

**REGULAR MEETING  
PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**6:00 PM WORK SESSION**

**7:00 PM PUBLIC HEARINGS**

**AUGUST 22, 2019**

**MEMBERS PRESENT:** Dexter Legg, Chairman; Elizabeth Moreau, Vice-Chairman; Colby Gamester; Jay Leduc; Rebecca Perkins, City Council Representative; Ray Pezzullo, Assistant City Engineer; Corey Clark, Alternate, and Polly Henkel, Alternate

**ALSO PRESENT:** Juliet Walker, Planner Director; **Members from the Conservation Commission:** Chairman Steve Miller, Allison Tanner

**MEMBERS ABSENT:** John P. Bohenko, City Manager, Chairman Dexter Legg, Jay Leduc, Jillian Harris, Planner I,

**I. WORK SESSION (6:00pm)**

**A. Proposed Amendments to Article 6 Section 10.620 Flood Plain District.**

Consultant Rick Taintor spoke to the proposed amendments. The first set of the proposed revisions relate to the flood plain. The first amendments are revisions that the City needs to make to comply with the Nation Flood Insurance Regulations. In 2013 the City got the letter from a compliance review that outlined specific changes they needed to make to the zoning. They have to be adopted before the new Flood Plain Maps come out. The second proposed amendment deals with looking at climate change impact and the 2 feet of sea level rise. The final proposed amendment is revisions to the thresholds of what constitutes substantial damage and substantial improvements. The changes for compliance to the flood program are pretty technical. There were 5 new terms that needed to be defined and 6-7 that needed minor word changes. The City got permission to do some minor changes to the standard definitions to tailor them to Portsmouth. The standards upon which elevations are measured are changing. Standards for recreation vehicles were added. This will require some minor changes to subdivision rules and regulations.

There are two sets of changes proposed for climate change. One is to define the Extended Flood Hazard Area. This would include areas with less than 2 feet above the base flood elevation. The other is the concept of freeboard, which is to provide 2 feet above the base flood elevation in the Special or Extended Flood Hazard Area. This will account for future climate change. Any new construction or substantial improvement should be 2 feet above the base flood elevation. There is no change for non-residential substantial improvement. Most of that is downtown, so it would be very difficult to implement down there. That could be addressed in the future. Mr. Taintor showed an example of the maps that outlined the Extended Flood Hazard Areas. Many of the areas are protected in other ways anyway. The areas that are affected downtown are not extensive, but they should be protected from future sea level rise. Ms. Walker added that this is related to the climate resiliency study done a few years ago. Some of those areas have active development proposals.

Mr. Clark questioned if 2 feet was enough. The Coastal Risk Commission map shows that the low end is 1.6 feet and the high end is 6 feet. Their recommendation is 3.9 feet. Mr. Taintor responded that higher would be too aggressive. Mr. Britz added that studies show rise would be 2 feet by 2050 and 6 feet by 2100. Mr. Clark commented that they should be building, so they won't have to rebuild. Mr. Taintor responded that they could look at what the impact would be to add another foot. Ms. Walker agreed that it would be good to show what the impacts would be.

Ms. Henkel questioned what the special exception for the Historic District meant. Mr. Taintor responded that there was a lot of boilerplate language in the required changes. They were allowed to take some out because it did not apply to Portsmouth. Ms. Henkel questioned what would happen if someone was rehabbing a historic building. Mr. Taintor responded that right now the regulations say if there is a substantial improvement to the house, then they need to implement the flood elevations. Substantial improvement is classified as 50% of the market value of the house. The proposed regulations would move the base point two feet higher. In many cases building elevation is 8 feet base flood elevation. If a building were at 9 feet now then the current regulations would not impact it. The proposed changes would be because the building is only one foot above. They would need to go another foot.

Ms. Walker commented that the maps show specifically what buildings would be impacted. Mr. Clark commented that some of the changes referenced the current FEMA maps. It should have language in there for future maps or most current maps. Mr. Taintor responded that it says the base flood elevation is defined by the flood insurance rate map that is currently in effect. Mr. Clark noted that the actual zoning stated a specific FEMA map. Mr. Taintor confirmed that it would be updated. Vice Chairman Moreau questioned if the buildings in the extended flood zone would be eligible for flood insurance. Mr. Taintor responded that he believed everyone was eligible for it, but it would not be subsidized. This change would not require them to get flood insurance.

Ms. Record clarified that if a project was pending and in the colored zones, then it would not be required to get flood insurance. Mr. Taintor responded that projects that have been approved would not be impacted by these changes. If they are in the special hazard area, then they have to have flood insurance. The extended flood area is not required. Ms. Walker added that very few properties are in the extended area.

Mr. Taintor commented that the last part of the proposed changes is the definition of substantial damage or improvement. Today it is 50% of the market value. The property values are skyrocketing, so the question is should the threshold be lowered to a lower percentage. That would trigger the freeboard requirements with a lower percentage. Ms. Walker added that they could consider treating damage and improvement with different percentage thresholds.

Vice Chairman Moreau commented that she was concerned that insurance would not want to cover the additional requirements because they were not there before the damage. That would be a lot to ask of the owner with a lower threshold. The substantial damage should remain at a 50% threshold. The improvement could be a different percentage.

Chairman Miller commented that they did not really deal with substantial damage. The climate change and freeboard revisions are a good idea. Vice Chairman Moreau questioned if this would go to a public hearing. Ms. Walker confirmed that was correct.

B. Proposed Amendment to Article 10 Section 10.1020 Wetlands Protection.

Mr. Taintor commented that the proposed amendments are meant to strengthen the wetland protection regulations. There are 8 changes listed and some definition changes. The first one is to exempt staked in fences from the CUP. The second change is to require additional information about the wetland or buffer when the change is greater than 250 square feet. This will provide the Board with information about the character and quality of the wetlands and buffer. Mr. Gamester questioned if this would be something that would force someone to hire a professional to complete. Mr. Britz responded that it probably would require that, but there is a threshold that would trigger that requirement. The intent is to get more information about the wetlands besides just the delineation.

Mr. Clark questioned if this would be for permanent or temporary alteration every time. Mr. Taintor confirmed that was correct. Mr. Clark commented that people would reach that 250 square foot threshold fast. DES defines temporary impact if a vehicle is driven over it. Defining temporary in the wetland buffer could be driving an excavator on the uplands. Mr. Britz responded that temporary would mean removal of material that gets put back. Driving wouldn't count in the threshold. Mr. Taintor noted that if it were shown on the plan, then it would be counted for temporary or permanent alteration. Ms. Walker added that Staff has discretion in that definition.

Mr. Taintor noted that the next item is where feasible any impervious surface added will include compensatory pervious area. If that is not feasible, then the application will include a wetland buffer enhancement plan. Then the next piece describes what has to be in the wetland enhancement plan. The next change includes a living shoreline policy for tidal areas to preserve the existing natural shoreline. It shall be implemented unless the Planning Board determines that it is not feasible. There is a definition for a living shoreline included in the Ordinance. Vice Chairman Moreau clarified that this would not impact people with existing walls. Mr. Taintor confirmed that was correct. The next item requires a submission of a plan to compensate for impervious surface. It doesn't guarantee the CUP. That's a disclaimer. Another change is that any new pavement in the wetland buffer should be porous. The Planning Board can allow exceptions. The next one is that permanent wetland boundary markers should be put up during construction. Mr. Clark commented that the wetland markers could be an issue if the wetland is growing in size. Ms. Tanner commented they would come in front of the Commission with a plan and they would do site walks. They would tell them to move the boundary markers. Ms. Henkel questioned what the marker would look like. Mr. Britz responded that they are typically a metal or plastic disc 3 inches in diameter. They would be put on trees. Vice Chairman Moreau commented that the Planning Board sees porous pavement come in front of the Board a lot. Vice Chairman Moreau questioned if there should be a required ongoing maintenance statement. Porous pavements don't work if it's clogged. Mr. Taintor confirmed that it would be added in the conditions of approval sections.

Ms. Walker commented that this would come back next meeting for a public hearing. That would be on track to get it to City Council before the end of the year. Vice Chairman Moreau noted that the biggest question is the substantial damage piece. It would be good to have public input.

C. Discussion of potential Zoning Ordinance Amendment to re-zone properties located along Chase Drive, Cutts Avenue, and Kearsarge Way from Gateway Neighborhood Mixed Use Center (G2) and to a new Gateway Neighborhood Residential (G3) district that would allow less density and fewer non-residential uses.

Ms. Walker commented that this was a report back to the Board relating to what started as a citizen petition that came before City Council. The petition requested that the rezoning of that be revisited to Single Residence B. The Planning Board held a public hearing in June and the Board requested a report back on a modified zoning that could be considered. During the original Gateway discussion there was a third G3

district. The request was to look at that again. Originally there was some discussion for the G3, but it did not go far in development. There was a purpose statement that proposed a lower density of mixed use and a higher residential. There had been an initial map of where the G3 district could be located. They looked at the corridor area along Lafayette Rd., outer Woodbury Ave. and the Bypass. There was an initial draft of the table of use modifications. It is very similar to the G2 zoning, so this area was pulled into G2. The Staff discussed what the Board should consider based on the neighborhood's request for a potential solution. There is potential for a modified G3 district. The intent was to have mixed use neighborhoods. The land use table is designed to limit it to primarily residential with small scale commercial services oriented to the residential neighborhoods. The building type drives the dimension standard. The recommended building types are more residential in scale, but could accommodate some commercial. The buildings would be limited to 3 stories or 40 feet. The residential density would be 16 dwelling units per acre for mixed use. A pocket neighborhood could be smaller with 12 units. There would be incentives for a density bonus and it would have a different threshold than G2. Ms. Walker noted that Planning Staff was looking for some direction from the Board on how to proceed. They have received a letter from the neighborhood. The threshold for residential density in the letter is a lot lower than what was recommended by Staff. There were some other things that were similar. The neighborhood does not want any multi-family dwelling units. The Board could refer back no change to City Council, or advertise the G3 for a public hearing.

Vice Chairman Moreau commented that she liked most of the proposal. It is always hard to visually tell if the dimensions will work to make a change or not. The intent was to try two different districts and see how it goes. This should go back to the public to see if this is what they are looking for. Diagrams that show what the density would look like would be helpful.

Ms. Henkel commented that it was good there could not be a convenience store in this G3. This is one of the only exits that people can get on and get off the highway quickly. It would be good to avoid having people jumping off to get soda then jumping back on. Ms. Walker commented that there are property owners in the Kersage Way properties that don't want to restrict that. That came up when it was discussed last time.

City Council Representative Perkins commented that she was interested in hearing more about if this would work with the neighborhood. This gives more options. It seems like a compromise between the planning process and neighborhood concerns. Ms. Walker confirmed that it would be brought back for a public hearing for next time.

Mr. Gamester commented that he liked the G3 idea, but agreed why they didn't move forward with it initially. The modifications are good and it is a good compromise.

## **II. PUBLIC HEARINGS (7:00pm)**

A. The Bethel Assembly of God, Owner, and Altus Engineering, Inc., Engineer for property located at 200 Chase Drive, requesting Design Review for the subdivision of one lot into two where the existing church will remain and the construction of a 22-unit residential apartment building on the new lot with related paving, utilities, landscaping, drainage and associated site improvements. Said property is located on Assessor Map 210 as Lot 02 and lies within the Gateway Neighborhood Mixed Use Center (G2) District.

## **SPEAKING TO THE APPLICATION**

Corey Belden from Altus Engineering spoke to the application. Mr. Belden commented that this project proposal is for an apartment building on Chase Drive. This project has been in the works for a long time. After the zoning changed the church and developer Steve Kelm saw an opportunity. The church has been struggling with debt. This is an opportunity to get out of debt and also provide additional housing close to the downtown area. In May 2018 the project came to the Board for a preliminary consultation. The plan was to subdivide and lease the parking lot back to the church. However, a zoning variance would be required. In April 2019 the applicant was denied the variance request. The design team went back and looked at the zoning. They decided to go with a development site. Now it will be incorporated and the entire lot will be under the same ownership. This project will have a subdivision with a 22-unit apartment building, 30 parking stalls, and 20% community space. There will be some pocket parks, greenways and a community garden. The plans show some pine trees. Initially there were some concerns that they may be diseased. However, the arborist only identified 2 trees that should be removed. The rest will remain. There's significant landscaping proposed for the project. The preliminary landscape plan is in the packages. Storm water would be addressed. There will be rain gardens to provide treatment and porous pavers for parking stalls. The project will need to meet the requirements for storm water management. It will go through that with TAC. The team will take the design comments from the Board back and consider them with revisions. Then this project will go through the site plan review process.

Vice Chairman Moreau clarified that this would be under common ownership and they would not be subdividing and selling off one lot. Mr. Belden confirmed that was correct. Vice Chairman Moreau questioned where the multiple pocket parks were located. Mr. Belden responded that there would be a pocket park in the courtyard area that would be open to the public. There would be community gardens in another area. There will be a couple greenways and a pocket park in the corner. Vice Chairman Moreau confirmed that the parks would be open to the public. Mr. Belden confirmed that was correct. Vice Chairman Moreau commented that it was good that the trees would be saved. It is important that the trash will not be visible from Market Street. There should be screening. The porous pavers will need to be maintained. Mr. Belden responded that they just went through that with another project. The plan will include the proper maintenance. Vice Chairman Moreau commented that the bike rack on the plan was good.

Mr. Clark commented that he was concerned with the strip along the church that was 20 feet wide between the proposed fence and the existing fence. It is not clear how it meets the definition for community space. It is a long strip with a fence on 3 sides. It is not an engaged community space. Mr. Belden responded that was an expansion of the community garden area. The shed is for the gardens. Mr. Clark questioned if a rain garden could be included as community space. Ms. Walker confirmed that they could have storm water management structures in the community space, but it has to fit the community space type. It can't occupy all of the community space. It needs to provide a benefit to the public.

Mr. Kisiel noted that this was currently a tax-exempt property, and questioned if it would remain that way if it did not change ownership. Ms. Walker confirmed that she would verify with the assessor.

Mr. Clark commented that it might be better to make sense to expand the 5-foot walkway to 8 feet to keep it consistent with the extension of the bike path. Mr. Clark questioned how the deliveries at the site would work. Mr. Belden responded that they would drive in and back out. Mr. Clark noted that could be a concern.

Mr. Kisiel commented that he was concerned about parking for the neighborhood on Sundays when there was service, and questioned how overflow parking would be handled. Mr. Belden responded that the two

parking lots are not connected. The church is monitoring the parking situation. They have added additional masses to spread out the flow of people and parking demand.

City Council Representative Perkins commented that they have seen a lot of versions of the plan and it has not evolved very much. The community space doesn't feel very meaningful. The building should be against the street with the parking behind it. The plan should be more creative with the community space. They should look into taking advantage of the density bonus and workforce housing. If it's going to be an amenity, then it has to be meaningful. Mr. Belden responded that the building orientation is that way because it's a unique lot. There are three frontages one on Market St., Michael Succie Dr. and Chase Dr. They have to meet the setback requirement on all sides. They can't push the building and parking because it would need a variance. This plan meets the zoning requirements.

Vice Chairman Moreau questioned if some of the apartments would be three bedrooms. The fourth floor appears to be stepped back from the edge of the first 3 stories. Mr. Kelm responded that it is not stepped back. The band is to break up the façade. There will be 18 two-bedroom apartments and 4 three-bedroom apartments.

Ms. Walker commented that this was a design review. It is an opportunity for the applicant to come before the Planning Board and it is non-binding. It is supposed to be more complete than the conceptual review. The Planning Board determined that was a complete application in the last meeting. The site plan review happens after this. The public hearing is for the public to give design feedback. Any future zoning changes on this property is not applicable for this project. This is not the time to talk about zoning. Vice Chairman Moreau agreed and commented that there will be a public hearing on zoning changes next month.

## **PUBLIC HEARING**

Land Use Attorney Scott Hogan represented owners in the Chase Drive neighborhood. Mr. Hogan commented that his clients have given the Board lots of input on zoning changes. The applicant is before the Board for a design review. If it were moved forward, then it would vest them for 1 year under the current zoning ordinance. There may be a legal issue because the applicant's plan does not comply with the current zoning ordinance. The Board had an interesting discussion about the community space requirement. Mr. Hogan commented that he had never seen an applicant who can vest when they don't meet the current zoning ordinance. The design review is closed when the Planning Board says it's closed. Tonight is not the end of the design review process if the Board has issues that are still unresolved.

Jason Carlin of 29 Brigham Lane commented that their home looks over the parking lot. This plan does not meet the spirit or the letter of the zoning requirements. It should encourage a walk able mixed-use development and ensure it compliments the surroundings. This does not compliment the neighborhood. It is not clear where the front of the building is. The Zoning Board of Adjustment rejected Michael Succie Drive as the front. The main entrance should face the main frontage, but it does not. The purpose is to create quality spaces. Members of the Board have questioned aspect of the design tonight. This will be the first building that has a flat roof in the neighborhood. Mr. Carlin questioned how the taxes would work and who would control it. They think they could build it and sell it. The residential density requirement for a single site would allow for only 9 units. The entire site would require a CUP. The applicant does not show measures to mitigate traffic, storm water safety, natural resources, or neighborhood character.

Marilee Clark of 461 Cutts Ave. commented that they were now entering an extremely difficult time for the neighborhood. The church has a history of requesting many projects with variances over the years.

They have never been denied a variance until now. There is concern about the increase in population in the neighborhood. The area is too small for the neighborhood and it will increase stress on the sewer and water. It will create parking problems. There will be increased noise and garbage. The surrounding homes will suffer devaluation. There is more to growing a community than putting up apartments.

Gloria Peacock of 355 Chase Drive lives directly across the street. Ms. Peacock was concerned and disappointed about what was proposed. The building does not fit the description of the Gateway District Zoning. The community space proposal is laughable. This is a disaster in the making for the neighborhood and the church. There will be parking problems, trash problems and neighborhood problems. The increases in parking demand and traffic will bring on safety concerns. There are 30 parking stalls proposed for 22 units. There should be 2 spots per unit. That doesn't include visitors or extra parking for church activities. This will lower property values. People will be looking for abatements on their property taxes.

Sandy O'Brien of 20 Brigham Lane commented that when they were first looking for a home in Portsmouth they thought it would be great living near a church. A recent article in the Portsmouth Herald included a quote from the church talking about their debt. The Connect Community Church and Pastor Lynn never reached out to the neighborhood. They never worried if it would go against what the neighborhood wants. If they had reached out maybe the neighborhood would have reacted with compassion and come up with a better solution. This could have been a collaboration. This will affect the traffic and safety. It will get worse and worse.

Roger Gauthier of 36 Brigham Lane is an abutter to the proposed project. This is the fourth time they have appeared before a Board. They lost the variance. They wanted a rehearing and they lost. Mr. Gauthier did not care about the church's financial difficulties. The goal is to preserve the neighborhood with decent people. It is not fair to anyone in the neighborhood to approve this. Their intentions are to build this divide the lot and make a new community.

Kevin O'Brien of 20 Brigham Lane commented that this building was out of context with the neighborhood. It is in the wrong location. The whole thing is set up to maintain parking with easements to have parking Sunday for church. The parking does not make sense. That should be looked at closely for capacity. It is going to be a big building that will stick out at the end of the lot. There should be a better arrangement for parking and a better view corridor. Property values will decrease. The apartment building could turn into a bunch of AirBnBs.

Bernice Richards of 435 Cutts Ave. did research on the gateway corridor and it seems like the purpose is to enhance Market St. This proposal does not lend itself to that. The other gateway enhancements are nice like the plantings, lighting, curbing and completion of the bridge. This proposal does not enhance Market St. The proposal didn't show the Market St. side view or the backside. That will be the main views for people passing by. The parking and trash are on Market St. They are huge trash bins.

Mary Gauthier of 36 Brigham Lane moved to Portsmouth a year and a half ago. Neither realtor mentioned this proposal. It is an unusual neighborhood. People pay substantial taxes to Portsmouth. The whole neighborhood would be impacted by this building. It's a quiet neighborhood. Most people support Portsmouth and are invested in the City. It seems like this building should be changed significantly. The church has asked for many variances. None of the other neighbors have asked for variances. Traffic will increase. This neighborhood has emergency access issues. The emergency access should be open. The parking will be an issue.

Carolyn O'Connor of 450 Cutts Ave. echoed the concerns previously outlined. This is essentially the same design that was rejected and seems like they are trying to get grandfathered in. The ZBA discussion pointed out that this design failed on 3 out of 5 criteria to grant a variance. The building alters the essential character of the neighborhood and impacts property values. It is unclear if the community space on the plans counts. It is not likely anyone but church members will stroll down the community space. The dead end pocket park looks right into the ground floor apartments. This could be a win for the church, the neighborhood and the City. However, it needs to be a smaller building that fits the space and fits the spirit of the zoning. In this plan the only the developer wins. The development doesn't fit the neighborhood or welcome people into the City.

Aaron Grass of 200 Chase Dr. commented that this plan does meet the zoning. This meets the spirit of the ordinance and will enhance the neighborhood. Everybody has an opinion and nobody will agree. People are arguing that it doesn't meet the criteria because they don't want it there. The neighborhood character is an opinion. Portsmouth has not approved anything that looks bad. There are already multi-unit homes in the neighborhood. The Planning Board will make the right decision for what's best for the City.

Susan Suarez is a member of Connect Church. This neighborhood is not normal. It sits between Market St. and I-95. There is a dry wall factory, train track, parking lot, and submarine. The proposed plan is not something different than what is already going on. The parking lot fills on a normal day. Traffic will be less because there will be tenant parking. People will not be in and out of downtown. The whole property would be updated in appearance. The parking lot would be redone with green spaces. It will improve the well being and health of the City. The green space would be a positive impact. It will benefit the neighborhood and the City. This is overall beneficial for the City and falls in the Master Plan.

Josh Jackman is a staff member at Connect Community Church and commented that this would improve the lot. The green space would be professionally landscaped. More green is always better. The gateway will benefit because the parking lot will be updated. The apartment plan will provide more housing close to downtown. It will attract people and families to add to the community. It will be an extension of the downtown. Right now the parking lot is very full from people commuting to and from work. The apartment building will reduce traffic.

Pastor Chad Lynn spoke in favor of the project. The design team is committed to meeting the spirit and heart of the Ordinance. The church and has been involved in the community. They are doing this project to help fulfill the mission. The church has spent thousands of dollars helping homeless people, there is an opioid epidemic prevention program, and they have served in the City's subsidized housing. Members of the church staff the Greenleaf Recreation Center. The intent of this project is not to make people mad. The church has struggled since Pease has closed. Pastor Lynn had 150 signatures from the congregation in favor of project. This project will be excellent and the design team will incorporate comments from the Board. The church has already invested 2 years and over \$100,000 to get to this point.

Natasha Karlin of 29 Brigham Lane commented that they just moved in and overlook the parking lot. Nobody talked about the zoning changes. They bought the house because of the view. Now a 4-story building is going up there. This is a good community. Nothing about the proposed apartment building represents the neighborhood today. This will be an eyesore and will give new tenants good views. The people in the neighborhood didn't feel like they were notified as much as they would have liked. Not everyone is looking at the newspapers or public notices. The neighborhood is open to a mixed-use space with a lower density and lower height. This could be improved, but this is not good as is.



Ed Richards of 435 Cutts Ave. commented that the focus is whether or not this building can be built on the land. This parking lot has 141 parking spaces now. The church now has a meeting space for 450 people. This building is trying to use up roughly half the spaces. They need more parking. They are building this looking at Michael Succie Dr. for the views. The frontage should be on either Market St. or Chase Dr. The length of the building should fit the site. It will also block views for people coming in Market St.

Liz Condosta of 19 Brigham Lane noted that the best part of this area is the neighborhood and the accessibility to downtown Portsmouth. There are views of downtown and the river. There are traffic issues today. The church has been a pretty good neighbor. The gateway district looks fabulous so far. Ms. Condosta agreed with the spirit of the zoning ordinance and making Portsmouth more accessible and affordable. There are inconsistencies with the spirit of the ordinance and this plan. The plan has not changed despite concerns being raised.

Kelly Boston of 465 Cutts Ave. has been a lifelong resident and been here before sharing concerns. Ms. Boston shared the same concerns as her neighbors. The main concerns are around the long-term impacts moving forward with this proposal. Ms. Boston appreciated the work the church has done in the community. However, it is unclear if they are committed to being there forever. This process should be slowed down and the plan should make some compromises.

Chelsea Gagnon grew up in this neighborhood and is a member of the church. This neighborhood has changed and grown. There have been new houses and new designs added over the years. This is not about the debt. The heart behind the church is to love the City more than we do now. This will allow for that even more. Ms. Gagnon appreciated hearing the neighborhood concerns. This church is for the neighborhood and the City.

Kyle Crossen-Langelier of 304 Leslie Drive commented that the property is across the street and has a full view of the parking lot. The full plans have not been submitted for the meeting. Ms. Crossen-Langelier was concerned about the lighting. Headlights could shine in her house because of the access change. There is also a concern about the increased utilities noise. Ms. Crossen-Langelier appreciated that the trees would be saved.

Dani Bouchard spoke in favor of the project. Ms. Bouchard lives in Brentwood, NH, but is a member of the church. This project will help repair the environment in the neighborhood. Before the big houses were built there was a habitat on the hill. This is a chance to bring back some nature that has been stripped away with the trees, shrubs, and community gardens. The water runoff will be greatly improved. The rain gardens will reduce the storm water runoff. There will be safe well-lit walking paths leading to a park. The church has done a lot of work with the community with at the Safe Harbor Recovery Center. Addiction is an epidemic. Safe Harbor is a great resource for people to find healing.

#### Second Time Speakers:

Aaron Grass of 200 Chase Drive wanted to finish addressing the traffic. The road gets busy with big events. Every neighborhood has those issues on those days. They have made provisions for parking. It's in the layout and drawings. The new mosque that is being built does not have sufficient parking, but were granted a permit. The big houses built on top of the hill blocked someone's view along the line. Those huge houses took over everything in the neighborhood. This is not a normal neighborhood. There will be less cars facing across the street toward houses, so headlights and parking should get better. It meets the zoning. They tried to build something smaller with a smaller footprint. It didn't work and wasn't approved. Now the plan fits with the zoning. All the trees and greens being planted will be good for the

neighborhood. The hedges will screen the parking lot. Everything in the town looks amazing. If it wasn't for Mr. Kelm and his projects, the downtown wouldn't be what it is.

Kelly Boston of 465 Cutts Ave. clarified that she lived on the corner of Brigham St. and Cutts Ave. and has been there 20 years. The neighborhood came to the Board 12 years ago when the assisted living facility was going to be built. It wasn't right for the neighborhood. Now there are 5-6 new houses in that area. They are big and block views, but they fit the neighborhood. The developer should come to the table with something that fits the neighborhood. The Board should reject this proposal.

Attorney Scott Hogan commented that the church wants to add 22 units because it is struggling with debt. The applicant is looking for 1 year vesting under current zoning, but it doesn't meet community space. It doesn't meet the 15% frontage required. This proposal sought numerous variances. It got reduced down to one, which did not get approved. The ZBA found that it did not meet 3 of the 5 criteria required. Mr. Hogan was concerned this proposal would have a negative effect on the single-family homes that surround it. The proposal does not meet the hardship criteria. The requested relief was denied. The plan was redesigned because the church is struggling with debt. Mr. Hogan's clients just heard they don't live in a normal neighborhood and it was not a lot to look at. This is a unique neighborhood, but not for the reasons the applicants just said. It's because it is a really valuable unique residential neighborhood. Mr. Hogan has never seen an application able to vest for one year when they don't meet the criteria. No one can say that it meets the current zoning ordinance. If those two issues aren't resolved then the Board can't close out the design review process. The neighborhood is proposing a G3 district. Giving a property owner one year of vesting is an extraordinary position. The Planning Board has the authority to decide when this is complete. The Planning Board should get an opinion from legal counsel. The Board has the authority to decide when it is complete.

Jason Carlin of 29 Brigham Lane noted that the applicants own sheets defined Market St. as the front of the building. Frontage requires 100 feet. That does not comply. The front lot line build out should be 50% and that is not met. It's a recycled design that is unchanged. The street facing entrance has not been met. The storm water is not up to current standards. The trash faces the front on Market St. A 20 by 6 foot enclosure is way too small for the residences. The snow removal maintenance needs to be outlined. Sheet C5 has a note about pushing it off to the side then it has to be hauled away. The cash strapped church won't be able to afford that. The plans and application did not address utilities. The elevation of ground floor above grade is not stated. They will need a ramp for the main entrance and there is not one depicted. This is not a new design. This building belongs downtown. The trees are about 30 feet. The building is roughly double that height. That is very tall. No one will see the massive houses because everyone will look at that building. A more modestly scaled development that faces Market St. would not be nearly as objectionable.

Roger Gauthier of 36 Brigham Lane was not against the church. Mr. Gauthier was sorry that they have exceeded their budget. The neighborhood has been up here multiple times. Every time they have come up the Boards have voted in the publics' favor. Give this a little thought and don't let the church get an exception to rules.

Kevin O'brien of 20 Brigham Lane commented that the community space was awful. The gateway was supposed to be mixed use. There is no mixed use. This is a strict land use development issue. The plans propose landscaping improvements and parking pavers. They are pretty pictures, but they don't know how all that gets paid for. It is unclear if this will be built to the standard that is being presented. Mr. O'Brien questioned if anyone had calculated the rent necessary to support all the improvements and maintenance for the structures. This building could become a 20 plus unit Airbnb with lock boxes and no people. They

could be luxury apartments. There are no permanently affordable units. It is not clear if the financials for this project would work.

Ed Richards of 435 Cutts Ave. commented that the building is placed where it is on the lot to get the views. The building needs to rotate to face Market St. Ext. or Chase Dr. It is unclear what the building will be when it is complete. Mr. Richards questioned if it would have a condo association. If that is the case, then the land that meets the community space requirements would not go with it. This process is steam rolling. The developer is going to wear the Board out. There is a lot of money to be made here. The ZBA said the building needed to be moved. The applicant is saying that it complies with the zoning, but it doesn't. The church's finance problems are unfortunate, but they can't lie this onto the laps of people in neighborhood. This is going to cost each property 5-15% loss in value. That is a 1.6 million dollar property value loss for the total neighborhood. That should not be how they solve the church's financial problems. This is disconnected from the neighborhood. Mr. Richards did not want to shut them down, there needs to be a better design. There can be a happy compromise for everyone. The zoning was changed and now they have the option to cash in and solve their problems. It is at the expense of all the neighbors. Everything will be fine for the church, but they disregard the neighborhood. It is nice to see church membership supportive of the project, but not one of them live in the neighborhood dealing with the financial consequences.

Pastor Chad Lynn commented that a lot has been said about the church's financial problems. There isn't a sane person in the room who would look for a solution after struggling for 30 years with this debt load. Pastor Lynn inherited the debt issue. There are some neighbors that live close to the church that told them they were in favor. The plan would not survive under G3 zoning. This was worked on under the zoning that is in place. Pastor Lynn appreciated the green space feedback. Let's work on it. This is not an approval decision. It's an opportunity to provide input to go work on a plan.

Sandy O'Brien of 20 Brigham Lane has lived near a church in a similar situation. It was a small church in Newburyport that struggled financially. They closed the small church and converted it into condos. The design of the homes fit in with the neighborhood. This developer and church should consider other creative solutions.

Third time speakers:

Pastor Chad Lynn commented that the church voted unanimously to get out of debt to fulfill the mission up to the sale of the entire property. The alternative to this project is selling the whole thing. Mr. Kelm is not making much money off this property. Developers usually come in and try to maximize the property. This is a tight rope between what is legally allowed, keeping the church, and fitting in with the neighborhood. Selling the building will create a worse situation. This plan is trying its best to keep with the Master Plan of the City. This plan will tie in better than the parking lot that is there now. The congregation will do what it has to do to get out of debt. They don't want to move, but will if they have to. They are willing to work with the City.

Jason Karlin of 29 Brigham Lane commented that this application was woefully underdeveloped and does not include enough details. Mr. Karlin questioned if the utilities and safety access would be sufficient. The Pastor just said they need the money. The calls into question the one ownership plan. The Board should demand that the design team come back with all of the scaled elevations in context with the neighborhood.

Sandy O'Brien of 20 Brigham Lane commented that they were asking kindly for a nicer and more creative solution and that is being met with threats.

Ed Richards of 435 Cutts Ave. commented that now the Board knows what they are concerned about this and why the neighborhood wants a G3 zone. Then if the land is sold something more compatible with the neighborhood will go in.

Aaron Grass of 200 Chase Drive commented that some of his words were twisted about calling the neighborhood not normal and nothing to look at. The property that he owns is not attractive to look at. Any improvement would improve that whole area. The properties and environment on the hill are beautiful. Mr. Grass wanted to be at the same level as everyone else.

Natasha Karlin of 29 Brigham Lane commented that she has been a Portsmouth resident for 20 years. The 22 units plan does not comply today, so 150 units would not either. It is sad to hear threats about that.

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

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

City Council Representative Perkins requested that Ms. Walker explain why the orientation of the building and the front of the property are how they are. Ms. Walker responded that the property has 3 frontages. One of the reasons they were going to the zoning board was because the frontage is the same whether it is the entrance or not. Frontage refers to a side that is on a street. The orientation is driven in large part by having to meet those setback requirements. The front lot build out condition changes because they doing this as a development site, which means that the church is part of the building. Because of that have they have to make an effort to toward the front build out but they don't have to meet it.

City Council Representative Perkins commented that the applicants were here for the design process. They will do a thorough review of the plan at the site plan level. City Council Representative Perkins questioned if they voted that the design phase was complete, would it change their rights. Ms. Walker responded that they would still have to comply with the zoning ordinance. City Council Representative Perkins requested that Ms. Walker talk about parking and the ordinance. That would be something the City would look for. Ms. Walker confirmed that they would consider shared parking for the whole project and there is a shared parking requirement in the ordinance. Parking relief would come from the Planning Board with a CUP.

City Council Representative Perkins noted that there were some concerns about the ownership, and questioned if they would be required to remain under one ownership after the project was complete. Ms. Walker confirmed that was correct. That would be in perpetuity. If they change that, then it would change the site plan approval and they would have to address that with the City.

Vice Chairman Moreau clarified that when they calculated the combined space for community space it would be looking at a number for the whole site. The community space is mostly on the church side. Ms. Walker confirmed that they would need 20% of the total development site to be community space. Vice Chairman Moreau clarified that even though it was shared parking they would have to meet all of the residential and all of the church parking requirements because they would be looking at the whole site. They would get into the details of parking, traffic and safety at the site plan level. The purpose of the design phase is to look for giant red flags that would prevent this plan from moving forward. It looks generally at what the project is and if it will conform to the zoning. The community space needs work. It's not great to have the trash on Market St. but the orientation of the building is driven by zoning. All of the comments are feedback for the applicants to incorporate in their site plan.

Ms. Record reiterated that this was a non-binding decision. Ms. Walker confirmed that was correct. The only thing this would do would vest them under the current zoning for a year. So they would not be subject to new zoning. Vice Chairman Moreau added that this was binding them to current zoning for a year, but it was non-binding to the planning. Ms. Record clarified that the church would have to sell the whole property if they wanted to sell it after the project. Vice Chairman Moreau confirmed that was correct. This property is combined in perpetuity as long as they are granted approval in this way.

Ms. Henkel questioned if the orientation of the building was to provide a gateway. Ms. Walker responded that there is a front lot build out requirement. The zoning does not accommodate lots like this with frontage on multiple streets. A development site allows them to make efforts toward the front lot build out, but they don't have to comply totally.

Vice Chairman Moreau commented that the Board's job tonight was to decide whether or not they have heard enough from the development team. If they want to hear more, then the Board needs to let them know what they would be looking for. The Board can end the design process, so the team can start toward a site plan and CUP, or they can come back in for another design review.

City Council Representative Perkins commented that she was interested in hearing what the Board thought about closing the design process tonight in light of the fact that they are considering G3. A lot of the comments they heard tonight are not pertinent to the question in front of the Board. 22 units on a lot of this size is a low density for the vision of a Gateway District. They are supposed to create a denser and walkable gateway. There is opportunity to do more dense and affordable housing. This is private property and they don't need to tell the Board why they are doing it. They are allowed to build within the zoning. The zoning was developed through an extensive 2 years long process. There was a lot of careful consideration given to this. City Council Representative Perkins was inclined to vote complete because it was a reasonable plan. There could be a much denser plan could be in front of us.

City Council Representative Perkins moved this proposal has completed the Design Review process, seconded by Mr. Kisiel.

Mr. Kisiel commented that if the Board moved forward with G3, then they would have a public hearing and it would be sent to City Council. It is a multi-month process. It's not easy to just rezone a property. Mr. Kisiel would be excited to see 22 new apartments. The City needs this. It's a difficult piece of property with frontage issues. There is an entire design process to hash out issues. Mr. Kisiel commented that he would vote in favor.

Vice Chairman Moreau clarified that Alternates Ms. Henkel and Mr. Clark would be voting tonight.

Mr. Gamester clarified that the entire development site would vest under current zoning. Vice Chairman Moreau confirmed that was correct.

Mr. Clark commented that he felt that this did not meet the intent of the gateway zoning. The community space not needs a lot of work. Mr. Clark commented that he would be voting against closing the design phase. Ms. Walker responded that the design review process was put in place as a separate piece from the site plan review. A lot of what was raised tonight would be worked out in the site plan review process. Design review was put in to let developers work within zoning that is currently adopted and eliminate confusion. The Board shouldn't consider a proposed zoning amendment as part of the design review

process. The project presented has to try to show they meet the current zoning regulations. Not all the details are provided in this phase. The Board cannot prolong the design review process indefinitely.

Mr. Pezzullo clarified that they were not voting that the current proposal meets all zoning requirements because that will be fleshed out in site review process. Ms. Walker confirmed that was correct. If there are significant concerns that is justification to postpone. This is a non-binding decision.

Vice Chairman Moreau commented that they put in the design review process when they were looking at changing some of the zoning. It seemed unfair to parties that were working on plans and projects in current zoning when zoning may change. The Board spent 2 years developing the gateway zoning. It was publically advertised. There were a lot of meetings, consultants, and feedback. There is nothing in these plans that raises a red flag. It needs a lot of work. They will need to comply with storm water, ownership and community space requirements. Vice Chairman Moreau supported ending the design review process and beginning the site plan review process.

The motion passed in a 7-1 vote.

Vice Chairman Moreau encouraged the church to meet with the neighborhood to work on the project.

B. Amendment to Chapter 10, Article 4, Section 10.421.10 – DISTRICT LOCATION AND BOUNDARIES of the Zoning Ordinance of the City of Portsmouth and the City of Portsmouth Zoning Map to remove a portion of the property located at 361 Hanover Street at Assessors Tax Map 138, Lot 63 that fronts on Hanover Street from the Downtown Overlay District and Amendment to Chapter 10, Article 5A, Section 10.5A21.10 – CONTENTS OF REGULATING PLAN and the City of Portsmouth Zoning Map 10.5A21B – BUILDING HEIGHT STANDARDS MAP to extend height area 2-4 stories (50' max) along the entirety of Foundry Place.

### **SPEAKING TO THE APPLICATION**

Planning Director Juliet Walker spoke to the application. This zoning amendment addresses 361 Hanover St. The property as it currently exists is in the CD-5 zoning district and in the Downtown Overlay District. That adds another layer of zoning requirements. Another existing condition is the regulated height. The height area for this property going down Hanover St. is a height area of 2-3 stories with a 40-foot maximum. Bridge St. and Hill St. are 2-4 stories or 50 feet maximum. Foundry Place currently does not have an indicated height area. That means properties located on Foundry Place with no frontage do not have a height area. This is not an issue because it is the garage, which is municipal. It is also Lot 2, which is community space. The height for properties across the street are based on the other streets they abut. 361 Hanover St. is currently subject to a 2-3 story with a maximum 40 feet height. There is also the North End incentive overlay district. Properties in that overlay have the ability to increase their building height by 1 story or 10 feet and have a 30,000 footprint. This building is half in the downtown overlay, but not in the North End Overlay. The proposed advertised amendments are to adjust the Downtown Overlay District boundary to align it with the North End Overlay. This would remove 361 Hanover St. from the Downtown Overlay. Then they would not be required to have a commercial property on the first floor. All of the other buildings on Hanover St. in that section are residential. It also removes the exemption. They would have to comply with all parking requirements. The other adjustment is the addition of a height area on Foundry Place. The building height area on Bridge St. and Hill St. would be extended down. That would mean that the first 50 feet back of the building from Hanover St. would have to comply with the lower height and the other half could go up to the higher height and even use an incentive for an extra floor. Staff is supportive of setting a height area for Foundry Place. Staff also had some related

amendments to talk about. The Board can choose to add them, and this would be advertised again with those additions to give proper notice. One potential is to downzone the property from Cd5 to Cd-4 L1 for the portion of the property on Hanover St. It includes more residential land uses and style and scale. It limits non-residential to office only. Another would be to modify the restriction on first floor residential on any property in the Downtown Overlay. They are more like residential neighborhoods in a downtown context. It may not make sense to restrict the uses. The intention is to make sure it's an active streetscape, however this area is more residential. Right now in CD-4 downtown is restricted from certain building types that are accepted for residential uses. There's also a restriction on height, which is hard for residential uses.

Mr. Kisiel requested clarification on the two different height requirements proposed for 361 Hanover St. Ms. Walker responded that if a building fronts on two building areas, then the lower height applies 50 feet back into the building. Then they can take advantage of the higher height for the rest.

City Council Representative Perkins questioned if the 50 feet would be measured from the parking lot. Ms. Walker responded that it they would take the average grade plain around the building in increments of 5 feet. City Council Representative Perkins clarified that it would be 50 feet from halfway up the retaining wall. Ms. Walker confirmed that was correct. City Council Representative Perkins commented that she was inclined to support the changes in front of the Board tonight. The additional amendments would need to come back but they also made sense. The restriction on the first floor residential area is at a major intersection downtown. There should be more detail about the busier areas. Ms. Walker responded that side of Middle St. is more residential than the State St. side. That portion of State St. could go either way. That intersection is to the south of Discover Portsmouth and abuts a pretty residential area. If the Board wants to those changes to be advertised, then Staff can provide examples of the existing streetscapes and bring more information back.

Ms. Walker commented that the Board has a couple options. One is to consider the additional amendments and bring this back next month. The other is to proceed as currently advertised, and they can make minor revisions before it goes to City Council.

Vice Chairman Moreau commented that she liked the idea of extending CD-4 L1 and agreed that 361 Hanover St. is an island by itself. It would be good to take a longer harder look at those areas and add them to what is there now. Everything talked about tonight may be too many changes at once.

## **PUBLIC HEARING**

Elizabeth Bratter of 45 McDonough St. spoke in favor of the amendments. However, the adjustments should better align with the topography of the area. This is an opportunity to correct the zoning and there should be more time taken to consider this. It doesn't make sense to split a property into two different zones. They could run the line behind 361 Hanover St. The Hanover building is already high because of the topography. It should have no more than 2-3 stories in height. It is in a predominantly residential neighborhood and should consistent with what is there.

Nicole Kohler of 44 Rock St. commented that sometimes when residents get notices it is not clear what is going on. Ms. Walker responded that they could always call the Planning Department for questions.

Katie Beaudoin of 31 Sudbury St. is an abutter to the building. Ms. Beaudoin was concerned about having a 60-70 foot building as a neighbor. There is not enough information from the neighborhood to make that

decision. Let us come back as a community to make a more informed decision. It is good there could be residence on the bottom, but Ms. Beaudoin did not want to live next to a 70-foot building.

Robin Husslage of 27 Rock St. commented that the topography plays an important roll in this. The level is so high already this building could end up being enormous.

Bill Norton represented the owners of 361 Hanover St. commented that right now this is confusing to look at, and it would be good to clarify the zoning with these changes. They would eliminate confusion. The building is no higher than the top level of garage. It should be compatible with the new Deer St. development.

Peter Happny of 66 Rock St. opposed the change because he preferred to see a commercial space like that stay commercial. It encourages people to work in the City. If the building goes higher, then it will block the sun. They need to keep spaces for people to work in.

Martin Burns of 288 Hanover St. was against the proposal. Mr. Burns has lived in the neighborhood a number of years. The zoning changes have not been beneficial. This could present a parking problem if more residences are added. The proposal sounds good, but the building will be too high.

Nicole Kohler of 44 Rock St. commented that the Heinemann has been a good neighbor to the neighborhood. It doesn't make sense to change the zoning when they don't know what is going in there.

Elizabeth Bratter of 159 mcdonough commented that she would like to see the Heinemann Building turned into CD-4 L1. There should also be a 2-3-story height restriction for Hill St. and Hanover St. 2-3 story. Hill St. has one big empty parking lot on it that is zoned CD-5. That is big for a development. The top end of Hill St. is privately owned. Hill St. needs to be looked at carefully. There should be less commercial use. It should match the residential area around it.

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

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

Mr. Gamester moved to modify the proposed amendments and schedule another public hearing for a future meeting, seconded by Mr. Clark.

Mr. Clark noted that it would be helpful to understand the topography and scale.

The motion passed unanimously.

### **III. ADJOURNMENT**

Mr. Gamester moved to adjourn the meeting at 10:33 p.m., seconded by Ms. Record. The motion passed unanimously

### **NOTICE TO MEMBERS OF THE PUBLIC WHO ARE HEARING IMPAIRED**

**If you wish to attend a Planning Board meeting and need assistance, please contact the Human Resources Office at 610-7270 one week prior to the meeting.**