

HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC

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October 12, 2022

Rick Chellman, Chairman
Portsmouth Planning Board
1 Junkins Avenue
Portsmouth, NH 03801

Re: Russell Street Development

Dear Mr. Chellman, et al.,

This firm represents the Market Wharf 1 Condominium Association (“MW”) and we write regarding the pending application of Port Harbor Land (“PHL”) for the so-called Russell Street Development. The lot proposed for development is the situs of a deeded parking easement owned by MW (“Easement”) for 58 vehicles, and we write with concerns about the intersection between MW’s parking rights and PHL’s proposals before this Board.

More specifically, we write to identify an issue that we believe directly impacts PHL’s application in a manner that obviates the general prohibition on the Planning Board’s consideration of private disputes.

Pursuant to the Easement’s terms, the underlying property owner has a limited right relocate it in conjunction with its development, and PHL has announced an intent to do just that. Unfortunately, PHL has repeatedly refused to provide MW with any substantive information as to how or where it intends to affect MW’s parking rights. Left no other option, MW has filed an action for declaratory judgment in Rockingham County Superior Court, seeking a determination that, regardless of any relocation, PHL be required to observe certain obligations inherent in the ownership and use of the Easement, as well observing the terms of an agreement reached with the prior owner.

Most of those issues in that lawsuit are of no moment to this body, except for one limited area. MW’s easement contains 58 single spots, which it has utilized without interruption for 35 years. PHL’s proposal requires a total 345 parking spaces, and provides for 341, a cushion of only four spots per PHL’s engineer’s submission to the Technical Advisor Committee. (Attached, at pg. 4) However, depending on which drawing is referenced, 25 (A 102) or 20 (C-102.1) of those spots are so-called “stacked” parking, a decidedly less desirable parking arrangement, which is decidedly contrary to MW’s history of usage. Therefore, a court order

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prohibiting the use of stacked spots to satisfy PHL's obligation to provide for the Easement would render the available parking total significantly non-complaint with the Portsmouth Zoning Ordinance ("Ordinance")¹.

Due to PHL's consistent refusal to provide any details of the proposed relocation of MW's easement, it is presumed that it intends to relegate MW to the stacked spots. However, the express provisions of the Easement preclude that arrangement according to the Ordinance. The Easement's spaces are unassigned and includes commercial and guest parking, none of which are permitted to be stacked.

First, stacking is permitted only for residential units; they are expressly prohibited for commercial units. Ordinance, Art. 11, §10.1114.32. Eight of MW's units are commercial and, because each unit is entitled to two spots, 16 single spaces are unquestionably ineligible for stacked parking. Further, the Easement provides that that *any* open spots may be used by other owners' invitees, including contractors, deliveries and the like.

Second, as noted above, and per the Condominium Declaration, the parking spots are not assigned to a specific unit but are available on a first come/ first served basis. (Decl. 4.5.2). The Ordinance limits stacked spots to "one-family and "two-family dwellings" and requires that they be "assigned to the same dwelling unit". Ordinance, Art. 11, §10.1114.33- 10.1114.33 (a). However, the Easement permits an owner to park in *any* open easement spot, unrelated to their unit, rendering illegal the use of stacked spots for the Association's owners.

Finally, the Ordinance prohibits the use of stacked spots for guest parking, but the Easement expressly permits guest parking., i.e., it is dedicated to providing parking to the Association owners and "their employees, agents, customers, invitees, contractors and independent contractors". So, again, it would be improper to assign stacked spots to the Easement. Ordinance, Art. 11, §10.1114.33 (b).

MW's concern is that, by delaying disclosure of its intent to relegate MW to stacked spots, PHL's application will be approved, permitting it to sell the more desirable single spaces to its new commercial and residential tenants, thereby allowing it to assert that it would then be impossible to undo those sales to accommodate the Easement. This would create a situation wherein PHL would be unable to both observe the Ordinance and accommodate MW's perpetual and irrevocable parking rights.

¹ The engineering submission also erroneously notes, at page 3, that the Easement can be accommodated by "any space".

While private restrictions will generally not affect the public review of land use applications, (*Chasse v. Candia*, 132 N.H. 574 (1989)), a private restriction such as an easement may create a violation of land use controls that are significant to such a review. For example, an easement for a drainage ditch or high-tension utility lines may cause that portion of the property to be unbuildable. In such a case, the land use board would be required to include that fact in consideration of a related application. *See, e.g. Quality Discount Market Corp. v. Laconia*, 132 N.H. 734 (1990) (Fact that landowner was not entitled to claimed parking easement on abutting property, precluding compliance with town's parking requirements was relevant to site review process).

Based upon the foregoing, we respectfully submit that the omission of any specifics regarding PHL's intentions for honoring its legal obligation to provide for the Easement results in its inability to credibly represent the number of parking spots that its development will contain and, due to the very real possibility that the court will sustain MW's claims, this deficit must be considered in reviewing its application. It is also submitted that the court's order in this regard will have a substantive impact on PHL's application, requiring that it be resolved before approving same.

We thank-you for your consideration.

Very truly yours



Lawrence B. Gormley

Encl.

T5037-002
May 24, 2022

Mr. Peter Stith, Principal Planner, Chair
Site Plan Review Technical Advisory Committee
City of Portsmouth Planning Department
1 Junkins Avenue
Portsmouth, New Hampshire 03801

**Re: Site Review, Lot Line Revision & Conditional Use Permit Applications
Proposed Mixed Use Development, Russell & Deer Street, Portsmouth, NH**

Dear Peter,

On behalf of Port Harbor Land, LLC (owner/applicant), we are pleased to submit one (1) set of hard copies and one electronic file (.pdf) of the following information to support a request for a Site Review Permit, Lot Line Revision Permit, Conditional Use Permit for Shared Parking on Separate Lots, and a Conditional Use Permit for Increased Building Footprint the above referenced project:

- One (1) full size & one (1) half size copy of the Site Plan Set, dated May 24, 2022;
- Owner/Applicant Authorization, dated January 4, 2022;
- Site Review Checklist, dated May 24, 2022;
- Drainage Analysis, dated May 24, 2022;
- Operations and Maintenance Manual, dated May 24, 2022;
- Grade Plane Exhibit, dated May 24, 2022;
- Community Space Exhibit, dated May 24, 2022;
- Landscape Presentation Plan Set, dated May 24, 2022;
- Lighting Graphical Design Package, dated May 24, 2022;
- Fire Truck Turning Exhibit, dated May 24, 2022;
- Traffic Impact Study, dated May 24, 2022;
- Eversource Will Service Letter, dated May 23, 2022;
- Unutil Will Service Letter, dated February 22, 2021;
- Green Building Statement, dated May 23, 2022;
- Application fee calculation form

PROJECT SUMMARY

Existing Conditions

The project is located at 2 Russell Street, Deer Street & 250 Market Street consisting of properties identified as Map 118 Lot 28, Map 119 Lot 1-1C & Lot 4, Map 124 Lot 12, and Map 125 Lot 21 on the City of Portsmouth Tax Maps which are located in the Character District 5 (CD5). The properties identified as Map 118 Lot 28, Map 124 Lot 12, and Map 125 Lot 21 (proposed redevelopment parcels) are the existing parcels proposed to be redeveloped are bound by Deer Street to the south, Maplewood Avenue to the west, the railroad to the north

and Russell Street to the east. Map 119 Lot 4 will be developed into a park area as part of the community space for the proposed project, and Map 119 Lot 1-1C will be part of the lot line revision application.

The proposed redevelopment parcels lots currently consist of a large surface parking lot which is mainly used by the Sheraton Hotel. There are some small patches of gravel and grass where the site abuts the railroad property and a ledge outcropping to the north.

Proposed Redevelopment

The proposed project will include the construction of three buildings consisting of office, retail/commercial, and residential uses. Building 1 is a proposed 4-story office building at the corner of Deer Street and Maplewood Avenue, Building 2 is a proposed 5-story mixed-use residential building at the corner of Deer Street and Russell Street with below ground parking, first floor residential lobby, commercial space and parking and 60 upper floor residential units, and Building 3 is a proposed 5-story mixed-use residential building along Russell Street with first floor residential lobby and commercial space and 24 upper floor residential units.

The existing condition of the proposed redevelopment parcels does not provide any stormwater treatment. The proposed development will provide stormwater treatment to runoff from the new buildings and surface pedestrian and vehicle access ways via stormwater treatment units. In addition, an underground detention system has been incorporated into the design to address peak runoff rates from the site. The stormwater management system is described in further detail in the enclosed Drainage Analysis.

The project also consists of significant on-site and off-site improvements including wide sidewalks, roadway improvements, community space, lighting, landscaping, and utilities. The proposed development will provide landscape improvements including an enhanced streetscape and plantings, plaza area at the redesigned intersection of Deer Street and Russell Street, and community space areas. The streetscape design includes a variety of vibrant site elements such as shade trees, public benches, and retail spill out zones. Combined, these site features will create a friendly, safe pedestrian experience and connect users with first floor programs and access to proposed on-site and off-site community space areas. In total the proposed project is providing 22,169 SF of off-site, pedestrian orientated and park space public improvements.

Community Space & Off-Site Improvements

The project is located in the North End Incentive Overlay District. The applicant will be providing 38,721 SF of community spaces. This Community Space is 38.8% of the total lot area which exceeds the 20% of total lot area required to receive the incentive bonus for one additional story (10 ft) above the maximum height requirement. The community space calculation is depicted in the enclosed Community Space Exhibit. Additionally, the project is required to provide 30% community space as part of a conditional use permit application discussed below for Map 118 Lot 28 to allow proposed Building 2 to have a maximum 40,000 SF building footprint. Overall, the project will be providing 31.2% open space on the development lot where only 5% is required by zoning.

LAND-USE PERMIT APPLICATIONS

Local Permitting Timeline

The proposed project will require the following site related approvals from the Planning Board:

- Site Plan Review Permit
- Lot Line Revision Permit

- Conditional Use Permit for Shared Parking on a Separate Lot
- Conditional Use Permit for Increased Building Footprint

Along with attending six (6) work sessions with the Historic District Commission (HDC), to date the applicant has attended the following meetings with the local land-use boards related to the Site Plan:

- December 16, 2021 – Planning Board Conceptual Consultation
- January 11, 2022 – Technical Advisory Committee Work Session
- February 17, 2022 – Planning Board Design Review

In addition to the local land-use permits, the project will also require the following approvals from the New Hampshire Department of Environmental Services (NHDES):

- Alteration of Terrain Permit
- Sewer Connection Permit

Site Plan Review Permit

The project will require a Site Plan Review Permit for the site improvements described above in the project summary. The project has previously been before the Planning Board for Conceptual Consultation and Preliminary Design Review. In addition, the project has previously been before the Technical Advisory Committee (TAC) for a work session.

Lot Line Revision Permit

The proposed redevelopment parcels located at the corner of Russell Street and Deer Street consist of properties identified as Map 118 Lot 28, Map 124 Lot 12, and Map 125 Lot 21. The existing internal lot lines separating these three lots, are proposed to be relocated to better align the parcels for the proposed building footprints.

Additionally, three land transfers are proposed to allow for the realignment of the Russell Street & Deer Street intersection and for the City's future construction of a roundabout at Russell Street and Market Street. Land transfer area 1 is proposed from Map 119, Lot 4 to the City of Portsmouth. Land transfer areas 2 and 3 are from Map 119, Lot 1-1C to the City of Portsmouth.

Conditional Use Permits

Shared Parking on Separate Lots

A Conditional Use Permit for parking on a separate lot as permitted under Section 10.1112.62 of the City of Portsmouth Zoning Ordinance is requested for the project. The project meets the parking requirements by sharing parking between the three (3) proposed redevelopment parcels and the existing Sheraton Hotel and Deer Street condos as shown on the enclosed Site Plans. A total of 341 parking spaces are required to meet the Zoning requirements.

The existing surface parking lot is used by the Sheraton Hotel for their valet and self-park operations. There are also an existing 82 deeded parking spaces for the Deer Street and Sheraton Condos that can be assigned to any space on either the Sheraton Lot or the redevelopment parcels. The table below identifies the required parking for the existing and proposed uses per the City of Portsmouth Ordinance. The project is providing 189 spaces within Building 2 and there are 154 existing spaces on the Sheraton lot, for a total of 343 proposed parking spaces where 341 spaces are required.

City of Portsmouth Downtown Overlay Parking Requirement	
North End Development, Portsmouth, NH	
Proposed Commercial Use Parking Requirements	No requirements 75,000 SF 0 Spaces
Proposed Residential Use Parking Requirements	1.3 Spaces / Dwelling Unit 84 Dwelling Units 110 Spaces
Proposed Residential Visitor Parking Requirements	1 Spaces / 5 Dwelling Unit 84 Dwelling Units 17 Spaces
Sheraton Hotel Parking Requirements	0.75 Spaces / Hotel Room 181 Rooms 136 Spaces
Sheraton Condo Parking Requirements	Deeded Easement for 24 Spaces 12 Dwelling Units 24 Spaces
Deer Street Condo Parking Requirements	Deeded Easement for 58 Spaces 3-story mixed use Condos on Deer Street 58 Spaces
Subtotal Required	345 Spaces
DOD Parking	-4 Spaces
Total Spaces Required	341 Spaces

Per Section 10.1112.62 (2) the shared parking arrangement shall be secured by a covenant acceptable to the City and recorded at the Rockingham County Registry of Deeds. The applicant understands that should the Planning Board grant the shared parking CUP, as a condition of approval the applicant will be required to record the agreement. The applicant will manage the parking for hotel use with a valet parking operator that will operate and manage the parking 24/7/365 to optimize the use of the available parking.

Increased Building Footprint

A Conditional Use Permit to allow a building footprint of up to 40,000 SF as permitted under Section 10.5A43.43 of the City of Portsmouth Zoning Ordinance is being requested for the project. The Planning Board may grant a conditional use permit to allow a building footprint of up to 40,000 SF in the CD5 district, if all of the following criteria are met:

- (a) No story above the ground floor parking shall be greater than 30,000 SF in the CD5 district.**

The footprint of the building stories above the ground floor are 29,810 SF.

- (b) All ground floor parking areas shall be separated from any public or private street by a liner building.**

The ground floor parking areas are separated from the public street by a liner building.



(c) At least 50% of the gross floor area of the ground floor shall be dedicated to parking.

The total gross floor area of the ground floor dedicated to parking is 64.2%.

(d) At least 30% of the property shall be assigned and improved as community space.

The proposed lot area for Map 118, Lot 28 and Map 119 Lot 4 is 62,417 SF which requires 18,725 SF of community space to meet the 30% requirement. Map 124, Lot 12 and Map 125, Lot 21 also require 20% community space to be eligible for the North End Overlay Incentives. Proposed community space areas on Map 118, Lot 28 and Map 119 Lot 4 totals 25,352 SF or 40.6%. The total required community space for the project is 26,201 SF with the total proposed community space equaling 38,721 SF or 38.8%. This is shown on the enclosed Community Space Exhibit.

(e) The development shall comply with all applicable standards of the ordinance and the City's land use regulations.

The development complies with all applicable standards of the ordinance and the City's land use regulations.

Under separate cover, a Site Plan Review application fee in the amount of \$6,497.94, a Conditional Use Permit for Shared Parking application fee in the amount of \$200, and a Conditional Use Permit for Increased Building Footprint fee in the amount of \$200 have been mailed to the Planning Department by the applicant. A copy of the application fee calculation form is enclosed.

We respectfully request to be placed on the TAC meeting agenda for June 7, 2022. If you have any questions or need any additional information, please contact Neil Hansen by phone at (603) 294-9213 or by email at nahansen@tighebond.com.

Sincerely,

TIGHE & BOND, INC.



Neil A. Hansen, PE
Project Manager



Patrick M. Crimmins, PE
Vice President

Cc: Port Harbor Land, LLC (via e-mail)

Dear Members of the Technical Advisory Committee,

Oct 2, 2022

As usual provided observations by category.

Drainage:

When comparing Pre and Post numbers the amount of “good” Pre is 29,047 sf (17.56%) vs the Post 15,941sf (9.64%). This is a decrease of “good” of 7.92% about 13,101 sf. A significant increase in impervious surface on the entire lot! It was made clear that detention basins were increased in size. Re-reviewing the drainage plans show Pre-PA-2 (pg 90) described as running off into a **gravel swale**. Based on the description of Post PA-2 there will no longer be a swale due to needing to provide a 20’ wide fire lane. *The concern is that the RR tracks are highly impervious and usually sit higher than the gravel on each side of them.* This causes whatever water that collects between the tracks to run off onto each side. It seems the Post results of PA-2 will be pooling along the RR track and the proposed fire road in the summer, even with the slight grade. The snow walls from plowing, will likely encourage ice forming on the fire road. A man made swale to direct and control the flow of this water, which is shown flowing toward Maplewood, could be considered, with grating along the length of the fire road to allow water from melting snow and all the “sheet flow” mentioned in both the pre and post descriptions to sheet flow under this driving/walking/riding area.

T-5037-002 POST
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 Page 2

Area Listing (all nodes)

Area (sq-ft)	CN	Description (subcatchment-numbers)
11,690	39	>75% Grass cover, Good, HSG A (POST 2.0, POST 3.0, POST 3.2)
2,460	80	>75% Grass cover, Good, HSG D (POST 1.0, POST 1.1, POST 3.0)
1,125	96	Gravel surface, HSG A (POST 2.0)
6,672	96	Gravel surface, HSG D (POST 2.0)
50,755	98	Paved parking, HSG A (POST 2.0, POST 3.0, POST 3.2)
26,589	98	Paved parking, HSG D (POST 1.0, POST 1.1, POST 2.0, POST 3.0, POST 3.2)
20,986	98	Roofs, HSG A (POST 1.1, POST 3.1)
43,348	98	Unconnected roofs, HSG D (POST 1.1)
1,791	30	Woods, Good, HSG A (POST 3.0)
165,416	93	TOTAL AREA

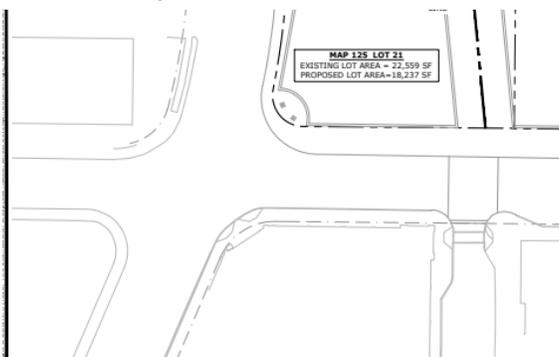
T-5037-002 PRE
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 Page 2

Area Listing (all nodes)

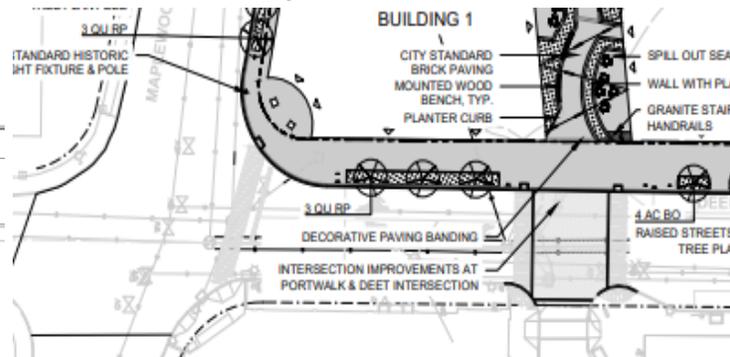
Area (sq-ft)	CN	Description (subcatchment-numbers)
12,636	39	>75% Grass cover, Good, HSG A (PRE 2.0, PRE 3.0)
10,362	80	>75% Grass cover, Good, HSG D (PRE 1.0, PRE 2.0, PRE 3.0)
2,104	96	Gravel surface, HSG A (PRE 2.0)
5,270	96	Gravel surface, HSG D (PRE 2.0)
3,120	98	Ledge, HSG A (PRE 2.0, PRE 3.0)
62,458	98	Unconnected pavement, HSG A (PRE 2.0, PRE 3.0)
63,417	98	Unconnected pavement, HSG D (PRE 1.0, PRE 2.0, PRE 3.0)
6,029	30	Woods, Good, HSG A (PRE 3.0)
165,416	90	TOTAL AREA

Deer Street Road Alignment and CrossWalk

C-204 (pg 41)



L-101 (pg 52)



Sometimes just lining up one side of the road with another solves a lot of problems. Both 2 Russell and 161 Deer are works in progress with some management of sidewalks Deer St could be lined up to become a more functional intersection looking at the presented plans. It is remembered that one side of Deer St is merely a two way and the other is a four way street.

The crosswalk situation is a matter of pedestrian management. The proposed Deer St/Portwalk crosswalk sits much closer to a busy intersection, is a wider area to cross and has significantly more traffic at peak hours when the most people would be crossing than Hanover St. It is only the look not the function that is comparable. The area also has a very active right turn from Maplewood onto Deer St and a wild left turn from Deer St onto Maplewood at peak hours! Solutions to consider, some have been discussed could be: (a) only have ONE cross walk on the side furthest from the Maplewood intersection (b) create an island in the middle or two bump out (similar to at White Heron) to slow down traffic and make the crossing distance less (c) add an RRFB (d) use a **painted white cross walk with left and right side excessively large outlines in white** (f) add a colored street light for better night visibility. Many tired tourists looking for the Sheridan entrance often are not watching the road in that area.

The Bike/Pedestrian/Driveway/Fire Road

Anyone who has ever driven in a city with decorative colored bricks as street markings in the road knows they are almost impossible to see, much less figure out, in the dark, even with adequate lighting. Those of us leaning on the more senior side find them even harder to see in the dark. It could be more helpful to create slightly recessed reflective markings, instead of the proposed colored bricks or just create an area marked with white paint specifically for pedestrians. Cyclists move with the flow of traffic anyway and therefore should not need a specific place to ride.

There does need to be a fence, plantings or something to keep people from moving onto the RR Track setback by accident along this fire road. The Historic District Committee only tends to review what is in their purview, safety and zoning issues are not commonly addressed. *Trains are a LOT wider than the track and most people don't realize that, much less drivers who are hoping pedestrians will move out of their way.*

Lighting

According to Plan E-001 (pg 55) the lighting provided is merely 227 lumens under the MAXIMUM allowed, that amounts to about one 25 Watt incandescent bulb. The city's light sources are over the MAXIMUM allowed by 1059 lumens. Both are shameful numbers considering that LEDs are supposed to help us reduce the amount of energy wasted and help to reduce the need for so much lighting. **There is nothing on the lighting plan which indicates which lights will be turned off between 11PM and 6AM and which low level lights will be used for security purposes.**

Landscape Plan (L-101 pg 52)

Seems to be lacking in details, maybe because it is not in the 100' buffer

Community Space Exhibit (pg 184)

Was unable to find an **easement plan** for community spaces.

Respectfully,

Elizabeth Bratter,
159 McDonough St
Property Owner

RE: 161 Deer St (88 Maplewood/Lot 5)

Meeting: TAC 09/06/22

Packet Pages: 479 to 646

Dear Members of the Technical Advisory Committee,

August 31, 2022

Observations and questions:

Existing **greenspace** is listed as 6367sf (pg 504), proposed not listed (pg 505). There seems to be a real lack of greenspace. The beautiful tree grates could be smaller and low maintenance native shrubs could be added parallel to the sidewalk.

How will the **fire department access** the rear (RR side) of the building? The RR tracks split from one line to two and then to three. The proposed green space along the tracks is 15'2" on one end and 19'1" on the other (pg 519). It seems like the proposed green space may end up being a hardscape. It's hard to tell if the measured 14' and the 16' shown facing Lot 125-17-2 could be a driveway. The turning radius to the RR track side could be difficult.

Impervious surface amounts change quite a bit. Existing is around 75.58% or 74.9%, however, proposed impervious surfaces range from 87.77% (pg 500), 91.9% (pg 519), 93.32% (pg 601). These numbers seem to affect stormwater water calculations and may change as TAC moves forward. Stormwater calculations may need to be adjusted.

The maximum building **height** is 50', adding a penthouse makes it 52'. The proposed building starts at 55' 6", with the penthouse at 67' plus 3'6" of mechanicals on top of the penthouse.

What about the **trash**? A room (dimensions?) is shown in the parking garage (pg 528). What will it be stored in? How will it be picked up (private, city)?

According to the opening letter (pg 480), there will be 4954 sf for a **restaurant** (front left facing Deer St) and 6615 sf of office/retail facing the RR tracks. The location of the 1000 gallon **grease trap** (pg 529, 533-details) appears to be in the rear facing Maplewood Ave. *Wouldn't it be helpful to be closer to the restaurant?* The Maintenance Plan did not seem to mention the grease trap being emptied regularly much less cleaned.

The **ramp to the parking garage** seems to be located next to the transformer pad, facing Maplewood Ave. Are cars proposed to be entering and exiting at this location? What about **sight lines** with the transformers there? With only 19 units the impact will be minimal but it would seem that commercial vehicles would be entering and exiting during peak traffic hours, perhaps right in and right only on the way out.

The **R-Tank Storage** (pg 500, 534-details) is proposed to aid in stormwater retention/detention. Will this be a slow release in sync with low tide as opposed to at 48 or 72 hour increments?

Looking at page 576 it may be worth considering, instead of providing a 12' wide sidewalk, it could be more helpful for the community, to make the sidewalk smaller and **widen Deer Street** on that side of Maplewood Ave. It could help to line it up to the other side of Deer St. It could still allow credit for the community space. It could become a 6' or 7' wide sidewalk with a couple of bump outs to slow traffic coming onto Deer St as it enters into a neighborhood.

Sincerely, Elizabeth Bratter, 159 McDonough St, Property Owner