

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**EILEEN DONDERO FOLEY COUNCIL CHAMBERS  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 PM**

**NOVEMBER 15, 2018**

**MEMBERS PRESENT:** Dexter Legg, Chairman; Elizabeth Moreau, Vice-Chairman; Rebecca Perkins, City Council Representative; Colby Gamester; Jay Leduc; Jody Record; Jeffrey Kisiel; John P. Bohenko, City Manager; Ray Pezzullo, Assistant City Engineer; and Corey Clark, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director; Jillian Harris, Planner I;

**MEMBERS ABSENT:** Jane Begala, Alternate

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the October 18, 2018 Planning Board Meeting;

City Council Representative Perkins moved to approve the Minutes from the October 18, 2018 Planning Board Meeting, seconded by Mr. Gamester. The motion passed unanimously.

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**II. CAPITAL IMPROVEMENT PLAN**

**A. CIP Public Information Meeting**

Planning Director Juliet Walker provided a presentation. Ms. Walker noted this was an update on the CIP status before the Planning Advisory Committee meets. It is an opportunity for the public to have input before the Advisory Committee meets. There will be more opportunity for the public to weigh in later as well. Citizens can submit requests throughout the year. The deadline for public submission was October 15, 2018. This is the public information meeting. Then the Advisory Committee will meet in December. The Committee will go over the requests and filter them into the appropriate department. Then this will come back to the Planning Board with a recommendation. After that it goes to City Council in January. There will be a public hearing in March. Then the CIP will get adopted and rolled into the budget planning. The CIP projects are major expenses that are not annual purchases. It can include land acquisition, equipment that cost more than \$50,000 and have a life expectancy of more than 5 years, vehicles

that cost more than \$50,000 and have a life expectancy of more than 5 years. The CIP is one of the ways the Master Plan items can be incorporated. Last year there were 106 projects requested to be in the CIP. 84 of those projects were carried forward. 22 of them were new project requests. Most projects are anticipated to be completed within 3 years, 50% within 6 years, 10% after 6 years, and 6% would be ongoing allocations to bigger projects. They are classified into different categories. The newer requests will be highlighted in the presentation and posted online for review. Some projects are carried forward because funding was not available for them or they get pushed out for other reasons. The goal is to be realistic about timeframes. Most projects included are from the past 6-7 years. Newer requests include the replacement of Fire Engine Ladder #2, a Fire emergency generator for Station 1, the continuity of optimization of the build out and server virtualization from IT, a Fire Training Facility, Greenland Road practice field, transportation system management, Coakley Rd. and Borthwick Ave. connector road, Fleet St. utility updates, and drainage improvements for Pine St. Enterprise funds overlap with other projects in other categories sometimes. For example the Maplewood Ave bridge replacement, the DPW complex improvements, and the storm drain improvements to Maplewood Ave. The citizen requests that were received included an accessible playground in a to be determined location, public amenity for Atlantic Heights, continue the projects on Leslie Dr., repave Harvard Rd., storm water management on Pine Hurst Rd., and a shared use path to Sagamore Ave. They have been forwarded on to the appropriate departments for review. They will recommend how they should be handled to the Advisory Committee. The list of citizen requests will be posted online and their status will be tracked.

Wes Tator of 411 Middle St. is a realtor and commended Ms. Walker, the Planning Department and the Planning Board for the thorough work they have been doing and the open public process for the CIP. Mr. Tator noticed there was no date set for the December meeting. Ms. Walker responded that it was not an open meeting; it's the Advisory meeting. The results from that meeting will be reported back at the January meeting. City Manager Bohenko noted that this meeting was put in the schedule a couple years ago. There will be a formal presentation in January and then if it is approved it will go to City Council. They will have a work session and then typically there will be a public hearing at the first meeting in March. There will be a detailed presentation in January that will go through all the projects. It will talk about any funding issues. This step gives people an opportunity to get in at the beginning of the process. There are multiple opportunities for people to talk to the CIP and budget. The CIP has to be adopted before the budget can be worked on. The schedule is posted on the web site. If anyone has any questions they can contact Ms. Walker or City Manager Bohenko. Mr. Tator noted that they have quite the task before them to take 106 projects and boil them down to get a number that the Council can address in the budget.

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**III. DETERMINATIONS OF COMPLETENESS**

**A. SUBDIVISION:**

1. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, and **Regan Electric Company, Inc, Owner**, for property located at **6 Dearborn Street**, wherein Final Subdivision Approval (Lot Line Revision) is requested.

Mr. Gamester moved to determine that the above applications are complete according to the Subdivision Regulations and **to accept** the applications for consideration, seconded by Mr. Leduc. The motion passed unanimously.

- 2. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, wherein Final Subdivision Approval is requested to subdivide one lot into two.

Mr. Gamester moved to determine that the above applications are complete according to the Subdivision Regulations and **to accept** the applications for consideration, seconded by Mr. Leduc. The motion passed unanimously.

- 3. The application of **Clipper Traders, LLC, Owner**, for property located at **105 Bartlett Street, Portsmouth Lumber and Hardware, LLC, Owner**, for property located at **105 Bartlett Street**, and **Boston and Maine Corporation, Owner**, for railroad property located between **Bartlett Street and Maplewood Avenue**, requesting Preliminary and Final Subdivision Approval to consolidate and subdivide five lots and a portion of another into 5 lots.

Mr. Gamester moved to determine that the above applications are complete according to the Subdivision Regulations and **to accept** the applications for consideration, seconded by Mr. Leduc. The motion passed unanimously.

**B. SITE REVIEW:**

- 1. The application of **Two-Way Realty, LLC, Owner**, for property located at **120 Spaulding Turnpike**, requesting Site Plan approval.

Vice Chairman Moreau moved to determine that the application is complete according to the Site Plan Review Regulations (contingent on the granting of any required waivers under Section V of the agenda) and to **accept** the application for consideration, seconded by City Council Representative Perkins. The motion passed unanimously.

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**IV. ZONING AMENDMENTS – PUBLIC HEARINGS**

A. Amendments to the Ordinances of the City of Portsmouth, Chapter 10 Zoning Ordinance regulating Accessory Dwelling Units and Garden Cottages including revisions to Article 8 Supplemental Use Standards Sections 10.814 Accessory Dwelling Units and 10.815 Garden Cottages and revisions to Article 15 Definitions Section 10.1530 Terms of General Applicability.

Planning Director Juliet Walker noted that this was reviewed at the last meeting and comments were received from the public and the Planning Board Members. As a result there have been some revisions. They clarified the zoning compliance, looked at the requirements for utilities

and service, modified design requirements, clarified Planning Board findings, and clarified the Certificate of Use. The revised version adds a section in the AADU part for existing non-conforming lots and buildings. They can have an AADU. Right now people with non-conforming lots are going to the Zoning Board to get a variance and then coming to the Planning Board. So far the Zoning Board is granting the variances, so this revision will help skip that step. They had a conversation with the Legal Department about ownership. They added a section about Trusts and LLCs. After talking to Legal they found it would be difficult to determine ownership with an LLC. It proved difficult to understand how to handle that situation. LLCs were deleted from that change. This can be revisited in the future. The recommendation from the Planning Board to document the CUP in the Registry of Deeds was added. The Certificated of Use will not be issued until the Certificate of Occupancy is. The first ADU is in the process of renewing there's now. They talked about the renewal process and if it should be defined in ordinance. There is a Compliance Agent dedicated to going out and renewing these. The intent was to not add provisions on how the Staff would monitor this because they feel they have a good handle on it. Changes were made for the Garden Cottages as applicable.

City Council Representative Perkins noted that the addition about non-conforming lots was good. City Council Representative Perkins questioned if the building height or footprint could be more flexible. Ms. Walker responded that it was hard to do a blanket explanation because they don't know what the non-conformity is. A small addition to a tight lot could be substantial. They could think about a revision. Vice Chairman Moreau suggested to keep it the same for now and to try it out. If there were already space in the attic or basement, then it would be easy to do. Mr. Gamester clarified that they could still go to the ZBA if they wanted to request more. Vice Chairman Moreau confirmed that was correct.

City Council Representative Perkins requested clarification on the recording the CUP revision. Ms. Walker responded that typically the Planning Department would record it. They want to have assurance it's recorded correctly. The Board can add it as a stipulation that it would be recorded by the Planning Department. The applicant would pay the fee.

Mr. Gamester noted that the ordinance covers a living trust, but some houses are in a reputable trust. Mr. Gamester questioned how that would that be interpreted. Ms. Walker could not speak to that without talking to the Legal Department.

Vice Chairman Moreau noted questioned whether or not someone could expand the 5-10 feet allowed when expanding a third floor. Ms. Walker responded that it couldn't be higher than the principle dwelling. Vice Chairman Moreau noted that the Ordinance just says it can't be increased. It could be the same height as the primary dwelling. Ms. Walker responded that she could make that change. City Council Representative Perkins commented that it should be modified to say the building could not be higher than zoning allowed. Ms. Walker responded that was assumed. Chairman Legg questioned if the Board was comfortable with deleting that item. Mr. Gamester agreed with what was said, but wanted to ensure that deleting it would not create a scenario where an ADU could become higher than the principle dwelling. Vice

Chairman Moreau suggested that they keep that section and add that increases in height are allowed within the zoning of the principle dwelling. Mr. Gamester questioned if a principle dwelling included the garage. Ms. Walker responded that it did not. Ms. Walker noted that she could take the Board’s comments and come back with a revision next month.

Chairman Legg commented that the Planning Department should look at the height increase item and make sure deleting it would not do something unintended. Ms. Walker responded that the intention is to allow an addition to the principle dwelling within zoning standards.

Public Hearing:

Wes Tator of 411 Middle St. had a comment on the height question. Mr. Tator thought there might be times that a rear building can be higher and it might work aesthetically in the context of the neighborhood. Mr. Tator encouraged the Staff to stay open to that thought.

The Board voted to **postpone** this to the December 20, 2018 Planning Board Meeting.

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B. Amendment to the Ordinances of the City of Portsmouth, Chapter 10 Zoning Ordinance, Article 2 Administration and Enforcement by inserting a new Section 10.240 regulating requirements and criteria for granting of a Conditional Use Permit.

Ms. Walker noted that this was reviewed at the last meeting and a few items needed to be reviewed with the Legal Department. They haven’t had a chance to do that yet. This Ordinance would provide CUP criteria for applications that don’t have specific CUP criteria already, like a Wetland CUP. This update needs to be created to be in compliance with state law. There were a few minor adjustments to not limit the authority for CUP to the Planning Board. State law allows other land use boards to grant CUPs. Right now the Planning Board is the only one with authority in Portsmouth. It was adjusted to clarify that the relationship for specific criteria were in addition to not instead of. The basis for approval was clarified as well as the Planning Board jurisdiction. There was a discussion last time about item 10.243.24. There is one item in the approval criteria about being specific about how applying criteria. This was reviewed with Legal and they looked at the special exception criteria. The language was modified a little bit to help apply a standard. The specific items that would be considered impact were listed. This is only for CUPs that don’t have other provided criteria. The expiration of authorized use was clarified to expire if not in use for more than 8 months.

City Council Representative Perkins questioned if it was appropriate to add something about consistency with the Master Plan to help to make it objective. Ms. Walker responded that the Legal Department felt that “adequate” was an appropriate legal term. City Council Representative Perkins clarified that the abandoned use expiration would be after a building permit was obtained. Ms. Walker confirmed that was correct.

Public Hearing:

There were no speakers.

Vice Chairman Moreau moved to **recommend approval** of the proposed amendments to the City Council, seconded by Mr. Gamester. The motion passed unanimously.

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**V. 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 **Pease Development Authority, Owner, and Lonza Biologics, Inc., Applicant**, for property located at **70 and 80 Corporate Drive**, requesting Subdivision approval, under Chapter 500 of the Pease Land Use Controls, Subdivision Regulations, to merge Map 305, Lots 5 & 6 (17.10 acres), Map 305, Lot 1 (13.87 acres), Map 305, Lot 2 (10.18 acres) and a discontinued portion of Goosebay Drive to create Map 305, Lot 6 (43.37 acres). Said properties are shown on Assessor Map 305 as Lots 1 & 2 and lie within the Pease Airport Business Commercial (ABC) district. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

Vice Chairman Moreau moved to **postpone** to the December 20, 2018 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

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B. The application of **Pease Development Authority, Owner, and Lonza Biologics, Inc., Applicant**, for property located at **70 and 80 Corporate Drive**, requesting Conditional Use Permit approval, under Chapter 300 of the Pease Land Use Controls, Part 304-A Pease Wetlands Protection, for work within the inland wetland buffer for the construction of three proposed industrial buildings: Proposed Building #1 with a 132,000± s.f. footprint; Proposed Building #2: 150,000 ± s.f. footprint; Proposed Building #3 with a 62,000± s.f. footprint; and two 4-story parking garages, with 55,555 ± s.f. of impact to the wetland, 66,852 ± s.f. of impact to the wetland buffer and a 1,000± l.f. stream restoration for Hodgson Brook resulting in 42,500 s.f. of wetland creation. Said property is shown on Assessor Map 305 as Lots 1 & 2 and lies within the Pease Airport Business Commercial (ABC) district. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

Vice Chairman Moreau moved to **postpone** to the December 20, 2018 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

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C. The application of **Pease Development Authority, Owner, and Lonza Biologics, Inc., Applicant**, for property located at **70 and 80 Corporate Drive**, requesting Site Plan Review Approval, under Chapter 400 of the Pease Land Use Controls, Site Review Regulations, for the construction of three proposed industrial buildings with heights of 105 feet: Proposed Building #1: 132,000 s.f. footprint and 430,720 s.f. Gross Floor Area; Proposed Building #2: 142,000 s.f. footprint and 426,720 s.f. Gross Floor Area; Proposed Building #3: 62,000 s.f. footprint and 186,000 s.f. Gross Floor Area; and two 4-story parking garages, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 305 as Lots 1 & 2 and lie within the Pease Airport Business Commercial (ABC) district. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

Vice Chairman Moreau moved to **postpone** to the December 20, 2018 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

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D. The application of **206 Court Street, LLC, Owner**, for property located at **206 Court Street**, requesting Conditional Use Permit approval pursuant to Section 10.1112.52 of the Zoning Ordinance to allow 3 residential units with 2 parking spaces where 4 parking spaces are required. Said property is shown on Assessor Map 116 as Lot 34 and lies within the CD 4-L1 District and the Historic District. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Mr. Gamester moved to consider Old Business Item D and Old Business Item E together and vote on them separately, seconded by Vice Chairman Moreau. The motion passed unanimously.

Attorney Bernie Pelech spoke to the application on behalf of 206 Court St. LLC. John Chagnon from Ambit Engineering and Architect Jeremiah Johnson were also present. This application was at the Planning Board last month seeking a CUP. It was postponed for additional discussion with the Planning Department. The applicants met with Juliet Walker and under the Department’s recommendation the applicants have secured a leased space. One section of the Ordinance states that if a leased space is procured then the criteria for a CUP is more easily met. A parking space has been leased at the Foundry Place Garage. That is quite a distance from the property. The Parrot Ave lot is conveniently located behind 206 Court St. Mr. Pelech anticipated that residents would take advantage of that. There are three spaces on site and the



Ordinance requires four spaces. The fourth space is the leased space at the Foundry Place Garage. There is bike and motorcycle parking available. It should be noted that there are two bus stops right on Court St. in close proximity. There are also on street parking spaces. Mr. Pelech believed that the three spaces on site with the fourth space in the Foundry Garage was adequate, and hoped that the Board would be favorable to this request. At one time a variance for zero spaces on this lot was granted when it was going to be a South Church accessory. The site plan can't go forward without the CUP.

John Chagnon from Ambit Engineering submitted a parking assessment. The owner is here and wanted it to be made clear that this is not a condo for sale. It's repurposing an apartment building. The parking space in Foundry is for the employees. The site plan has been updated based on the Planning Board's comments.

City Manager Bohenko thought this was a good way to cure the issue on the fourth spot. City Manager Bohenko requested a bond for \$12,000 to ensure that this space is secure in the garage for 10 years. The idea is to ensure that this space is a locked in solution. They can talk to the Legal Department to see how to handle the payment. It's important to have something that guarantees that it will be for more than one year. It would have to be paid year to year, but the money would be set aside. Owner, Todd Allen, requested to discuss that with council, and questioned if this would be uniform for every future applicant for parking. City Manager Bohenko responded that as long as he is on the Board it would be. It's important to make sure that we are curing the issue. It would be preferable to negotiate a long-term lease with a neighboring property. If that were presented to the Board with a 10-year lease, then that would be preferable. Mr. Allen responded that the neighboring property is transferring owners. They have reached out to the synagogue and they have availability. Mr. Allen would like to have a legal discussion before committing to that. City Manager Bohenko agreed. It would be good to memorialize that. The intent is to have some document to assure that this parking would be there for at least 10 years.

## **PUBLIC HEARING**

Jeremiah Johnson Architect and Portsmouth Resident commented on the application. This has been through many Boards and this is the last one found. It was disheartening to have the parking discussion last meeting after the public hearing had closed with no input from the applicant. There was no pushback from other Boards. If there is going to be a bond and that is the approach that is required it should be addressed in the Ordinance.

John Chagnon commented that what was being proposed tonight is an acceptable solution to the owner.

Bernie Pelech added that they were still working with close by neighbors. If they are able to secure a long term parking lease, then hopefully the bond can be released. This can be taken care of through the Planning Department.



Chairman Legg thought that condition would be structured in a way that is flexible to allow the owner to meet that fourth spot requirement in a variety of ways.

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

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

Ms. Walker commented that the Department discussed more options than just off street parking or leasing a spot in the garage. It was a good meeting in exploring options and a number of options were suggested for example leasing in the garage or shared parking on abutting properties. Both are consistent with the CUP granting authority. It can include off site parking, public transit or other modes of transportation. The Ordinance is sufficient to allow the Planning Board to make the stipulation they are going to make. There are other options too and they are outlined in the memo.

Mr. Gamester commented that 10 years would be great for security, but putting up that amount of money for the bond may be a hardship for various owners. It should be for 5 years with a renewal.

Ms. Record commented that the verbiage should be that the lease should be renewed or another parking arrangement is obtained. That would give them options. Chairman Legg noted that they were only talking about a leased space. It was not specified where, so it's adequate to give it that flexibility. Vice Chairman Moreau commented that it should be flexible for both parties. The applicant would work with the City for extended period of time for a leased spot with the satisfaction of both parties. Chairman Legg suggested adding a timeframe of 5 years. Vice Chairman Moreau agreed.

Ms. Walker confirmed that it is feasible that it could be leased or a shared parking arrangement. Ms. Record does have a good point. A clause should be added to include a shared parking agreement. Mr. Gamester and City Manager Bohenko agreed.

Mr. Gamester requested clarification of 1.2 on the staff memo. Ms. Walker responded that they would require documentation that there is a rental agreement to show that space is assigned to the same unit. The City will have the ability to enforce it theoretically, but for now they are focused on the initial.

Mr. Gamester moved to **grant** a Conditional Use Permit to provide 2 on-site parking spaces, 1 on-site tandem parking space, and 1 off-site leased space where 4 spaces is the minimum required, seconded by City Manager Bohenko with the following stipulations:

- 1) The off-site space shall be provided at one of the municipally owned parking garages downtown or through a shared parking agreement with a property owner in the vicinity of the project. The lease or shared parking agreement for the off-site space shall be renewed annually and dedicated or assigned to one of the units via a rental agreement and/or condominium documents for a minimum of 5 years from the final certificate of

occupancy for the project. The method of guaranteeing that this condition is met shall be mutually agreed upon by the applicant and the City’s Legal and Planning Department prior to issuance of a building permit.

- 2) The tandem space shall be assigned to the same dwelling unit as the adjacent space located on the street side of the parking area.

The motion passed unanimously.

E. The application of **206 Court Street, LLC, Owner**, for property located at **206 Court Street**, requesting Site Plan approval to construct a 3-story irregular shaped rear addition with a footprint of 767 s.f. and Gross Floor Area of 1,914 s.f. and to convert the use to three dwelling units, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 116 as Lot 34 and lies within the CD 4-L1 District and the Historic District. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

**DISCUSSION AND DECISION OF THE BOARD**

Mr. Gamester moved to **grant** Site Review approval, seconded by Mr. Leduc with the following stipulations:

Stipulations to be completed prior to the issuance of a building permit:

- 1) The Site Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2) Applicant shall provide documentation of an executed easement or agreement with abutter for work on their lot.

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F. The application of **Happy Mountain Holdings, LLC, Owner**, for properties located at **64 & 74 Emery Street**, requesting Site Plan approval to construct one two-unit residential building on each lot, each building to be 2-stories with a 2,080 s.f. footprint and a 3,000 s.f. Gross Floor Area, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 174 as Lot 14 and lies within the Single Residence B (SRB) District. (This application was postponed at the October 18, 2018 Planning Board Meeting.)

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Chairman Legg apologized if he had been a little harsh at the last meeting. The concerns were heartfelt, but the Chairman intends to treat everyone with respect.

Eric Weinrieb with Altus Engineering was present to speak to the application. This application was here last month. This project has two duplexes proposed. Because there will be four units, a site review was triggered. The staff memo outlines 9 items. Items 1-4 and 9 have been addressed. Item 2 is no longer applicable. All of the drainage calculations have been provided. They went above and beyond the requirements by going with the 15%. More landscaping details have been added to the plan. Because of the recording requirements the landscaping cannot be on the site plan. It was added to the utility plan. The waivers are still being requested because it's a small residential property not a large commercial one.

## **PUBLIC HEARING**

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

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

Mr. Gamester moved to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, seconded by Vice Chairman Moreau and to waive the following regulations:

- 1) Section 2.5.4 3(C) – Access and circulation;
- 2) Section 2.5.4 3(D) – Parking and loading;
- 3) Section 2.5.4 3 (J) – Outdoor lighting;
- 4) Section 3.4 - Curbing (A) where access ways and driveways meet public streets; 5) Section 5.2 - Sidewalk and Pedestrian Pathways;
- 6) Section 5.3 - Bicycle Facilities;

The motion passed unanimously.

Mr. Gamester moved to **grant** Site Plan Approval, seconded by Vice Chairman Moreau with the following stipulations:

### Stipulations to be completed prior to the issuance of a building permit:

- 1) The Site Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2) Prior to recording, Sheet C-1, Note 9 shall be updated for consistency with minimum driveway width of 14 ft.

### Stipulations to be completed prior to the issuance of a certificate of occupancy:

3) Stormwater system maintenance shall be documented in a deed restriction. The deed restriction for stormwater maintenance shall be recorded and include language that notes any changes shall require review and approval by the Planning Director.

4) Applicant shall provide documentation of utility, driveway access and stormwater flowage easements.

The motion passed unanimously.

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**VI. PUBLIC HEARINGS – NEW BUSINESS**

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

A. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, and **Regan Electric Company, Inc, Owner**, for property located at **6 Dearborn Street**, wherein Final Subdivision Approval (Lot Line Revision) is requested between two lots as follows: Lot 1 as shown on Assessor Map 140 decreasing in area from 14,311 s.f. to 13,182 s.f. with 145’ of continuous street frontage on Dearborn Street; and Lot 4 as shown on Assessor Map 123 increasing in area from 13,129 s.f. to 14,258 s.f. with 91’ of continuous street frontage on Dearborn Street and 27’ of street frontage on Maplewood Avenue. Said properties are located in the General Residence A (GRA) District where the minimum lot size is 7,500 s.f. and minimum street frontage requirement is 100’ and Character District 4-L1 (CD4-L1) (Map 123, Lot 4).

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

John McGee Jr. represented the owners and spoke to the application. This application is for a subdivision of lots. The matter was initially brought before the Planning Board a number of years ago. Mrs. Regan wanted to subdivide to retain the home. The matter was brought up and there were some outstanding matters that the City wanted corrected. Brian Regan has worked with City Staff especially with Nick Cracknell on this. The work has been completed to the satisfaction of the City and now they can subdivide hopefully. The surveyor is not here. Ms. Walker handed out two stipulations that should be included. One is for the surveyor to add the dates of the BOA approvals. That will be added to the plan. Keeping the 10-foot strip that was transferred to Regan Electric as open space is acceptable to Regan Electric.

Vice Chairman Moreau questioned why they made the line less conforming. Mr. McGee responded that has been contemplated for 25 years. It also gives Regan Electric a little more space.

**PUBLIC HEARING**

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau moved to determine that the applications are complete according to the Subdivision Regulations and **to accept** the application for consideration, seconded by Mr. Gamester. The motion passed unanimously.

Vice Chairman Moreau moved to **grant** Final Subdivision Approval, seconded by Mr. Gamester with the following stipulations:

- 1) Lot numbers as determined by the Assessor shall be added to the final plat.
- 2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 3) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 4) The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 5) Sheet 1 of 2, Note 7 shall be updated to list specific variances granted by the Zoning Board of Adjustment and dates granted.
- 6) Note 7 shall be amended to add the date of the BOA approval as 02-21-12.
- 7) As stipulated in the variance approval on 02-21-12, the 1,129 sq.ft. of land area to be transferred from Map 140, Lot 1 to Map 123, Lot 4 is required to remain as open space in perpetuity. Such restriction shall be noted on the subdivision plan.

The motion passed unanimously.

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B. The application of **Brian and Susan Regan, Owners**, for property located at **28-30 Dearborn Street**, wherein Final Subdivision Approval is requested to subdivide one lot into two lots as follows: Proposed Lot 1 having 6,750 s.f. and 55’ of continuous street frontage on Dearborn Street and proposed lot 2 having 6,432 s.f. and 90’ of continuous street frontage off Dearborn Street. Said property is located in the General Residence A (GRA) District where the minimum lot size is 7,500 s.f. and minimum street frontage requirement is 100’.

**Chairman Legg read the notice into the record.**

**DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau moved to **grant** Final Subdivision Approval, seconded by Mr. Gamester with the following stipulations:

- 1) Lot numbers as determined by the Assessor shall be added to the final plat.
- 2) Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 3) GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 4) The final plat shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 5) Sheet 1 of 2, Note 7 shall be updated to list specific variances granted by the Zoning Board of Adjustment and dates granted.
- 6) Note 7 shall be amended to add the date of the BOA approval as 02-21-12.
- 7) As stipulated in the variance approval on 02-21-12, the 1,129 sq.ft. of land area to be transferred from Map 140, Lot 1 to Map 123, Lot 4 is required to remain as open space in perpetuity. Such restriction shall be noted on the subdivision plan.

The motion passed unanimously.

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C. The application of **Thomas and Ann Taylor, Owners**, for property located at **43 Whidden Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to install permeable pavers for two parking spaces and plantings, with 400 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 109, as Lot 2 and lies within the General Residence B (GRB) and Historic District.

**Chairman Legg read the notice into the record.**

Mr. Gamester moved to **postpone** to the February 21, 2019 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

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D. The application of **Clipper Traders, LLC, Owner**, for property located at **105 Bartlett Street**, **Portsmouth Lumber and Hardware, LLC, Owner**, for property located at **105 Bartlett Street**, and **Boston and Maine Corporation, Owner**, for railroad property located between **Bartlett Street and Maplewood Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer for proposed roadway improvements to include-configuration of parking, construction of parking islands, re-grading and installation of curbing to direct stormwater; utility improvements;

drainage improvement and treatment including separation of stormwater from sewer, parking improvements and removal of two dilapidated structures, with 37,733 ± s.f. of impact to the tidal wetland buffer. Said properties are shown on Assessors Map 157 as Lots 1 & 2 and Assessors Map 164 as Lots 1, 2, 3, and 4 and are located within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Zoning Districts.

**Chairman Legg read the notice into the record.**

Vice Chairman Moreau recused herself from the application.

Ms. Record moved to **postpone** to the December 20, 2018 Planning Board Meeting, seconded by Mr. Leduc. The motion passed unanimously.

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E. The application of **Clipper Traders, LLC, Owner**, for property located at **105 Bartlett Street, Portsmouth Lumber and Hardware, LLC, Owner**, for property located at **105 Bartlett Street**, and **Boston and Maine Corporation, Owner**, for railroad property located between **Bartlett Street and Maplewood Avenue**, requesting Preliminary Subdivision Approval to consolidate and subdivide five lots and a portion of another into 5 lots, a right-of-way, and a remainder of one lot as follows:

- (1) Proposed Lot #1 having an area of 20,667 ± s.f. (0.4747 ± acres) and 143.44' of continuous street frontage on Bartlett Street.
- (2) Proposed Lot #2 having an area of 51,952 ± s.f. (1.1927 ± acres) and 80.91' of continuous street frontage on Bartlett Street and 386.88' of continuous street frontage on a proposed right-of-way.
- (3) Proposed Lot #3 having an area of 102,003± s.f. (2.3417 ± acres) and 809.23' of continuous street frontage on a proposed right-of-way.
- (4) Proposed Lot #4 having an area of 61,781 ± s.f. (1.4183 ± acres) and 481'± of continuous street frontage on a proposed right-of-way.
- (5) Proposed Lot #5 having an area of 177,435 ± s.f. (4.0733 ± acres) and 297.42' of continuous street frontage on a proposed right-of-way.
- (6) Proposed Right-of-Way having an area of 69,621 ± s.f. (1.5983 ± acres).
- (7) Map 164 Lot 4 reducing in area from 13 ± acres to 4.7 ± acres and having 75'± of continuous street frontage on Maplewood Avenue, and decreasing intermittent street frontage of 234'± on Bartlett Street to 105'± of continuous street frontage on Bartlett Street.

Said properties are shown on Assessors Map 157 as Lots 1 & 2 and Assessors Map 164 as Lots 1, 2, 3, and 4 and are located within the Character District 4-W (CD4-W) and Character District 4-L1 (CD4-L1) Zoning Districts.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**



John Chagnon from Ambit Engineering spoke to the application. Applicants Dan Pinciara and Ed Hayes were present Attorney Kevin Balm, Steve Pernaw and Joe Maletti was also present. Mr. Chagnon commented that this application was for subdivision approval for 105 Bartlett St. Mr. Chagnon noted that the applicants had requested that the Planning Board postpone the CUP application. The project team needs more time to consider and implement the suggestions from the Conservation Commission. They had just met them yesterday. Mr. Chagnon was willing to answer questions on the CUP, but they were here tonight for the subdivision only. Clipper Traders need this approval to gain control of the land. Currently the land area owned by the applicant is Ricci Home Center and Hardware Store. The actual property line for the ownership is just the building itself. The owner Ed Hayes is a life-long Portsmouth resident. The rest of the site is leased. The subdivision will allow applicants to purchase the land and give them business security going forward. Clipper Traders owns the land and Great Rhythm Brewery building. The existing Clipper Traders lot does not have any frontage because it is not on a City street. There is very limited deeded access. The applicants would like to gain control of the access. Clipper traders approached PanAm Railroad and negotiated a land purchase. Lot 5 will provide the opportunity for future development. The driveway will become a road in the process. The driveway needs to be improved to bring it up to road standards. Lot 5 created the need for a road and funds for the road. Mr. Chagnon requested that the Planning Board approve the subdivision lines tonight. It is understood that there is a need to improve the specifics of the road design. It will be done under the supervision of the City Staff and DES. There will be added oversight in the construction process. In order to continue moving forward Clipper Traders needs an approval tonight. The submitted waiver requests in section 6 are to support the proposed subdivision of the land. The waivers will allow the existing road to be developed to accommodate the layout today. One waiver is to allow a 50-foot right of way where 60 feet is required. The other is to allow the cul-de-sac size. The plan proposes to keep existing grades for 600 feet of road. The waiver requests are justified. The cul-de-sac will be compliant with the Fire Department turning movements. These plans include improvements to the drainage. The applicants were asked to separate existing drainage. That is shown on the plan and will be detailed further for road approval. The zoning and overall plan highlights the variances that were granted for this project. This came to the Planning Board with a conceptual meeting and variances were applied for and obtained. There was a re-zoning associated with this land. The setbacks from the Mill Pond are shown. The plans that are here tonight for approval is for the subdivision plan. It shows the information about the locations of the overall subdivision, the zoning and the abutters. The three plan sets show the lot lines and lot areas with surveying information. The intent is to record this as part of the subdivision approval and get Legal Department approval for the easement. There are three easements in the plan set. One is the existing easement plan. It shows all the existing easements on record. The Great Rhythm Brewery site has a 12-foot wide access easement. The same is true for Ricci Home Center. There is a utility easement plan. There is a new easement for the City sewer line across the property. The applicant will provide a City easement for that line. There is a couple other off site of the property that needs access to the sewer. There will be easements for those properties. There is a City drainage outfall pipe that crosses the lot and is part of this application. There will be a dedicated drainage easement to the City. All lots will have the right to access and use the utilities. The applicants fully expect to develop Lot 5. That will come back for a site plan approval. There will be the need to fully explore the utilities for that. The water line size for the Lot 5 will be determined at that time. The Staff Memo has a number of conditions. They are

acceptable to the applicant. The purpose of the application tonight is to gain control. This additional land provides potential for providing a greenway along the Mill Pond.

Mr. Clark understood that there is an AOT required for this and wondered if AOT was considering the current work and the future development of Lot 5. Mr. Clark was concerned that the AOT will require changes to the roadway infrastructure when Lot 5 went in. Mr. Chagnon confirmed they were going in for AOT approval. There is going to be a need for an AOT approval for Lot 5 as well. That will be a separate AOT application. The roadway improvements design will capture water in the cul-de-sac and bring it down along the roadway to the outfall. Mr. Chagnon did not anticipate Lot 5 improvements would use that drainage system. It is a good idea to size that. Lot 5 would be a more localized treatment system. They have talked to AOT about that. Mr. Clark was glad they were aware of the whole picture.

Mr. Clark was concerned about the highest observed tideline and how that affects the plan. Some of the sand filters are at 5.5 but the highest tide is 7. The filters could be impacted if they get the highest tides. Mr. Clark questioned how it would be mitigated. Mr. Chagnon responded that there was a back flow preventer. It would not be a usual situation, so it would be an infrequent occurrence. Mr. Chagnon noted that he would take a look at that to raise them. Mr. Clark noted that this has happened elsewhere in the City and he didn't see it on the plan there. In order to get the CUP one of the comments dealt with storm water management. It seemed like this would be taken care of before road is built. Ms. Walker responded that this is a complex recommendation. The drainage and final design has to be reviewed and approved by DPW. It is unclear if the storm water has been addressed sufficiently. If the road design changes substantially as a result of the review process, then it has to come back to the Planning Board.

Mr. Pezzullo pointed out a conflict with a waiver request and a staff recommendation about the about allowing the 600 feet of road a minimum grade of less than 1%. Mr. Chagnon noted that the requirement for eliminating the note came after the plans were submitted. It is still appropriate because in the first stretch the grades are pretty flat. The City wants the first 600 feet of sidewalk to be planned for. They will crown the road and direct the drainage.

Mr. Clark pointed out that they did not have the AOT in sheet 2. Mr. Chagnon confirmed that would need to be added there.

Chairman Legg noted that it was a bit unusual separating the CUP and subdivision approval. The Chairman was comfortable doing that with the stipulations that were proposed. They were put on this subdivision to provide enough flexibility for this Board to ensure the road and storm water treatment will be done appropriately. Chairman Legg questioned what the implications would be if they were to postpone the subdivision approval. Mr. Chagnon responded that the implication is that Clipper Traders needs this to go forward. They have been at this for a long time. There are two burdens here. One is financial. They can't obtain financing without some sort of approval in place. The railroad is getting impatient. Mr. Chagnon understood the concern. Mr. Chagnon noted that a recent project where the subdivision preceded the purchase that was successful was the Foundry Place and Garage.

## **PUBLIC HEARING**

Elizabeth Bratter of 159 McDonough St. reminded the Board that this would affect the properties along the waterways and the people that make their living on the watershed. Ms. Bratter has not seen anything that has to do with the meeting yesterday and recognized that piece was postponed. Ms. Bratter was in support of the staff recommendations of approving the subdivision with the stipulations. This project has a lot of unknown issues. It was clear that those conditions by the Planning Department be approved in such a way that they cannot move forward without resolving those issues. Ms. Bratter was concerned about the no grade waiver, and was not sure if the grade will need that or not. That waiver should be removed and then once the road is developed it could be incorporated then. The installed utilities may need it. Ms. Bratter had no issue with this moving forward as long as the Planning Department stipulations were included.

Thomas Hiney of 101 Langdon St. was concerned about the need to get control of the land with their approval. That is when money passes hands. It seems like pressure on the Planning Board to move forward. The subdivision plan going in and the applicant talks about the need for access to the property and business are legitimate. The Islington Creek Neighborhood is concerned about how this will impact their relationship to the pond. The development and greenway will be great. Mr. Hiney requested that they don't forget about the neighborhood and their ability to access the pond and greenway. Mr. Hiney recommended that they consider how they can secure long-term access to the Mill Pond and greenway for Islington Creek. As this goes up it will cut the neighborhood off. Pedestrian easements should be considered for the view corridors and the crossing of tracks for neighborhood. There is lots of activity coming down Langdon St. and Dover St. to access the pond.

Elizabeth Bratter of 159 McDonough St. agreed with Mr. Hiney considering the pedestrian access easements. It would benefit McDonough St. and Islington Creek Neighborhood.

Doug Pinciara from Clipper Traders addressed some of the concerns. They would love to grant access to everyone in the Islington St. corridor. They have spoken several times to the railroad and they do not grant access across the tracks. It is an additional liability for them. This is not an option. The railroad understands that people have been crossing tracks and it is technically trespassing. Originally they were under the impression that they had to build a fence. After reading the fine print they discovered that they only have to if their engineer says they do. The hope is that a fence will not be needed. They won't put up a no trespassing sign on their properties. They won't put up fences unless they are required to. The goal is to make that area a better place for everyone.

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

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

Ms. Walker thought it would be reasonable to assume that the road and utility final design will be approved by DPW. The removal of the grade waiver is appropriate and it could still be requested later.

City Manager Bohenko noted that moving this forward is important for the applicant and in terms of what the City will have control over on the property. If this does not go forward there are other opportunities the railroad may take that may not work with the neighborhood. This allows the City to continue the process and have control on how the property will be developed.

Mr. Clark completely agreed with City Manager Bohenko. As many in Portsmouth know the railroad has been working on other things in Newington. They won't be able to purchase a piece of land elsewhere and store rail cars. They could do it here. There are some concerns with the storm water, but those would be addressed. The Board will have a chance to review changes before it moves forward. Mr. Clark was in favor of moving this forward.

Ms. Walker clarified that this was a preliminary and final subdivision approval.

Mr. Gamester hoped that the City, this applicant and other applicants with projects in the area come together to make Bartlett St. better. There will be a lot of traffic that is going to be created from the projects. Chairman Legg noted that he talked about this with Ms. Walker and asked her to schedule a work session to talk more broadly about this. The City is already thinking about the implications to the Bartlett St. and Islington St. connection. This will give the Board a more strategic view in understanding this situation. It will give a broader context in reviewing site plans for this project and other projects in the area.

City Manager moved to find that a waiver will not have the effect of nullifying the spirit and intent of the City's Master Plan or the Site Plan Review Regulations, and to **waive** the following regulations with the stipulation that any modifications to the final roadway and sidewalk design and materials shall be reviewed and approved by the DPW prior to construction and that modifications to the design that result in a revised layout and/or impact the overall drainage plan from that approved by Planning Board shall require amended subdivision approval, seconded by City Council Representative Perkins:

1. a) Section VI 3.B Minimum Right-of-Way -- to allow 50 feet where 60 feet is require;
2. b) Section VI 3.I Maximum Cul-de-Sac length – to allow a 1,050-foot long cul-de-sac where the maximum length is 500 feet;

The motion passed unanimously.

Mr. Gamester moved to **grant** Preliminary and Final Subdivision Approval, seconded by City Manage Bohenko with the following stipulations:

Conditions Precedent (to be completed prior to the recording of the subdivision)

- 1) Approval is for Subdivision Plans sheets 1 through 4, associated Easement Plans sheets 1 through 3, and Lot Plan sheets C4 through C10, P1 and P2, SD1 and SD2 and supporting detail sheets.
- 2) Applicant shall provide a letter from Eversource confirming how electricity service will be provided and the potential extent of impacts to the surrounding neighborhood in order to extend service.
- 3) The plans shall be updated to show existing and proposed utility lines servicing each building and lot. The plans should also identify where cross easements may be required to provide service connections that run across multiple lots. Services shown shall include sewer, gas, water, storm drainage, power, communications and access. A new water main shall be provided under the proposed road and a note shall be added to the plans that service lines for Lots 4 and 5 shall be relocated to the new line once operational. A note shall be added to the plan that water line sizing shall be based on the outcome of the Water Capacity Analysis.
- 4) Proposed Utility Easement Plan, Sheet 2 of 3, Note 5 shall be updated to clarify that the easement shall be the area of the proposed "right-of-way".
- 5) Any references to the sizing of the proposed water main shall be removed from the plans until such time as the Water Capacity Analysis has been completed.
- 6) The proposed sidewalk along the north side of the proposed road and any related drainage improvements shall be shown on all applicable plan sheets and incorporated into the drainage plan. The sidewalk shall be constructed as part of the subdivision road construction unless amended by the Planning Board in the future. Any notes indicating that the sidewalk will not be constructed as part of this project shall be removed from the plans.
- 7) Stormwater runoff from the roofs of existing buildings on Lot 3 shall be revised to redirect and capture runoff from flowing onto the proposed sidewalk.
- 8) Sheet P1, Note 4 shall be removed as road reconstruction shall include the entire length of the proposed road.
- 9) Sheet C7, note referencing vegetation and sight distance shall be updated to include reference to the need for maintenance.

Conditions Precedent (to be completed prior to the recording of the subdivision)

- 10) As the applicant anticipates recording the final plat prior to construction of the road and utilities, the final subdivision approval shall require a subdivision bond adequate for the completion of these improvements. All improvements shall be completed within 2 years unless otherwise amended by the Planning Board.
- 11) The subdivision shall not be recorded until the closing has been finalized for the transfer of ownership from the Boston & Maine Corporate to the applicant.

Conditions Subsequent (to be completed prior to construction of the roadway)

- 12) The applicant shall coordinate with the City's consultant to complete a Water Capacity Analysis using the City's capacity modeling and shall modify the water service design as required. The private water line that currently feeds lots 4 and 5 shall be either

replaced or abandoned depending on the outcome of the Study. All modifications shall be reviewed and approved by the DPW and the Fire Department.

13) Final design and construction of the road and utility improvements shall be subject to wetland conditional use permit approval and all applicable state and federal permits.

14) Proposed easements to the City shall be reviewed and approved by the Planning and Legal Departments prior to final acceptance by the City Council.

15) Final roadway and sidewalk design and materials shall be reviewed and approved by the DPW prior to construction. Any modifications to the design that result in a revised layout and/or impact the overall drainage plan from that approved by Planning Board shall require amended subdivision approval.

16) Applicant shall provide documentation of ownership rights and responsibilities for the private road to be constructed.

17) Any future development of Lot 5 may require modifications and relocation of the gas line. Any modifications shall be reviewed and approved by the City through the Site Plan Review process.

The motion passed unanimously.

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F. The application of **Two Way Realty, LLC, Owner**, for property located at **120 Spaulding Turnpike**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 6,200 s.f. vehicle storage parking lot using porous pavement, reduce impervious surface in the buffer and grading in the buffer, with 8,135 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 236 as Lot 33 and lies within the General Business (GB) District and the Single Residence B (SRB) District.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Mr. Gamester moved to consider New Business Item F and New Business Item G together and vote on them separately. The motion passed unanimously.

Eric Weinrieb from Altus Engineering spoke to the application. The parcel is in the SRB and the General Business Zone. In 2002 variances were granted to consolidate three lots, the old Dominos, the bridal shop and the Nissan Dealership. The facility was expanded. A CUP was granted because some work was in the wetland buffer. Zoning relief was obtained earlier this year to proceed with the project. Mr. Weinrieb met with TAC in October and in November with the Conservation Commission. The site has a lot of challenges. Part of it is in the Eversource easement and there is a wetland system with a 100-foot buffer. This limits the areas of development. Mr. Weinrieb looked at areas for expansion opportunity on the site. A drive in service bay will be added to stay current with other dealerships. The addition displaces some of the parking, so parking storage will be in the easement area. In the expansion area there will be some head in parking and parallel parking. The parking lot expansion in the easement will be porous pavement because it's a low traffic area and will not have a lot of sediment or traffic



movements. It will hold up. There is a maintenance schedule and drainage study on all storm water in the plans. That does require special treatment. The Architect made a change to the dimensions yesterday. In order to make it work functionally the building needs another 6 inches along the landscape island. The new dimensions will be 20'6" by 60'. It was mentioned at the Conservation Commission Meeting and plans will be updated. The storm water management and new service bay are all in the buffer. There is not a lot of opportunity for improvement, but the addition will have a stone drip edge. There will be green space and landscaping and bike racks. The larger parking area will act as the storm water management area because the entire pavement will be infiltrated and it will treat any contaminants. The new parking lot will have three new lights. They are dark sky friendly. Because it is in the power line easement, they will only be 12-foot high poles. The height at ground level in that area is 37-38. The top of the pole is 50 and the high point of the berm is 45. The houses on the other side are in the 30 range. It would be difficult for those lights to have an impact on the residential properties. There are no new utility services, but there is a forced main that runs from the building to the service bay. The oil water separator will be relocated. There are new floor drains tied into it. Because they don't know a lot of details on the line it can be a condition of approval. They would find the lines and elevation and make an assessment on the elevation based on that. The detail for the separator is included in the plan package. The Conservation Commission did recommend approval with a stipulation for a maintenance plan for the storm water management and porous pavement. It is in the full drainage study. The lights will be on a timer. There is a full narrative about the criteria for a CUP in the application. The land is reasonably suited. They are building the addition on land that is already disturbed. None of the paved surfaces for the storage area are in the buffer. It will just be temp grading in the easement area. There is no alternative location out of the buffer. It's a constrained site. The zoning board wanted to maintain the intent of the zoning and keep the project 200 feet away from residential houses. There are no adverse impacts to the building expansion. There is no change to the function and values. This is not a natural vegetated state. The area is under the power line that is managed by Eversource. This project is the least adverse impact.

Mr. Leduc questioned if two propane tanks were being removed. Mr. Weinrieb questioned what tanks Mr. Leduc was talking about. Mr. Leduc responded that they were behind the building to the right of the concrete patio. Mr. Weinrieb responded that they would remain. There is no change.

## **PUBLIC HEARING**

William Blum of 236 Cate St. noted that the covered service drive would add value to the neighborhood because it would contain the vehicles in the building. Any conversations, visual impacts and emissions will be contained in the building. It's a good proposal and Mr. Blum supported it.

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.



## DISCUSSION AND DECISION OF THE BOARD

Mr. Gamester moved to **grant** the Conditional Use Permit, seconded by Mr. Leduc with the following stipulation:

1. That any new lighting installed as part of this project be turned off at the close of business each day.

The motion passed unanimously.

G. The application of **Two-Way Realty, LLC, Owner**, for property located at **120 Spaulding Turnpike**, requesting Site Plan approval to construct a 6,200 s.f. vehicle storage/parking lot expansion and a 20' x 60' one-story drive up service bay addition to an existing building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 236 as Lot 33 and lies within the General Business (GB) District and the Single Residence B (SRB) District.

**Chairman Legg read the notice into the record.**

## DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau noted that the additional 6 inches to the building size should be accounted for.

Mr. Gamester moved to **grant** Site Review approval, seconded by Mr. Leduc with the following stipulations:

1 Building code compliance information on travel distance to building egress shall be reviewed and approved by the Inspections Department.

2 Application checklist shall be updated for consistency with submitted plans for Planning Board.

3 The detail for the oil water separator connection and reconnection shall be reviewed and approved by DPW prior to building permit approval.

4 The Site Plan shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

5 Existing above ground propane tanks shall be added to the site plan.

6 Proposed building addition shall be modified to show dimensions of 20.6' x 60', as described at the meeting.

The motion passed unanimously.

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H. The application of **Robert J. and Susan L. Nalewajk, Owners**, for property located at **350 Little Harbor Road**, requesting Amended Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to install a 12' wide security gate on the western side of the lot (to restrict public access from Martine Cottage Road), installation of 255 linear feet of buried electrical conduit from the residence to the proposed gate, 740 linear feet of buried irrigation line to provide water to proposed landscaped areas and dock, 3,770 s.f. of after the fact disturbance within the wetland buffer for the placement of crushed stone and wood chips, with 4,875 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 202 as Lot 16 and lies within the Rural District.

**Chairman Legg read the notice into the record.**

**SPEAKING TO THE APPLICATION**

Attorney Bernie Pelech spoke to the application. Stever Riker from Ambit Engineering, Contractor Ben O'Jay, and Owner Sue Nalewajk were also present. This application has been before the Board previously and received a CUP upon the recommendation of the Conservation Commission for a new home. They are almost done construction and a few things arose that required some tweaking to the plans. There is also an after the fact application. The original approval from the Conservation Commission noted that the construction access be on the southerly access. This past fall there was some serious rain and as a result that access became impassable because of mud. In order to continue to use that access the builder removed the mud and put crushed stone and wood chips in the access way. The City determined that was a violation and ordered them to cease work and file an application to remediate that. The Conservation Commission heard that restoration plan yesterday. Once the construction is done the fill will be removed and the access way will be restored to its original grade and condition. The restoration plan is separate and distinct to the other requests. The application was before the Conversation Commission in September for the gate and irrigation system. There was a 3-3 vote for a favorable recommendation to the Board, so it did not pass. They had no problem with the irrigation line. The Commission was concerned with the size and location of the gate. It is necessary because people think it is a public way and it is private property. It is not open to the public. The gate has been approved at the other entrance. It would be good to install the other gate to prevent people from wandering around the property. Hopefully the Board can act separately on the irrigation and gate. They have reduced the size and height of the gate. There is less impact than the original proposal in September.

Steve Riker from Ambit Engineering went through the 4 items that were requested. One item is the security gate at the south end. A gate was previously approved at other driveway. The gate is needed because the historic use of the neighborhood has created a situation where the public is consistently accessing the property. There is almost a walking loop created by Martine Cottage Road, Little Harbor Road and the Creek Farm. For some time this property was abandoned and the public got used to crossing the property and completing this loop for walking and biking etc.

Now there is a house under construction and the owners need to feel secure from both sides. The second item proposed is 250 feet of electrical conduit. It is depicted on the plan in a yellow line. It makes its way to the construction access way and runs to the proposed gate. Electrical power to the gate is needed for operation and a security camera. The conduit is installed now. In September the Board asked the property owners if it was there. Mr. Riker did not know it was there. It is there, but there is no electrical running thought it. The third item is the irrigation lines. Robbi Woodburn designed it. They are placed in areas that were previously disturbed from the construction of the house. The line will have hose bits to allow for watering. These lines are needed to help plant and maintain vegetation in the green areas on the plan. They are located a distance from the home. It will provide ease of watering. Using the hose to on the side of the house would be tiring and arduous. The fourth item is the restoration of the construction access way. It was recommended by the Conservation Commission to use that access during construction. The two rain events in October made the access way a mess. The organic material was stripped and piled next to the access way. Gravel and woodchips were put in. This application includes a restoration plan to restore it to the previous condition of a grass path. It will be restored to the original grade, loamed and seeded.

Mr. Clark questioned if there was a fence proposed on either side of the gate. People could just walk around the gate. Mr. Riker responded that there was no fence proposed. The approach to the gate is a paved driveway. It makes it look like a more formal travel way. The gate would deter that. Mr. Clark questioned if there was an old chain link fence there currently. Mr. Riker responded that was put up for construction purposes.

City Manager Bohenko questioned if just a sign would suffice. Mr. Riker responded that there are some signs at the end of Martine Cottage Road. Mr. Riker did not think the public abided by the signs currently. Chairman Legg questioned when the applicants would come back for more fencing requests. Mr. Riker responded that fences are allowed.

Vice Chairman Moreau questioned why the gate needed to be electrified if this isn't going to be the main entrance. Mr. Riker responded that it would be for the ease of operation. The owners would be able to open it from inside of the house. Vice Chairman Moreau questioned why it had to be so elaborate if it's just to stop people from trespassing.

Ms. Record questioned if there were signs there now stopping people at the entrance. Mr. Riker responded that they are at Martine Cottage Road.

Mr. O'Jay added that there are signs and fences at both ends that are locked. It says no trespassing or private property. Ms. Walker clarified that the gates up now are just construction gates.

Mr. Gamester clarified that the conduit is already there. Chairman Legg confirmed that he saw it at the site today. It looked like it was there already. It's after the fact approval.

## **PUBLIC HEARING**

Brook Stevens of 60 Martine Cottage Road is a direct abutter. Martine Cottage Road directly enters this property. It is a private road that is signed at the entrance and 200 feet down the road. Mr. Stevens has not seen anyone walk down to access the grass path that was uninvited. The loop does not exist any more. Once the grass path is restored there will not be a road entering the property. Mr. Stevens respected their need for privacy, but the public is not going there. The electricity and security gate impact the wetland buffer. They already violated this by installing the conduit last year. Cars should not be driven in the wetland buffer. This was a post construction request in the wetland buffer. It was not approved as a drivable access with a gate. Last night the Conservation Commission pointed out that they created a road when the project is 90% complete. This portion of the site will be put back to a grass path. Mr. Stevens requested that the Board request the removal of the conduit.

Robert Najjar of 10 Martine Cottage Road has lived there 28 years. The original recommendation from the Conservation Commission looked at the total extent of the buffer disturbance. There has already been an approved large gate, a driveway and a retaining wall. Now that is essentially what they are asking for in the backside. At the Conservation Commission the Vice Chair made an excellent suggestion. She recommended putting up a locked gate and signs. That is what is appropriate for the site. This is a rural zoned area. No one else has a fence or gate for security.

Brook Stevens of 60 Martine Cottage Road noted that this does not maintain the character of the previously approved project. Mr. Stevens loves the sound of the spring peepers and the vernal pool. The lights would impact the wildlife and especially the amphibians. A large electrical gate with lights impact a number of issues. The gate is not dark sky friendly. It is located 40 feet from the home. The light pollution in the main home was not addressed in the original approval. Further light is not needed. There is no demonstrated need for a gate of that size. There is a main driveway with a loop access. A stonewall or small manual swing gate would be more appropriate. This is a large 20-foot wide gate. There is no need to have symmetry for the gates. You can't see them together. Cars have headlights. They do not need a light on the gate. The underground utilities like the irrigation will only be needed for a year. The irrigation lines are not needed.

Bernie Pelech clarified one point. The owners have a legal right to access the property that way. It's a right of way. That is not an issue the Conservation Commission had input on how they use it. They can use it with vehicles if they wish.

Robert Najjar of 10 Martine Cottage Road highlighted that the drawing showed that area as a mowed grass path not a driveway. The gate is symmetrical to the main area. It does not need to be the same for this entrance. The Board should vote on this separately. Mr. Najjar had no objection to the irrigation system or the restoration plan. The conduit should be removed. No additional structures are required to achieve the owners' objectives. Further impact on the buffer is not desirable or needed.

Ben O'Jay noted that the grass path has been a driveway for many decades. The property was abandoned for 20 years, so it grew over. They were directed by the Conservation Commission to use that as the construction entrance. It is a legal access way. It is the owner's intent that it is grassed over. It always has been a driveway.

Brook Stevens of 60 Martine Cottage Road commented that it was approved as a grass path because the original approval had 20,000 square feet of impact to the wetland buffer. They decided to release that as a drivable access to get other improvements in the buffer.

Bernie Pelech commented that was not the case. The owners did not agree to not use the driveway.

Chairman Legg asked if anyone was present from the public wishing to speak to, for, or against the application. Seeing no one rise; the Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

Vice Chairman Moreau noted that the vote should be separated.

Vice Chairman Moreau moved to approve the wetland conditional use permit for the restoration plan as presented, seconded by Mr. Gamester with the following stipulations:

- 1 The applicant shall notify the Planning Director 1 week prior to commencing the restoration work, which shall occur in the spring or summer of 2019.
- 2 The applicant shall provide a monitoring report to the City one year after restoration work is complete confirming the site has returned to a grass path of the same width and elevation as before the impact.

The motion passed unanimously.

Vice Chairman Moreau moved to approve a wetland conditional use permit for the installation of the irrigation system only, seconded by City Manager Bohenko.

Applicant shall remove underground conduit for electricity that was previously installed without a permit.

Vice Chairman Moreau commented that she felt like this gate is going to be used like a main gate. A simpler gate could be used. The Board has made a lot of concessions on this property. They keep trying to chip away.

Mr. Gamester noted that he was usually flexible with the buffer provided there was proper mitigation. This application came through with the house. A lot of concessions were made and there was mitigation for the garage and driveway. This gate is lacking on the fifth criteria about least impactful. Chairman Legg agreed.

The motion passed unanimously.

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Mr. Gamester moved to continue the meeting past 10 p.m. seconded by Vice Chairman Moreau. The motion passed unanimously.

## VII. PUBLIC HEARING - DESIGN REVIEW

*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. Request for Design Review of the **Roman Catholic Bishop of Manchester, Owner**, for property located at **98 Summer Street (St. Patrick's School)**, for demolition of the 2 ½ story building with the address of 125 Austin Street with a 9,218 s.f. footprint and 37,272 s.f. gross floor area, and the construction of a 35 space parking lot, with landscaping, lighting and water management. Said property is shown on Assessor Map 137 as Lot 1 and is located in the General Residence C (GRC) District.

Attorney Peter Loughlin and Eric Weinrieb from Altus Engineering spoke to the project. The application for demolition has been submitted at the same time as this review. It is understood that any site review would be subject to a demolition permit. They were filed together to provide plenty of public notice of the intention. Preliminary plans were submitted to show what they want to do on the lot. This will come back for a full site review. It would require more detail. The intent is to use the design review process as an opportunity to come to this Board at an early stage before getting into the details. The goal is to get the Board's input and suggestions before time and effort is put into doing the design. The public has the chance to make comments as well. The public has brought attention to the landscaping and grading in the back of the lot. Another abutter noted issues with the lighting that should be addressed. Those comments will be considered.

Mr. Gamester was familiar with the wall behind the lot now. Mr. Gamester questioned if there was anyway to tie the lots together. Mr. Loughlin responded that would have to be engineered. Mr. Weinrieb added that they have not looked into it, but they will. There may be ledge back there.

Vice Chairman Moreau noted that there are a lot of churches in the downtown that deal with neighborhoods for parking bans and off street parking, etc. Mr. Loughlin responded that the pastor has had a meeting with the neighbors and discussed that as an opportunity. They are planning on doing it.

Ms. Walker questioned what the parking demand throughout the week would be. Mr. Loughlin responded that he would think it would not be full in the average week. It would be somewhat unpredictable because of funerals and holy days. There is a daily mass that gets regular use. Ms. Walker questioned if there were programs or plans to expand services. Mr. Loughlin responded that the parish activities are growing. They are always hoping more people will take advantage of programs.

## PUBLIC HEARING



Chairman Legg commented that before the Board is a design for a parking lot. Certain people may be here to speak for or against the demolition of the building. This is not really the place to talk about that. Chairman Legg requested that the public talk about what is presented in this phase, which is review of the design of the lot.

David Random of 720 State St. tried to keep his comments limited to the design of the lot, and questioned if that included the proposal that there is a lot to begin with. Chairman Legg agreed they could broaden it. Mr. Random commented that although he lived on State St. all the residents about Chatham St. All of those residents have off street parking either in a garage or on the property. All of the parking is perpendicular to Chatham St. There is absolutely not enough parking for that church. Every Saturday and Sunday Chatham St. is lined with illegally parked cars. There are a few sections that allow parking, but most is signed no parking. That allows residents to back out of their driveways. In the past people have parked on his property because there was no space. Mr. Random has met with police on site to explain situation. Rather than towing cars he talked to the Priest. It is a problem for emergency vehicles.

Donald Saari of 72 Summer St. lives on the corner of Summer St. and Austin St. The neighborhood was originally developed in the 1800s. Most houses were built some time in the 19<sup>th</sup> century before vehicles existed. There were no allowances for off street parking. The problem is exacerbated because overtime the City has been unwilling or unable to control parking with condos, apartments and churches. Mr. Saari applauded the parish for handling the parking problems that residents and parishioners experience. Mr. Saari was in favor of the development of these areas for parking to alleviate problems.

Lucy Clark of 22 Winter St. was very excited about the parking lot and the addition of more landscaping and trees. The plan is good. The elevation grade is what it is. The chain link fence was put in for the children because that's where they played. If that could be removed that would be great. They will be taking care of the property more in the future, so that will be wonderful. The lighting in the parking area affects everyone. Everyone moving in puts in more lights. Ms. Clark was looking forward to the building being gone, but wanted the project team to be conscious of the lighting.

Steven Erickson of 257 Austin St. noted that it was hard to speak to the issue without talking about the demolition. Putting service parking in the middle of the neighborhood is the worst choice imaginable. The parish has been great neighbors. There is no parking problem. Mr. Erickson has never had a parish member park in front of their house. There is a public lot on Middle St. and Miller St. that is close. Elderly parishioners may have trouble accessing the church in the winter. It would make more sense to have a parking program for them, and then have the younger parishioners park in the existing lot on Middle St. There is plenty of parking opportunities on Austin St. There are better solutions that are less damaging and more attractive. A short walk to church is good for the spirit.

Bob Lanahan is the Architect for Corpus Christie and a member of the church. Over time Mr. Lanahan has parked illegally on almost every street. Chatham St. is a favorite spot, and he has parked there for many events for the church. The extra parking is necessary.



Robert Wallace of 110 Austin St. is a direct abutter. The prospect of removing the school and putting in a parking lot is the best solution for the neighborhood and church. No other proposed development on the site would serve the neighborhood well because it would increase congestion.

Inaudible of 85 Austin St. commented that parking is an issue. It is not quite the issue that immediate abutters feel acutely. There is a free lot down the street. This design is the result of a lack of imagination and the laziness of some drivers. It is inefficient and short sighted. The church also owns another lot. They could have a mini bus. There may not be a need for this in 10 years.

Mike De La Cruz of 64 Austin St. commented that the church has a difficult problem and decision. The parking has been an issue. This would help, but it would not solve the problem. People have provided other solutions. The project team should take a little more time to give the right solution. There is a community that lives on the other side of the church. The building is not attractive on the other side. The Austin St. side of the building is a beautiful design. That will be taken away if it's demolished. Mr. De La Cruz questioned if it was possible to create a win for the church and keep the building. That building is rare. Knocking it down is not a good idea if there is a different solution. There are two issues with design. The first is that it will take time for the visual barrier to grow in. As a resident he will be able to see up the hill, so there should be a visual barrier there too. This will have a large visual impact for the people on Austin St.

Elizabeth Bratter of 159 McDonough St. has been walking to the church for more than 30 years. Ms. Bratter walks because she lives in a neighborhood with parking issues. If the end result is that the church and the City decide to demolish the building, then there should be a plaque made to honor the history of the school. There is parking problem because people used to walk to church. The new LED lights the put in will be bright. They may not need as much lighting in there because the LED street lights are already pretty bright. Ms. Bratter asked that pictures of the inside of the school be taken and donated to the Portsmouth Athenaeum.

Dan Rowling of 411 Middle St. understood the need for the church to study the parking problems. The design is out of context of the neighborhood. The project team should reconsider reworking some of the areas around the church. They could pick up 25 more parking spaces in the area nearby the church. There are 122 spaces in lots within walking distance of the church. 40-50 spaces that could be shared parking. Any of these solutions would be better for the neighborhood. There should be further study of the parking solution for the church before this moves forward.

Pattie Hepp of 293 Austin St. commented that she could stand on the porch and see this property. They do not have parking where she lives. Ms. Hepp would rather walk home from a municipal lot than see this built. There should be more neighborhood input into this decision and more ideas should be considered. This does not represent the character that is in the neighborhood now. If the building is going away, then they should put in something more beautiful.

Inaudible of 62 Winter St. commented that he likes buildings, which is why he bought a house in this neighborhood instead of the woods. The church is facing some challenges, but there is a better solution than a parking lot. There are better options than demolishing the building. There should be more house solutions not less.

David Random of 720 State St. commented that after speaking with the police about illegal parking he talked to Father Gary about the problem. Father Gary put a notice in the bulletin about all the church members parking on Chatham St. and it was in the directory. Mr. Random copied the bulletin and put them on windshields of illegally parked cars to no avail. Mr. Random commended the church. They had a neighborhood meeting last year. It would be a beautiful green space. If the church is not allowed to add parking spaces, then Mr. Random will be much more vigilant about calling the police about illegally parked cars. Some have also suggested that the former school building be turned into condos. Mr. Random would hate to see that because it would add to the parking problems.

Steven Erickson of 257 Austin St. talked to Father Gary on Tuesday and his plea was the same as the one tonight. Let's slow this whole process down and have a conversation. Decisions like this will be with us a long time. Take the time to deliberate and explore all possibilities. There is no rush. The consequences of what we do will be felt a long time. Look at all the options.

Chairman Legg thanked everyone for their thoughtful comments. It was good input for the Board and the applicants.

Vice Chairman Moreau noted that she was on the Demolition Review Committee. It is a new committee. It has been publically noted that someone objected to the demolition. From there they have to schedule a hearing take in all the information of the historic value. There will be a chance for the public to come to the committee meeting and speak. It's a 2-week turn around time from the objection. Vice Chairman Moreau noted they will work with the applicant. If there are no options, then they document the building.

City Council Representative Perkins seconded comments of the Chair. It was a respectful and constructive dialogue. City Council Representative Perkins encouraged both sides to be open to dialogue.

Vice Chairman moved to determine that the design review process has ended, seconded by Mr. Gamester. The motion passed unanimously.

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**VIII. PRELIMINARY CONCEPTUAL CONSULTATION**

A. The application of **Torrington Properties, Inc. and Waterstone Properties Group, Inc., Applicants**, for property located at **428 Route 1 By-Pass**, requesting a second Preliminary Conceptual Consultation review for a mixed use development.

Attorney John Bosen spoke to the application. The applicants recently purchased the Frank Jones Center. Mr. Bosen introduced the development team, which included: Jay Bisognano of Torrington Properties and Josh Levy of Waterstone, Gregg Mikolaities, Project Consultant and Rick Lundborn of Fuss & O'Neill. The plan is to give a high level overview of the project and discuss the challenges they are dealing with. They will walk through some of the plans. Mr. Bosen noted that the slide showed an overall concept and lay out of the project with a new public road. The front of the property will have a retail office section and 22,000 square feet. Then further down will be residential apartments and townhouses. There will be 520 parking spaces and a dog park. The subdivision plan will divide the property into 4 parcels that will be permitted as one project. The project team is working with Planning Staff to make a public road that will connect Cate St. and Borthwick Ave. They are in discussion with the Planning Staff about a land swap. It is understood that it will require Conservation Commission approval. This will relieve pressure on Bartlett St. This project will generate \$93,000 in property tax revenue. The land was previously zoned as industrial. This is a gateway to the City and in need of revitalization. This project will do that. It will have a food hall, retail and housing. The project team is working with the Conservation Commission to restore Hodgson Brook. There will be a bike path. The applicants have a stellar reputation of being good community partners. There are some challenges with the workforce housing part of the ordinance. This is the first project under the ordinance, so the hope is they can work together on this. The project team has hired a workforce-housing specialist who will talk about this topic. The goal is to build 320 apartment units. It will fit nicely on the site with the density bonuses. That would require 65 workforce-housing units. That is very large. That is more than the Portsmouth Housing Authority's entire project. It is not supported by economics. This was not a cheap land acquisition. It will include a donation of some of the land back to the City, create a connector road, and restore the Brook. The proposal is for 15 workforce-housing units, which will make a dent in the workforce housing in the City.

Jamie Simcheck and Greg Seymour spoke to the workforce-housing piece. This is in the Gateway District. Mr. Simcheck respected the new ordinance. It requires 20% of units to be workforce housing. That would require 65 units. This amount of workforce-housing units would make it financially unfeasible. The project team asked the Planning Board to reduce the amount required. The Commonwealth of Massachusetts requires 10% of municipalities. It is the most impactful on lender requirements. The net income must be 1.2 times. If the performer cannot meet that, then the lender cannot provide financing. It should be noted that this is a low debt service coverage. Other developments may have higher finance requirements. The project team is using more conservative assumptions. The distance from downtown will result in lower market rate rents. The current workforce-housing requirement is based on the assumption that the real estate boom will continue. The construction rates are currently at an all time high. Moreover there are no local or state subsidies for workforce housing. \$800,000 in tax credits will help the Portsmouth Housing Authority build out their project. Even if this project was interested in pursuing this, those credits are highly competitive. It's unlikely it would be eligible in the near term. The project team has researched how to maximize the units with the current and local relevant study that was the Court St. analysis. The current demand is for 1 or 2 bedroom apartments. The demand for 1 bedrooms vs. 2 bedrooms is 2-1. The project team has proposed

to provide 15 workforce housing units. 10 of them will be 1-bedroom units and 5 will be 2 bedroom units. This one market rate project will increase workforce housing by over 1%. The housing cost is the same to construct and manage. The project will meet the lenders requirement without financial subsidies with 15 workforce-housing units that are an 80% median income.

Vice Chairman Moreau requested clarification on what land was part of the project. Mr. Bosen pointed the parameters of the 12.2-acre lot. Vice Chairman Moreau noted that 15 workforce-housing units were not worth it. It's less than 5% and the Ordinance asks for 20%. Vice Chairman Moreau questioned if they could do some sort of max rate on the units instead of defining workforce housing. They could be higher than workforce housing, but lower than market rate. Mr. Bosen responded that they could look at that. The goal is to meet the needs of the workforce. Mr. Bosen was not sure the needs are properly identified in the Ordinance. Vice Chairman Moreau commented that they have some flexibility in the zoning. They could say they still want the units, but they could set a different rate. Mr. Bosen responded that in many places 60% AMI is considered low income.

Mr. Bisognano thought that was a great idea, but would like to understand the proposal more. Vice Chairman Moreau responded that they would be more units at a slightly higher rate than workforce housing, but lower than the market rate. Mr. Bisognano responded that they would have an open mind.

City Council Representative Perkins agreed with Vice Chairman Moreau. This is a flexible piece of the zoning. A lot of time was spent researching for that purpose. Portsmouth would rather see a project with 300 units than no project. However, the workforce housing was put in the Ordinance for a reason. They need to consider the economic issues with workforce housing. The number of workforce-housing units in this design is low. During the drafting of the Ordinance the Board didn't know if 20% was the right number. It would be better to see more units at 80% market rate or a little higher. It would be good to think about parking waivers and additional units. City Council Representative Perkins was not sympathetic to not getting subsidies. They are getting density bonuses. This project will not get tax credits, but they have tried to provide financial relief. City Council Representative Perkins was open to moving away from workforce housing, and providing lower than market rate units. City Council Representative Perkins thought that studios were underserved in the market as well.

City Manager Bohenko questioned if they had calculated if they did not have bonuses how many units could they build. Mr. Bosen responded that it would be 244 units. Those units would be in 5 separate buildings. It would not be as attractive. City Manager Bohenko was concerned about waiving the parking regulations. That could be a problem long term. Mr. Bosen noted that this is a tried and true model. This is the type of parking needed to service this development.

Vice Chairman Moreau questioned if they considered putting parking underground to offer more green space. Mr. Bosen responded that it is cost prohibitive to go underground. Mr. Bosen agreed with City Council Representative Perkins comment about studios. The Viridian has 5 studios and they wish they had more. City Manager Bohenko questioned if deck parking was considered. Mr. Bosen responded that would also be cost prohibitive. They have been studying the cost for about a year have a lot of data and information. City Manager Bohenko was

concerned about waiving things because they paid too much for the land. It is not the Board’s problem. City Manager Bohenko was not interested in hearing about that part of problem, but knew it was a reality. The Board should not be cutting back on standards because of the cost of land.

Ms. Record noted that she was hesitant to make such concessions right away. Only 15 workforce-housing units is a big difference. It would be best to come to a middle ground.

Mr. Clark noted that the zoning was amended last year and they were not hiding the workforce-housing requirement. The closing for this was after that. It is hard to be sympathetic because they knew what they were getting into. As you know workforce housing is a touchy subject. Whatever they come up with they will have to sell it to the Planning Board and the public. If the Board starts waiving things and making changes they will be outraged.

City Council Representative Perkins reminded everyone that they picked 20% with a lot of record that they weren’t sure that was the right number. Be respectful that the experts aren’t sure that’s the right number.

Chairman Legg noted that what the project team is hearing from the Board is that people pay attention to the number of units that are affordable. 15 workforce-housing units are a non-starter. On the other hand the Board is willing to go to 80% or more for 60 units. That would create 60 units of more affordable housing. Affordable housing gets defined as people want to define it. The project team should try to get closer to 20% than 4.5%.

Chairman Legg commented that he liked the Viridian building, but the backyards with the terraces are right there. It detracts from an attractive building. Think about that when designing this project. The back of the building faces the public.

Mr. Leduc was excited about the development of this area. One challenge is that the street does funnel out to Bartlett St. and Islington St. It’s a tough area for traffic. The green space, bike paths, and redevelopment of the street will be great. It will add a beautiful piece to the City. Mr. Bosen responded that those amenities would be a result of the development of the units. They are not trying to get away with anything. They are trying to add a lot to the City. They need to work together to get there. They will go back to the drawing board to get more affordable units.

Mr. Clark questioned if the current bridge across Hodgson Brook was for pedestrians. Mr. Bosen responded that it would be a pedestrian bridge. Ms. Walker clarified that it is to be determine. It is still part of the discussion. The pros and cons to keep it open will be discussed in a January work session.

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**IX. OTHER BUSINESS**

A. Request for property located at **165 Deer Street (“Lot 3”)** for a one year extension of Site Plan approval which was granted on February 15, 2018.

Mr. Kisiel recused himself.

Ms. Walker commented that this request for extension was well in advance of when it is actually required. The applicant is not here to make a case. All other boards have granted it. Ms. Walker assumed the request was due to financing. Mr. Leduc clarified that there was no timeline guiding how far in advance they could request to extend. Ms. Walker confirmed that was correct. Mr. Leduc questioned if the date would change. Chairman Legg questioned if there was a risk approving this. Ms. Walker responded that it was just premature. Chairman Legg noted that if the Board starts to see this a lot, then they should consider changing the guidance.

City Council Representative Perkins was happy to grant the request, but hoped that the buildings around the garage go up sooner than later.

City Council Representative Perkins moved to determine that no change had taken place that would materially affect the current site plan approval and voted to **approve** a one year extension of the Site Plan Approval to expire on February 15, 2020, seconded by Vice Chairman Moreau. The motion passed unanimously.

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**X. ADJOURNMENT**

It was moved, seconded, and passed unanimously to adjourn the meeting at 11:42 p.m.

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Respectfully Submitted,

Becky Frey,  
Acting Secretary for the Planning Board