

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

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

**7:00 PM**

**December 16, 2021**

**MINUTES**

**MEMBERS PRESENT:** Dexter Legg, Chair; Elizabeth Moreau, Vice Chair; Karen Conard, City Manager; Peter Whelan, City Councilor; Ray Pezzullo, Assistant City Engineer; Colby Gamester; Corey Clark; Peter Harris; Rick Chellman; Polly Henkel, Alternate;

**ALSO PRESENT:** Peter Britz, Interim Planning Director; Stefanie Casella, Planner 1

**MEMBERS ABSENT:**  
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**I. PRESENTATIONS** (*Time: 6:00 pm*)

**A. FY 2023-2028 Capital Improvement Plan**

City Manager Conard commented that this presentation will be on the City’s web site as a resource going forward. The CIP helps inform the budget. It’s a planning document but it does not appropriate money. It is made up of projects proposed from staff and public input about what is appropriate for the 6-year horizon. The planning process begins in September. Money will be appropriated for fiscal year 2023 when the budget is adopted by the City Council in March. The document is organized by sections for different projects. It includes citizen requested projects, studies involved in evaluated projects, historical documents, projects by wards. 1,300 historical documents have been identified for preservation and an additional 1,000 that still need to be evaluated. There are currently 98 projects in the document and 14 of them are new. The CIP will not be more than 2% of the previous budget. This is 1.49%, so it is well below the 2% line. The FY 21 and 22 reduction was a direct result of the pandemic restraint. The CIP bonding has target of no more than 10% net debt service. It is 8.91% for this proposal.

Fire Chief Todd Germain spoke to the projects proposed by the Fire Department some of which included: vehicle replacements, medical equipment, protective clothing replacement, breathing apparatus equipment, cardiac monitor replacement.

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Public Works Director Peter Rice spoke to the projects proposed by Public Works some of which included: a new brine machine.

Police Chief Mark Newport spoke to the projects proposed by the Police Department some of which included: a new facility land acquisition, new police department facility, upgrades to current facility.

School Business Administrator Nathan Lunney spoke to the projects proposed by the schools some of which included: improvements across the district, turf field replacement, tennis court replacement, high school facility upgrades, elementary school facility upgrades, and Sherburne School upgrade.

Abby Mills from the Finance Department spoke to proposed projects from that department some of which included: a city document storage facility and document restoration, preservation, and scanning.

Interim Planning Director Peter Britz spoke to proposed projects from the Planning Department some of which included: conservation land acquisition, historic district guidelines, trail development projects, McIntyre Building redevelopment, climate action plan, groundwater study.

Recreation Director Todd Henley spoke to proposed projects from the Recreation Department some of which included: additional field, phased build out of the Greenland Rd. recreation facility, playground improvements, Leary Field bleacher upgrade, pool upgrades, community campus upgrades.

Public Works Director Peter Rice spoke to the projects proposed by Public Works some of which included: the Pierce Island Master Plan, park and monument improvements, tree and greenery program, Prescott Park Master Plan and capital improvements, city fuel station replacement, Bow St. overlook maintenance, City Hall HVAC repairs, transfer station upgrades, cemetery improvements, retaining wall maintenance, sound barriers along I-95 corridor, citywide facility improvements, undergrounding downtown aerial utilities.

Deputy City Manager Suzanne Woodland spoke to the projects proposed by the IT Department some of which included: technical service upgrades, server upgrades, licensing, citywide switch to Microsoft Office 365, financial software upgrade, record retention software.

Police Chief Mark Newport spoke to the projects proposed by the Police Department some of which included: public safety record management and dispatch system upgrade.

Public Works Director Peter Rice spoke to the projects proposed by Public Works some of which included: parking lot paving, parking meter maintenance.

Interim Planning Director Peter Britz spoke to proposed projects from the Planning Department some of which included: the Hampton Branch Rail Trail, bike/ped master plan, Middle Street bike lane connection to downtown, wayfinding system, Greenland Rd. bike/pedestrian improvements, Market St. side path, US Route 1 new side path, US Route 1 crosswalk and signals, Maplewood Ave. downtown complete streets program, Elwyn park traffic calming and pedestrian improvements, Borthwick Ave. bike path.

Public Works Director Peter Rice spoke to the projects proposed by Public Works some of which included: Market Square upgrades, Sagamore Ave. upgrades, sidewalk reconstruction program, traffic signal upgrade program, citywide intersection improvements, Russell/Market intersection upgrade, citywide bridge improvement program, Cate St. bridge replacement, Coakley-Borthwick connector roadway, traffic calming on Middle Rd, Aldrich Rd. and South St., street paving for the City and Pease, Junkins Ave. improvements, Pinehurst Rd. drain improvements, Madison St. road improvements.

Deputy Director of Public Works Brian Goetz spoke to the proposed water projects some of which included: annual water line replacement, well stations improvements, reservoir management, new groundwater source, water storage tank painting, water storage tank improvements, Madbury water treatment plan facility repairs and improvements.

City Engineer Terry Desmarais spoke to the proposed sewer projects some of which included: annual sewer line replacement, Pease wastewater treatment facility upgrades, wastewater reuse at Pease, long term control plan related projects, wastewater pumping station improvements, Woodbury Ave. sewer separation, sewer mains and service funding for Sagamore Ave. sewer extension, Mechanic St. pumping station upgrade.

Public Works Director Peter Rice, spoke to the proposed combined projects some of which included: Bartlett St. corridor, Fleet St. utilities upgrade and streetscape, Edmond Avenue upgrades, citywide storm drain improvements, Chapel St. upgrades, DPW complex improvements, The Creek neighborhood reconstruction.

Mr. Clark requested detail on if any projects would help address anything with new the MS4 permit. Mr. Goetz responded that they were currently doing a Master Plan for the storm water permit, which will require site specific projects. They are going through the exercise of locating projects and cost. Then they will start implementing projects in the out years. Public Works Director Rice added that the brine machine was a direct response to the permit.

Mr. Clark questioned if land acquisition outside the Bellamy Reserve was still ongoing. Mr. Goetz confirmed that they were working on pursuing another property. They will utilize reserve Enterprise Funds and receive a 50% match from the State. This will continue to help optimize it. There are conservation easements as well.

Mr. Clark noted that the additional recreation fields project looks like it was pushed out to 2028, but the transfer station is for 2026. Those projects were supposed to go hand in

hand. Mr. Clark questioned if there would be any conflict separating them. Public Works Director Rice did not think so. There was a citizen request to extend the bike/ped access through the building to that area. That request has been identified. There should not be any conflict.

## **PUBLIC HEARING**

Ben Doyle of 4 October Dr. Greenland, NH is a student of Portsmouth High School. Mr. Doyle commented on the proposed climate action plan project. Mr. Doyle is the liaison between Eco-Club and the Mayor's Blue Ribbon Committee on sustainability. Portsmouth has been an eco-friendly municipality for more than a decade and is striving to be as sustainable as possible. The Blue Ribbon Committee is looking for tangible options and is keen on investing in concrete practices to maintain environmental practices. The climate action plan is the central jumping off point. Mr. Doyle urged the Planning Board to include that project. As a young person in Portsmouth, it would be especially meaningful to achieve this and help further the progress.

Effy Malley of 428 Pleasant St. commented that she was on the Sustainability Committee and spoke in favor of the climate action plan. A climate action plan would support actionable steps and technical points to identify targeted emissions. This supports other goals in the Master Plan as well.

Larry Lariviere was a member of the Blue Ribbon Committee and commented in support of the climate action plan. Mr. Lariviere supported the request for additional staff to work with the Planning Board and Sustainability Coordinator to begin the process to create a climate action plan. The City needs to do more to claim that they are an eco-municipality. They need to back it up with action. This will benefit all of us.

Ellen Legg of 4 Moebus Terrace spoke to recognize some members of the Planning Board who were not reappointed by the current Mayor. They have put in a lot of work. The City has a problem of beating up Board members and then sending them out without much thanks. Dexter Legg has lived here for 40 years. He has shown dedication to the City by raising his family here and serving on several boards over the years, including this one. He has been maligned by some City Council members and some future members of the Planning Board. They can be kinder than that. Ms. Legg also thanked Colby Gamester as well. He is the one of the most hard working and honest people she knew. He has worked hard to stay in Portsmouth and serve on the Planning Board without any agendas. It is important to say that because things have gotten out of hand with City politics. Ms. Legg thanked Chairman Legg and Mr. Gamester for their service.

Matt Glenn of 34 Harrison Ave. served on the board of SABR and voiced strong support for the bike/ped project opportunities in the CIP. In 2014 a lot of effort went into the bike/ped plan but only a few projects have been completed. This is an exciting opportunity to connect the fragments and make a network. The newest athletic field and plans on community campus will have a dirt road put in for emergency access only. The multi-use path won't be available until 2028. Walking access should be allowed now.

Mr. Glenn also expressed for the skate park plan to move forward with the Middle Rd. improvements. The Route 1 side path should include the section from Elwyn Rd. to the high school. Safety improvements are needed. These projects are relatively inexpensive.

Christina Dubin or 336 Miller Ave. also expressed support for the CIP to include funds for the climate action plan. They set a good policy. They need consistent data collection and goals across the City and to create plans to address the changing environment.

Lenora Wise Bronson of 828 Woodbury Ave. commented that they requested traffic calming on Woodbury Ave. and the adjacent streets. Ms. Wise Bronson questioned what the status of that project was. The residential area of Woodbury Ave. is very dangerous. Traffic calming has been requested for a long time. There have been a lot of accidents. There needs to be strategic stop sign locations and speed tables. Cars speed and tailgate. It's a dangerous situation. Chairman Legg commented that he would ask for City staff to comment on that query at the end of the hearing.

Page Trace of 27 Hancock St. spoke as a resident and agreed with Ms. Wise Bronson's comments. This request went to the Parking, Traffic, and Safety Committee and now it is somewhere out there in the middle of nowhere. The City needs to take Woodbury Ave. seriously. Someone needs to take action on this.

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

## **DISCUSSION AND DECISION**

Chairman Legg requested for City staff to comment on the status of the Woodbury Ave. traffic calming request. Public Works Director Rice responded that the request did go to PTS and it is being reviewed. Data is being collected. The request is not being ignored. It is just not in the queue for this year. Traffic calming identification is an ongoing effort. It's not that this request is not important. It's just that other projects have been identified prior to this one. They are moving forward. They are not ignoring the situation. If City Council wants to push this project forward, then that's their prerogative.

Mr. Gamester moved to adopt the Capital Improvement Plan as presented and pass to the City Council for consideration, seconded by Mr. Clark.

Mr. Gamester commented that this was the 8<sup>th</sup> CIP process that he has sat on, and it is one of the best parts of the year. The City Manager and staff did a good job putting this together.

Vice Chairman Morea commented that she sat on the subcommittee, and they did talk about the Woodbury Ave. traffic calming. Monies are allocated toward traffic calming every year.

Mr. Chellman thanked the staff and noted a lot of work went into this.

Chairman Legg commented that this was his 6<sup>th</sup> year involved with the CIP process. If someone wants to look at one document to understand the City, this is it. The document will show them what's happened and what's planned for the City. Chairman Legg thanked the City staff again.

The motion passed unanimously.

## **II. APPROVAL OF MINUTES** (*Time: 7:00pm*)

### **A. Approval of the Planning Board minutes from the November 18, 2021 meeting.**

Vice Chairman Moreau recused herself because she was not present at the November meeting.

Mr. Gamester moved to approve the Planning Board minutes from the November 18, 2021 meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

Mr. Chellman commented that after the last Planning Board meeting it came to his attention that they were in a situation with Planning Board members that doesn't comport with the state statute. This was reviewed with the NH Municipal Association, and they agreed. The minutes need to reflect that there is concern that there is an ex officio member on the Board. That could have a detrimental effect on any action the Board takes.

Chairman Legg commented that this was discussed with the City Attorney Bob Sullivan. Attorney Sullivan noted that this Board is not the place to resolve this issue. The Planning Board is not responsible for appointing members to the Board. That authority is invested in the City Council. The Council has voted two current ex officio members to this Board unanimously. They will serve in that role until the City Council makes a different decision. Mr. Chellman should bring his concerns to the City Council because they have the authority.

Mr. Chellman clarified that there were three ex officio members, City Manager Conard, Mr. Pezzullo, and City Council Representative Whelan. Mr. Chellman confirmed he would address this with the City Council. However, this Board does have the authority to remove a member from action. Chairman Legg responded that it did not. They have the authority to make a recommendation to City Council. This is not the place to debate this.

## **III. DETERMINATIONS OF COMPLETENESS**

### **SITE PLAN REVIEW**

- A.** The request of **North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners)** for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting Site Plan Review approval.

Mr. Gamester moved to determine that the application is **complete** according to the Site Plan Review Regulations, and to accept the application for consideration, seconded by Vice Chairman Moreau. The motion passed by an 8-1 vote. City Council Representative Whelan opposed.

- B.** The request of **Martingale, LLC (Owner)**, for property located at **99 Bow Street**, requesting Site Plan Review approval.

Mr. Gamester moved to determine that the application is **complete** according to the Site Plan Review Regulations, and to accept the application for consideration, seconded by Vice Chairman Moreau. The motion passed by an 8-1 vote. City Council Representative Whelan opposed.

- C.** The request of **Dagny Taggart, LLC (Owner)**, for property located at **93 Pleasant Street** requesting Site Plan Review approval.

Mr. Gamester moved to determine that the application is **complete** according to the Site Plan Review Regulations, and to accept the application for consideration, seconded by Vice Chairman Moreau. The motion passed by an 8-1 vote. City Council Representative Whelan opposed.

- D.** The request of **Torrington Properties Inc. (Applicant)**, on behalf of **2422 Lafayette Road Associates, LLC (Owner)**, for property located at **2454 Lafayette Road** requesting Site Plan Review approval.

Mr. Gamester moved to determine that the application is **complete** according to the Site Plan Review Regulations, and to accept the application for consideration, seconded by Vice Chairman Moreau. The motion passed by an 8-1 vote. City Council Representative Whelan opposed.

#### **IV. 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. REQUEST TO POSTPONE** Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting a wetland Conditional Use Permit under section 10.1017 to construct 50 town homes on an undeveloped lot. The (Applicant) is proposing five areas of wetland impact for a total of 21,350 square feet of permanent impact and three areas of temporary impact for a total of 2,350 square feet. Said property is shown on

Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. **REQUEST TO POSTPONE (LU-21-98)**

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

Mr. Gamester moved to postpone this application to the January 20, 2022, Planning Board Meeting, seconded by Mr. Clark. The motion passed unanimously.

- B. REQUEST TO POSTPONE** Request of **Ricci Construction Company Inc., (Owner)** and **Green & Company Building & Development Corp., (Applicant)** for property located at **3400 Lafayette Rd** requesting Conditional Use Permit for a Development Site in accordance with Section 10.5B40 of the Zoning Ordinance and Site Plan Review approval for construction of a 50-unit multi-family residential development that includes community space and related landscaping, drainage, paving, utilities and other site improvements. Said property is shown on Assessor Map 297 Lot 11 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District and the Natural Resource Protection (NRP) District. **REQUEST TO POSTPONE (LU-21-98)**

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

Mr. Gamester moved to postpone this application to the January 20, 2022, Planning Board Meeting, seconded by Mr. Clark. The motion passed unanimously.

- C. REQUEST TO POSTPONE** The request of **Gregory J. Morneault and Amanda B. Morneault (Owners)** and **Darrell Moreau, (Applicant)** for property located at **137 Northwest Street** requesting a Wetland Conditional Use Permit under Section 10. 1017 of the Zoning Ordinance to impact 5,062 square feet of wetland buffer and 45 square feet of tidal wetland. The proposed new home and existing turnaround is partially within the 100' tidal buffer zone of the North Mill Pond. In addition to the new home the applicant is proposing to remove an existing gravel turnaround and install a new paved parking apron for City vehicles to turn around. This new turnaround and the City pump station are all within a new easement. In addition, there is a plan to upgrade the stormwater outfall to protect against erosion. Said property is shown on Assessor Map 122 Lot 2 and lies within the General Residence A (GRA) District and Historic District. **REQUEST TO POSTPONE (LU-20-222)**

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



Mr. Gamester moved to postpone this application to the January 20, 2022, Planning Board Meeting, seconded by Vice Chairman Moreau. The motion passed unanimously.

## **V. PUBLIC HEARINGS – NEW BUSINESS**

- A.** The request of **North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners)** for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting a Conditional Use Permit as permitted by Section 10.1112.62 of the Zoning Ordinance and according to the requirements of Section 10.1112.14 to allow 113 off-street parking spaces including 18 reserved spaces to be provided on-site and 25 spaces to be provided on a separate lot where a total of 138 are required and Site Plan Review approval for the demolition of three existing buildings and construction of the following: 1) a 5-story mixed use building with 66,676 gross floor area and 16,629 sq. ft. building footprint including 7,720 sq. ft. of commercial use on the ground story and 32 residential units on the upper stories; 2) a 5-story 124-room hotel with 65,980 gross floor area and 14,622 sq. ft. of building footprint; 3) 34,427 sq. ft. of community space as well as associated paving, lighting, utilities, landscaping and other site improvements. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

Mr. Gamester moved to review Public Hearings – New Business Items A and B together and vote on them separately, seconded by Vice Chairman Moreau. The motion passed unanimously.

## **SPEAKING TO THE APPLICATION**

Evan Tormey spoke to the application. This project was first here in December 2020 and was back again in March. Input from this and other Boards has made this plan better. The project meets a number of the City's Master Plan goals. The plan was developed in partnership with the City for the North Mill Pond greenway and community park. The proposed greenway site area is located on private property with the exception of the proposed public park. This project will contribute to the ongoing redevelopment of the North End. The proposed development improvements to the streetscape include wide sidewalks, landscaped areas, and hardscaped areas. There is one mixed use building and one hotel proposed for this site. The project will provide over half an acre of greenway trail. The total community space will be 31% of the site. The plan will significantly improve storm water runoff from the site and the neighborhood. The plan will remove impervious surface and provide the City with an easement to access the storm water drain. Since the project was last here, they have made some significant changes in response to feedback. The density has been reduced. The residential units were reduced from 60 units to 32 units. The hotel rooms have been reduced from 128 to 124 rooms. The surface parking has been significantly reduced by including a puzzle lift system. There is no parking or building in the 50-foot setback. The amount of parking and building in the 100-foot buffer has been reduced. More landscaping and a berm were added in the buffer. The space between the 2 buildings has

been increased to make it more pedestrian friendly. There is a net reduction of over 7,000 sf of impervious surface. If the reserve parking is never built, then the net reduction is over 10,000 sf. Wayfinding signage and entrance markers were added to the greenway. This project team worked closely to coordinate with the landscaping and design of the City's abutting property. It will have an enormous beneficial effect on the shoreline and pond.

Patrick Crimmins from Tighe and Bond spoke to the site plan. The applicants have incorporated feedback from City Boards, staff, and the public. This is also being reviewed by the HDC. The property includes 425 linear feet of tidal wetland and buffer. These urban lots were historically filled in the past. It is a highly disturbed site that had industrial use on it in the past. The site currently has buildings and parking lots. The northern portion of the site includes an old boat ramp, piers, culvert, headwall, and outlet. The site is previously disturbed with buildings, maintained lawn, and parking lots. The existing vegetation on the site are invasive species. The existing conditions degrades the water quality in the pond. Runoff directly discharges into the pond today with no treatment. The existing culvert does not have an easement. There are no drainage systems on site. Many stated goals in the Master Plan involve this greenway. The City has the abutting parcel and are proposing a greenway and park for that site. Projects are not connected but this project plays a critical role in connecting the trail to this park. The project complies with the zoning ordinance. The first new building will be a mixed-use residential building with office retail. The upper floors step back. The second building is a 5-story hotel building. There will be one single drive off Raynes Ave. The plan meets site plan regulations to only provide one driveway. There is emergency access along the whole site. They can access all sides of the buildings. During the TAC review, staff requested that Raynes Ave. be converted to a one-way street. That is shown on the plan. They provided a traffic study for the project that contemplated a 2 way road but were asked to show one way street. The findings were that there was no significant impact in the area. This was peer reviewed by TEC and they agreed. The study was done based on the higher density. The total parking required is 138 spaces. On the first iteration of this plan they had 111 surface parking spaces. Now that the density has been reduced and creative parking solutions were implemented there are 59 surface spaces. 18 of those spaces are highlighted for future reserve. Only 41 will be built at this time. The screened lift systems will have 54 spaces and will be covered with the mixed-use building. The CUP is for shared parking off site. The proposal is to share 25 spaces with 145 Maplewood Ave. It is an office use so they will have off setting peaks and the parking will work well together. The plan is dark sky compliant. There will be lighting shields along the pond side, so light won't spill onto the water. The streetscape improvements will include city standard lighting. There will be a connection to the trail off Maplewood Ave. There will be pedestrian connections to the trail throughout the site. The sidewalk connects out to the site. There will also be a community space plaza, which will provide another connection to the park. The North Mill Pond trail is 10 feet wide and completely out of the 25 foot buffer except for where it will connect to the pier and kayak launch. The proposal is to rehab the pier and kayak launch and make that a public amenity. The intent would be to replace them in kind. The landscaping design works with the City's design. The storm water treatment improvements will be a significant upgrade. Utilities will connect off Raynes Ave. running down the middle of the driveway. They will also be upgrading the water main in Raynes Ave. The proposed treatment will include storm water treatment units and incorporate an underground detention system to mitigate temperature and peak runoff. The path will have porous asphalt, but it will be lined because they are not allowed

to infiltrate on the site. The storm water design will replace the existing culvert that discharges the neighborhood runoff. They will grant the City an easement to the culvert. In addition to the culvert reconstruction and easement they will also incorporate a storm water quality unit for neighborhood runoff. There is no treatment today. The plan will provide 34,427 sf of community space, including 27,352 sf along the North Mill Pond. Providing this space will help the City realize a goal of their Master Plan. The community space makes up 32.1% of the parcel. The proposed project will provide an overall improvement by reducing impervious surface in the 100-foot buffer. All impervious will be removed from the 0-25 foot, and there will be 67 sf of existing sidewalk in the 25-50 foot. The amount of impervious surface will be reduced by 3,283 sf in the 50-100 foot. Overall, the net reduction is 7,070 sf. If the reserve parking is never built, then the net reduction would be 10,100 sf. Reduction. The trail is a critical component, and the site will have significant landscaping.

Bob Ulig from Halverson Design with Tighe and Bond spoke to the landscaping plan. The building footprint and setback along Raynes Ave. allows for an active street edge and will tie the whole North End District together. It allows for the spill out of active programs for ground floor uses. The area between buildings has seating areas for the residents and public. The trail has been coordinated with the City to make sure it seamlessly integrates. The landscaping will enhance the relationship with the pond and encourage public use. The buffer plantings are intended to enhance the ecology and separate people from the water's edge while letting them appreciate the pond. Keeping the people from approaching the shoreline will help to prevent degradation. The streetscape will include brick edging strips to highlight furnishing zones. They will have the same tree grates as across the street. There will be a tabletop drive between the buildings to indicate it is a pedestrian space. The spill out areas at the corner of Raynes Ave. and Maplewood Ave. would provide a restaurant terrace and additional plantings. The planting strip will include evergreens and deciduous trees that will create seasonal interest. The dumpster enclosure in the back area will be screened. The area between 3S Art Space and the hotel will be creatively paved and connect to the trail. It will be a multi-use area for community activities. The entryways to the greenway will be identified with similar gateway material, plantings, and wayfinding signage. There will also be a series of different seating areas along the greenway. The kayak launch and storage will be located along there as well. The proposed landscaping matches what is proposed for the City project. The unification will help the ecology and enhance the aesthetic. The fescue mix proposed is low maintenance. The edge of the parking areas will have a mix of hardy evergreens and deciduous trees. The operations and maintenance plans have been updated to address watering, monitoring, and mowing. There will be limited mowing in certain areas. This was designed and constructed through public and private partnerships to create a continuous multi-use path experience from Maplewood Ave. to Market St.

Mr. Crimmins addressed the permits they were seeking. The project was first here in December 2020 and again in March. The applicants have been responsive to feedback for the site plan review permit, wetland CUP, and shared parking CUP. The application includes a response sheet that addresses the stipulations from TAC. The staff report recommends approval. The shared parking on the CUP is for the parking on a separate lot. The hotel requires 93 spaces, the residential building requires 42 spaces, and 7 visitor spaces. The overlay allows for a 4 space reduction. Overall, 138 spaces are required. This proposal provides that by providing 41 onsite surface spaces, 25 shared spaces, 54 puzzle lift spaces, and 18 reserves spaces. The applicant

intends to enter a parking agreement for the shared spaces. If the Planning Board grants the CUP, then a parking agreement be secured and recorded. The puzzle lift system will be screened from view along Maplewood Ave. The lift system is a more viable alternative than putting parking underground. The high ground water table and topography of the site would make underground parking costly and prohibitive. It would require a similar amount or more impervious surface because they would need to provide ramps and fire access. The reserve parking would not be constructed at this time. It will give the applicant opportunity to observe the parking and build it if needed. The applicant has committed to 100% valet for the mixed use and hotel to optimize the use of parking. The applicant has been responsive to comments from the Boards and public for the buffer impact and the wetland CUP. They met with the Conservation Commission 5 times. They have reduced the impervious surface in the buffer by 7,070 sf. If the reserve parking is never built, then it would be over 10,000 sf. The original proposal in December had a net impact of adding 4,000 sf. Now it is a 3,800-sf net reduction. The Conservation Commission voted 3-3 in June, but since that meeting, they have further improved the plans. The staff memo has recommended approval at that time before the further reduction. Mr. Crimmins addressed the six criteria for granting a wetland CUP. 1. The land is reasonably suited to the use, activity or alteration. This is a previously disturbed site that has been used for industrial use in the past. Currently there are buildings and parking on the site. The site is suitable for this project. The proposed project is consistent with the uses in this zoning. The waterfront is highly disturbed, and the existing vegetation provides little value to the pond. There is no public access. 2. There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration. The placement of the building and parking were done in a way to reduce impervious area in the buffer. The plan replaces maintained lawn with native grass and shrubs. 3. There will be no adverse impact on the wetland functional values of the site or surrounding properties. There is no wetland function on the site today. This plan will improve the tidal buffer and add value by providing public space. 4. The alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals. There is no alteration to woodlands or the wetland area. Any temporary disturbance of the buffer will be restored with vegetation to provide habitat. 5. The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this Section. This project will result in a net improvement. 6. Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible. The project area in the vegetated buffer is limited to removing impervious construction, the greenway, and constructing the storm water outlet. Within the buffer strip the landscape plan will replace lawn with appropriate vegetation to help the wetland and prevent invasive species. It will be a low mow area with native trees and shrubs. The applicants believe that the plan addresses the criteria for all three permits. The project meets requirements, provides buffer enhancement, the greenway, and community space. The latest plan will reduce impervious surface, enhance the buffer, and provide open space. This Board has approved other projects that are similar in nature and scale.

Mr. Clark requested more detail on the soil contamination on the site and how this project may be helping that. Mr. Tormey responded that the site previously had a cleaners and gas station with a number of underground storage tanks. There is a ground water management permit out there and the site is under observation. This development will remove a lot of the remaining contaminated soils. A lot has already been removed over the years. They have found that the

soil is predominantly urban fill which is common throughout Portsmouth. The soil management plan will manage on site work appropriately to minimize exposure risk. The construction here is an engineered cap, so it will cap what is out there now. Mr. Clark questioned if it was their intent to continue monitoring. Mr. Tormey confirmed that was correct. The ground water management has been monitored for 9 years of the 20 years. The excavation and removal should attain closure on the site. There are levels of contamination above what is allowed in state regulations. Right now, there is a degraded parking lot and a lot of surface runoff. The proposal will capture all runoff and rain will not infiltrate. That's why AOT does not allow for pervious pavement because they don't want contaminants to move around. Mr. Clark questioned what the original use of this site was. Mr. Tormey responded that there was evidence of ship building and piers. The site has evolved over the years, but it has predominantly been an industrial site. Mr. Clark questioned if there were higher concentrations of coal ash toward the pond. Mr. Tormey responded that it was more concentrated where the proposed building is.

Mr. Clark requested more detail on the storm water treatment plan and the jellyfish filters. Mr. Crimmins responded that the filter systems will meet AOT regulations. The jellyfish filters will filter out contaminants and TSS to allow clean water to discharge to the pond. The operations and maintenance plan includes plans for the filters and tanks. Mr. Clark questioned what treatment would be provided for the storm water cap on Raynes Ave. Mr. Crimmins responded that they have proposed a water quality unit to treat runoff from the neighborhood. It is a little less maintenance intensive, but it will provide treatment. Mr. Clark commented that there are a lot of DES permits for this site and questioned what the status of those were. Mr. Crimmins responded that they have a number of preapplication meetings for the wetlands permit, AOT, and sewer connection. They haven't submitted the wetland permit application because the plan has changed so much. Once have this approval is granted, then they will submit the wetland application. Mr. Clark questioned if they thought of trying to do a granite head wall. Mr. Crimmins responded that they would have to defer to DPW because they would have an easement for maintenance of that. Mr. Clark commented that he didn't see anything regarding NOFA or organic land management. Mr. Crimmins responded that they have committed to that and will add it to the plan if it is not already in there.

Vice Chairman Moreau questioned how the emergency access road will not be used by regular cars. Mr. Crimmins responded that it will have a mountable curb, so it won't look like an entrance. Vice Chairman Moreau questioned how they will handle snow. Mr. Crimmins responded that it would be hauled off site. Vice Chairman Moreau requested more information on how the shared parking will work. Mr. Crimmins responded that the peaks for the hotel and residential building are at night. The peak for office parking is in the day. There is no one there at night. The valets will evaluate how to best manage the parking. Vice Chairman Moreau questioned if the valet would handle all the parking. Mr. Crimmins confirmed that was correct. Vice Chairman Moreau questioned who would be responsible for all the maintenance long term. Mr. Crimmins responded that the applicant would be. The community space easements would spell out those agreements.

Mr. Harris commented that this plan was a vast improvement from the original plan. Mr. Harris questioned what the status was with their HDC application. Mr. Tormey responded that they have been through 3 work sessions and are going back in January for another one. Mr. Harris

commented that there were still some outstanding items with the HDC relating to size and the location of the building. Mr. Tormey responded that they worked very hard to keep the building out of the buffer. There have been vision plans showing it in the buffer. The focus was to keep it out of the buffer. The design tonight is what they anticipate it will be and they are not flexible on the footprint. Mr. Harris questioned if they should be seeing this application before they were approved by the HDC. Chairman Legg commented that some developers run parallel paths. It is not required for them to get HDC approval before coming to the Planning Board. Mr. Britz confirmed they were not required to get HDC approval before coming to the Planning Board. Mr. Britz had a conversation with Nick Cracknell, and he noted that they have done a lot of work on the site. They are still working on the architectural design of the building, but he felt the site location was nailed down.

City Council Representative Whelan commented that it was his understanding that the HDC had not even started talking about the hotel yet. They have only discussed the mixed-use building. That's a significant open question. The applicant has done a tremendous amount of work on this to get it out of the buffer. They need to be careful when they start to excavate because there has been a lot of industrial action on that site. There needs to be a mitigation plan to keep the soils where they should be. Mr. Tormey responded that it doesn't make sense to make a mitigation plan until they get site plan approval. However, it is something they are very familiar with, and they are skilled with site management plans. The development team has a lot of expertise in this. City Council Representative Whelan questioned if they would get a deed or letter of intent about the shared parking agreement. Mr. Tormey responded that per the zoning ordinance they would need to record the agreement with the Registry of Deeds.

Vice Chairman Moreau commented that if anything in the HDC approval significantly changed the site plan, then they would have to come back for an amendment.

Mr. Chellman commented that it was good to hear the developers had experience with creating a contamination mitigation plan from brown field sites. It would have been good to review the mitigation. The memo in the package shows there is potential for serious stuff. The application feels a little premature. They haven't submitted for DES permits because they feel they need the site plan approval first. The Conservation Commission did not approve this. The HDC approval has not come through. The mixed-use building does go into the 100 foot buffer. Mr. Tormey responded that the part nearest Maplewood Ave. is a little sliver in the 100-foot buffer to the wetland across the street. The zoning requires a max setback from the street, so that's why that is there. Mr. Chellman questioned if the puzzle lifts would be covered like car ports or fully enclosed. Mr. Crimmins responded that they would be fully covered by the building, and they were working on screening with the HDC. Mr. Chellman questioned if they would be accessed from the water side. Mr. Crimmins confirmed they would be accessed through the parking lot. They were still working on what the entrance screening would look like. Mr. Chellman questioned if they had talked with DES to understand if there were any red flags. Mr. Crimmins responded that they were comfortable submitting what they had designed. It coordinates with the City park application that has been submitted. Mr. Chellman questioned if there was any bonding requirement in their past brown field project to ensure mitigation was done in accordance with the plans. Mr. Tormey responded that they did not, but there was collaboration with the EPA and the City. There are a lot of regulations in place to ensure it is done properly.

Mr. Chellman questioned if there was a contingency fund in case there was a severe environmental condition. Mr. Chellman was comfortable with the end result but recognized there was risk during construction. Mr. Tormey responded that the memo notes there would be a storm water pollution prevention plan in place for the site. They will not be exposing contaminated soils. Those soils will need to be hauled off site and/or covered. There will be significant sediment controls. Mr. Chellman questioned if they would be wetting soils. Mr. Tormey confirmed they would for dust control. There are many sites around the City that have contaminated soils that have been handled appropriately. It is highly regulated. Mr. Chellman questioned when they would be wetting soils vs. covering them. It would be good to see those details. Mr. Tormey responded that they were talking about wetting them while they were working with them. They are not going to leave them exposed and wet for days. They keep it wet to prevent dust. The soils will be covered if they are staying exposed. Typically, those soils are going off site immediately. Mr. Chellman questioned if that would be in the plan that has not been developed. Mr. Tormey confirmed that was correct, but it's a plan created at the appropriate time for the appropriate parties.

Mr. Gamester questioned if the owner would be responsible for determining if the reserve parking was needed or if there was another trigger event. Mr. Gamester questioned if all of the spots had to be created if only some of the reserve was needed. Mr. Crimmins responded that the owner would determine if the reserve was needed. That is how it is written in the ordinance. The intent of the reserve spaces is to reduce surface parking as much as possible. The applicant would have to assess the parking management and assess if reserve parking was needed. They may not need to add all 18 at once. They can determine how many spaces are needed. Mr. Gamester questioned if they would just default to go into the reserve spaces or look at innovative options. Mr. Crimmins responded that they would look at innovative options. Cars are evolving so it is hard to predict what parking needs will be like in the future. If they needed to provide a parking demand analysis, then they could do that. Mr. Gamester questioned if they would be open to a discussion with the City before adding it. Mr. Crimmins agreed and noted that they provide a monitoring plan. Mr. Gamester questioned if the shared parking would be in perpetuity. Mr. Crimmins confirmed that was correct. Chairman Legg commented that it was a nicer plan if they kept the reserve parking undeveloped. Chairman Legg questioned if 25 spaces was the maximum amount that they could get across the street. Mr. Tormey responded that 25 was the max at 145 Maplewood Ave. 3S Art Space doesn't have parking and the AC Hotel is not a complementary use. They are optimistic that they won't need the reserve spaces. Chairman Legg questioned if there was any opportunity to put in another puzzle lift on site in the future. That could be a creative solution. Mr. Tormey agreed that it may be a creative solution. It may or may not meet the ordinance. They have to show a future reserve that they are able to build on the plan. They would entertain that as an opportunity before building the surface spaces. Mr. Gamester commented that ultimately what they are getting at that is that there's something more than just the owner going in and building those spaces without some sort of exchange. Chairman Legg commented that they could add a condition saying that the applicant has to provide a document that demonstrates the fact that they need spaces and will have a discussion with City staff on a creative solution before they build the surface reserve spaces. Mr. Tormey confirmed that they were amenable to that condition.

Mr. Chellman questioned if those 18 paces would be paved. Mr. Tormey confirmed that they would. Mr. Chellman commented that it looked like there was a lot of fill in the area between the buildings. Mr. Tormey responded that it was a pretty flat site out there. They were filling a berm to screen the parking from the trail and pond. Mr. Chellman confirmed that was what he was looking at. Mr. Tormey commented that the parking is on grade or slightly below the finished floor. Mr. Chellman questioned if the berm was in the 100-foot buffer. Mr. Tormey confirmed that it was.

Chairman Legg commented that some of the exhibits show that the dock and kayak launch are optional. Mr. Tormey responded that was because they were looking for Board feedback on that. This was discussed with TAC and the Conservation Commission about whether those should or should not be in there. To date all of them have recommended that they are included. Chairman Legg questioned if maintenance would be subject to an agreement with the City. Mr. Tormey confirmed that was correct. Chairman Legg questioned if the landowner would be accountable for the maintenance. Mr. Tormey confirmed that was correct.

Mr. Gamester questioned why the Conservation Commission was a tie vote. Mr. Tormey responded that one member was opposed to the density of the project. Which was not necessarily their per view because it was out of the buffer. There were questions about the soils. One member thought they were going to go back in front of them and was not clear to them it was the final vote.

## **PUBLIC HEARING**

Abigail Gindele of 229 Clinton St. commented that it was important to maintain a functioning if not thriving eco system. It is good to balance a healthy community. The flora and fauna relationship is important and symbiotic. This proposal and a lot of the greenway treats the buffer zone like a park with native plants. The design invites people into the buffer zone and that is the opposite of what should be happening. This much human activity will decimate the whole North Mill Pond eco system. A park is not a buffer zone. The solution is to build a smaller project and pull the park out of the buffer. The greenway should be out of the buffer zone. The applicant's argument is that they are repairing the situation. However, if they make a change, then they should bring it up to current standards. That should include a viable 100-foot buffer. The applicants can still make a profit with a smaller project.

Bill Downey of 67 Bow St. commented that there has been a tremendous amount of work done on this project. It's an exciting project and a major gateway that will speak volumes as to how people perceive the community. At the last HDC meeting there were a lot of concerns with the location and lack of attention on the waterfront. There is a long way to go with the HDC. It is premature to bring this to the Planning Board. This should be postponed until that is resolved.

Mark Brightman of South Mill St. commented that they have an illegal board member on the Planning Board, and they have been warned.



Andrew Maynard of 61 Cabot St. spoke in support of the site review and development. The Portsmouth zoning ordinances provides incentives to build larger buildings in exchange for the greenway. This project complies with zoning and achieves Master Plan goals. Zoning requires 20% community space, and they are providing over 30%. The project features environmental improvements, storm water treatment, removing invasive species, and a landscaped buffer. It will provide a major portion of the long-awaited North Mill Pond greenway. This will be connecting Maplewood Ave. to City owned land. It completes a key piece of the greenway. It achieves the goals of reinvesting in underutilized buildings and land promoting open space and adding residential units. This will increase tax revenue. The wide sidewalks will compliment surrounding development. There is no reason why this site review should not be approved.

Rick Becksted of 1395 Islington St. spoke as a resident. Mr. Becksted commented that he understood the Master Plan and what the City has devised but there are still outstanding questions. This was meant to be a 2.5 story building. Incentives are not always a good thing. This Board should not approve this yet because the HDC has not finished their review. Some stipulations may change if the density changes. They have not taken the surrounding historic homes in consideration. This needs to be tabled.

Page Trace of 27 Hancock St. spoke as a resident. Ms. Trace applauded the gentleman for being so interested in the remediation of the brown fields. The property is featured in a painting and its location is described as Portsmouth, NH the corner of Raynes Ave and Maplewood. Remediation of a brown field is tremendously important, but history is equally important and deserves equal respect. The Board should think about this when they pass judgement. Ms. Trace sat on the HDC and at the last meeting they discussed massing and only looked at the mixed use building.

Second time speakers:

Elizabeth Bratter of 159 McDonough St. commented that the developers were attempting to do a lot of double dipping. The maximum height along the North Mill Pond is 35 feet or two stories stepping upward to 40 feet. They are presenting 5 stories up to 72 feet. They are choosing to use the North End Overlay incentive with the wide sidewalks. The ordinance says that any lots in 100 feet of the North Mill Pond must provide a specific amount of community space. They must provide a minimum of 20% and it must include the greenway trail connections to abutting streets with easements to the City. Using the overlay, they are double dipping on the massing. These buildings are more than that. The changes they have made make it only slightly smaller. They are requesting a 54% reduction of what is allowed for parking. The first summer this hotel is opened they will need 124 spaces without selling any condos. The reserve parking is shown in the buffer. The berm was supposed to be put in all along there per TAC. Please do not approve the parking CUP because they already received a reduction by using the Downtown Overlay District. They have not submitted a parking analysis. There is no extra parking in the area. DES will not allow pervious pavement in the 100-foot buffer or underground parking. It is unclear how they will allow pilings. It is known that the North Mill Pond has toxins in the sediment. That should be tested prior to putting anything into it. This was denied by the Conservation Commission for many good reasons. One of them was because of the mass of the buildings. There will be almost 300 people there every day. That will greatly impact conservation. Do not

override a group of people who know the Commission and regulations well. The site plan review should be postponed until all the double dipping has stopped and the HDC and Conservation Commission give approval.

Page Trace 27 Hancock St. spoke as resident. Ms. Trace applauded all of the work that has been done on the project. However, more work needs to be done. One of the reasons it looks so beautiful is because of stair step of buildings in the vision plan. Another project that will snake off the Sheraton Hotel. That is an entirely different project going into an odd piece of land with a stair step. This 5-story building on the North Mill Pond will not create a stair step. It will just be a long wall along the pond. The Board should look at the parking more.

Esther Kennedy of 41 Pickering Ave. commented that the biggest issue was building in the buffer zone. The Master Plans says to not to build in the buffer zone. Please do not allow building in the buffer zone. The height is questionable.

Duncan McCallum of 536 State St. spoke against the proposal. This proposal is a couple of monstrosities. It is inconsistent with the character of the North End and Historic District. The Wetland CUP is required in order to grant site plan approval for the project. They just went through this with 105 Bartlett St. In this case the development plan clearly violates the wetland ordinance. The development plan is not the alternate location with the least adverse impact. There is an alternate location that is both reasonable and feasible to build on. This plan violates the criteria. The development has to comply with all 6 and if they fail to comply, then the Wetland CUP may not be issued. They clearly do not comply with two of them. They can build out of the buffer. They can place buildings outside the wetlands buffer. They can place the parking lot and paved road out of the buffer. It may not be as big, but they are not entitled to build whatever they want. They don't always get to do what they want. The paved road cuts right through the middle of the buffer. The parking and paved road is 25,000 sf of impervious surface in the buffer. The plan does not meet those two requirements for granting a permit. They need a Wetlands CUP to get site plan approval. The applicants in this case like many don't want to comply with the zoning ordinance because they don't want to. They can't make as much money if they have to comply. If that is all the applicant has to offer, then they should not approve. The wetlands protection ordinance and buffer are not a joke. Developers don't take the buffer seriously enough. The Conservation Commission did not recommend this project.

Third time speakers:

Duncan McCallum of 536 State St. commented that it was clear that it would be premature to grant approval. The HDC has not considered the hotel yet. It is unclear who will enforce and pay for the valet in perpetuity. The developers are trying to focus on the reduction in overall impervious surface. But that misses the point. The construction itself will cause damage to the buffer and the pond overall. It is not just a matter of reducing the overall impervious surface. They will need to do construction to remove it. The greenway is great, but they don't need to construct a 5-story building to build that. They could just donate the land. They are offering nothing by giving that land to the City because they can't build on it anyway. In a public private partnership, it is almost always obvious why it's a good deal for the private side. It is harder to identify the public benefit. In this case it is hard to see why it is a good proposal for the public.

In view of the mass of the buildings they are a bad idea. At the minimum they should postpone and wait until hear they from the HDC. They should wait until some of the other issues raised are resolved. If the Board chooses to vote on it tonight, then they should deny it.

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

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

Chairman Legg commented that before they entertain a motion for this applicant request, they should make a motion to consider the balance of the agenda on December 30, 2021. Then if that motion is approved the people and public here for other applications can leave now.

Mr. Gamester moved to postpone the applications after the Raynes Ave. application to the December 30, 2021, Planning Board Meeting, seconded by City Council Representative Whelan. The motion passed unanimously.

Vice Chairman Moreau moved to grant the wetland conditional use permit as presented, seconded by Mr. Gamester.

Vice Chairman Moreau commented that this was a tough one. This project is making this site so much better in so many ways. There are a lot of things on both sides of the argument. People don't want anything there, but nothing will be taken care of. People want the greenway. They have pulled the buildings way out of the buffer, which is good. Vice Chairman Moreau was less worried about the piece in the back end of the buffer because it's across the street and Maplewood Ave. is doing more damage than the building would. The drainage and jellyfish filters are an improvement. Hauling the snow is an improvement. They will pay to maintain the landscaping and greenway. Those are all positives. They are putting in pavement and large buildings, but they are building the greenway. Vice Chairman Moreau disagreed with those who feel they have to meet every criteria exactly. It is more a negotiation of controls. Vice Chairman Moreau has been a board member for nine years and they have always treated it as a mitigation negotiation. It is not as black and white.

Mr. Gamester commented that he had a problem hearing comments that humans should not be using the buffer because that is contrary for what the buffer is there for. It is not just for the body of water, but what can be done in the buffer as it applies to the body of water. If the building was all in the buffer, then they would all agree to deny. It's not all in the buffer. They are restoring the buffer lands. People should be able to enjoy this area. It's the same as a beach or Prescott Park. It doesn't make sense that it does not comply because people will degrade the buffer. Mr. Gamester did not agree with the idea that they cannot build in the buffer. They have had this conversation countless times. The buffer is there for mitigation. It is not there as a strictly no build zone. All but a sliver of this building is not in the buffer. It doesn't make sense with the ordinance or statute that they have to keep it pristine and untouched. The 6 criteria are there to show how to prove they comply with what can be done in the buffer. Building can be done in it. In this instance parking is in the buffer. The buildings are going to create a cap. This site meets the criteria as it applies to the buffer, water, and ground contamination. It's not

perfect but not everything that comes before it has to be perfect. It is not the easiest yes but looking at the site, the proposal, and what's changed Mr. Gamester noted that he would support it.

Mr. Clark commented that the North Mill Pond is on the 303 D list. It's an impaired water body. At some point they have to start looking at what to do to get those water bodies off that list. It is part of the City's MS4 permit. Regardless of what happens on the site people will be using the North Mill Pond for recreation. It's been looked at time and time again. This shoreline was created with urban fill. It wasn't designed by nature. As the shorefront degrades the contaminants within the soil will continue to leach out. They can say that they are never going to do anything in the buffer. However, it will continue to erode and break up and contaminate. If this was a pristine site that would be one thing. It's not. It is completely manmade, and this project is trying to turn it back into something natural. Right now, there is very little vegetation and no trees. Overall, the proposal will help the site and help the health of the North Mill Pond. There will be more human impact, but the site proposal is a benefit overall.

Mr. Chellman disagreed with a few comments. The proposal does include significant environmental improvements to the site. They could still improve and comply with the criteria to not put the building in the wetland buffer. They could clip the corner off the building and get a variance. Mr. Chellman had a problem with the criteria wording in the ordinance. It has nothing to do with people using the buffer or the size of the building. The criteria is very specific and says the application shall comply with all 6 criteria. That's not a discretionary list. If there was another point saying unless the Planning Board found there was an overall benefit that exceeded the prior 6 criteria, then there would be flexibility. It doesn't say that. It's more than a sliver in the buffer. They could still build a large project and do what they want to do by shifting things out of buffer. Criteria 2 and 5 are tough standards and the Board is supposed to follow the ordinance. It's a good project, but this is a threshold problem.

City Council Representative Whelan was not in favor of the project. The Board should table it and let it come back in January. They should give the HDC time for further clarification. City Council Representative Whelan agreed with Mr. Chellman's comments. They have to meet the 6 criteria and they are not meeting 2 of those. That's why have they have a zoning ordinance and they should not deviate from that. They went in front of the Conservation Commission 5 times, and they still did not approve. The Commission had serious concerns. It's a good project but there is a reason that they have a 100-foot buffer. New Hampshire has 18 miles of coastline and people want to develop all of it. The Board should not be cavalier about the buffer. They should come back with a smaller project out of the buffer. There are problems with contamination on the site. There is a risk of putting more pollutants in the water when they excavate and do construction. Mr. Clark is right, it is an impaired waterway and that needs to change. However, this is an intensive project. The Board should be following the rules and regulations. They can come back with a smaller project outside of the buffer.

Mr. Harris agreed with Mr. Chellman and City Council Representative Whelan. There is a lot of benefit to the project. There are a lot of steps to improve the environment there. People accessing the buffer area will cause further disruption. The HDC had issues relating to the size and mass of the buildings. They are hoping to get it down to 3 stories. There are unresolved

issues. They need to listen to other Boards. It is prudent to wait until the HDC approves or vets it further.

Mr. Gamester commented that this CUP is coming before us regardless of the HDC. If they make a significant change, then they will come back before the Planning Board. There will be disturbance here regardless. The alternate location that is feasible and reasonable was achieved through the many iterations of the project. Most of the activity is outside of the buffer save a sliver of the building. The pavement is necessary because underground parking is not feasible. There is no alternate location. This is the least adverse impact especially with all the improvements for this manmade shoreline.

Chairman Legg agreed with Mr. Gamester and Vice Chairman Moreau. They don't need to see the final HDC product before acting. They have done that in the past, so it is not a new process. If the project changes significantly, then they would come back. There is no risk of approving something tonight and having something else developed in its place. Just like the law, the ordinance is open to interpretation. That's why they have attorneys to help interpret the law. If it was all clean cut and easy, then they would not need that. That's the reality with the zoning ordinance. If the City Council wanted to prohibit development in the buffer, then they would have said so. If it were pristine undisturbed wetland buffer, then no one would be saying this was a good project. The reality is that this is urban fill. This will improve the water that is currently shedding into the North Mill Pond. This is similar to the Bartlett St. project when the Piscataqua Waterkeeper spoke and said that the project would improve the water quality because of its current conditions. This project will improve quality of water for the North Mill Pond. The project meets the criteria for the wetland use permit. Chairman Legg commented that he would support the CUP.

Mr. Chellman commented that putting building in the wetlands buffer is a bad idea. It does not meet the criteria.

Chairman Legg commented that this Board has approved building in the wetland buffer in the past. Mr. Chellman commented that should not justify this decision.

Vice Chairman Moreau commented that they look at each project and its unique site. They have denied people in the past. The Board has never allowed someone to build an entirely new building in the buffer.

The motion passed by a 6-3 vote. City Council Representative Whelan, Mr. Chellman and Mr. Harris opposed.

Vice Chairman Moreau applauded the applicants for the unique parking ideas they came up with. The puzzle lift is creative. They considered the constraints of the site and kept it out of the buffer as much as possible. The valet and shared parking are good ideas. The City gets to enforce that with this approval. They can make a stipulation for the developer to report back to the City with a parking monitoring report. It could be a stipulation for the parking CUP or the site plan. Chairman Legg noted that it should go with the parking CUP because it's parking related.

Mr. Harris questioned if the 18 additional spaces were required. Mr. Britz commented that with the offsite parking and allowance to do reserve parking they meet the parking requirement. They need the CUP to allow for the offsite. Chairman Legg commented that when they add up all the parking requirements it comes to 138 spaces, but they can't provide them all on site. They are creating a shared parking agreement for 25 spaces across the street. The applicant is also saying that the ordinance says they need 138 spaces, but they are not sure they do. That's why they are putting in 18 reserve spaces and not build them until it is confirmed that they are needed. That's why asking they are asking for the CUP for 25 spaces off site. Mr. Harris commented that there would be an overlap between hotel parking and office parking and questioned how that would be addressed. Chairman Legg commented that operationally the valets would manage that.

Mr. Chellman commented that hotels don't run at 100% occupancy. Unless they are in downtown Boston, they tend to run at 60-70%. The criteria says they are supposed to provide an arrangement and analysis. Mr. Chellman questioned if the wetlands CUP approved paving for the reserve spaces if needed. Vice Chairman Moreau confirmed that was correct. Mr. Chellman commented that if they have secured 25 spaces and can show a covenant, then they satisfy the ordinance.

Chairman Legg agreed. The applicant will monitor the parking capacity and provide information to the City before building any reserve spots. They will also work with the City to see if there is an innovative way to add more spaces in a different way. The Board should give the City and property owners some direction and guidance. Mr. Gamester applauded the applicant for not building those out right away because ultimately, they probably won't need it. If they are needed, then the applicant can look at innovative solutions. The applicant will keep a parking demand analysis, but they don't necessarily need to submit it unless they need to use any or all reserve spaces. Then they can meet with the City to see if there are innovative solutions.

Vice Chairman Moreau commented that they should include it as a stipulation. It should say something like parking will be subject to an annual usage report that is submitted to the City and they should work with the City to determine an appropriate plan. Mr. Gamester commented that they should not need to submit it to the City if they have no intention of building the reserve.

Mr. Chellman commented that there has been concern with other projects about parking spilling over into adjacent neighborhoods and questioned how that would be handled if the valets began to do that. City Council Representative Whelan responded that the valet license is approved or declined by City Council annually. Mr. Chellman clarified that if they violated their agreement, then they would lose their license. City Council Representative Whelan confirmed that was correct.

Vice Chairman Moreau commented that the City may need more clarification about working with the applicants on innovative solutions. Mr. Gamester commented that they would have to show that they looked at more options than just building out the reserve parking in the plan. Mr. Chellman commented that they could come back to the Planning Board for this too. Vice Chairman Moreau commented that the City can refer it to the Planning Board if needed. Chairman Legg commented that they would have to demonstrate to the City that the demand is

there and that they have exhausted other reasonable alternatives. The City would provide approval.

Vice Chairman Moreau moved to find the number of off-street parking spaces provided will be adequate and appropriate for the proposed use of the property and to grant the conditional use permit, seconded by Mr. Gamester with the following stipulation:

3.1 Construction of reserve parking will be subject to usage reports submitted to the City demonstrating additional parking is needed only after alternative options to construction of reserve spaces have been considered and reviewed by the City . If City staff determines further review is needed applicant will be referred to Planning board for further review.

The motion passed unanimously.

Mr. Gamester noted that City Council Representative Whelan and Mr. Chellman brought up concerns about monitoring the site. They should specifically call out an oversight engineer for monitoring.

Chairman Legg commented that the property owners should maintain the dock and kayak launch. Mr. Britz agreed that it there would be an easement over the community space for the City. Vice Chairman Moreau added that they could add the responsible parties for all maintenance in the stipulations.

Mr. Clark questioned if they should stipulate that they use NOFA practices. Mr. Britz responded that NOFA standards were above and beyond the City's requirements, but the Conservation Commission did ask for that.

Mr. Clark commented on the North End Vision plan that came up a lot tonight. The drawings in the Master Plan shows 8 buildings within the same parcel and one is over the water on Maplewood Ave. A lot of them are shorter than what is proposed but one is directly on the water and the rest are in the buffer. Ultimately these plans have less impact. They are complying with what is proposed in those two documents.

Vice Chairman Moreau commented that overall, the project is a lot better than it was, it is good that they pulled the bulk of the buildings out of the buffer. There are some creative solutions in this plan, and they will maintain the site long term at no expense to the City.

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

Conditions Precedent

- 1 The site plan and any easement plans and deeds shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 2 The applicant shall record a notice of voluntary lot merger.
- 3 Any easement plans and deeds for which the City is a grantor or grantee shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by City Council.

4 The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City's Legal and Planning Departments.

5 The applicant shall agree to pay for the services of an oversight engineer, to be selected by the City, to monitor the demolition and construction of improvements within the public rights-of-way and on site.

6 Owner shall provide an access easement to the City for water valve access and leak detection. The easement shall be reviewed and approved by the Planning and Legal Departments prior to acceptance by the City Council.

7 The Applicant or its engineer shall submit a copy of a completed Land Use Development Tracking Form using the Pollutant Tracking and Accounting Program (PTAP) online portal currently managed by the UNH Stormwater Center or similar form approved by the City.

8 Grease traps will be designed to meet code requirements.

9 Sewer connection permit will be obtained from DES.

10 Applicant and City will enter into a Community Space Agreement which will specify the owner as the responsible party to maintain all the greenway/community space.

11 Fertilizing within the buffer zone will follow City guidance and Northeast Organic Farming Association (NOFA) standards.

12 Exposed parking shall be screened from view.

Conditions Subsequent:

13 The Engineer of Record shall submit a written report (with photographs and engineer stamp) certifying that the stormwater infrastructure was constructed to the approved plans and specifications and will meet the design performance.

14 A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City's Planning and Public Works Departments.

The motion passed unanimously.

- B.** The request of **North Mill Pond Holdings LLC (Applicant), and One Raynes Ave LLC, 31 Raynes Ave LLC, and 203 Maplewood Ave LLC (Owners)** for property located at **31 Raynes Avenue, 203 Maplewood Avenue, and 1 Raynes Avenue** requesting a Wetland Conditional Use Permit under section 10.1017 to construct two buildings 1) a 5 story mixed use commercial and residential building and 2) a five story hotel building with 124 rooms. The project has removed all of the impervious surface from the 25' tidal buffer, proposes 67 square feet of impervious surface in the 25-50' tidal buffer and 21,190 square feet of impervious in the 50-100' tidal buffer. Overall the project is able to demonstrate a reduction of 7,070 square feet of impervious surface in the tidal wetland buffer from the existing condition or a reduction of 10,107 square feet if the reserve parking is not constructed. Said properties are shown on Assessor Map 123 Lot 14, Map 123 Lot 13, Map 123 Lot 12, Map 123 Lot 10 and lie within the Character District 4 (CD4) District, Downtown Overlay District (DOD), Historic District, and the North End Incentive Overlay District. (LU-21-54)

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

The motion and vote for this CUP is documented under Agenda Item A above.



- C. The request of **Martingale, LLC (Owner)**, for property located at **99 Bow Street**, requesting Site Plan Review Approval to allow the expansion of the existing deck to include expanded seating for the business as well as public access to the Piscataqua River. Said property is shown on Assessor Map 106 as Lot 54 and lies within the Character District 5 (CD5), Downtown Overlay, and Historic Districts. (LU-21-181)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- D. The request of **Dagny Taggart, LLC (Owner)**, for property located at **93 Pleasant Street** requesting Site Plan Review approval for the redevelopment of the existing 4 story structure and the construction of a new structure totaling 34,266 square feet of commercial space and 18 parking spaces. Said property is shown on Assessor Map 107 Lot 74 and lies within the Historic, Downtown Overlay, and CD4 Districts. (LU-21-183)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- E. The request of **Torrington Properties Inc. (applicant)**, on behalf of **2422 Lafayette Road Associates, LLC (Owner)**, for property located at **2454 Lafayette Road** requesting to amend a previously granted Conditional Use Permit to provide less than required parking in accordance with Section 10.1112.14 of the Zoning Ordinance and Conditional Use Permits for increased housing density and for increased building height as allowed by Section 10.5B72.10 and Section 105B72.20 of the Zoning Ordinance, and development within the Gateway Neighborhood Mixed Use District in accordance with Section 10.5B40 of the Zoning Ordinance; and for Site Plan Review to demolish the existing structure and construct a five (5) story structure with 95 condominium units with 20% designated as workforce housing units and provide 21,896 square feet of community space. Said property is shown on Assessor Map 273 Lot 3 and lies within the Gateway Neighborhood Mixed Use Corridor (G1) District. (LU-21-192)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- F. The request of **35 Pines LLC, (Owner)**, for the property located at **295 Maplewood, Unit 1** requesting a Conditional Use Permit Approval in Accordance with Section 10.1112.14 of the Zoning Ordinance, for the provision of no on-site parking spaces where three (3) spaces are required. Said property is shown on Assessor Map 141 Lot 35 and is located in the Character District 4-L2 (CD4-L2) and Historic District. (LU-21-211)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- G.** The request of **Public Service CO of NH (Owner)**, for the property located at **300 Gosling Road** requesting a Wetland Conditional Use approval according to section 10.1017 is requested for the replacement of 8 utility poles adjacent to Gosling Road. The project proposed temporary impact of 98,984 square feet in the wetland area and of 25,224 square feet in the wetland buffer. The proposal is to replace existing wooden structures with equivalent steel structures. Said property is shown on Assessor Map 214 Lot 3 and is located in the Office Research (OR) and Waterfront Industrial (WI) Districts. (LU-21-205)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- H. REQUEST TO POSTPONE** The request of **ADL 325 Little Harbor road Trust (Owner)**, for the property located at **325 Little Harbor Road** requesting a Wetland Conditional Use Permit under section 10.1017. The applicant is proposing 81,865 square feet of disturbance in the tidal wetland buffer the disturbance includes replacement of an existing home with a new home with a footprint of 3,382 square feet, construction of a new garage 1,300 square feet, renovation of an existing guest cottage 1,217 square feet, construction of a pool cabana 368 square feet and replacement of an existing shed 384 square feet along with other impacts/improvements including utility connections, playground, drainage improvement and extensive landscape improvements. Said property is shown on Assessor Map 205 Lot 2 and is located in the Rural (R) and Single Residence A (SRA) Districts. **REQUEST TO POSTPONE** (LU-21-189)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

- I.** The request of **The City of Portsmouth (Owner)**, for property located at **0 Vaughan Street** requesting a Wetland Conditional Use Permit under section 10.1017 to restore a piece of property along the North Mill Pond into a City Park, Greenway and Living Shoreline project. The project as proposed includes restoration of 57,520 square feet of restoration work in the Wetland and Buffer with project impacts of 262 square feet in the wetland and 5,490 square feet of impact in the 100' wetland buffer. The project includes the removal of invasive plants, planting of native species to restore the vegetation on the site. The restoration work is proposed in the subtidal, intertidal, and tidal buffer portions

of the site. Said property is shown on the Assessor Map 123 Lot 15 and lies within the Character District 4 (CD-4). (LU-21-187)

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

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

## **VIII. PRELIMINARY CONCEPTUAL CONSULTATION**

- A.** The request of **Port Harbor Land LLC**, for the property located at **2 Russell Street** requesting Preliminary Conceptual Site Consultation for a mixed use project consisting of office, retail/commercial, and residential uses in one 4-story and two 5-story buildings. The site is located between, Russell Street, Deer Street, Maplewood Avenue and the Railroad Corridor. Said property is located on Assessor Map 124-12 and lies within the Character District 5 (CD-5). (LUPD-21-10)

The Board voted to postpone to a special meeting scheduled for Thursday, December 30, 2021.

## **X. OTHER BUSINESS**

## **XI. ADJOURNMENT**

City Council Representative Whelan moved to adjourn the meeting at 10:46 p.m., seconded by Mr. Gamester. The motion passed unanimously.

Respectfully submitted,

Becky Frey,  
Secretary for the Planning Board