and drainage structure, they agreed to form a Homeowner's Association, which was felt to be more responsive and would react quicker. In those documents they have put a number of requirements for the homeowners, which will also be included in the deeds, including inspections, annual cleaning, vegetation inspection, and a log must be kept and forwarded to the Director of DPW annually. Homeowners will also contribute to an escrow account to fund this work. Anybody will be able to go to City Hall and see that the work is being done. Additionally the individual deeds state they will not increase the square footage as shown on the approved plan unless reviewed by professionals and receive City approval. They have included that the City has the right but not the obligation to do all of the work, at the cost of the homeowners association. Attorney Springer believes they have met all of the City requests. Mr. Lyons wanted the City to have the obligation but Attorney Sullivan requested that they have the right but not the obligation.

In his opinion, Attorney Springer felt this is probably the most regulated and protected rain garden in the history of Portsmouth and is an example of what can be done in the future. Mr. Lyons has received more protections than any abutter to this type of subdivision in the City's history. They have covered all points and submitted to the City an easement deed to flow water from the public road and Spinney Road/Middle Road into the drainage system. The City has the right to go in and fix the private drainage structure if required.

There was discussion last month about the encroachment of a shed on an abutters property. They have a stamped plan by a licensed NH engineer and they have shown the line where they believe it is and the law is quite clear that this Board does not have the ability to hear boundary disputes. He did approach Ms. Goldman in the lobby and offered to discuss this but she declined and said she would be hiring her own surveyor. On October 14th he sent her a detailed letter from Mr. Berry explaining the boundary lines. He does not believe this is within the purview of the Planning Board. Mr. Verra also has prepared a plan that shows the same property line.

He felt they have done everything asked of them and he concurs with the Staff Memorandum and its recommendations.

Chairman Ricci asked Mr. Berry about the culvert that goes across before the cul de sac that has no insulation and only 2' of cover. Mr. Berry indicated that 2' is standard practice for them. Chairman Ricci asked if there are any inverts or elevations shown for the pump chambers shown on Lot 3 & 4. Mr. Berry said they do not know the exact placement or elevation of these structures so they are trying to leave that up to the individual lot constructors.

Deputy City Manager Allen asked if their agreement on the impervious area allowed them to reconfigure the total footprint and driveway. Mr. Berry said they will take the square footage as shown, which is in the drainage analysis, and work with those figures.

Chairman Ricci asked if they could put the square footage of pavement and structure on the plan that is being recorded.

Councilor Thorsen discussed the obligation of the City to enforce maintenance and asked what would happen if this wasn't done. Attorney Springer responded that the abutters would have standing. Any abutter would have the right to bring a suit against the subject property. Councilor Thorsen felt it was unlikely someone would bring suit given the amount is quite small. Attorney Springer said they discussed it with everybody and the City has the right to recover its attorney fees. Councilor Thorsen said, if the City doesn't do the enforcement, is there any other action that could be taken. Attorney Springer said they talked about that and it was nothing that was requested by the City. It was requested by Mr. Lyons. They can't give all abutters a cause of action but every abutter has rights against their neighbors.

Chairman Ricci asked about the note regarding the silt fence for erosion control. Mr. Berry confirmed it has been very clear that they like silt sock. Some spots may need doubling up of protection and they may have a fence behind the silt sock. Where they have grading very close to the buffer they would have silt fence and silt sock.

Chairman Ricci asked if they will use anything at the outlets of the culverts other than rip rap. Mr. Berry said they would not for permanent defense. They would instruct the contractor to construct those outlets first and clean them out before final turn over. That comment is not included but they will add it. It will also be in their SWWEP document.

Chairman Ricci opened the public hearing and called for public speakers.

Leslie Dolman, of 257 Middle Road, still has concerns about her boundary. The piece of property has been used by 257 Middle Road for many years and she will continue to pursue that. She had a question about Sheet 25 regarding the infiltration system. It indicates that two infiltration systems will be added if an additional home is placed on that lot.

Mr. Berry said that is the lot that directly abuts her property. If more infiltration is required on that lot, he pointed out where the second system could be placed. In order to increase their footprint, they would have to come back to the Planning Board for approval.

Becky McBeath of 243 Middle Road, was appreciative of Councilor Thorsen mentioning abutters and their interests. She was not notified of the private meetings Attorney Springer mentioned or the negotiations. If the City does not have the obligation to enforce maintenance, then the abutters should be able to enforce the maintenance. She is looking forward to new neighbors and supports this development. She had not been at most of the meetings but she had a survey of her property from James Verra and she believes there is a property line dispute. She had contacted Mr. Sanderson about cutting down a tree and he responded that he was not sure whose property the tree was on but he gave her permission to cut the tree down.

Chairman Ricci reminded Ms. McBeath that a boundary dispute was not part of the Planning Board purview and was not relevant to this application.

Peter Loughlin, of 336 Thaxter Road, explained that he was not the attorney for the applicant or developer. His interest is to pay \$100,000 to acquire 7.2 acres of totally unbuildable and useless land so that he can do his best of keep it open for the neighborhood's enjoyment. He has had a garden and planted shade trees on the property for many years and he wants to preserve the tree farm for the future. He submitted a list of abutters who support this subdivision (20 direct abutters).

John Lyons. Of 76 Fells Road, commended the City on how the City has reviewed this project, and not from any specific point of view, and to make sure that everybody's interest is protected. He included the Planning Department, the Department of Public Works and the Technical Advisory Committee members. He thanked all of City Staff and all Board members for their hard work. Secondly, he said that Attorney Springer was correct in saying that Mr. Lyons has pushed on this project and the developer has really tried to work with him and the neighbors to address their concerns. There is a stream that runs along his property that runs into a City sewer. He did not want that to become exasperated again. They have given him 99% of what he was looking for. He has never spoken against this project as he wanted it to be approved. There is an advantage to everyone in the neighborhood because of Attorney Loughlins' land purchase and because the rain gardens mitigate the amount of water coming down the hill. If the rain gardens are maintained, it is a benefit to everyone

and he believes they are now protected against the rain gardens not being maintained. He is speaking in support of this subdivision and hopes they approve it.

Seeing no further first time speakers, Chairman Ricci called for second time speakers.

Peter Loughlin referred to the letter that he wrote to the City, that Attorney Springer had referred to, and he wanted to clarify that the land was not marginal land. To the extent there are issues regarding drainage, they are not created by the subdivision. They already exist and were created by previous development when we were less responsible. The Spinney/Sanderson family should not be penalized for delaying the development of the property but rather should be praised for keeping it open for so long. It was acquired in 1841 by the Sanderson family for farm land. The wetland ordinance did not come into existence until the 1990's so any development prior to that would have been small lots with no drainage management. He urged them to grant approval tonight.

Leslie Dolleman, 257 Middle Road, felt it was great that most of the abutters support this subdivision. She understands the desire to take advantage and make the best of an inheritance but these are not small lots and there will be a total of 11 new homes.

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

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

Deputy City Manager Allen made a motion to waive compliance with Section VI.2.A of the Subdivision Rules and Regulations, requiring the side lines of lots to be at right angles to straight street lines or radial to curved street lines. Ms. Moreau seconded the motion.

The motion passed unanimously.

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

Mr. Barker requested a stipulation that the impervious surface calculation be added to the site plan.

Chairman Ricci stated he would like to have the building footprint and the impervious area surveyed for each lot as a condition of occupancy. Mr. Marsilia called that an As-Built. Chairman Ricci thanked the applicant and understood it has been a long journey but he doesn't want to "trip over the finish line". He would like a condition of approval that the foundation and paved areas on site have As-Built Plans presented for the Building Inspector's approval as a condition of a Certificate of Occupancy.

Additional items that Chairman Ricci requested were that the square footage of the buildings and the driveway will be added to the Subdivision Plan that is to be recorded at the Registry of Deeds; That a note be added to the Subdivision Plan that the contractor construct the outlets at the culvert first and clean the outlets prior to the final turnover;

The motion for Preliminary and Final Subdivision passed unanimously with the following stipulations:

1. The house on Lot #2 shall have a Middle Road address.
2. The building footprints and driveways shall be consistent with the Site Plans with respect to the drainage analysis.
3. All required easements to the City for stormwater system maintenance and flowage shall be reviewed and approved by the City Legal Department and DPW prior to recording of the plat.
4. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
5. GIS data shall be provided to the Department of Public Works in the form as required by the City.
6. The lot line revision plan approved by the Planning Board on August 21, 2014, shall be recorded prior to the recording of this plat.
7. 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.
8. The impervious surface calculation for each lot and the square footage of the buildings and the driveway shall be added to the Subdivision Plan that is to be recorded at the Registry of Deeds.
9. The foundation and paved areas on site shall have As-Built Plans prepared for the Building Inspector’s approval as a condition of a Certificate of Occupancy for each individual lot.
10. The contractor shall construct the outlets at the culvert first and clean the outlets prior to a Certificate of Occupancy being issued.

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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 request by **Portsmouth Land Acquisition, LLC**, that the following lots be rezoned from Industrial (I), Office Research (OR) or Municipal (M) to Gateway (GW):

- Assessors Map 163, Lots 33, 34 and 37.
- Assessors Map 165, Lots 1, 2 and 14.
- Assessors Map 172, Lots 1 and 2.
- Assessors Map 173, Lots 2 and 10.

and including Cate Street between Hodgson’s Brook and Bartlett Street, and that the Zoning Map be revised accordingly; and further that the Zoning Ordinance, Article 7, Section 10.730 – Gateway Planned Development, be amended by inserting a new Section 10.734.40 as follows:

**10.734.40 Workforce Housing Incentives**

If a GPD with a Residential Component contains 10% or greater Workforce Housing Units, the following shall apply:



- 10.734.41 The minimum lot area per dwelling unit shall be 1,000 square feet.
- 10.734.42 The maximum building length set forth in Article 5, Section 10.522 shall be increased to 350 feet.
- 10.734.43 Required off-street parking may be located in a required front yard or between a principal building and a street.

The Chair read the notice into the record.

**SPEAKING TO THE REQUEST:**

Attorney Bernard Pelech representing Portsmouth Land Acquisition, appeared before the Board and stated he had provided a letter to the Board dated October 8<sup>th</sup>. Originally the area was the subject of a rezoning proposal initiated by the City Council. The Planning Board wisely indicated to the City that it should probably be rezoned but CD-4 was not the proper district. He subsequently met with Rick Taintor and other staff and he was told if he wished to request a re-zoning on behalf of his client he could do so. He sent a letter to the City Council for rezoning to the Gateway District (GW). The GW allows for a gateway planned development. This land was formally zoned Industrial and was the truck terminal for the O'Brien trucking business. There have been numerous inquiries about the site but the property is not under agreement and is still on the market. It was clear that many developers wanted a residential component and a mixed use development. The only way that can occur is if they put it in a Gateway District which allows mixed use. One of the primary goals of the City and any potential property owner would be a connector road from the Route 1 By-Pass to Bartlett Street. By zoning this to the GW, they enable any potential purchaser to avail themselves to the GW option. This is the most appropriate zone and the benefits are substantial as the value of the property tax assessed value could increase greatly, the connector road would be a great asset to the City and the surrounding neighborhoods as it would help keep tractor trailers off the neighborhood streets, the allowed uses are more neighborhood friendly than the Industrial district, the provides for the ability of proposing workforce housing, it is easier and more economically feasible to build market rate housing, and, in addition, there are user friendly amenities such as pedestrian walkways, a municipal park, a village concept with small retail, services, and coffee shops. Attorney Pelech felt this is good planning. Looking at what the Gateway District is supposed to do, it is for redevelopment along existing developed corridors and to encourage site design that encourages pedestrian use.

The Chair opened the public hearing and asked if anyone wished to speak to the matter.

Patrick Crimmins, of Tighe & Bond, spoke on behalf of Mertin Property Investments, who owns part of the lots being considered for rezoning. He is speaking in support of the rezoning effect but his client has asked the Board to look at some of the setbacks as their land is surrounded by streets and railroad tracks. Their lot has sat vacant for many years. The Gateway District would be less constrictive but they would still need some setback relief. Their hope is that the Board would reduce the setbacks being considered or, in the alternative, ask the Board to consider their request for set back relief down the road.

Paul Mannle, 1490 Islington Street, stated he is against rezoning all ten parcels. He pointed out that one parcel is rezoned Natural Resource Protection. This area is part of the Islington Street Form Based Zoning Charrette being held next February so he felt this is premature and that the proposal seems very

close to spot zoning. Five of the ten parcels are on the market and rezoning will effect their value. The connector road should not have any connection to the rezoning of this property. He feels the Planning Board should follow the City Staff recommendation and make no recommendation to the City Council. He also suggested that the City should buy the parcels themselves.

Nancy Johnson, 81 Clinton Street, is pleased to see the change from CD-4. Gateway has a lot of possibilities but she was unsure about some of the allowed uses and their close proximity to family homes. The maximum length of 350' for residential housing would be more than twice the current length allowed and almost the length of a football field. There does not appear to be a maximum width. She wasn't sure why they would rezone Lot 14 to anything as it is railroad property and wondered why the railroad doesn't have it's own zone. She would like to see a fence the length of the railroad property for the protection of children. The GW stressed pedestrian circulation but how can people safety walk to the malls, downtown, etc. Under the Bartlett Street under-pass is so narrow that a sidewalk will not fit. The City Manager has stressed that a connector is a priority and the main purpose is to get trucks off the by-pass. Trucks constantly get stuck under the Bartlett Street underpass which can create a very dangerous situation. Lastly, she felt that 7 day/24 hours traffic counts should be done.

Dave Gross, of 235 and 201 Cate Street, likes the idea of rezoning the area but is concerned about "putting the cart before the horse". It would be best to concentrate on the access road first and talk to the new property owner and get an idea of how they would access this. He felt the best thing to do was to do nothing.

Rick Beckstead, 1395 Islington Street, felt the access would be a good thing but wants to make sure this is done right. He asked which Gateway definition are they talking about as there are two in the Zoning Ordinance. He also asked about the definition of workforce housing. He stated there is no developer that will construct anything without making money so low income housing is not realistic. He feels they should wait for public input at the charrette so that everyone can participate.

The Chair called for second time speakers.

Gregg Mikolaities, of Tighe & Bond, addressed some of the abutters concerns. He displayed a plan showing the proposed connector road which included a 50' right of way to give the Board a sense of where that road would be. In preliminary discussions with the City this was the preferred location. He confirmed there is a state definition of workforce house. The Gateway has been in existence for several years so everyone knows what it is. They are not making up a new zone, it is not spot zoning and it has been vetted several time. The Northeast Credit Union Building was the first project.

Mr. Beckstead is still worried about where the traffic will be coming in and out but agreed it is an interesting plan. With the proposed road the road frontage increases which increases the value of the property. He feels they need to wait on this.

Attorney Bernie Pelech noted that the issue of workforce housing keeps coming up. Mr. Taintor read the state definition at the City Council meeting and each community has different levels for that workforce housing. It is not some nebulous term and is well defined by State statue. They also

mentioned, with regard to the proposed roadway, that the bridge that goes over Hodgsons Brook would not need to be replaced as Cate Street would probably dead end there.

Mr. Mannle pointed to the connector road and said “quid pro quo”.

Mr. Beckstead commented on workforce housing. He didn’t want the Board to think they are getting something out of this. \$300,000 is an affordable home price in Portsmouth.

Mr. Gross referred to the Northeast Credit Union building that Attorney Pelech mentioned and said he can see that building cutting off the sun. Also, he was concerned about the bridge being cut off as half of his daughter’s customers use that road.

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

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

Mr. Gladhill had some concerns and thought he might like to see it sent back to staff. He made a motion to postpone to the November Planning Board meeting. Deputy City Manager Allen seconded the motion.

Mr. Barker asked why they would only postpone this for one month. He didn’t understand why they are still talking about this given that the Charrette is planned for a few months from now. He is shocked at how much time they are spending on this issue.

Councilor Thorsen agrees that one month is probably very quick. When this first came up and the property was for sale, he recommended that the City look at buying the property. The City indicated they would prefer not to buy it but he still thinks they should. When they first proposed the CD-4, the Charrette was so far off in the future there was concern about the property being sold again or a 70’ building being built. When the Planning Board voted last month he was the dissenting vote but after reflection he thinks it was correct to not vote for CD-4. Councilor Dwyer raised the idea of the Gateway originally. They have progressed now to the point that even if they brought it back in a month, the City Council would already lose first reading. They are coming so close to the Charrette, he is inclined to agree with some speakers who don’t think they should be doing this at all. He would rather just consider the Form Based Zoning as opposed to any CD-4 or Gateway. He agrees there is no point in putting this off a month. He would recommend that the Planning Board send back to the City Council that it is no longer timely and would recommend that the City pursue the Character Based Zoning approach.

Ms. Moreau gave a lot of thought to the Gateway working in this area but she doesn’t think this is an incentive for workforce house. She still feels more research needs to be done of the surrounding area. She thinks they should let the City Council know they need to let the process proceed.

Mr. Gladhill is in favor of workforce incentives but not what is being proposed and does not see the incentive. There should be new ideas for workforce housing to create more incentive.

Deputy City Manager feels the Gateway would work but this was not a good time to move forward. They have been provided the elements of a proposed Zoning Ordinance but administratively they would have to put something together for the City Council which would probably be two months, bringing them right to the doorstep of the Charrette. He would lean towards moving forward with the Charrette process and holding off on this recommendation.

Chairman Ricci agreed.

Mr. Gladhill withdrew his motion to postpone and made a motion to postpone to the Charrette in February. Chairman Ricci suggested that they advise the City Council that they do not support this request at this time. Mr. Taintor felt the Board should be aware that if they go through the Charrette process they may come out of it thinking the Gateway would be appropriate for this. Therefore, he felt they shouldn't say that they think the Gateway is not a good idea but that they don't think it is a good idea at this time.

Mr. Barker seconded the motion.

The motion to report to the City Council that the Planning Board does not support re-zoning these parcels at this time and would recommend moving forward including them in the Charrette process currently scheduled for February passed unanimously.

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B. The application of **DEH Ventures, LLC, Owner**, and **CHI Engineering Services, Applicant**, for property located at **430 West Road**, requesting amended Site Plan approval to expand the existing parking area, provide adequate drainage, repair and/or replace curbing and provide appropriate signage, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 267 as Lot 28 and lies within the Gateway (GW) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Lorden, of MSC Engineering, represented CHI Engineering, was present with Mark Eaton. Mr. Lorden stated this is a 3 ½ acre lot in the Gateway district. There is a 36,000 s.f. building on site and 106 parking spaces with 31 in the front, 18 on the side and 57 in the rear. They are proposing 21 new parking spaces in the front along the edge of the travel way. Also, to bring them up to ADA compliance, lose one parking space in the front and strip it to make it an access aisle. There are currently 44 parking spaces in the back, 22 across and 2 deep. In addition to needing more parking, they need additional lay down area in the rear. They are not changing any part of the building, utilities or lighting. They received variances in March from the BOA for parking between the principal building and streets and parking to be located 27.6' where 30' is required. The work would add 4,200 s.f. of pavement to the site which would bring additional drainage concerns. To alleviate and mitigate that as all new pavement and some existing pavement will be impervious, they are adding a proposed raised outlet grate to catch any additional flow which will tie into an existing structure off-site. They will be able to infiltrate up to 50 year storm so there will not be any increase in run-off. TAC approved

this plan with two stipulations: to provide a sidewalk plan, which they did, and also to provide a \$5,000 contribution to the City in lieu of constructing a sidewalk now.

Ms. Moreau referred to the area in the back that is gravel with parking spaces that are not striped. Mr. Lorden responded that will be a lay down area for materials.

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 amended site plan approval with the stipulation regarding a \$5,000 contribution to the City. Deputy City Manager Allen seconded the motion.

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

1. A contribution in the amount of \$5,000 shall be made to the City for future sidewalk construction on West Road.

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C. The application of **Rye Atlantic Properties, LLC, Owner**, for property located at **361 Islington Street**, requesting Site Plan approval for the conversion of an abandoned gas station to an automobile detailing facility, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 144 as Lot 23 and lies within the Mixed Residential B (MRB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Eric Weinrieb, of Altus Engineering, appeared on behalf of Rye Atlantic Properties. Also present was Mike Labrie and the tenant operating the auto detailing business. The property is on Islington Street and is the former Getty gas station. In August a variance was granted for this use in the MRB District with the condition to send it to the Planning Board for Site Review approval.

The project involves taking the abandoned gas station and creating an auto detailing facility, restriping the parking lot, putting in a holding place for a future dumpster in case one is needed as their business increases. He noticed a lot of people have been cutting through the lot to avoid the light at the intersection of Cabot Street and Islington Street so they propose planters along the Islington Street are to discourage that.

At TAC they provided a landscape plan for those planters. They requested some waivers from the application as identified as Notes 7-10 on the site plan. They also requested to allow more than one driveway as there are three today and they will close one off. They are requesting a waiver from the landscape requirement and the outdoor lighting requirement. They are not proposing any new lighting and will only be using the existing canopy lighting. Lastly, because they are not making any changes

to the site, they have done a digital detailed existing survey and instead of providing as as-built plan they are requesting that they provide the City with a CAD file for the existing conditions plan.

Mr. Rice asked if the planters are just buckets with plants in them. Mr. Weinrieb stated that initially, at TAC, they hoped to obtain some of the planters that were being discarded from the Vaughan Mall. That is not available at this point, so they would be providing something similar. They are substantial size planters made of concrete and are approximately 3' x 8'.

Ms. Moreau asked if they had given any thought to actually returning some of the pavement to green space. Most of the parking is in the back so there is a lot of space in the front along Islington Street. Ms. Weinrieb said this is an interim proposal. They are in the process of finishing up a large project in Rye so the applicant does not have the energy to go forward with this site yet. By putting planters in, it will create more mass and will work better at reducing traffic. Mr. Moreau was concerned about keeping the planters looking good.

Mr. Marsilia asked about the status of the underground tanks. Mr. Weinrieb confirmed they have all been removed.

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 determine that the application for Site Plan approval was complete according to the Site Plan Review Regulations. Ms. Moreau seconded the Motion.

The motion to accept the application for consideration passed unanimously with the following four waivers:

1. Section 3.3.2(3) – Driveways shall be limited to one per lot.
2. Article 7 – Landscaping Requirements
3. Article 10 – Outdoor Lighting Requirements
4. Attachment A(8) – Digital As-Built Plan Requirements

Deputy City Manager Allen made a motion to grant amended site plan approval with the recommended stipulation. Mr. Gamester seconded the motion.

The motion to grant Site Plan Approval with the following stipulation passed unanimously:

1. The applicant shall work with the City Legal Department to provide an easement for the signal pole and mast arm for the intersection at Islington Street and Cabot Street, prior to the issuance of a building permit.

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E. The application of **Jessica Paskalis, Owner**, for property located at **74 Wentworth House Road**, requesting a Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to re-locate the septic system out of the 100' wetland buffer, demolish the existing 19'10" x 26'7" garage and construct a new 2-story 21' x 28' garage, add a roof overhang over the rear door and construct a new 8' x 16' block foundation on the eastern side of the house which is currently supported by timber piers, with 110 ± s.f. of impact to the inland wetland and 75 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 201 as Lot 20 and lies within the Waterfront Business (WB) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Jessica Paskalis, the property owner, stated that she purchased her property 5 ½ years ago in a foreclosure sale and has been slowly restoring it. She is now rehabbing the existing garage and breezeway and replacing the septic system.

Alex Ross handed out a color plan and stated this project is very simple. They are present for a conditional use permit for minor house and septic improvements. The handouts show the existing conditions showing the wetlands in the rear of the lot and the existing septic system which is very close to those wetlands. They want to get the system out of the wetland buffer. Page 2 shows that they have proposed a new septic system location 100' away from the wetlands. They have received approval from the State for the septic system.

The house improvements include demoing and reconstructing the garage. Living space above the garage will be added to convert the house from 2 to 3 bedrooms. They are installing a new foundation to a small area on the eastern side of the house that does not have adequate foundation.

They met with the Conservation Commission who recommended unanimous approval with 2 minor stipulations. They wanted gutters on the rear of the house, going to a raingarden and they requested that the septic system be pumped out prior to disconnecting, which they planned to do anyways. That note has been added to the plan.

This will be a major improvement to the wetlands by getting it out of the buffer.

Councilor Thorsen noted that they have a leach field under a gravel driveway and asked if there was potential for damage. Mr. Ross stated the leach field is designed for traffic and can sustain that load.

Chairman Ricci said they are adding more impervious with the larger garage which Mr. Ross confirmed. Chairman Ricci did not see where any test pits had been performed. He asked what the soil was like. Mr. Ross said there were surprisingly good soils. It is a tricky site as it has wetlands out back and ledge out front. They did a number of test pits in front of the house and found decent soils where they could put the leach field. Chairman Ricci asked if there was an opportunity to put a dry well at the corner of the garage. On small additions where the soils are decent he is trying to have them put a drywell in and dump the gutters into a leaching pit. He asked if that was possible for this

site. Mr. Ross felt the soils would allow that. Chairman Ricci felt this plan is better than what is there now but the additional suggestions would help.

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 with the additional request for a dry well in the front corner of the garage. Mr. Barker seconded the motion.

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

- 1. That a dry well be added at the front corner of the new garage to take the roof run-off.

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G. The proposal to name the connector road between Market Street and the U.S. Route One Bypass as “Submarine Way.”

Mr. Taintor indicated this is a requirement of the NH DOT Sarah Mildred Long Bridge replacement project as this will become a public road. They wanted something that would reflect the area. Albacore Way was taken so this name was suggested. The Planning Board has the responsibility for naming streets and in 3 years will have the responsibility of accepting the street.

Mr. Gladhill asked where they come up with the “way” extension. Deputy City Manager Allen indicated this name came from a group that takes their responsibility very seriously and they worked very closely with the State and City to make this happen. He felt it was a reasonable request and he would strongly support it.

The Chair opened up the public hearing and asked for public speakers. Seeing none, he closed the public hearing.

Mr. Rice made a motion to accept the name. Mr. Barker seconded the motion.

The motion to accept the name “Submarine Way” 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 at the August 21, 2014 Planning Board Meeting.)

Mr. Taintor explained they have been talking about this for several months and in previous discussions they tried to break it down into two pieces: the basic parking requirements for conference centers and the special requirements for the downtown overlay district. The original referral was just changing the number for conference center and they use a square foot basis. There was a recommendation to use a rated occupant basis. He felt the square footage is less ambiguous and less subject to change over time so he recommended staying with that. They closed that topic at the August meeting but left open what to do in the downtown overlay district.

Mr. Taintor provided a draft of that. Several members of the Board said it was not zero but not the same number they use in the rest of the City. He was proposing for conference center/space of assembly 1 space per 200 s.f. GFA and he suggested they might consider large retail uses (Whole Foods) retaining the existing system of going up to a certain square footage with no parking requirement and above that applying the parking requirement. Currently their retail space requirement in certain types of retail space is 1 parking space per 350 square feet of floor area. The recommendation would be one parking space per 300 square feet of gross floor area after the first 20,000 square feet. However, he doesn't know if 20,000 square feet is the right number.

Since 2010 they have had a maximum number of parking spaces which is 110% or 120% of the minimum, depending on how large the use is. When they reduced the parking requirements in the Downtown Overlay District they didn't think about how the maximum would be affected by that. They have the unusual situation now of having a maximum number of parking spaces in the very area of town where people are most worried about parking. His suggestion is to exempt properties in the Downtown Overlay District from the maximum number so they can provide more parking if they want to.

Mr. Rice asked about the gross floor area (GFA). He asked how you get one parking for 200' of GFA. Mr. Taintor said that in August they did not want to go down to zero but do not want to require the same amount of parking required in all other area. They now require 1 space per 100 s.f. so he made it half of that. It's not a magic number but it gets between the citywide standard and zero.

Chairman was troubled by trying to come up with something when he is unclear on what the mile high view of this is. If the City provides a new parking garage this would change. He is not comfortable with over 20,000 s.f. He needs to know what's going on with the parking garage. Mr. Taintor felt that is a really good point. When the DOD zoning changed, it was with the understanding there would be a new parking garage. He questioned whether they should be creating new standards now without knowing what the future will be. Chairman Ricci was not sure that they are able to do that. He has trouble looking at this without a City Councilor giving them some direction.

Mr. Barker is concerned with there being lots of small pockets of parking. There is a lot of unused land because people have put in their own parking. It believed it makes more sense to have one central

location and it makes better use of the surrounding property. Mr. Taintor added that was the reason he was only suggesting parking requirements for large scale uses.

Chairman Ricci remembers Dave Holden always saying that the City should sponsor parking as they did not want 10 small parking areas around town.

Mr. Gladhill agreed. There was a time period when buildings came down to provide parking. They need to know when the parking garage is coming.

Chairman Ricci felt that providing parking is just like providing sewer and water.

Councilor Thorsen thought that perhaps there was a misstep in taking the parking away before putting the parking in. Perhaps they should not continue to make that mistake. They will have more parking downtown based on what he has seen but he wouldn't want to say it is absolutely going to happen. The open question he has is how does the new proposal compare to where they were in 2010 when they took away the parking. When he tried to visualize what 350 or 200 s.f. was, it seemed it was going to be very sparse unless they are making the assumption that most people are not going to have cars. For that reason, he had some difficulty with the numbers.

Mr. Taintor noted that the square footage includes kitchens, hallways, stairs, and not just the meeting areas. The one space per 100 s.f. is a pretty high requirement compared to other communities. The retail requirement of one space per 350 s.f. is also a high requirement because there is so much back space and check out space, and it works out fairly well

Councilor Thorsen understood how it would work for a grocery store. Conceptually, taking the convention space and the outlying off-rooms, and exclude the other areas, he asked if that would be 50% of the space. Mr. Taintor did not know.

Jerry Zelin stated that he did some calculations based on the Planning Department recommendations. Using Harborcorp as an example, they vary from saying their conference center will have 1,300 s.f. or 2,300 s.f. and he believes the 2,300 includes the underlying breakout rooms. They have also said that the conference center would hold 750 people sitting banquet style and 1,200 people sitting theater style. Yet, the Planning Department suggestion for Harborcorp would only require 65 to 115 spaces for a conference center that can hold 1,200 people. Similarly, with Whole Foods that is proposing 40,000 s.f. of space would have to provide 57 parking spaces.

Chairman Ricci agreed there are multiple uses in a conference center and not everyone is going just for the conference. It is a multi use space where people are traveling with family and staying at the hotel.

Mr. Taintor felt that the question about the number of required parking spaces gets spread out to the rest of the downtown also.

Chairman Ricci felt this was such a complex matrix that you almost have to do a traffic study of the whole downtown and overlay the conference center on top of it to see the impact.

Councilor Thorsen felt the principal, in his mind, was whether the development will have excess spaces for its facility or will it create a demand on the City. He felt the purpose was not to put a burden on the rest of the area.

Chairman Ricci agrees but he's not sure what the figure should be. He believes there is a parking problem in downtown Portsmouth. Ms. Moreau agreed. To have the conference center pay for their own parking, no matter what number they put on it, they are going to under sell it because they have a parking problem now.

Mr. Barker felt there were two issues. One issue is to define what the philosophy towards parking is in the City and how do they address it. If they make changes and now require additional parking for individual uses or buildings, that has a long term impact on the City. He asked if they can they effect the Whole Food development parking requirements or are they already vested today for zoning. Mr. Taintor agreed that they are vested. Mr. Barker felt they are making changes now for any development coming forward that has not already vested. He struggles with the urgency to make a change now. They need to make a decision on whether they should make a change at all and then decide whether their recommendation is going to work.

Mr. Taintor pointed out there are two separate issues. One issue is the parking numbers he proposed in response to the original Council referral and the second issue is recognizing they have a cap on parking in the downtown and whether they want to remove that. Chairman Ricci did not believe there is an exact number. He doesn't want to make a bad situation worse.

Deputy City Manager Allen said they need direction and wondered if they need to do more study. The cap was specifically put in place for the outlining areas to prevent the Walmart sea of asphalt happening. If the cap creates a problem then they probably should not have it in the downtown. At the very least, he felt the maximum number of spaces in the downtown should not apply. He also agreed that these numbers and square footage are difficult to get your head around and feel comfortable that they are endorsing the right decision.

Ms. Moreau said that after having done a lot of research in this area, they have made some decisions and only struggle with the downtown and everyone recognizes we have a parking problem. She spends everyday downtown and stated there is an absolute parking issue. From a planning perspective, they cannot make any decision until the City Council makes a decision on what they are going to do about the parking problem. She doesn't see the rush, she agrees there is no need for the maximum but they need more answers from the City Council about the future of parking downtown.

Chairman Ricci suggested that they get back to the Council that they need more feedback from them and there is nothing that the Planning Board or Planning Department can do at this time.

Mr. Taintor asked if the Planning Board feels that the existing regulations are fine outside the Downtown Overlay District, that the maximum cap should be eliminated from the Downtown Overlay District, and that more information is needed from the City Council on the parking policy. Ms. Moreau made that motion. Mr. Barker seconded the motion.

Councilor Thorsen agrees with removing the maximum. He doesn't want to send back the message to the Council that they want the status quo. They should send back a message saying they need more direction or where do they plan to go with future parking before they make a decision. He doesn't want to give the impression that he Planning Board is giving back the direction that they should the status quo on the merits of the status quo. Ms. Moreau and Chairman Ricci indicated that is not what they were saying. Councilor Thoreau felt that the City Council is going to be in the same situation and won't know if they are going to approve the parking garage themselves with certainty.

Chairman Ricci felt if the City Council doesn't know the parking situation, then the Planning Board certainly doesn't.

The motion passed unanimously to report back to the City Council that the Board voted as follows:

- (1) The existing parking standards for conference centers outside the Downtown Overlay District are appropriate and do not need to be revised;
- (2) The Downtown Overlay District should be exempted from the maximum number of allowed parking spaces in Sec. 10.1112.50 of the Ordinance; and
- (3) Before making a recommendation regarding parking standards in the Downtown Overlay District, the Board needs more information from the City Council regarding parking policy for the downtown, including whether additional public parking is going to be provided.

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**VI. PLANNING DIRECTOR'S REPORT**

A. Master Plan – a presentation was made at the City Council retreat. He included the powerpoint in their packets. He also included the State Statue about Master Plans, and a draft of Request for Proposals for Consultants as they want to get moving on this in early 2015. They are anticipating 8 meetings with the Planning Board during the process. This is the responsibility of the Planning Board so they need to be involved. He also provided the Economic Development section for their review.

B. Upcoming Planning Meetings – These meetings were listed in the Staff Memorandum.

At the City Council Retreat, the Council indicated they wanted to streamline the CIP process and limit the number of presentations and they want to participate in the Planning Board presentation. Rather than having a presentation at the December meeting, there will be a special joint meeting on January 8, 2015 for the CIP presentation. Chairman Ricci did not see the need for a Special Meeting and suggested inviting the City Council to attend the Planning Board meeting when it is presented. After discussion, Chairman Ricci stated they will keep it the way they have always done it.

C. Status of Conditionally Approved Applications for Site Plan Approval – See Staff Memorandum.

D. Status of Conditionally Approved Applications for Subdivision Approval – See Staff Memorandum.

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**VII. ADJOURNMENT**

A motion to adjourn at 10:05 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 November 20, 2014 Planning Board Meeting.