

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

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

7:00 PM

March 17, 2022

MINUTES

MEMBERS PRESENT: Rick Chellman, Chairman; Corey Clark Vice Chair; Karen Conard, City Manager; Ray Pezzulo, Assistant City Engineer; Beth Moreau; Peter Harris; Jane Begala; James Hewitt; Franco DiRienzo, Alternate; Andrew Samonas, Alternate

ALSO PRESENT: Beverly M. Zendt, Planning Director; Peter Britz, Environmental Planner; Stefanie Casella, Planner 1

MEMBERS ABSENT: Greg Mahanna

.....

I. APPROVAL OF MINUTES

A. Approval of the February 17, 2022 minutes.

Chairman Chellman commented that Mr. DiRienzo would sit in for Mr. Mahanna tonight.

City Council Representative Moreau moved to approve the minutes from the February 17, 2022, minutes as amended, seconded by Mr. Clark

Mr. Hewitt commented that he questioned about taking attendance not Mr. Mahanna. Also, the shadow study that was requested for the 2 Russell St. application was referring to the whole site not just the community space. Mr. Hewitt noted that he commented on the trees for the 230 Commerce Way application and thinking about it more he would have requested that the project also go to the Trees and Greenery Committee. Mr. Hewitt did not say it at the time but would have liked to. Mr. Chellman commented that Mr. Hewitt did not mention the Committee at the time, so that was not an edit to the minutes. That can be addressed when the application returns.

Chairman Chellman noted that he had a couple edits from Mr. Mahanna. The first is that Mahanna is spelled with two N's. Also, Mr. Mahanna has personally never done business with the Green and Company and Port Harbor application developers. That needs to be corrected.

The motion passed unanimously.

Chairman Chellman commented that he had a request to consider VII. Other Business Item A out of order.

City Manager Conard moved to take VII. Other Business Item out of order, seconded by Vice Chairman Clark. The motion passed unanimously.

City Council Representative Moreau moved to grant a 1 – year extension of the 163 Sparhawk Conditional Use Permit, seconded by City Manager Conard. The motion passed unanimously.

II. DETERMINATIONS OF COMPLETENESS

SUBDIVISION REVIEW

- A. The request of **Cate Street Development (Owner)**, for property located at **428 US Route 1 Bypass, 406 US Route 1 Bypass, and 55 Cate St** requesting Subdivision Review approval for a lot line adjustment.

City Council Representative Moreau moved to determine that this application is complete according to the Subdivision Regulations, (contingent on the granting of any required waivers under Section III and IV of the agenda) and to accept the applications for consideration, seconded by Vice Chairman Clark. The motion passed unanimously.

SITE PLAN REVIEW

- A. The request of **238 Deer Street, LLC, (Owner)**, for property located at **238 Deer Street**, requesting Site Plan Review approval.

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

Mr. Harris questioned what the status for parking was for this application. Chairman Chellman commented that this was just for the determination of completeness. That means there is enough information for the discussion. They did not make a decision on any items in that package, and would have a discussion later in the agenda.

- B. The request of **Cate Street Development (Owner)**, for property located at **406 US Route 1 Bypass**, requesting Site Plan Review approval.

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

III. PUBLIC HEARINGS -- OLD BUSINESS

The Board's action in these matters has been deemed to be quasi-judicial in nature.

If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.

- A. The request of **Cate Street Development (Owner)**, for property located at **406 US Route 1 Bypass**, requesting amended Site Plan Review approval to reconfigure and expand parking on Tax Map 172 Lot 2, Tax Map 172 Lot 1, and Tax Map 165 Lot 2 to contain 73 new spaces (52 covered); to renovate the existing structure on Tax Map 172 Lot 2; and to add a bioretention stormwater facilities, stormwater collection and treatment facilities on Tax Map 172 Lot 1 and Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, and Map 165 Lot 2 and lie within the Gateway Corridor (G1) District. (LU-22-7)

SPEAKING TO THE APPLICATION

Gregg Mikolaities from August Consulting Jay Bisognano, John Bosen, and Rick Lundborn and Scott Lamontange were present to speak to the application. Mr. Mikolaities commented that the West End Yards were acquired in 2017 and the project was approved in September 2019. Part of the approval process was a land transfer to create Hodgson Way. At the time West End Yards was going through the permitting process the vacant car dealership was not part of the project. It was a separate lot that was approved in 2017 for a brew pub and restaurant. When the retail building was permitted there were not tenants at the time, so the parking calculations were based on theoretical tenants. Tonight, they have letters of intent for retail tenants for 95% of buildings C and D. They cannot disclose the tenants except for Buffalo Wild Wings. There will be another restaurant on the east side of the site. There is a large corporation tenant based in Portsmouth that will take the top floor and part of the bottom. Now they can calculate the actual parking that is needed. The leases have not been signed yet. This has been through TAC. That's why here tonight. The ordinance states that apartments under 500 sf only need half space, but in reality, this location is closer to 1 space. That's driving the need as well. The minimum calculation for this site is 556 spaces, and that's what was approved. Tonight, they are asking for 622 spaces. The maximum allowed is 668 spaces. The plan has now incorporated retail building D, which is the vacant dealership. It is now integrated into the project. They have also approached the railroad to purchase property to create head in parking. TAC requested covered parking in that area. People will not be able to see the parking without the cover, but they agreed to the covered parking.

Chairman Chellman commented that they said 622 spaces in the presentation, but the plans showed 624 spaces. Mr. Mikolaities responded that they lost 2 because of the parking structure. Mr. Lundborn confirmed that the covered parking area reduced the spaces from 52 spaces to 50. Chairman Chellman requested clarification on whether or not the changes were all in the red outline on the plan. Mr. Mikolaities confirmed that was correct. TAC asked for clarification on parking allocation, so they created a color plan. There will not be designated parking, but the colored plan helps to clarify allocation.

Ms. Begala requested more information on the open space now that the plan includes the former pet zone and the asphalt space is growing larger. Mr. Lundborn responded that the pet zone and grass adjacent to it will stay. Ms. Begala questioned where the residential buildings were. Mr. Lundborn responded that the apartments were in buildings A and B. There is a nice courtyard in the middle between them. Mr. Mikolaities responded that they were not asking for lot coverage. The site far exceeds the green space requirements, and they were not asking for more building coverage. Building A is fully occupied and building B is leasing now. Pending a positive outcome tonight they will secure retail leases and hope to fill those buildings this summer and fall.

Mr. Hewitt commented that he had hard time figuring out how much additional parking they were requesting. Mr. Lundborn responded that they were requesting 120 spaces. 56 of the spaces will go with the building, 50 spaces will go along the railroad, and then there will be some tandem spaces. Some were associated with a previous retail use that has been vacant for years. Mr. Hewitt questioned if there were any tenants that did not own a car. Mr. Bisognano responded that there were not. Mr. Hewitt commented that when this was approved in 2019, they were assuming that there would be 35 people in the development who would not own a car. Mr. Bisognano responded is that the reality is they do own cars. Mr. Hewitt commented that it was sobering to see how far off this was from the City's parking ordinance calculations. At the TAC meeting they were requesting 2 spaces for units above 750 sf, but now they were asking for 1.5 spaces. Mr. Mikolaities responded that they were not asking for any relief. They were just asking for the midpoint. It is shared parking, and they prepared a plan in color to show a rough allocation. Covid has changed things too. People are commuting less. The situation is different from when they designed it. The Veridian is successful and fully leased and the ordinance calculation was right on. Mr. Hewitt commented that he was trying to understand why the calculation was so far off. Mr. Mikolaities responded that they leased building one and realized they needed more parking. They always wanted the front building, but at the time of permitting the owner wasn't willing to sell it.

Chairman Chellman clarified that they were not proposing any changes outside of the red outline. Mr. Mikolaities confirmed that was correct. Chairman Chellman questioned if the bond for the initial approval had been released. Mr. Mikolaities responded that it had not. Chairman Chellman questioned if there were any conditions of prior approval that would not let it be released. Mr. Mikolaities responded that Underwood Engineers were reviewing the site work for that. Chairman Chellman commented that he just wanted the Board to understand that in addition to the ordinance comments.

Vice Chairman Clark questioned if the only changes outside of this additional lot were the tandem spaces. Mr. Mikolaities responded that it also included that row of head in parking on the acquired land. Vice Chairman Clark clarified that the the preexisting lot just added the tandem spaces. Mr. Mikolaities confirmed that was correct. Vice Chairman Clark questioned if this would be revised for the AOT permit as well. Mr. Mikolaities confirmed that was correct. Vice Chairman Clark questioned where the snow storage was shifted. Mr. Bisognano responded that they would haul it off site if they got too much. Vice Chairman Clark questioned what the reasoning behind the covered parking was and if it would cause an issue with snow falling on the

cars. Mr. Mikolaities responded that the snow would not be an issue. They pushed back on the covered parking request. They did view lines on the site and that land is tucked back in. Staff wanted to break up that parking for the railroad view corridor.

Mr. Hewitt questioned if they had evidence to support their need for additional parking. Mr. Bisognano responded that any resident that comes into the development has to state if they have a vehicle and how many. They also required the retailers to state how many parking spaces they need. They have the data and that is why they are here. Mr. Hewitt commented that he did not want them to come back in a year asking for another 100 spaces. Mr. Bisognano responded that there was no way they could practically do that. Mr. Hewitt requested that the applicants send the Board their data. Mr. Bisognano confirmed they would.

Vice Chairman Clark noted that one of the comments they got was about the feasibility of making the covered parking structure capable of housing stacked parking if more was needed in the future. Vice Chairman Clark questioned if that was feasible. Mr. Bisognano responded that in order for lift systems to run smoothly and safely they need a 24-hour attendant. As a practical matter that would not be possible in this location.

Ms. Begala commented that she agreed with point 7 in notes, which talks about how this parking layout conflicts with the Master Plan's vision. This is a sea of asphalt. This is not walkable or a good quality of life for any of the neighbors around there. It's also confusing about how many spaces the Board was voting on tonight. Mr. Mikolaities responded that comment was from the past TAC comments that have already been addressed. The first time around they did a poor job incorporating building D into the site. That TAC comment was to make more walkable connections, so they added a driveway, crosswalk and sidewalk to connect building C to building D. Ms. Begala requested clarification on how many parking spaces they were talking about. Mr. Lundborn responded that they were talking about a total of 120 spaces. There are 56 spaces that go with building D, which was the previous car dealership. Then 50 spaces along the rail road and 11 tandem spaces. That adds up to 127 spaces. However, they eliminated 7 previously approved spaces to make site connections. That leaves 120 spaces.

Mr. DiRienzo questioned if the tandem spots would be designated. Mr. Lundborn confirmed they would be designated for residents that have 2 cars.

Mr. Samonas questioned if it was possible to not allow the leasing tenants of building B to have a car. Mr. Bisognano responded that they could require that they don't have a vehicle. However, then tenants either won't lease the unit or they will park in the neighborhood illegally. The data is real. People have vehicles. If they did not allow cars, then they would have vacant buildings.

Chairman Chellman commented that the maneuvering aisles were 20 feet wide, but the ordinance states they should be 24 feet wide. Mr. Lundborn responded that they were allowed a reduction for a one way. Chairman Chellman questioned if TAC reviewed and approved that. Mr. Lundborn confirmed they did.

Mr. Hewitt questioned if the current impervious was 67% of the site. Mr. Lundborn responded that he did not know off the top of his head, however, there was a reduction from the original properties to today. They do not exceed the allowed impervious.

Chairman Chellman clarified that there were 56 spaces on the front lot and a net of 64 spaces in the because a few of the original spaces out. That makes 120 spaces total. Mr. Lundborn confirmed that was correct.

PUBLIC HEARING

Elizabeth Bratter of 159 McDonough St. commented that she appreciated that this developer was being more realistic about the parking. People like to have cars. The shared parking is overflowing because more people are working from home. They should enclose the parking structure and make it high enough to be able to allow for stacked parking. There is other stacked parking in Portsmouth. They need a professional to set it up and provide enough clearance.

John Chagnon from Ambit Engineering questioned if they were dealing with the lot line application at this point. Chairman Chellman responded that was next on the agenda.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark questioned if they were voting on the subdivision application at this time. City Manager Conard responded that they did not move to hear the agenda items together and vote on them separately, so that would be voted on in the next agenda item.

Vice Chairman Clark moved to grant Site Plan Approval, seconded by City Council Representative Moreau with the following conditions:

Conditions Precedent

- 1.1 Temporary easements will be needed for construction. Temporary easement language and area (to be identified on the plan) are to be obtained along eastern and western boundary lines in order to begin construction of the foundation.
- 1.2 A Construction Management and Mitigation Plan will be required to address, at minimum, access and use of the municipal ROW to construct the building, and proposed staging areas. Heavy machinery staging and access shall be from Deer St.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 Engineer of record shall be established prior to issuance of building permit for the purpose of satisfying condition 1.h.

1.7 Correct existing conditions plans to show 2” water service from water main to the valve and 1” water service from the valve to the building.

Conditions Subsequent

1.8 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;

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

1.10 Applicant will report back to Planning Director in one (1) year regarding how the resident/visitor parking needs are being met and if the approved parking plan is adequately addressing all the uses on the site.

Vice Chairman Clark commented that parking is an obvious issue anywhere in the City. People who are going for this development are the ones that want to have cars. They are sacrificing living downtown and electing to have a car. That makes sense. It is good to see that they are incorporating this additional lot because it was a weird cut out in the site development. Overall, it is a better site in the end.

City Council Representative Moreau commented that she had been reviewing the plan since beginning. It is disheartening to see that they need more parking. That was not what they envisioned because they wanted to encourage a walkable City with less cars. The pandemic ruined that because people are staying home more and need a car. As a land use committee, they need to look at the parking regulations. City Council Representative Moreau commented that she had no issues with the parking plan.

Mr. Hewitt questioned if they could include a stipulation to have the developers submit a report on the traffic that justifies the parking needs. The report should include the square footage of the apartments, number of beds, number of cars, and number of occupants. Chairman Chellman commented that the developers said they had a report that they could submit and questioned if that would suffice. Mr. Hewitt confirmed that would work. Vice Chairman Clark and City Council Representative Moreau agreed to the amendment.

The motion passed unanimously.

- B. The request of **Cate Street Development LLC (Owner)**, and **Boston and Maine Corp (Owner)**, for properties located at **428 US Route 1 Bypass, 406 US Route 1 Bypass**, and **55 Cate St** requesting Preliminary and Final Subdivision approval (Lot Line Revision) to convey 31,187 square feet from Map 165 Lot 14 to Map 172 Lot 2, Map 172 Lot 1 and Map 165 Lot 2 which will result in a total of 52,820 square feet lot area for Map 172 Lot 2, 126,500 square feet lot area for Map 172 Lot 1, and 260,789 square feet lot area for Map 165 Lot 2. Said properties are shown on Assessor Map 172 Lot 1, Map 172 Lot 2, Map 165 Lot 2, and Map 165 Lot 14 and lie within the Transportation Corridor (TC) and the Gateway Corridor (G1) District. (LU-22-7)

SPEAKING TO THE APPLICATION

Mr. Mikolaities commented that they discussed this above when talking about the front lot and land from the railroad. They have a purchase and sale in hand and if they receive a positive vote tonight, then the sale will occur prior to the end of April.

PUBLIC HEARING

John Chagnon from Ambit Engineering commented that he did some work for the flooding that occurred at the Old Frank Jones Brewery on Islington St. There is a large culvert pipe under the railroad. All of the drainage from the parking runs into a collection system in that goes to a culvert that drains to the Bypass. The prior owner agreed to let them clean it out and allow the water to flow. Mr. Mikolaities confirmed that they were doing a similar easement, so it was all set.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Clark moved to grant Preliminary and Final Subdivision Approval, seconded by City Council Representative Moreau with the following stipulations:

- 1 Lot numbers as determined by the Assessor shall be added to the final plat.
- 2 Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
- 3 GIS data shall be provided to the Department of Public Works in the form as required by the City.
- 4 The final plat and all easement deeds shall be recorded concurrently at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.

The motion passed unanimously.

Chairman Chellman commented that they had two applications that were requesting postponements on tonight's agenda. The Board should take them out of order and postpone them.

City Council Representative Moreau moved to take IV Public Hearings – New Business Item B. 213 Jones Ave. and IV Public Hearings – New Business Item C 189 Gates St. out of order, Vice Chairman Clark. The motion passed unanimously.

City Council Representative Moreau moved to postpone IV Public Hearings – New Business Item B. 213 Jones Ave. to the April Planning Board Meeting, seconded by Vice Chairman Clark. The motion passed unanimously.

City Council Representative Moreau moved to postpone IV Public Hearings – New Business Item C 189 Gates St. to the April Planning Board Meeting, seconded by Vice Chairman Clark. The motion passed unanimously.

IV. PUBLIC HEARINGS – NEW BUSINESS

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

- A.** The request of **238 Deer Street, LLC, (Owner)**, for property located at **238 Deer Street**, requesting Site Plan Review approval for demolition of the existing structure and the construction of a new 3-4 story mixed-use building with 21 residential units with a footprint of 5,263 +/- s.f. and 19,190 s.f. gross floor area with associated site improvements. Said property is shown on Assessor Map 125 as Lot 3 and lies within the Character District 4 (CD4), Downtown Overlay, and Historic Districts. (LU-20-238)

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering and Mark Gianinny from McHenry Architects spoke to the application. This was formally the VFW Hall and is now the Staley Bar and Grill. The project has been going through the approval process for some time. On February 18, 2021, the Planning Board granted a CUP that would allow them to not provide any parking on site. They were granted some variances from the BOA and have received approval from HDC. The project is to provide 21 micro units in the downtown. They will replace the building that is there now. There will be a no build easements for the western abutter 30 Maplewood Ave. and another easement to allow for parking movement for the other abutters. There is another easement plan that shows the public pedestrian easement areas. They will create a wider pedestrian alley between the buildings and extend it up to the front of the building. There will be 5 bike racks on the exterior and the plan will incorporate some landscaping. The current building will be replaced with a code compliant HDC approved 21-unit micro housing building. Parking for 30 Maplewood Ave. will remain. They agree to all of the stipulations.

Mr. Hewitt questioned what the square footage of the apartments would be. Mr. Chagnon responded that they were all under 500 sf.

Mr. Harris questioned what the status of the parking stipulation was. Mr. Chagnon responded the parking CUP was approved with two conditions. The applicant understands the conditions must be met prior to the issue of a building permit. Without approval for the site, it is hard to go out and secure leased parking spots. They have made some inquiries but there was nothing official to report yet. They are aware that the conditions need to be met before the issuance of a building permit.

Ms. Begala questioned if there was a backup plan if they find tenants have a car. Mr. Chagnon responded that the plan included a draft of the lease provision. It states that the landlord and tenant would work to ensure they had a designated off-street parking location. The landlord would provide off street options and the tenant would choose where they want to park. Then the

cost of the off-site parking space will become part of the rent. It is still applicable if a car is attained after the lease is signed.

City Council Representative commented that lease agreement was her requirement. The landlord has to take responsibility to solve the problem if the tenant has a car. Chairman Chellman questioned if City Council Representative Moreau was satisfied with the language in the lease. City Council Representative Moreau confirmed she was.

Ms. Begala commented that it was a great idea because they don't want another developer coming back to request more parking. This allows the tenants to decide if they want a car or not. It is in a more walkable area.

Chairman Chellman agreed that there was a big difference in locations between this application and the last one. The location is a highly walkable area and people will not need cars as much. The reverse can happen if parking is required. People can tend to have cars in an area where they may not have if parking is provided.

Ms. Zendt commented that the lease and off-street parking agreement and conditions were part of the original approval and must be completed prior to the issuance of a building permit. They will be fully enforced.

Mr. Chagnon commented that current patrons of establishments and employees are using the parking garage which is close and walkable.

Mr. DiRienzo noted that the apartments were studios and questioned if there would be a one-person limit. Mr. Gianinney responded that they will be one-bedroom apartments but there will be no limit. The maximum would probably be 2 people based on the size.

PUBLIC HEARING

Elizabeth Bratter of 159 McDonough St. commented that her biggest concern was that it abuts a neighborhood that was in a pilot of neighborhood parking program. This should not fall through the cracks. The parking conditions should be clear, and someone should be babysitting the lease. The Planning Board has made it clear that this is an experiment. Ms. Bratter would like to be reassured that this would be monitored. Otherwise, the overflow could be parking in the adjacent neighborhood because it is free and the garage costs money.

Charles Dye of the 30 Maplewood Ave. condo association commented that the applicants did a spectacular job working with their immediate neighbor. They had some concerns with drainage and the applicants worked through those problems. They were in support of the project. A year ago, the condo sent the Boards a letter saying that they supported the project. There is a parking lot that has been striped, and they did not have any interest in housing construction vehicles in it. They should house them on the Deer St. side.

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

DISCUSSION AND DECISION OF THE BOARD

City Council Representative Moreau commented that their stipulations should include a 1 year parking report to understand how many tenants had cars and how it was working. Chairman Chellman questioned if that report would go to the Board. City Council Representative Moreau responded that it would go to staff.

Chairman Chellman questioned if they needed to add a stipulation about the construction equipment location. Vice Chairman Clark commented that there was a condition that said temporary easements were needed for construction, so whether or not those are granted is up to the abutter. Ms. Zendt noted that they could add it as a consideration to be added to the construction mitigation plan. They should look to stage from Deer St. They need the whole perimeter for construction. The condition can be added to B. City Council Representative Moreau agreed that the heavy equipment could be staged on Deer St.

City Council Representative Moreau moved to grant Site Plan Approval, seconded by Vice Chairman Clark with the following conditions:

Conditions Precedent

- 1.1 Temporary easements will be needed for construction. Temporary easement language and area (to be identified on the plan) are to be obtained along eastern and western boundary lines in order to begin construction of the foundation.
- 1.2 A Construction Management and Mitigation Plan will be required to address, at minimum, access and use of the municipal ROW to construct the building, and proposed staging areas. Heavy machinery staging and access shall be from Deer St.
- 1.3 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.
- 1.4 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.
- 1.5 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.
- 1.6 Engineer of record shall be established prior to issuance of building permit for the purpose of satisfying condition 1.h.
- 1.7 Correct existing conditions plans to show 2” water service from water main to the valve and 1” water service from the valve to the building.

Conditions Subsequent

- 1.8 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;
- 1.9 A stormwater inspection and maintenance report shall be completed annually and copies shall be submitted to the City’s Planning and Public Works Departments.
- 1.10 Applicant will report back to Planning Director in one (1) year regarding how the resident/visitor parking needs are being met and if the approved parking plan is adequately addressing all the uses on the site.

Vice Chairman Clark commented that they looked at this for the parking over a year ago and felt at that time that they were going out on a limb for a unique project. City Council Representative Moreau commented that they want this to succeed because if it does, then it will be a good model.

Mr. Harris agreed and appreciated the report after one year. There is so much pressure on the neighborhoods surrounding downtown.

City Council Representative Moreau commented that they worked with the applicants and had a lot of input on the parking. Hopefully this lease agreement has addressed the concern.

Chairman Chellman commented that after a Board decision the applicant will get a written letter of decision and it becomes part of the record. Vincent Hayes is the City's Land Use Compliance Agent. It is his job to look at the conditions in the letter of decision and makes sure that they are all satisfied. They don't release the bond or building permit until the conditions are satisfied. There are a number of steps that happen after the Board makes a decision. Ms. Zendt commented that they will try to bring Mr. Hayes in to walk the Board through the process and explain what he looks at to understand and coordinate the implementation of stipulations provided.

Ms. Begala commented that it will be good to understand how the 21 units fill and what mix will have cars and where they are parking. That is important and they are appreciative of the developer working with the Board on this.

The motion passed unanimously.

- B. REQUEST TO POSTPONE** The request of **Donald Lowell Stickney III (Owner)**, for property located at **213 Jones Avenue** requesting Conditional Use Permit under section 10.814 of the Zoning Ordinance and modification of the standards set forth in Sections 10.814.40 or 10.814.52 through 10.814.56, to construct a new single family residence and convert the existing residence into a Detached Accessory Dwelling Unit totaling 886 square feet of living area. Said property is shown on Assessor Map 222 Lot 69 and lies within the Single Residence B (SRB) district. (LU-22-34) **REQUEST TO POSTPONE**

DISCUSSION AND DECISION OF THE BOARD

This item was postponed earlier in the agenda.

- C. REQUEST TO POSTPONE** The request of **Nerbonne Family Revocable Trust (Owner)**, for property located at **189 Gates Street** requesting a Conditional Use Permit under section 10.815 of the Zoning Ordinance and modification of the standards set forth in Section 10.815.30 for the conversion of an existing accessory structure (garage) into a garden cottage with 546 gross square footage of living space. Said property is shown on

Assessor Map 103 Lot 6 and lies within the General Residence B (GRB) and Historic Districts. **REQUEST TO POSTPONE** (LU-22-30)

DISCUSSION AND DECISION OF THE BOARD

This item was postponed earlier in the agenda.

- D.** The request of **Treadwell House Inc. (Owner)**, for property located at **70 Court Street** requesting a Conditional Use Permit under section 10.112.14 of the Zoning Ordinance to provide five (5) parking spaces where 11 are required. Said property is shown on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-10)

SPEAKING TO THE APPLICATION

Chairman Chellman noted that Mr. Samonas recused himself from the application.

John Bosen spoke to the application and noted that the applicant Andrew Samonas and engineer Eric Saari were in attendance. They are in the process of purchasing 70 Court St. It is currently an office building, and they plan to convert it to an 8-unit inn with a caretaker residence. They have obtained a special exception from The ZBA to operate as an Inn. They are here tonight seeking a CUP to provide 5 parking spaces where 11 is required. This is a historical building and many of its architectural features lend itself well to an inn. Presently there are 4 parking spaces on site. They will be expanding it to 5 spaces. The ordinance requires 11 but a parking demand analysis suggests 6 would be appropriate for the proposed use. They have met all of the approval criteria. The applicant believes that the street parking availability and access to neighboring lots mitigates the need to meet the required 11 spaces. The site is .2 miles from the Worth Lot and .3 miles from the Hanover St. garage. the Samonas family also owns an office building on Middle St. that could be used for parking if needed. There are also ride share options available too. This site is one block away from the Downtown Overlay where the parking requirement could be met. The applicant will be using remote check in, and guests will be provided access codes and parking options in advance. Not all guests will use cars. Ride share options can bring guests to Portsmouth.

Ms. Begala questioned how many spaces would be available in the building they owned next door. Mr. Bosen responded that the site plan will provide 5 spaces and the Samonas family has available parking 500 yards away. It can be utilized for overflow if no public options were available. There are 22 spaces in that lot. Chairman Chellman clarified that application does not include that property. Mr. Bosen confirmed that was correct. It is a small boutique inn. There is plenty of public parking in the vicinity. People will use uber and walk. Chairman Chellman commented that the advanced check in model will allow them to know how many cars were coming to the site. Mr. Bosen confirmed that was correct. It is a benefit to the advanced check in. They can notify guests of the public parking options and the overflow. Chairman Chellman clarified that the overflow was not part of this application. Mr. Bosen confirmed that was correct. It's an option but it is not part of this application.

City Council Representative Moreau commented that she was concerned because typically a tourist would have a car. It would be better to designate 3 additional spaces. Then they would have one space for each room. Some public parking options have limits or hours or days. It would be better to designate 3 spaces on the adjacent property in a covenant. Mr. Bosen confirmed the applicant was agreeable to that. Chairman Chellman questioned if the applicant was agreeable to an easement for that. Ms. Zendt commented that a recommended stipulation was to put up signage to mark those spaces as restricted for hotel parking. The dedicated spaces should be done through a parking covenant because it is one owner for both sites. Staff did not require this because it close to the Historic Overlay and 8 spaces do seem appropriately sized for the inn.

Ms. Begala questioned if the additional spaces were on the property next door. Mr. Bosen responded that they were not. They would be 500 yards away where Court St. and Middle St. intersect. Ms. Begala commented that most tourists will have a car, so 8 spaces should be and the parking covenant for 3 spaces should be required. Mr. Bosen confirmed they were willing to make that part of the condition of approval.

Mr. Harris agreed. There is the bus station, but they are not close enough to a major airport. Tourists will have cars. Mr. Bosen agreed.

Chairman Chellman requested a one-year report to see how this was doing and if it's adequate or needed at all. Mr. Bosen agreed.

PUBLIC HEARING

Elizabeth Bratter 159 McDonough St. appreciated the covenant idea because the south end was already overflowing. The parking lots that are in walking distance are full in the summer 24 hours a day.

Chairman Chellman 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

City Council Representative Moreau moved to grant a conditional use permit to allow a building or use to provide less than the minimum number of off-street parking spaces required by Section 10.1112.32 (five parking spaces on site), seconded by Vice Chairman Clark with the following stipulations:

- 1.1 Provide three additional parking spaces at 159 Middle St.
- 1.2 A parking covenant will be filed requiring three spaces located at 159 Middle St. to be restricted to the Inn use and signage be appropriately posted.
- 1.3 Applicant will report back to Planning Director in one (1) year regarding how the visitor parking needs are being met and if the approved parking plan is adequately addressing visitor and staff needs.

The motion passed unanimously.

V. PRELIMINARY CONCEPTUAL CONSULTATION

- A. The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** for Preliminary Conceptual Consultation to partially demolish existing buildings and construct a new 3 story structure with a short 4th story. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. (LUPD-22-6)

Tracy Kozak spoke to the presentation. They have started work sessions with the HDC. The presentation will provide a high overview of the project, the context and history of the site, and then discuss the civil engineering. The goal is to connect public spaces via pedestrian ways. The site is in Market Square on the corner of High St. and Congress St. and across from the North Church. The parking lot is in the back of structure. Historically the right side was a hotel that burned down in the 1960s. It has been parking ever since. The wooden shed structures will be removed. The addition on back will connect to the masonry structures that front Congress St. There will be underground parking with 19 spaces and a car elevator accessed off Haven Court. The ground level will all be retail and restaurant. They will be matching floor levels for 3 stories and have a short 4th story. The roof line is just under 45 feet. The plan shows a pedestrian bridge because it is being discussed, however, that is not part of the application. They will restore existing facades. It is currently modern storefronts, and they will bring back the historical features. They are proposing a new dormer on 3 Congress St. The wood structure will become the new primary entrance to this block. There will be other secondary entrances as well.

Terrence Parker from Terra Firma commented that they were trying to create a site experience. The alleyway can go all the way through the McIntyre and they were trying to create excitement in the alleyway. There could be glass partitions and a labyrinth with a wellness and mindfulness theme. There could be stone benches that create an amphitheater above Gilley's. The alleyway would be well lit with arches. There would be a series of interesting stairs up from Fleet St. Lamp posts with glass prism lanterns would illuminate the path. The building creates a wayfinding image then continues through the alley.

John Chagnon commented that the site plan set is broken into the site development and off site. There is frontage on Congress St. and it backs to Haven Court. Part of it is a private right of way owned by the applicant. Haven Court continues as an area the City owns down to Fleet St. It has been blocked off for many years. Currently the building occupies the majority of the property. The lots have been merged, so now it is one lot. The back lot is currently vacant. High St. is narrow with some parking on the other side. The sidewalks are an insufficient width on both sides. It is cluttered with electrical conduits, pipes, and other utilities. The demo plan shows that they will take some of those additions on the back of Congress St. and the pavement will be removed. The plan shows they will build an additional building on the back of the existing building. The main pedestrian entrance will be off Ladd St. It connects at Market St. and the commercial alley. Eventually the developer hopes to connect commercial alley to the Worth Lot. The next sheet shows the utilities. They will put in underground electric and are

working with DPW to replace the sewer and water on High St. There will not be a lot of changes to the grading on Haven Court. It is very active for deliveries and trash removal. They need to keep the alley available for deliveries. The connector pedestrian bridge would be above the travel area if it was built. They are looking at providing an alternative to a street level dumpster. It will most likely be loaded into the basement and taken out through the garage. They will take out the curbs at the street level and make it possible for vehicles and pedestrians to coexist. They looked at levels of the building and the parking garage to understand where they could connect. It would impact 2 spaces if they made the connection.

Mr. Hewitt commented that the building looked historical and traditional, but the prism and sky way were more modern. Mr. Hewitt questioned if the prism was a stairway. Ms. Kozak responded that they were not a habitable space. It would be used for displays or potentially to show images of historical items or other landmarks in town. As people approach from Ladd St. they will see that shape in direct proportion of the church's steeple. It faces due north so as the sun swings to south it casts a shadow that sweeps with the time of day like a clock and the steeple. It is all glassy and metal at that end and masonry with smaller windows on the other. It is telling a progression of time and evolution.

Ms. Begala commented that she loves the labyrinth and creativity. The plan says that there will be 32% open space. Ms. Begala questioned what that percentage referred to. Mr. Chagnon responded that the definition of open space includes walkways. Open space in downtown Portsmouth is different than rural areas. Ms. Begala commented that still did not add up to 32%. That is a large number. Mr. Chagnon responded that the lot was currently bifurcated by zoning. The current parking lot is CD-4 and the front is CD-5. Chairman Chellman commented that they were showing 32.6% for the north, so it could be a typo. Mr. Chagnon agreed. Chairman Chellman commented that 10% was required for CD-4 and 5% was required for CD-5. They do not have 32%. Chairman Chellman questioned if they had any idea what it might be. Mr. Chagnon responded that it was complicated because it was two different lots. The rough math shows it's about 20%.

City Council Representative Moreau commented that they did not need to show the detailed numbers until they come back for the site plan approval. The section for deliveries on High St. is active, so they need to make sure plenty of room. They should keep in mind how many deliveries will happen and if they can get in and around the site. They need to think a lot about lighting for the area of Haven Court. Removing the dumpster would be good. The grade change makes it hard to not include stairs but they should consider big wide steps to help people with strollers maneuver.

Mr. Samonas commented that it was an excellent idea to connect commercial alley to Gilley's and Vaughn Court. Mr. Samonas requested more detail on how the back side of the building would interact with the street and the garage style windows. Ms. Kozak responded that the whole first floor will be retail and restaurant. This style of window will roll all the way up to allow in fresh air in nice weather and not be in the way.

Ms. Begala commented that the maximum height of the building is 40 feet, but the plan said 45 feet. Ms. Begala questioned if the building was higher than the maximum height and if it would

be the highest building around Market Square. Ms. Kozak responded that the height applies to the back part of the parcel. The height question is under review. They submitted a variance request but that was postponed until the zoning was further clarified. They are matching the height of the building it's attached to exactly. The building across High St. is at least as tall if not a little higher. The other building is the parking garage, and they are aligning the third floor with the upper level of the garage. Ms. Begala commented that it should not be higher than the steeple of the North Church. Ms. Kozak responded that it was lower than the steeple.

Vice Chairman Clark commented that the flat top roof is measured differently than a gable and hip roof. The ordinance says that if it's a flat top roof then they should be measuring from the top. The main entrance is a good historical façade, but the proposed addition seems to be swallowing it up a little. They may want to look into breaking the addition up with different facades. The pedestrian access is a fantastic idea. One issue related to the open space is car the elevator and cars coming out onto that. If they are counting that as open space, then they really have to do that tactfully. It should go above and beyond the typical warnings to make pedestrians feel welcome.

Mr. Samonas commented that trees and landscaping could have a separator effect between the public space on Haven Court and the restaurant and retail space. Landscaping will provide a more aesthetically pleasing view than the back of a parking garage.

Chairman Chellman questioned if the building was chamfered to allow for vehicles. Ms. Kozak responded that it was more of a notch. It was not for vehicles. They don't see cars going up and down the alley. There may be some trash chutes and hand trucks but there would be a subterranean trash room that would come up the elevator and out that way. Chairman Chellman questioned if they have studied the pedestrian connection had been tested to see if it was possible. Ms. Kozak responded that they have tested the height, size, and mass to see if a truck could go under it and if it was ADA accessible. They envision that the public could use the walkway to access the building's amenities. Chairman Chellman commented that he was personally opposed to pedestrian bridges because it impacts the level of pedestrians on the street. The prism will act like a clocktower but an actual clocktower would fit in better in this location.

Chairman Chellman closed the presentation.

VI. DESIGN REVIEW APPLICATION ACCEPTANCE

- A.** The request of **One Market Square LLC (Owner)**, for the property located at **1 Congress Street** requesting Design Review approval to partially demolish existing buildings and construct a new 3 story structure with a short 4th story. Said property is shown on Assessor Map 117 Lot 14 and lies within Character District 4 (CD-4), Character District 5 (CD-5) and the Historic District. (LUPD-22-6)

City Council Representative Moreau moved to accept the submitted materials for Design Review and schedule the public hearing for the April Planning Board meeting, seconded by Vice Chairman Clark.

Mr. Hewitt questioned if the dispute with the Zoning Board needed to be resolved before they voted on this. Ms. Zendt responded that variances and approvals from other commissions do not have to be resolved before this Board accepts the completeness and it goes through design review. The formal application may need to address that fully. They may identify things for variances through the TAC process and other presentations. At this stage they can identify what is needed, but it does not need to be completed.

The motion passed unanimously.

VII. OTHER BUSINESS

- A.** Request from **Michael J. O'Connor, Owner**, for property located at **163 Sparhawk Street** for a 1-year extension of the Wetland Conditional Use Permit granted on 2/18/2022. (LU-20-256)

DISCUSSION AND DECISION OF THE BOARD

This was voted on earlier in the agenda.

- B.** Review and discuss dates and topics for proposed training offered through the New Hampshire Municipal Association.

Ms. Zendt commented that in response for the request for training they reached out to NHMA to see what resources they have available. Steven Buckley provides some free training and some that costs money. The first session is free. They polled the Planning Board Members and March 30, 2022, at 6 pm will likely be the first special meeting to discuss roles and responsibilities. It will not take the full 2 hours, so they can work to identify an additional topic. They will be sending a similar poll out for April to host a joint meeting with the Conservation Commission to discuss the Wetland CUP. They will discuss the State law, understanding the ordinance and best practices. The topic of today is talk about the March 30, 2022, additional topic. They talked about beginning the meeting at 6 p.m. to have a discussion period before Mr. Buckley begins at 6:30 p.m.

Chairman Chellman commented that the Board has talked a lot about concerns on what Board does and how that ties into the Master Plan, regulations, and the Land Use Committee. Chairman Chellman will talk with Steven Buckley beforehand to find out what possible topics he may have. If a Board member has anything in particular, they would want to discuss feel free to raise it.

Ms. Begala requested that they use a different method to poll the members in the future because she did not see the poll and will not be able to attend the March 30, 2022, meeting. Ms. Begala questioned if they would be reviewing the roles and responsibilities that the Board already has training materials on or if it would be more in depth. Ms. Begala questioned if the meeting would be recorded. Chairman Chellman commented that he would follow up. They did not produce the handbook but are familiar with it. Ms. Begala commented that she attended a training hosted by PLAN today and it was very beneficial. They do it monthly and today's topic was about development as a regional initiative. They looked at the regional impact of projects.

City Council Representative Moreau commented they started doing those trainings online monthly and have always had an annual spring conference. They have been extremely informative, and training is a big part of being a Planning Board Member. A lot of Mr. Buckley's focus will be on exactly what the Planning Board's role is and how they see it from a legal and statutory side of things. It will not be straight out of the manual. There is a Regional Planning Association that looks at regional impact. The Planning Board has the right to consider if a has regional impact and reach out to the Rockingham Planning Commission. Then they would advise the Planning Board. They have done it in the past for 2 projects on Route 1 on the Greenland and Rye line.

Vice Chairman Clark commented that he attended a training hosted by Mr. Buckley in 2016 and found it very helpful. He was very good at going over the roles and responsibilities and touched on a lot of case law. It helped clarify when the Board is outside its legal bounds and what can happen.

C. Discuss upcoming staff presentation on housing data, trends, and needs.

Ms. Zendt commented that in response to the request for additional information and data Staff will be preparing a report for the April Planning Board meeting. It will be about the housing development in Portsmouth and housing trends for the past 5 years. They will be sharing housing data on the cost burden, need, and housing stock in Portsmouth. Council adopted a goal in producing a variety of housing. It is the same report they are giving to the Land Use Committee.

City Council Representative Moreau commented that the Land Use Committee was just getting started. They are charged with looking at any areas in the City for 79E revitalization. They are looking at the City owned property list. There is new legislation coming through and housing opportunity zones. There is a Housing Commission in the City it has not been active, but they did create a housing policy. They are evaluating to see if the Housing Committee would be a good thing to have. They would be an advisory role to Planning Board. At the regulatory meeting on April 8, 2022, they will look at a lot of the current zoning as it stands and how the ADU's are working. There is a whole list of current zoning that may need some adjustments. The next full committee meeting will happen May 13, 2022, and then starting in June it will be the first Friday every month at 9 a.m.

Mr. Samonas questioned what the status of the Housing Commission was. City Council Representative Moreau commented that legally it was there, but nobody is on it and it is not active. They are looking at it and discussing if it is needed. Long term, the Land Use Committee is something that make changes, but the Housing Commission is a standing committee that looks at it on a regular basis. All zoning changes will go to the Planning Board for review with a public hearing. Then it will go through the Council readings and enacted. It is not a quick process, but they hope to get the ball rolling.

Ms. Begala commented the report was going to be for 5 years, but she had requested a report for the past 10 years. It is important for the Planning Board to look at numbers to understand the

context of what is being built now and look at how to manage growth. The future forecasts are around growth, regulations, and comprehensive planning. The Planning Board has a planning role in which the Board has a legislative role to propose ordinance changes and a regulatory role to apply the ordinances. Ms. Begala was not sure how the Planning Board's role was different from the Land Use Committee. They need to follow the Master Plan. If the growth in town was changing the character of the town, then it no longer reflects the Master Plan. The Land Use Committee is guided by and reports to the City Council, but there was no mention of the Master Plan. The data they are gathering is also useful to the Planning Board. Ms. Begala commented that she was looking forward to the Board having a discussion about how to review the ordinance with an eye to ensure the rate of growth and character of the growth is in line with what the citizens and public input into the Master Plan. The big question was if they were still on track with the Master Plan or not. At the last meeting City Council Representative Moreau explained what the Land Use Committee was doing. It will give them a chance to take a structured look at immediate changes and focusing on City owned property.

City Council Representative Moreau commented that was one of the things they were focusing on. They do look at the ordinances but at the same time they don't enact changes. The true legislative body is the City Council. They are the final word on anything. Their direction and policy is what takes precedent. That Master Plan and building future Master Plan is part of the long look back to see if it was effective and. They are looking at many different things and more than just City properties. Ms. Begala commented that their training materials included a flow chart about what the Planning Board is doing, and Ms. Begala was still trying to understand her role and the Planning Board role. They should discuss it in a future session. Ms. Begala had not seen the active part of the Planning Board operate a lot. They should bring zoning ordinance revision recommendations to City Council based on the Master Plan. Ms. Begala questioned how they took a more active role around that.

Ms. Zendt commented on the legislative role of the Planning Board. Staff begins that work with the community and land use plays a role in setting the work plan. Then they bring that to the Planning Board and they help staff form the revisions. The Planning Board's work is to refine the changes. The Master Plan has a host of policies and goals. It is not at a granular level but a high-level vision. There can be any range of amendments needed to implement the Master Plan and all revisions should reflect that with the caveat of state law requirements. That takes precedence over the Master Plan. When Staff moves forward with a regular work plan of amendments the Planning Board will be active in contributing. Then it will go to City Council to approve it. The Land Use Committee is serving as an agent for Council to help develop a preliminary round of amendments. Ms. Begala questioned how a member of the Planning Board could submit a recommendation for revision as part of this process. City Council Representative Moreau responded that right now they are taking input from the public. Any member of the public can send a recommendation for zoning changes and provide feedback.

Chairman Chellman commented that the Land Use Committee was charged by Council specifically to do what it's doing. They are following Council direction. It will feed back to the Planning Board, and they will evaluate it with respect to the Master Plan. Then the Board can propose something and send to it to Council.

Minutes, Planning Board Meeting, March 15, 2022

Mr. Harris questioned what the process was to propose something. City Council Representative Moreau responded that right now anyone can send input. City Manager Conard added that Chairman Chellman and Vice Chairman Clark were serving on the Land Use Committee and proposals can be conveyed through them. City Council Representative Moreau commented that he could assemble the proposals in a document and send it to any one of us. They will get it to the Land Use Committee.

Ms. Begala commented that there should be a future discussion that would provide clarity on what distinguishes the Planning Board and Land Use Committee and how they are collaborating. City Council Representative Moreau confirmed there could be an update every month.

VII. ADJOURNMENT

City Council Representative Moreau moved to adjourn the meeting at 10:00 p.m., seconded by Vice Chairman Clark. The motion passed unanimously.

Respectfully submitted,

Becky Frey,
Secretary for the Planning Board