



PLANNING DEPARTMENT MEMORANDUM

TO: PLANNING BOARD

**FROM: RICK TAINTOR, PLANNING DIRECTOR
JESSA BERNA, ASSOCIATE PLANNER**

DATE: MAY 18, 2015

SUBJECT: MAY 21, 2015 PLANNING BOARD MEETING

I. DETERMINATIONS OF COMPLETENESS

Staff Report:

The Subdivision Rules and Regulations and the Site Plan Review Regulations require the Planning Board to determine that an application is complete according to the Regulations and to vote to accept it for consideration. These actions do not require a public hearing.

Recommendations:

- A. Vote to determine that the following application is complete according to the Subdivision Rules and Regulations and to accept it for consideration.
1. The application of **Deer Street Associates, Owner**, for property located at **165 Deer Street**, and **Boston & Maine Corporation, Owner**, for property running **from Borthwick Avenue to Maplewood Avenue**, requesting Preliminary and Final Subdivision Approval (Lot Line Revision).
- B. Vote to determine that the following application is complete according to the Site Plan Review Regulations and to accept it for consideration.
1. The application of **Northern New England Conference of Seventh Day Adventist, Owner**, for property located at **861 Middle Road**, requesting Site Plan Approval to construct an 18' x 33' addition to the front of the existing church.
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II. OLD BUSINESS

It is recommended that item A under Old Business and item A under Public Hearings – Old Business be discussed together and voted on separately.

A motion is needed to consider these two items together.

A. The application of **North End Properties, LLC, owner, and Deer Street Development Company, Inc., doing business in NH as Harborcorp of Portsmouth, applicant**, for property located on **Russell Street, Deer Street, and Maplewood Avenue**, for a Conditional Use Permit under Section 10.535.12 of the Zoning Ordinance to allow an increase in building height above the maximum height specified in Section 10.531. Said property is shown on Assessor Plan 125 as Lot 21, Assessor Plan 118 as Lot 28, Assessor Plan 124 as Lot 12, Assessor Plan 119 as Lot 1-1A, and Assessor Plan 119 as Lot 1-1C, and lies within the Central Business B, Historic, and Downtown Overlay Districts. (This matter was referred to the Planning Board by the Historic District Commission at its meeting on April 1, 2015 and postponed at the April 16, 2015 Planning Board Meeting.)

Staff Report:

Section 10.535.13 of the Zoning Ordinance provides as follows:

Within the area bounded by Maplewood Avenue, Deer Street, Russell Street and the railroad right-of-way (Assessor Map 125 Lot 21, Map 118 Lot 28 and Map 124 Lot 126), the Historic District Commission may grant a conditional use permit to allow an increase in building height above the maximum structure height specified in Section 10.531, up to a maximum of 50 feet in the CBA district or 60 feet in the CBB district, only if the proposed building and site design positively contribute to the context, quality, and overall historic character of the neighboring properties and the district as a whole, including:

- Publicly accessible open space areas such as widened sidewalks, plazas, pocket parks, playgrounds or other significant public open space areas;
- Underground parking in lieu of surface parking;
- The use of high-quality building materials in the building design including, but not limited to: slate or copper roofing; copper gutters and downspouts; restoration brick; granite sills, lintels, foundations, stoops and steps; and wood windows along the façade elevation;
- Significant scaling elements in the building design such as increased setbacks, stepbacks, reduced footprint and volume, the use of pitched roof forms, banding, quoining and other massing techniques to maintain a pedestrian scale along the façade;
- Significant restoration or reconstruction of a “focal” or “contributing” building;
- Permanent protection of a significant view corridor.

This provision was adopted under the statutory provisions for “innovative land use controls” in RSA 674:21. The administrative requirements under these provisions are as follows:

II. An innovative land use control adopted under RSA 674:16 may be required when supported by the master plan and shall contain within it the standards which shall guide the person or board which administers the ordinance. An innovative land use control ordinance may provide for administration, including the granting of conditional or special use permits, by the planning board, board of selectmen, zoning board of adjustment, or such other person or board as the ordinance may designate. If the administration of the innovative provisions of the ordinance is not vested in the planning board, any proposal submitted under this section shall be reviewed by the planning board prior to final consideration by the administrator. In such a case, the planning board shall set forth its comments on the proposal in writing and the administrator shall, to the extent that the planning board's comments are not directly incorporated into its decision, set forth its findings and decisions on the planning board's comments. (RSA 674:21,II)

Thus, the responsibility of the Planning Board is to provide “comments” to the Historic District Commission regarding the application for a conditional use permit to allow the height of the building to exceed 45 feet or 3½ stories.

At the April 16, 2015, meeting the Planning Board voted to close the public hearing on this application and to postpone consideration to the May 21 meeting.

Recommendation: Vote to report comments to the Historic District Commission

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.*

A. The application of **North End Properties, LLC, Owner, and Deer Street Development Company, Inc., doing business in NH as Harborcorp of Portsmouth, Applicant**, for property located on **Russell Street, Deer Street and Maplewood Avenue**, requesting Site Plan Approval for a proposed 5-story mixed use development with a footprint of 72,600 ± s.f. and gross floor area of 352,736 ± s.f., including a hotel/event center with 24,000 s.f. of event center space and 97 hotel rooms, 23 residential condominiums, a 44,169 s.f. of retail, and 523 parking spaces (382 spaces in a garage structure and 141 below-grade spaces serving the retail use); with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 21, Assessor Map 118 as Lot 28 and Assessor Map 124 as Lot 12, Assessor Map 119 as Lot 1-1A, Assessor Map 119 as Lot 1-1C and Assessor Map 119 as Lot 4 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District. (This application was postponed at the April 16, 2015 Planning Board Meeting.)

Staff Report: This application is for redevelopment of the existing Sheraton Hotel parking lot into a mixed-use development including a hotel, conference center, condominiums, retail spaces, and a parking garage. The tract to be developed consists of three parcels totaling 85,650 sq. ft. (1.97 acres),

and is bounded by Green Street, Russell Street, Deer Street, Maplewood Avenue, and the railroad right-of-way. The applicant also owns a parcel on the opposite side of Green Street, along Russell and Market Streets, containing 9,765 sq. ft. (0.22 acres), which will be landscaped as part of this development project.

The proposed development will have three site entrances providing access to two distinct parking areas. A 141-space underground garage will be accessed from Russell Street, Deer Street and Maplewood Avenue and will primarily serve a grocery store (Whole Foods Market). An additional 382 spaces in an above-grade parking structure will be accessed only from the Russell Street entrance and will serve the hotel, conference center and condominiums as well as replacing existing spaces for the Sheraton Harborside Hotel and the Market Landing condominiums on Deer Street. Vehicles will also be able to access the upper garage from the lower garage by means of the Russell Street entrance, which allows for overflow if the underground garage is filled. Both garages will also be available for public parking.

Prior Reviews by the Planning Board

In 2007 the project site was approved for a 6/7-story, 83,118 ± s.f. structure consisting of a hotel, convention center, parking garage and 21 residential condominiums. After having been granted several one-year extensions, the applicant ultimately allowed the site plan approval for that project to lapse in October 2011.

The Planning Board reviewed the current proposed development in a Design Review hearing on December 19, 2013, and January 16, 2014.

Required Actions by the Historic District Commission

The proposed development project will require two separate approvals from the Historic District Commission: a Certificate of Approval for development within the Historic District, and a conditional use permit for building height in the Central Business B district.

In the last 12 months the HDC has held eight work sessions with the applicant. On May 6th, the applicant applied for a Certificate of Approval, and the HDC held a public hearing on the proposed development. A subsequent site walk and public hearing/work session is scheduled for May 27th.

Because the proposed building would be taller than 45 feet and 3½ stories, the applicant must be granted a conditional use permit by the Historic District Commission. The HDC took up this matter at its meeting on April 1 and referred it to the Planning Board for comment as required by statute. A second public hearing was held on May 6th but no action was taken because the HDC hadn't received comments from the Planning Board yet. A third public hearing on the conditional use permit is scheduled for May 27th.

A development must comply with all City ordinances and codes in order to be eligible for site plan approval. This proposed development will not comply with the Zoning Ordinance unless the HDC grants the conditional use permit for building height. Therefore, it is recommended that the Planning Board not vote on the application for site plan approval until after the HDC has voted on the

conditional use permit. Based on the timetable outlined above, this means that the earliest date for a vote on site plan approval would be the Planning Board meeting on June 18, 2015.

Required Actions by the City Council

Approvals from the City Council will be required for several land transfers, easements and licenses that are necessary to implement the site plan. These are shown on Sheets C-2.3 (Land Transfer and Easement Plan) and C-2.3A (License and Permit Plan) and include the following:

From the Property Owner to the City

- Land and temporary construction easements at the intersection of Market and Russell Streets for road widening, including construction of a roundabout.

From the Sheraton Harborside Hotel parcel to the City

- Land (and possibly temporary construction easements) at the intersection of Market and Russell Streets for construction of a roundabout.
- Land at the intersection of Deer and Russell Streets for intersection realignment.
- Easements for a street lighting control cabinet on Russell Street and for a sidewalk widening at the intersection of Deer Street and Maplewood Avenue.

From the City to the Property Owner

- An easement across Russell Street for an aerial connector between the proposed hotel and the existing Sheraton Harborside Hotel.
- Easements at the intersection of Russell and Green Streets for stairs and/or exterior facilities.
- Easements along Green, Russell and Deer Streets and Maplewood Avenue for foundation construction, stairs and building overhangs/canopies.
- Licenses along Green, Russell and Deer Streets for commercial activities (such as outdoor dining areas).
- Temporary construction licenses along Green, Russell and Deer Streets and Maplewood Avenue.

City Council approval will also be required for changes to the on-street parking spaces on Russell and Deer Streets.

TAC Review and Recommendation

The Technical Advisory Committee reviewed this application in a work session on March 25, 2014, and in seven meetings (public hearings) on April 1, June 3, September 30, November 4, and December 30, 2014, and February 4 and March 4, 2015.

TAC's review of this application has been supplemented by independent engineering reviews of the project's traffic and parking impacts and the stormwater and drainage analysis. These peer reviews were conducted for the City by TEC, Inc., and included document review, supplemental analysis, and meetings with Planning and DPW staff. The applicant's "Supplemental Information Package" submitted with the site plans includes responses to TEC's comments on traffic and parking (dated February 17, 2015) and on stormwater management (dated February 25, 2015).

At its meeting on March 4, 2015, the Committee voted to recommend approval of the application subject to the following stipulations:

A. Plan Revisions

C-1.1 – General Notes

1. Under “Property Notes”, correct item 5, Zoning Requirements regarding building height, to indicate that the maximum structure height is 45 feet or 3½ stories, whichever is less, but may be increased to 60 feet through the granting of a conditional use permit.

C-2.3 – Land Transfer and Easement Plan

2. Clarify ownership of proposed aerial connector, i.e., whether Sheraton parcel or new project parcel will require the easement from the City.

C-3.0 – Site Layout Plan

3. Further revise the intersection of Green and Russell Streets to make the intersection more of a “T” for cars and to make the pedestrian crossing distance narrower. The design intent is to accommodate the periodic use by large WB-67 trucks leaving the site while maintaining an intersection configuration that is appropriately scaled for pedestrians, bicyclists and the majority of vehicles that will be moving through the intersection. The applicant shall work with the Department of Public Works (DPW) to develop a design that achieves these objectives.
4. Terminate the concrete driveway apron behind the building behind the right-of-way line both at Green St and Maplewood Ave.
5. Change the reference to Detail “I” to Detail “G” for the raised concrete paver crossings at Deer St and Russell St parking garage and Sheraton entrances.

C-3.1 – Pavement Marking and Signage Plan

6. At the intersection of Deer and Russell Streets, change the 3-way stop to a 1-way stop on the Russell Street approach. The applicant shall conduct a post-occupancy review at this intersection and monitor the traffic conditions for one year after the full operation of the project to determine if the intersection should be migrated to an all-way stop condition. During construction, a small formed opening shall be created for the other two stop signs should those need to be added in the future.
7. On Russell Street north of Deer Street intersection, change sign #4 (R3-8) to #23 (R3-8L Modified)
8. Revise the sign table as follows:
 - a. Signs #2 (R1-1), #5 (W11-2) and #6 (R5-1) – change to 30”x30” when placed on the street (when on private property, may be 24”x24” as shown).
 - b. Sign #14 (R10-6) – change to 24”x36”.
 - c. Sign #17 (R1-5) –delete from table.
 - d. Sign #19 (R7-107) – change to 12”x18”.
 - e. Sign #21 (R10-11A) – change to 36”x48”, and place on the mast arm for visibility.

9. Remove sign #24 (LED Traffic Controller) from the Deer Street and Maplewood Avenue garage entrances and relocate sign #24 at the Russell Street entrance back into the ramp so that it is clear that it applies only to the upper garage and so that vehicles exiting the lower garage will be able to see it.
10. Tie the proposed lane striping for the project on Maplewood Avenue to the existing conditions outside of the limit-of-work boundary and make the following off-site modifications to the existing lane striping:
 - a. Eliminate the centerline within the intersection of Maplewood/Vaughan for approximately 30 feet;
 - b. Modify the centerline to provide positive guidance for the through movement and definition for the left-turn lane;
 - c. Add railroad pavement markings and static signs on the northwest side of the tracks, similar to what is proposed to the southeast.
 - d. Add a note regarding coordination with the City.
11. In the bus spaces on Russell Street, delete the painted lines shown on the plans at the ends of the puffers adjacent to the transition curbing.

C-4.0 – Grading and Drainage Plan

12. Revise drainage plan per discussions with the DPW. The revised plan shall be subject to review and approval by DPW and the City's independent peer reviewer prior to Planning Board action on the application.
13. Remove all contours in the street except where the existing grade is proposed to be changed.
14. Add a new pavement plan showing the limits of paving vs. milling/overlay. Include note that all areas of utility and drainage work shall be milled/overlayed.

C-6.0 – Utility Plan

15. Revise proposed 8" sewer connection between PSMH6 and PSMH7 to be PVC (not AC) and adjust PSMH6 so that there is a minimum 3' separation between the sewer line and the gas line.
16. Final Utility plans shall be approved by DPW prior to Planning Board action on the application.

C-8.0 – Details

17. In the Raised Crossing detail (G), change the painted white borders to flush granite borders.

C-8.3 – Details

18. Consider reducing the overall fence height (needs to be at least 42" above the service drive) and replacing with a more crashworthy design.

C-8.6 – Details

19. Add a plan view of the Deer Street & Russell Street Paver Crosswalk (detail C).

A-1.2 – Average Grade Plan Analysis

20. Add a note stating average building height per the Zoning Ordinance.

A-1.3 – A.1.4

21. Show actual height from sidewalk grade to the cornice line indicating height as perceived by pedestrians to assist Planning Board in making its report to Historic District Commission relative to the conditional use permit for building height.
22. Label the street names and add a key plan showing the location of each section.

A-1.5

23. Provide additional views as necessary to show all sides of the project.
24. Modify the illustration (by color banding or other method) to indicate the height at 45 feet above average grade and at 5-foot intervals up to 60 feet to assist the Planning Board and the HDC in understanding the proposed conditional use permit.

B. Additional Information To Be Provided for Review by the CityParking

1. The applicant shall provide further detail regarding off-site parking provisions for major events, including locations where off-site parking will be provided, shuttling methods for employees, and agreements or commitments demonstrating the long-term availability of the sites.
2. The applicant shall provide documentation regarding the parking easements on the site benefitting the Sheraton hotel and the Deer Street condominiums.

Traffic

1. The applicant shall provide a traffic signal design plan for the intersection of Maplewood Avenue and Deer Street and coordination timing plan for the Maplewood Avenue system for DPW review and approval prior to construction.
2. The applicant shall provide a plan for communicating recommended routes for delivery vehicles and patrons to access the site, emphasizing access via Market Street rather than Maplewood Avenue.
3. The applicant shall be responsible for a post-occupancy analysis of traffic, intersections, and traffic signal operations, to be conducted after one year of full operations including, at a minimum, each of the signalized intersections on Maplewood and the unsignalized intersection at Deer St and Russell St.
4. The applicant shall provide more detail about the types of facilities being proposed for the long-term enclosed bicycle parking in the parking garage as well as an explanation of the intended users and how those areas will be managed as part of the overall traffic demand management program for this project.

Other

1. The applicant shall provide a narrative describing how snow removal will be accomplished in the service road area.
2. All land and easement transfers shall happen prior to the issuance of a building permit.

C. Recording of Plans

The following plans shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department:

1. Sheet C-2.3 – Land Transfer and Easement Plan
2. Sheet C-2.4 – Lot Consolidation Plan
3. Sheet C-3.0 – Site Layout Plan
4. Sheet L1.0 – Landscape Plan

D. Off-Site Traffic Mitigation

The applicant shall make the following monetary contributions for off-site traffic mitigation as stated in the “Response to TEC Traffic & Parking Engineering Peer Review Comments” letter dated February 17, 2015:

1. A \$50,000 fair share contribution for improvements to the intersection of Market Street and Russell Street (which shall be in addition to the required land transfers and easements as shown on the site plan).
2. A \$25,000 fair share contribution for future improvements at the Maplewood Avenue railroad crossing.

Site Plan Submission to Planning Board

On March 11, 2015, the applicant submitted a revised plan set addressing the TAC stipulations as follows:

A. Plan Revisions

The revised plans incorporate all TAC stipulations regarding plan revisions, with one very minor exception: a note has not been added to Sheet C-8.6 stating average building height per the Zoning Ordinance. (This item will need to be addressed prior to the Planning Board’s recommendation to the Historic District Commission regarding the conditional use permit; however, the applicant has not yet filed the application for that permit.)

B. Additional Information To Be Provided for Review by the City

The “Supplemental Information Package” dated March 10, 2015, includes copies of the parking easements benefitting the Sheraton Harborside Hotel and the Market Landing condominiums. The remaining required information regarding parking management, traffic impacts and snow removal either still needs to be provided, or should be included as conditions of final site plan approval.

The following stipulations should be addressed prior to final action by the Planning Board:

1. The applicant shall provide further detail regarding off-site parking provisions for major events, including locations where off-site parking will be provided, shuttling methods for employees, and agreements or commitments demonstrating the long-term availability of the sites.

- While the Supplemental Information Package addresses this topic in a general sense, it does not identify locations for off-site parking, describe shuttling methods, or document commitments demonstrating long-term availability of off-site parking locations.
2. The applicant shall work with the Department of Public Works (DPW) to develop a design for the intersection of Russell and Green Streets that is appropriately scaled for pedestrians, bicyclists and the majority of vehicles that will be moving through the intersection while also accommodating the periodic use by large WB-67 trucks leaving the site.
 3. The applicant shall provide a plan for communicating recommended routes for delivery vehicles and patrons to access the site, emphasizing access via Market Street rather than Maplewood Avenue.
 4. The applicant shall provide more detail about the types of facilities being proposed for the long-term enclosed bicycle parking in the parking garage as well as an explanation of the intended users and how those areas will be managed as part of the overall traffic demand management program for this project.
 - The Supplemental Information Package includes a detail of a freestanding bike rack that is apparently intended to represent the long-term bicycle storage facilities. However, the bike rack shown is a consumer product not intended for a commercial installation, and it could not be used as suggested on the garage plan (Sheet A100) because it requires access from the side of the bicycle. A detail should be provided in the plan set for a bicycle rack system suitable for commercial use, such as the Dero-Decker (www.dero.com/product/dero-decker/), which can store 16 and 12 bicycles within the respective storage room dimensions shown on the plan. Other companies offer comparable products.
 5. The applicant shall provide a narrative describing how snow removal will be accomplished in the service road area.
 6. The final drainage plan shall be subject to review and approval by DPW and the City's independent peer reviewer.
 7. Final utility plans shall be subject to review and approval by DPW.

Several TAC stipulations relating to ongoing coordination with or review by DPW should be carried forward in any action by the Planning Board. In particular, the following stipulations should be included as conditions of site plan approval:

- All land and easement transfers shall happen prior to the issuance of a building permit.
- The applicant shall provide a traffic signal design plan for the intersection of Maplewood Avenue and Deer Street and coordination timing plan for the Maplewood Avenue system for DPW review and approval prior to construction.
- The applicant shall be responsible for a post-occupancy analysis of traffic, intersections, and traffic signal operations, to be conducted after one year of full operations, including each of the signalized intersections on Maplewood Avenue.
- The applicant shall conduct a post-occupancy review at the intersection of Deer and Russell Streets and monitor the traffic conditions for one year after the full operation of the project to determine if the intersection should be migrated to an all-way stop condition.

Reviews by Other Advisory Committees

The Trees and Public Greenery Committee reviewed the proposed development at its meeting on February 11, 2015. Members suggested several changes regarding proposed tree species, locations and planting details. The Committee Chair will review the revised plans that have been submitted to the Planning Board to confirm that the Committee's concerns have been addressed.

The Parking and Traffic Safety Committee reviewed the application at its meetings on March 5 and 12, 2015. At the March 12 meeting, the Committee voted to approve the parking and traffic changes proposed by the applicant with the stipulations recommended by the Technical Advisory Committee, subject to approvals by the Planning Board and City Council.

Planning Board Review Procedure

This project first came to the Planning Board in March, and has so far followed the schedule below:

- March 26: Presentation and review of site/civil aspects of the proposed development.
- April 16: Presentation and review of traffic impacts and parking management strategies;
Presentation and review of the application for a conditional use permit for building height.

It is expected that at this month's meeting (May 21) the Planning Board will provide comments to the HDC regarding the conditional use permit. There will also be a presentation and review of additional information requested by the Planning Board and/or site plan changes made in response to the previous two meetings.

Since the development requires a conditional use permit for building height in excess of 45 feet or 3½ stories, the Board cannot grant site plan approval until after the Historic District Commission has acted. Based on the procedural requirements and board meeting schedules, it is expected that the earliest possible date for Planning Board action will be at the Board's meeting on June 18, 2015.

Revisions to the Plan Set

On May 12, 2015, the applicant submitted a revised plan set with a number of changes, outlined in their letter. These revisions include updates to service drive lighting and grading at the hotel loading dock, utility updates, and additional landscaping near the Whole Foods loading dock. Updates to the Russell Street Pocket Park, and building design were also included. In addition, the applicant submitted an alternate sketch for on-street parking. This plan represents an option to increase the number of on-street parking spaces. Transportation Planner Juliet Walker and TEC representative Kevin Dandrade will be at the meeting to provide City and peer review comments, respectively.

Recommendation: Vote to continue the public hearing to the Planning Board meeting on June 18, 2015.

It is recommended that items B and C under Public Hearings – Old Business be discussed together and voted on separately.

A motion is needed to consider these two items together.

- B. The application of **Moray, LLC, Owner**, for property located at **235 Commerce Way**, and **215 Commerce Way, LLC, Owner**, for property located at **215 Commerce Way**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots which are currently shown on Assessor Map 216 as Lots 1-8A and 1-8B and Assessor Map 213 as Lot 11. The applicant proposes to merge Map 216 Lot 1-8A and Lot 1-8B into Map 216 Lot 1-8A, and to revise the lot line between Map 216 Lot 1-8A and Map 213 as Lot 11 as follows:
- Map 216 Lot 1-8A (136,490 s.f.) merged with Lot 1-8B (196,876 s.f.) increasing in area from a total of 333,366 s.f. to 384,402 s.f. with continuous street frontage on Portsmouth Boulevard and Commerce Way.
 - Map 213 Lot 11 decreasing in area from 290,077 s.f. to 239,040 s.f. with continuous street frontage on Portsmouth Boulevard and Dunlin Way.

Said lots lie within an Office Research (OR) District which requires a minimum lot size of 3 acres and 300 ft. of continuous street frontage. (This application was postponed at the March 19, 2015 Planning Board Meeting.)

- C. The application of **Moray, LLC, Owner**, for property located at **235 Commerce Way**, and **215 Commerce Way, LLC, Owner**, for property located at **215 Commerce Way**, requesting Site Plan Approval for a proposed 4-story office building with a footprint of 28,125 ± s.f. and gross floor area of 112,500 ± s.f., and 640 parking spaces serving the proposed building and an adjacent existing office building (including a parking deck with 161 spaces below grade), with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 216 as Lots 1-8A and 1-8B and lies within the Office Research (OR) District. (This application was postponed at the March 19, 2015 Planning Board Meeting.)

Staff Report: The proposed project is a four-story office building at the intersection of Commerce Way and Portsmouth Boulevard, including a below-ground garage providing a portion of the required off-street parking. The application for subdivision approval is to consolidate the lot at 235 Commerce Way with the adjoining lot at 215 Commerce Way, in order to eliminate internal setback requirements and to provide for a common parking and circulation plan. The subdivision plan also includes revising the lot line with the adjacent parcel on Portsmouth Boulevard.

The application for site plan review was postponed at the Technical Advisory Committee meetings on December 2 and December 30, 2014, and February 3, March 3, March 19 and April 30, 2015, and will be considered again at the TAC meeting on June 2, 2015.

Because TAC has not completed its review of the site plan review application, it is appropriate to postpone consideration of both applications to the Planning Board's June meeting.

Recommendations:

- (1) Vote to postpone consideration of the application for subdivision approval to the Planning Board meeting on June 18, 2015.
 - (2) Vote to postpone consideration of the application for site plan approval to the Planning Board meeting on June 18, 2015.
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D. The application of **Northern New England Conference of Seventh Day Adventist, Owner**, for property located at **861 Middle Road**, requesting Site Plan Approval to construct an 18' x 33' addition to the front of the existing church, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 232 as Lot 120 and lies within the Single Residence B (SRB) district. (This application was postponed at the April 30, 2015 Planning Board meeting.)

Staff Report: This application is to allow an addition on the front of the existing church building at 861 Middle Road, to expand and upgrade the off-street parking area at the side and rear of the church, and to revise the vehicular and pedestrian circulation system within the site.

The Technical Advisory Committee considered this application at its meeting on March 31, 2015, and voted to recommend site plan approval with the following stipulations:

1. The applicant shall have a code specialist determine the occupancy capacity of the building for parking and sprinkler system requirements, and shall confirm these determinations with the Inspections and Fire Departments.
2. The zoning calculations (e.g., yards, coverage, off-street parking, open space, occupancy, etc.) shall be added to the site plan.
3. The discrepancy between impervious surface percentages shown on different plan sheets shall be resolved.
4. An appropriate parking area for the school bus shall be shown on the plan.
5. The plan shall address the directional and informational sign changes identified by the Parking and Traffic Engineer.
6. The applicant shall provide an easement to the City at the rear of the site for snow storage and possibly drainage for the end of Pearson Street.

At the request of the applicant, on April 30, 2015, the Board voted to postpone consideration of this application to the May 21 meeting.

On May 12, 2015, the applicant submitted a revised plan set and additional information regarding parking. The plan presented TAC indicated an occupancy of only 100 rather than 201, which required significantly less parking. With the correct occupancy, 51 spaces are required where 21 exist today and 36 are proposed. Pursuant to Section 10.1112.40 "Reserve Parking Area" the application shows reserve parking which could be used in the future if needed. The reserve parking area meets the requirements of the Zoning Ordinance, does not count towards the open space calculation, and no

structures will be built in this location. A formal site review process will address any drainage and landscaping concerns if the applicant decides to build out this parking area.

The TAC stipulations have been addressed as follows:

1. The applicant shall have a code specialist determine the occupancy capacity of the building for parking and sprinkler system requirements, and shall confirm these determinations with the Inspections and Fire Departments: A code review of the project has been completed and the rated capacity of the church has been determined to be 201.
2. The zoning calculations (e.g., yards, coverage, off-street parking, open space, occupancy, etc.) shall be added to the site plan: This information has been added to sheet 5 of the plan.
3. The discrepancy between impervious surface percentages shown on different plan sheets has been resolved.
4. An appropriate parking area for the school bus shall be shown on the plan: A stabilized turf is proposed to be used off the rear of the parking area for the storage of the bus. The bus is infrequently used.
5. The plan shall address the directional and informational sign changes identified by the Parking and Traffic Engineer: The plan was revised to reflect the requested sign changes.
6. The applicant shall provide an easement to the City at the rear of the site for snow storage and possibly drainage for the end of Pearson Street: The site plan now shows the proposed easement location as requested by DPW.

Recommendation: Vote to approve the project with the following stipulation:

1. The Site Plan (Sheet 5) and Landscape Plan (Sheet 10) shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department, prior to the issuance of a building permit.

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 **Deer Street Associates, Owner**, for property located at **165 Deer Street**, and **Boston & Maine Corporation, Owner**, for property running **from Borthwick Avenue to Maplewood Avenue**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots which are currently shown on Assessor Map 125 as Lot 17 and Assessor Map 164 as Lot 4. The applicant proposes to adjust a lot line as follows:

- a. Map 125, Lot 17 increasing in area from 94,804 s.f.(2.1764 acres) to 108,359 s.f. (2.4876 acres)
- b. Map 164, Lot 4 decreasing in area by 13,555 s.f. (total lot area = 13 ± acres).

Said lots lie within the Central Business B (CBB) District, which requires a minimum lot size of 2,000 s.f. and no requirement for continuous street frontage.

Staff Report: This application is to relocate the boundary between the Boston and Maine Corporation and Deer Street Associates. The proposed lot line adjustment would transfer 13,555 s.f. of land from the B&M Railroad (Map 164, Lot 4) to Deer Street Associates (Map 125, Lot 17). This lot line revision is being done in preparation of the parking project proposed at this location. The additional 13,555 s.f. would be added to the southwestern end of the property.

The applicant has request that the Board waive the requirement to show the entire area proposed to be subdivided, the area of all proposed lots, and any adjacent parcels in the same ownership. This waiver is being requested because the Boston and Maine Corporation property consists of a large sinuous tract which is the railroad bed and the applicant believes that the requirement to survey the entire tract to convey a small portion of the property is an undue burden.

Recommendations:

- (A) Vote to find that specific circumstances relative to the subdivision indicate that the waiver will properly carry out the spirit and intent of the regulations and, therefore, to waive compliance with Section IV.6 of the Subdivision Rules and Regulations, requiring that the plat include the entire area proposed to be subdivided, the areas of all proposed lots, and any adjacent parcels in the same ownership.

[Note: Granting a waiver requires an affirmative vote by six members of the Board.]

- (B) Vote to grant Preliminary and Final Subdivision Approval (Lot Line Relocation) with the following stipulations:

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

B. The application of **Glen E. Parker, Owner**, for property located at **445 Ocean Road, Unit 8**, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer to construct a 3' x 16' addition to an existing deck, for a total deck size of 11' x 16', with 48 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Plan 294 as Lot 21-0008 and lies within the Single Residence A (SRA) District.

Staff Report: This project is a request to expand a deck located in the wetland buffer.

In order to be granted a Conditional Use Permit for work within the wetland buffer, the applicant must satisfy the criteria for approval set forth in Section 10.1017.50 of the Zoning Ordinance, as follows:

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

2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.
3. There will be no adverse impact on the wetland functional values of the site or surrounding properties.
4. Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.
5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of [the wetlands protection provisions of the Ordinance.

The proposal will screen in and expand the existing deck area by 48 square feet over a lawn area. Given the small size of the expansion this is a reasonable request. The proposed plan has will not impact the wetland values on surrounding properties given its small size. There a small amount of lawn which will be lost but the project does not appear to be removing any natural woodland area. Given the small size of this project and the existing lawn in the proposed project area this appears to be the least impacting alternative.

The Conservation Commission reviewed this application at its meeting on May 13, 2015, and voted to recommend approval with the following stipulation:

1. A stone apron drip edge shall be installed.

Recommendation: Vote to approve the application with the following stipulation:

1. A stone apron drip edge shall be installed.

VI. CITY COUNCIL REFERRALS

*The Board's action in these matters has been deemed to be quasi-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. The request by **Portsmouth Land Acquisition, LLC**, 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.

(This matter was postponed at the April 30, 2015, Planning Board meeting.)

Staff Report: At its meeting on April 30, 2015, the Planning Board voted unanimously in favor of Portsmouth Land Acquisition's request to rezone the subject parcels to the Gateway district, and the staff recommendation to amend two provisions of the Zoning Ordinance relating to building setbacks and height. However, the Planning Board did not support Portsmouth Land Acquisition's request to insert a new Section 10.734.40 in the Ordinance regarding Workforce Housing Incentives. Board members were concerned about the considerable increases in residential density and building scale which the proposed amendments would allow in exchange for including a modest percentage of workforce housing.

Although the Board did not recommend the specific workforce housing incentives proposed by Portsmouth Land Acquisition, members were generally supportive of encouraging the provision of affordable housing in the Gateway district. Therefore, the Board requested the Planning Department draft alternative language to provide zoning flexibility for Gateway Planned Development projects that incorporate workforce housing.

In place of the specific Workforce Housing Incentives requested by Portsmouth Land Acquisitions, the Planning Department drafted the following changes to Section 10.738.30 of the Zoning Ordinance be amended as follows (new text in **bold**):

In granting a conditional use permit, the Planning Board may modify specific standards and requirements set forth in this Section (including development intensity and dimensional standards, and building design standards) provided that the Planning Board finds such modification will promote design flexibility and overall project quality, **or that such modification is required for the development to provide a proposed workforce housing component**, and that such modification is consistent with the purpose and intent set forth in Section 10.731.

This change would give the Planning Board the flexibility to modify standards as necessary to produce workforce housing on a case-by-case basis, rather than opening up a broad set of formula-based exemptions. It should be noted that Section 10.738.30 applies to all "flexible development" conditional use permits; therefore, this provision could be used to support workforce housing components of Planned Unit Developments (PUDs) as well as Gateway Planned Developments.

Recommendation: Vote to recommend that the Zoning Ordinance be amended as set forth in the draft Zoning Ordinance amendment dated 5/26/15, with any further amendments that the Board deems appropriate.

B. Proposal to amend the Zoning Ordinance by inserting a new Section 10.837.20 – Short-Term Vacation Rentals, and to make conforming amendments to other sections of the Ordinance as necessary. (This matter was postponed at the April 30, 2015, Planning Board meeting.)

Staff Report: At its meeting on March 2, 2015, the City Council voted to request the Planning Board:

... to prepare proposed amendments to the zoning ordinance to address short-term rentals by home owners. Based on the Council-Planning Board work session discussion of February 17th, the Planning Board could take into account discussion points that emerged, including at least:

- a) Creating a definition that captures the short-term rental, perhaps a bed-breakfast 3 rather than attempting to force-fit one of current definitions;
- b) Addressing in the definition the requirements for number of rooms, parking, length of stay, life safety plan, health-food inspections, registration with the City;
- c) Considering which current zoning districts can allow the rental by special exemption.

The Planning Department drafted a set of proposed amendments to the Zoning Ordinance relating to “short-term vacation rentals” as well as several related changes to the regulations regarding other types of transient accommodations; and a public hearing on these draft amendments was held at the Planning Board meeting on April 30, 2015. Following the public hearing, Board members discussed the draft ordinance and identified several concerns:

- The requirement that a short-term rental be on a lot conforming to all dimensional standards of the zoning district was unrealistic due to the fact that a majority of lots in the General Residence districts have pre-existing nonconformities.
- The proposed 300-foot separation between any two short-term vacation rentals did not have a clear rationale and would result in unequal treatment of similar properties.
- The proposed off-street parking standard should be simplified.
- The City Attorney had expressed a concern about including an annual permit from the City Council as a provision of the Zoning Ordinance.
- Consideration should be given to allowing short-term rentals in other residential zoning districts (i.e., in addition to GRA and GRB).

The Board requested that Planning staff prepare proposed revisions addressing these concerns, and the draft (dated 5/12/15) is presented in response. The new draft incorporates the following changes from the version considered on April 30:

1. Several provisions have been removed, including (a) the requirement that the lot conform to all dimensional standards, (b) the requirement for annual permitting by the City Council, (c) the 300-foot separation between any two short-term vacation rentals, and (d) the detailed provisions regarding initial inspections and annual re-inspections.
2. The basic off-street parking requirement in Article 11 has been reduced to 2 spaces per dwelling, but a new performance standard has been added (Sec. 10.837.23).
3. A requirement for adequate insurance coverage has been added (Sec. 10.837.24).

4. The Table of Uses has been revised to allow short-term rentals by special exception in Rural and Single-Residence districts.

Recommendation: Vote to recommend that the Zoning Ordinance be amended as set forth in the document titled “Draft Zoning Ordinance Amendments – Short-Term Rentals” dated 5/12/15, with any further amendments that the Board deems appropriate.

C. Proposal to amend the Zoning Ordinance and Zoning Map to implement Character-Based Zoning in the North End, to revise various provisions of Article 5A – Character Districts, and to make conforming amendments to other sections of the Zoning Ordinance. (This matter was referred to the Planning Board by the City Council on April 20, 2015.)

Staff Report: In April 2014 the City Council voted to adopt a new set of form-based zoning provisions which are referred to in Portsmouth as “character-based zoning.” This was done by inserting a new Article 5A titled “Character Districts” in the Ordinance, and by rezoning the core of the Central Business District from the existing districts (CBB, CBA and MRO) to three new Character Districts (CD5, CD4 and CD4-L), along with overlays regulating building height, façade types, and special use regulations. In May 2014, the Council voted to direct staff to expand the character-based zoning approach to the North End and the Islington Street Corridor (i.e., the West End). To implement this project, the Planning Department once again contracted with Town Planning and Urban Design Collaborative (TPUDC), the consulting firm that assisted in drafting regulations for the original Character Districts.

As the first step in this process, the Planning Department held a community design charrette for the North End in November 2014, similar to the first charrette that took place in June 2013. Over the course of four days, Brian Wright and his team from TPUDC held a series of meetings and discussions in which residents and business owners helped create a Vision Plan for the North End. The Vision Plan was published on the Planning Department website (<http://planportsmouth.com>) and Facebook page (<https://www.facebook.com/planportsmouth>) and was made available for review over a period of approximately six weeks. In mid-January the Planning Department published a revised Vision Plan, incorporating comments submitted by residents during this review period.

Since then, the Planning Department staff has been working with TPUDC to extend the existing Character-Based Zoning to the North End, based on the results of the charrette and the Vision Plan. This has included defining a fourth Character District (CD4-L2), and establishing incentives for developers to provide additional open space and/or workforce housing units.

At the same time, staff has undertaken a thorough review of the ordinance adopted in April 2014 and drafted proposed revisions to address identified substantive and procedural issues. Many of these issues resulted from the way in which TPUDC’s regulatory model was overlaid on top of the City’s established structure of zoning, site plan review and subdivision review. The proposed revisions are intended to eliminate redundancies and conflicts, and to better integrate the development review process in the Character Districts into the City’s regular regulatory framework.

The proposed zoning amendments are contained in the three documents:

- (1) a proposed revision to Article 5A – Character Districts;
- (2) a set of four maps showing the expanded Character-Based Zoning Area, proposed districts for the North End, and some minor revisions to the zoning in the original study area; and
- (3) a document titled “Conforming Amendments to Zoning Ordinance”.

At its meeting on April 20, 2015, the City Council voted to schedule first reading on the proposed Zoning Map and Zoning Ordinance amendments for its meeting on June 1, 2015, and to refer the proposed amendments to the Planning Board for recommendations.

On May 5, 2015, the Planning Board held an information session about the proposed amendments in the Levenson Room of the Portsmouth Public Library.

Recommendation: Vote to schedule a public hearing on the proposed Zoning Ordinance and Zoning Map amendments for the Planning Board meeting on June 18, 2015.

D. The request of **Eversource Energy** for easements and licenses on Hanover, High and Ladd Streets and on the Hanover Parking Garage parcel, for an underground utility improvement project.

Staff Report: Eversource Energy is proposing a project to relocate existing overhead utility lines along Hanover and High Streets and the alleyway between Hanover and Ladd Streets, and to place the utilities underground. This project will increase reliability of the electric distribution system in this area of the downtown, and will also enhance aesthetics.

The proposed project is described in Eversource’s letter to the City Manager dated April 28, 2015, with accompanying plans and visual simulations. In addition to placing the utility lines underground, the project will include placement of transformers and switchgear in front of the parking garage along Hanover Street and in the alley beside the garage.

Eversource is requesting the City Council to grant the easements and licenses necessary to implement this project. Under Article VI of the City Ordinances, before the City Council can take final action on any disposition of municipal real property, including easements and licenses, the matter must be referred to the Planning Board for a report.

Recommendation: Vote to recommend that the City Council grant the necessary easements and licenses, subject to final project design approval by the Department of Public Works.

V. OTHER BUSINESS

A. The request of **Portsmouth Land Acquisitions, LLC, Owner**, for property located at **428 U.S. Route 1 By-Pass, property off Cate Street and 55 Cate Street**, for Design Review under the Site Plan Review Regulations, for a proposed mixed use development consisting of 288 dwelling units and 40,000 s.f. of commercial space in 3 buildings, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 172 as Lot 1, Map 173 as Lot 2, Map 165 as Lot 2, and Map 163 as Lots 33, 34 and 37, and lie within the Industrial (I) District, the Office Research (OR) District, and the Municipal (M) District. (This matter was postponed at the April 30, 2015 Planning Board meeting.)

Staff Report: Portsmouth Land Acquisitions has submitted a request for design review under the Site Plan Review Regulations for a mixed-use development. The proposed development consists of the construction of two new five-story buildings containing 288 dwelling units with ground-floor parking and commercial space, and the conversion of the existing Frank Jones Center to approximately 30,000 sq. ft. of retail space. The project also includes the construction of a public road connecting Cate Street to the Route One Bypass, including an upgrade to the existing signalized intersection at Borthwick Avenue.

The site is currently in the Industrial zoning district, in which residential and retail uses are not permitted, and the proposed development requires a land exchange with the City to assemble a larger contiguous parcel and realign Cate Street. Therefore, the applicant's site plan is contingent on several actions by the City Council and Zoning Board of Adjustment:

1. Amendment of the Zoning Map to rezone the proposed site from Office Research and Municipal to Gateway, as recommended by the Planning Board at its April 30 meeting (first reading on the proposed amendments is scheduled for May 18 City Council meeting);
2. Amendment of the Zoning Ordinance to provide various workforce housing incentives (residential density, building length, location of parking);
3. Granting of a variance to allow residential uses to occupy 85 percent of the floor area of the development, versus the 70 percent maximum for a Gateway Planned Development;
4. Authorization by the City Council of the land exchanges to create the consolidated parcel shown on the plan.

If all the above actions are taken, the plan will also require the following land use approvals by the Planning Board:

1. Subdivision approval;
2. Conditional use permit for a Gateway Planned Development;
3. Conditional use permit for work within the wetland buffer;
4. Site plan approval.

Because the proposed development plan entails a substantial land exchange involving City-owned property, it was determined that City Council consent should be obtained prior to submitting the design

review request to the Planning Board. The City Council voted at its meeting on May 4, 2015, to support this request.

Previous requests for design review have been motivated in large part by the applicants' desire to protect a proposed site plan from future amendments to the Zoning Ordinance. A notice of public hearing for design review "vests" the project shown in the request from any changes in land use regulations that would make the project less conforming to zoning. In this case, the proposed site plan is not permitted by the existing zoning and instead is based on the presumption that the City will amend both the Zoning Map and the Zoning Ordinance as the applicant has requested. Key elements of the proposed development that require zoning map and/or ordinance amendments include the residential and retail uses, the residential density, the size of the buildings, and the location of the parking areas on the site. Because the proposed project is not allowed by the site's existing zoning, it will not be vested by the design review process.

No discussion of the proposed development is required at the May 21 meeting; rather, the Planning Board must determine whether in its opinion the materials submitted by the applicant include "sufficient information to allow the Board to understand the project and identify potential issues and concerns." If the Board so determines, it should vote to accept the request for design review and to schedule a public hearing. If the Board determines that the request does not describe the proposed project in sufficient detail, it should specify the deficiencies so that the applicant can address them in a revised request.

Recommendation: Vote to determine if the request for design review includes sufficient information to allow the Board to understand the project and identify potential issues and concerns, and whether to accept the request for design review and to schedule a public hearing.

VI. PLANNING DIRECTOR'S REPORT

At its meeting of May 6th, the Historic District Commission voted to invite the City Councilors and the Planning Board members to a site walk at the proposed Harborcorp site at 6:00pm on Wednesday May 27th.
