

MINUTES

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

**CONFERENCE ROOM A
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

7:00 PM

SEPTEMBER 21, 2017

MEMBERS PRESENT: Dexter Legg, Chairman; Elizabeth Moreau, Vice Chairman; Nancy Colbert-Puff, Deputy City Manager; David Moore, Assistant City Manager; Colby Gamester; Jay Leduc; Jody Record, Jeffrey Kisiel; and Jane Begala, Alternate; Corey Clark, Alternate

ALSO PRESENT: Juliet T. H. Walker, Planning Director

MEMBERS ABSENT: Rebecca Perkins, City Council Representative;

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I. APPROVAL OF MINUTES

- A. Approval of Minutes from the August 17, 2017 Planning Board Meeting;
- B. Approval of Minutes from the August 24, 2017 Planning Board Meeting;

Mr. Leduc noted that he was absent on for the August 24, 2017 meeting, but the minutes stated that he was present.

Vice Chairman Moreau moved to approve the Minutes from the August 17, 2017 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

Vice Chairman Moreau moved to approve the Minutes from the August 24, 2017 Planning Board Meeting with Mr. Leduc’s revision request, seconded by Ms. Record. The motion passed unanimously.

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II. FY 2019-2024 CAPITAL IMPROVEMENT PLAN

- A. Informational Presentation on CIP Process and Schedule

Ms. Walker gave an overview of the Capital Improvement Planning Process. Every year the City Charter stipulates a Capital Improvement Plan (CIP) be created with a timeframe of six years. The proposal goes to the Planning Board then City Counsel then it gets rolled into the budget. The Planning Board has the legal authority in the state of New Hampshire to oversee the CIP. There is a web page that has all of the information about the plan including the documents of citizen requests. The schedule for this year is after this presentation citizen requests will be opened and then distributed

to the different departments. After that the Planning Board will have a public informational meeting which will provide an overview of all the requests received. In December a Planning Subcommittee will meet to go over all of the projects and narrow down what's feasible based on the budget and feedback from the department heads. The CIP is adopted in January then City Counsel usually has a public meeting. Then the CIP is officially adopted in March. Examples of what can be included in these types of requests are land acquisitions, construction of utility design, work on a planning study item, a purchase of a piece of equipment that has a life expectancy of five or more years, or a purchase of vehicle. All project requests are submitted to the city departments. New projects coming in need clear statement of need, justification and cost. This is an opportunity for the public to engage with the City as a neighborhood or an individual. Often times submitted requests are already included in some way for example sidewalk extension or roadway improvements are usually accounted for already. A list of project justification criteria is provided and the submitter should outline how the request fits that. Capital improvement projects typically come out of the master plan or another study as well as any policy priorities. There are a variety of ways to fund the projects and the department heads engage in that process. The goal is to think about the long-term and short-term investments from the city when finalizing the CIP. The subcommittee will think about prioritization needs.

Chairman Legg noted that if anyone on the Board was interested in serving on the subcommittee then they should let Ms. Walker know.

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III. DETERMINATIONS OF COMPLETENESS

A. SITE PLAN REVIEW:

- 1. The application of **Flintatta, LLC, Owner, and Unitarian-Universalist Church of Portsmouth, Applicant**, for property located at **73 Court Street**, requesting Site Plan Review.

Vice Chairman Moreau moved to determine that the application for Site Plan approval is complete according to the Site Plan Regulations and to accept it for consideration, seconded by Deputy City Manager Colbert-Puff. The motion passed unanimously.

- 2. The application of **Borthwick Forest, LLC, and KS Borthwick, LLC, Owners, and Borthwick Forest, LLC, Applicant**, for property located **on proposed subdivision road to be created off Borthwick Avenue**, requesting Amended Site Plan Approval.

It was voted to postpone to the October 19, 2017 Planning Board Meeting.

- 3. The application of **Merton Alan Investments, LLC, Owner**, for property located at **30 Cate Street**, requesting Amended Site Plan Approval.

Record gamester unanimous

Ms. Record moved to determine that the application for Site Plan approval is complete according to the Site Plan Regulations and to accept it for consideration, seconded by Mr. Gamester. The motion passed unanimously.

B. SUBDIVISION:

- 1. The application of **409 Franklin Pierce Highway, LLC, Owner**, for four vacant lots located off **Woodworth Avenue and Swett Avenue**, requesting Preliminary and Final Subdivision Approval.

Mr. Gamester abstained from voting.

Vice Chairman Moreau motioned to determine that the application for Subdivision approval is complete according to the Subdivision Rules & Regulations and to accept it for consideration, seconded by Ms. Record. The motion passed unanimously.

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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. The application of **Goodman Family Real Estate Trust, Owner, and Aroma Joe’s Coffee, Applicant**, for property located at **1850 Woodbury Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to construct a 785 ± s.f. restaurant/take-out building and 195 ± s.f. attached patio, with drive thru service and a walk –up window, with 6,870 ± s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 239 as Lot 9 and lies within the General Business (BD) District. (This application was postponed at the August 17, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

Mr. Kisiel moved to postpone to the October 19, 2017 Planning Board Meeting, seconded by Deputy City Manager Colbert-Puff. The motion passed unanimously.

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B. The application of **City of Portsmouth, Owner**, for property located at **305 Greenland Road**, requesting Site Plan Approval for the construction of a recreational field, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 241, Lot 18 and lies within the Municipal (M) District. (This application was postponed indefinitely at the February 16, 2017 Planning Board Meeting).

Chairman Legg read the notice into the record.

Vice Chairman Moreau moved to postpone to the October 19, 2017 Planning Board Meeting, seconded by Assistant City Manager Moore. The motion passed unanimously.

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V. PUBLIC HEARINGS – LAND USE REGULATIONS

*The Board's action in these matters has been deemed to be legislative 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. Proposed amendments to Article 11 – Site Development Standards of the Zoning Ordinance including amendments and revisions to Section 10.1110 Off-Street Parking and conforming amendments to other sections of the Zoning Ordinance, including Article 15 -- Definitions.

Ms. Walker gave a quick introduction to the off street parking revisions. The planning staff has been talking for years about how to balance development. The Housing Committee also recently did a report that has been used for the gateway mixed use revisions. That report also included off street parking suggestions to foster development that allows for a mix of housing and uses. The goal was to not have parking drive how those properties are developed. The Planning Department has deferred to best practices and looked at what other communities have adopted. The goal is to be adaptive for parking requirements depending on certain properties. This is a timely revision with the Gateway Project also underway. Off street parking is included in Article 11. The recommendation is to delete 10.1112 and insert a revised a document that outlines the number of parking spaces required by use. It will be a similar document but updated. Another related section is also being revised for off street in the downtown overlay district. Bicycle parking has been updated as well. Article 15 has been updated to include definitions. Article 8 has been amended to include supplemental use standards to account for additional dwelling units (ADU) and garden cottages.

Vice Chairman Moreau questioned where the rationale for the amount of square feet for parking spaces came from. Mr. Rick Taintor, Consultant, responded that the thought was it could be made higher. There is no magic to these looking at the entire ordinance. There were special requirements for ADUs and garden cottages. It made sense to make 500 square feet the threshold. It's a balancing act to see how far to go in either direction. Clearly in the more dense neighborhoods there will still be a lot of non-conforming units. The Master Plan recommended looking at parking on neighborhood basis. It was initially looked at to even crediting curb space as part of parking, but ultimately it was decided not to.

Vice Chairman Moreau noted that thinking about gateway areas specifically and asking for more bikes and more transit. It is important to make sure that these revisions don't allow the Board to give a lesser amount. Ms. Walker responded that these are the base requirements. Right now there is a parking section in the Gateway ordinance, but for the most part this Article would replace that. The credits in the Gateway ordinance for transit line would allow the Planning Board to reduce parking. Vice Chairman Moreau questioned if these requirements applied to retail and eating restaurants as well? Ms. Walker responded that non-residential buildings don't have required parking except for hotels. That's not changing for downtown. Vice Chairman Moreau commented that the idea having tandem parking was appealing, but is there flexibility with ownership to allow for flexibility around renters? Ms. Walker responded that this could be talked about and made clearer in the Article on how it could be allocated.

Ms. Begala questioned why hotels only require .75 spaces per guest room. Is that assuming hotel is never at capacity? Mr. Taintor responded that for the downtown overlay district it's .75, but for other areas it's 1.25. This has been carried forward from the existing ordinance. The only added a

requirement is for conference or banquet facilities. Ms. Begala questioned what GFA stood for. Mr. Taintor responded that it stood for gross floor area.

Ms. Begala questioned if libraries would fit into educational places or places of assembly in tables with non-residential uses. Ms. Walker responded that anything that the City owns is not covered by any of this because the City doesn't have municipal requirements. The Macintyre building has been converted to other uses that are private use. It would be general use because it could be a combination of things, but it is also in the downtown overlay. Ms. Begala questioned the table about maximum number of parking spaces. Mr. Taintor responded that this is in the existing ordinance. It has been simplified with the revisions. If a developer were required to provide 50 spaces, then they would have a minimum of 50 spaces and a maximum of 60 spaces to prevent too much parking. A CUP option has been added to let the Planning Board exceed that maximum. Today a variance is required, but the idea is to streamline it.

Ms. Begala questioned the table that has the parking rates. It says the required min number of parking shall be the highest of the time period totals. But they're all 100%. Mr. Taintor explained how to interpret the table better. It depends on what the use of the building is for. It would be a combination of percentages. This table assigns a certain percentage for each use and then it is all added together. Ms. Walker added that it is not as complicated as the percentages listed there. They are based on the table of parking requirements. Ms. Begala commented that she still did not see how it wouldn't be always 100%. Ms. Walker responded that it depends on the use of the building too, that will dictate how many spaces are needed.

Ms. Begala questioned the bike-parking requirement of 1 space for each 10 car spaces. Ms. Walker responded that unless it's a school or multi-family dwelling, then all other buildings would have to comply with the bike-parking requirement. Ms. Begala commented that accommodating bikes is great, but they can't be used all year round. Is this best practice? Ms. Walker responded that it was. There are a lot of bike able communities that have higher biking parking. This is a low threshold compared to Cambridge, and Minnesota who have higher bike parking. Ms. Begala clarified that bike paths will be on the streets, and they will be plowed. Ms. Walker confirmed that was correct.

Public Hearing

John Kilroy, 25 Buckminster Way, encouraged the Board to keep the parking requirements that are currently defined the same. The new amendment reduces the parking from 2 to 1. There is some ambiguity around the square footage. One space per ADU would be insufficient parking. It would be more prudent to keep it two spaces. A family could be any number of related adults or three non-related results. The average number of drivers per household is 2.3 and the average number of cars per household is two. This could lead to safety issues with more cars on the street. It could result in children running between street parked cars. One space per unit is inadequate and at odds with the two car household average. On street parking is not normal in all of Portsmouth just downtown. This is not a one size fits all city. The Gateway Zoning proposals are linked to a reduction of parking because it will be close to transit. There is no public transit near my house or neighborhood.

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

Discussion and Decision

Assistant City Manager Moore asked if Ms. Walker could describe how this amendment would affect ADU's. Ms. Walker responded that it is more or less in line with the current ADU requirements with the exception that any ADU that's less than 400 square feet would only require one space. An ADU over 400 is the same as today.

Ms. Record clarified that two off street parking spaces are required for an ADU over 400 square feet. Ms. Walker confirmed that was correct. Right now it's a standard two spaces no matter what the square footage is. In the new article it has switched to a requirement by size so an ADU unit would be treated the same as a single family. Chairman Legg clarified further that the maximum square footage for an ADU is 750 square feet and that would require two spaces. Ms. Walker confirmed that was correct and added that the Planning Department did get one comment from the public on this about ADUs. Doug Roberts emailed to note that this is the general practice in other communities.

Mr. Gamester noted in the beginning there was concern about square footage. Vice Chairman Moreau responded that both sides were understandable. However, if someone has a 3000 square foot house, then more square footage would be needed. Maybe there needs to be more of a range. This should be more exact because there are different neighborhoods. Some neighborhoods don't have parking and shouldn't have cars parked on the street. The Master Plan talked about having parking requirements by neighborhood. Chairman Legg asked if Vice Chairman Moreau had suggested revisions. Vice Chairman Moreau responded not yet.

Mr. Leduc commented that three spaces should not be required because that would be creating more pervious area. This is the bare minimum. Property owners can choose to build more if needed. Ms. Walker responded that the goal was to make sure to provide flexibility for parking. It is not advisable increasing over two spaces, which is what is required today. This is more of an issue in the denser areas and those challenges would increase. A neighborhood specific study was talked about. It could still happen, but that would delay timelines.

Ms. Record clarified that a property over 1200 square feet would need two parking spaces and an ADU over 400 square feet would need two as well? Ms. Walker confirmed that was correct because an ADU would be considered a separate unit.

Assistant City Manager Moore motioned to recommend that the City Council enact the proposed amendments to Articles 8, 11 and 15 regarding off-street parking regulations, seconded by Mr. Leduc. The motion passed by a vote (8-1.) Vice Chairman Moreau opposed.

Assistant City Manager Moore noted that there were good questions and discussion post Ms. Walker's presentation. It was clear that after reading the materials and responses this is a considered studied presentation with grounded recommendations from Ms. Walker and Mr. Taintor. These amendments reflect the priorities decisions and strategies that align with the Master Plan.

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VI. PUBLIC HEARINGS – NEW BUSINESS

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

A. The application of **Paul and Janice Lanzoni, Owners**, for property located at **411 South Street**, requesting Conditional Use Permit approval to create a 1-story, one-bedroom attached accessory dwelling unit on the second floor of a two-car garage, with gross floor area of 588 ± s.f., with associated paving, lighting, and utilities. Said property is shown on Assessor Map 112 as Lot 55 and lies within the General Residence A (GRA) District.

Chairman Legg read the notice into the record.

Assistant City Manager Moore moved to postpone to the October 19, 2017 Planning Board Meeting, seconded by Deputy City Manager Colbert-Puff. The motion passed unanimously.

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B. The application of **Karona, LLC, Owner**, for property located at **36 Artwill Avenue**, requesting Conditional Use Permit approval to create a one-bedroom detached accessory dwelling unit on the second story of an existing (unfinished) garage with gross floor area of 750 ± s.f., with associated paving, lighting, and utilities. Said property is shown on Assessor Map 229 as Lot 4 and lies within the Single Residence B (SRB) District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Tim Phoenix spoke on behalf of the applicant. This application came before the Board a month or so ago with a request for the same detached ADU and was denied. A number of changes have been made including physical changes and ownership that should be considered. The site plan is the same as last time. The existing dwelling has been there many years on a private street. A variance has been received for not having frontage on a public street. Several years ago the previous owner got permission to build a garage. The previous owner built it with second floor dormers that were not approved. The previous owner began to put in an apartment with framing and appliances, but the City shut it down. The previous owner sought a variance that was denied and the property foreclosed. Karona LLC has a goal to finish the apartment to create an ADU. The building and foundation were approved prior to the ADU ordinance. The board should keep in mind that the state and the city want these type of units. The lot is on a dead end street.

Exhibit 2 in the architecture plans shows changes from last time. There are physical changes to the exterior of the building to align it with the city standards. The dormer will be reduced and the backside dormer that creates a loft area will be removed. The roofline will look better and align with the originally approved building permit. The building is only 10.2 feet at its closest point from the main building. The requirement is for 20 feet. This building was approved at its location prior to the new ADU requirements. Please accept it as grandfathered in. Last month Butch Richie owned the building

alone. The original request was to approve the ADU, and until the building is ready to sell no one would live in the ADU. In order to occupy the ADU a certificate from the Planning Department is needed annually. This could be monitored as a stipulation by the certificate of occupancy. The sewer line has been moved to go around the building. There will be a recorded easement.

All of the requirements for an ADU have been met except for the ownership criteria. The criteria states that an ADU can't be in separate ownership. Today it's owned by an LLC. There is a shared driveway with room for several cars, which more than meets the requirement. The size of the ADU has been reduced to 750 square feet by taking out the dormer, and creating some dead storage space. The lot area per dwelling has been met. It will not be more than a two-bedroom unit. It will be one bedroom. The ADU is separated from the primary house by 20 feet, except for the point that is 10.2 feet. This was previously approved at the location before the ordinance was created. The Planning comments say that the Inspections Department confirmed that the foundation was permitted at the time. There is adequate open space. There would be no increase to traffic or noise. The applicant understands that the ownership is the issue. It has been addressed by conveying 10% ownership to Eric Baylen who is the tenant in the primary building now. Mr. Baylen is a friend and business associate of Mr. Richie. In order for it to be effective this needs to have recorded documents filed with the deed and the state. These documents are ready and prepared to file after getting approval from the Board. The ordinance does not define what an owner is. The purpose of the owner occupancy requirement is to have a person with direct interest in the property and make sure they are taking care of the tenants that are there. This property has that. An LLC is a legal person and the owner of the LLC who lives on the property is a legal owner. This is similar to trusts or bed and breakfasts. The Martingale Inn is owned by an LLC and a bed and breakfast is a property that needs to be owner occupied.

Vice Chairman Moreau questioned if there was a current lease or landlord agreement with tenant, and if so will that be terminated once the LLC is created? Mr. Richie confirmed there was a current lease. Vice Chairman Moreau noted concern that one would have the authority kick out the other. Mr. Phoenix noted that there has been this discussion with Mr. Richie and Mr. Baylen that once papers are filed Mr. Baylen would be an owner not a tenant.

Vice Chairman Moreau commented that she had nothing against the project and loved the changes that have been made. However, there is concern on a precedent being set of ownership on ADU approvals in the future. That is the biggest concern. Would the city attorney be allowed to review the LLC? Mr. Phoenix responded absolutely. Vice Chairman Moreau questioned if anything would be recorded with the registry or with the Secretary of State. Mr. Phoenix responded that they are happy to record that with the Secretary of State.

Ms. Record commented that she was not comfortable going down this road. When the LLC is established would the gentleman continue to pay rent? Mr. Phoenix responded that he is paying rent now. Whether it's called rent or not the tenant will continue to pay what is paid now. Ms. Record noted that in other communities owner occupied units rent can't be collected. Mr. Richie responded that Mr. Baylen is his partner and he is putting sweat equity into the property. That's his way of putting into the property. We have both invested money into the property everyday as investors. Ms. Record questioned what if the LLC still owns the property in a year and Mr. Baylen is not living there. Mr. Phoenix responded that if they were not there in a year the Planning Board wouldn't approve the occupancy in a year. Ms. Record questioned if this was approved as a garage originally. Mr. Phoenix confirmed it was approved as a garage with storage above.

Ms. Begala questioned if this project had the support of the neighboring abutters. Mr. Phoenix responded that both abutters are in support and letters have been recorded. Ms. Begala responded that she was really uncomfortable with this project. The City has allowed for detached ADU's to partially address housing demands in Portsmouth. The emphasis was on a single-family residence. The City is not in the business of speculative real estate investments. The ownership doesn't fit the intent of the ADU code. This application has certainly helped the Board see they should define the ownership in the ordinance better. Mr. Phoenix appreciated that view. This is partially legal according to what the ordinance says and doesn't say right now. This is how it should be interpreted. The hope is that this is enough so the Board will go along with it.

PUBLIC HEARING

John Kilroy, 25 Buckminster Way, felt this is a legal tactic and a slippery slope. Mr. Kilroy was not speaking in opposition, but ownership needs to be defined in the ordinance. The attorney is interpreting the ownership lack of definition as a way to move forward. The city has gone above and beyond because originally this was supposed to be demolished in March.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Walker clarified that the abutters letters of support were in the packet.

Mr. Gamester asked if there were two votes on this. Chairman Legg confirmed that there would be two votes. Ms. Walker noted that the second vote should include the grant modification too.

Vice Chairman Moreau questioned if the Board could attach stipulations. Ms. Walker confirmed it would be part of the second vote.

Chairman Legg appreciated what had been done based on the feedback and expressed concern that the ownership circumvents the ownership intent. One option is if this Board is satisfied with 750 square feet and the structural changes that were made, then the Board could consider what was proposed before. The city does not grant a certificate of use until a clear owner is defined. That is one option to address the owner situation.

Ms. Walker commented that if that is the course the Board goes then there should be a timeframe. Vice Chairman Moreau commented that the issue with what was proposed last time would continue to be an issue now for her.

Deputy City Manager Colbert-Puff commented that she was not sure fully understanding the vote because the ownership is a required standard. What if it doesn't satisfy that requirement? Ms. Walker responded that it is under the standards section for granting a CUP. The Planning Board doesn't have the power to waive a requirement.

Deputy City Manager Colbert Puff commented that she agreed with Chairman Legg, and was not sure she was comfortable with this.

Mr. Gamester moved to find application satisfies 10.815.40, seconded by Mr. Leduc. The motion passes in a (8-1) vote. Ms. Begala opposed.

Mr. Gamester commented that the design is compatible and there is adequate open space. The garage was previously approved so it fits. It's a dead end won't result in excessive noise.

Mr. Gamester was for the application at the first go around. It is a reasonable request that they can't get CUP until sale of the building. Although the Board just learned that it may not be a condition that can be put in. This is not necessarily a legal tactic to skirt the law, but they are working within the law. There will inherently always be an enforcement issue with any zoning application. It's not fair to always assume the negative with every applicant. They have provided a proper resolution for ownership. Their intent shown by last meeting and this, it will be an ADU.

Vice Chairman Moreau requested to add the stipulation that the applicant file with the secretary of state for a change in ownership, the lease is terminated and the LLC agreement is reviewed by the city. The Board will need to do further review to define ownership in the ordinance.

Mr. Gamester was amenable to adding the stipulations. Mr. Leduc was also amenable.

Mr. Kisiel commented that last month he did not support this project because of the owner occupancy. The persistence in trying to find a solution the Board is comfortable with the agreement and is very much appreciated.

Chairman Legg noted that generally the Board agrees this application has moved in a positive direction, but the concern is the ownership. The Planning Department needs to immediately change the definition of ownership. If the Board does approve this, then 10% ownership is a new definition of ownership. Ms. Walker noted that's not really by default. Chairman Legg responded that it's an example people can point to.

Assistant City Manager Moore recognized the progress on this application, but could not support the ownership issue.

The motion to approve failed in a vote (4-5.)

Mr. Gamester questioned if a positive motion failed could another motion be made? Ms. Walker responded that a motion to grant that fails to pass means the item is denied.

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C. The application of **Anthony DiLorenzo, Owner**, for property located at **325 Little Harbor Road (Belle Isle)**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the tidal wetland buffer to replace the existing home, remove two accessory buildings, renovate the carriage house, construct a pool, pool house and patio, replace a failing septic system with a new septic system, replace existing driveway with permeable pavers, repair the stone retaining wall and add native plants, with 4,995 ± s.f. of temporary impact to the wetland buffer and 149,508 ± s.f. of permanent impact to the wetland buffer. Said property is shown on Assessor Map 205 as Lot 2 and lies within the Rural (R) District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Corey Colwell from MSC Engineers spoke to the application. A CUP is being requested for work associated within a tidal buffer. Applicant owns Belle Isle, which currently contains one residential dwelling, a carriage house, a barn, three guest cottages and a horse paddock. The applicant would like to make improvements to the island. The proposed improvements beyond the tidal buffer fall under the Shore Land Protection Act. The improvements include the replacement of the residential dwelling, removing the caretaker house and three guest cottages. The carriage house will be renovated to a garage. The applicant would like to construct a pool with a pool house and patio as well as a tennis court. The plans include moving the septic more inland. The impervious driveway will be removed and replaced with pervious material. The retaining wall will be repaired. The plans include the installation of significant amounts of landscaping and new utilities. Accompanying the application were drawings that Mr. Colwell walked the Board through. The drawings showed where the buildings were that are going to be removed. The elevations were defined. The highest elevation is 36 and the low point is 4. The green area showed all the improvement within the 100-foot wetlands, which required a CUP and a wetland permit. The yellow area shows where the wetland shore land permit would be required. The impervious table shows the current impervious area is 9.2% after the improvements it would drop to 6.7%. All significant trees that will be removed are identified in the plans. They are only proposing to remove seven trees. The utility plan showed a new well proposal. The property is on town water and is prone to freezing. The plan calls for a new well and septic. A grading and erosion control plan is included. The runoff treatment is being significantly improved. It is currently flowing on lawn into the river. This proposal includes a significant amount of landscaping, rain gardens and a pervious driveway to treat runoff. The landscape plan by Matthew Cunningham is included. It calls out all the plant types and locations. The plan proposes removing lawn area and replacing it with landscaping. A plant schedule is included as well. In summary there will be a reduction of impervious and lawn area, a lot of new native plantings will be introduced, a sub-standard septic will be removed, the retaining wall will be repaired and rain gardens will be added. A 5 foot wide crushed stone path will be installed around the island for a walking path and more infiltration.

Vice Chairman Moreau requested more information on the current septic on the island. Mr. Colwell confirmed that the current tank and system would be taken out. Vice Chairman Moreau questioned where it currently is and where it is being moved? Mr. Colwell pointed out the current location and then showed where it was being moved.

Ms. Begala questioned what TBZ stood for. Mr. Colwell responded that TBZ stood for tidal buffer zone. Ms. Begala questioned what the square footage for proposed new house was. Mr. Colwell responded the new house would be similar in size to the existing house, which is 5800 square feet. Ms. Begala clarified that the existing house TBZ impact is 5800 square feet. Mr. Colwell confirmed that was correct.

Vice Chairman Moreau questioned if anything was being done with the waterline and water main. Mr. Colwell responded that they are not; it will remain the same. Vice Chairman Moreau clarified that the sewer trench will be coming from the new septic system.

Mr. Clark questioned if the applicants were applying for new wetland permits or amending? Mr. Colwell noted that the new permit applications were submitted already to the conservation commission and sent to the states. Mr. Clark commented that they were all new to the august ones. Mr. Colwell confirmed that they were all submitted this month.

Mr. Clark questioned what fertilizer would be used. Mr. Colwell commented that it was noted in the plan showing a slow release fertilizer. It is allowed within the wetland buffer. Mr. Clark noted that the application did not state anything about a slow release. Mr. Colwell responded that's was intended for work outside of the 100-foot buffer. The note can be clarified. Mr. Clark questioned if there were any stipulations for winter maintenance for the porous pavers. Mr. Colwell responded that was a good point because the pervious pavers have to be maintained. That is important. This plan does not go into the maintenance but point taken.

Ms. Begala clarified that the tennis court would be going where the existing horse paddock fence was being removed. Will there still be horses there? Mr. Colwell responded that there would not be horses. Ms. Begala noted there is a barn there. Mr. Colwell responded that would be renovated as well and there are no horses on the property today.

PUBLIC HEARING

Lisa Oakes, 215 Little Harbor Road, spent her childhood on the island. Even though it will be sad to see the residence torn down, the previous owner did a poor job renovating it. The island is a mess so these are good improvements to the island.

Charles Bradbury, 60 Pleasant Point Drive, is an abutter. Mr. Bradbury expressed concerns about the development particularly on the tidal zone. There is other construction in the area that doesn't adhere to the 100-foot setback. There are construction areas here including the tennis court in which the fence infringes on the 50-foot setback. That is concerning. There is also concern about any tennis court lighting where it's all open. Mr. Bradbury can appreciate what the owner is doing. Mr. Bradbury felt that this project would need to conform, as others have to account for tidal.

Chris Brown is not a direct abutter but lives on Pleasant Point Drive. Thinks this is a good plan and a careful reworking of the island. There have been sins committed in the tidal buffer on this island in the past. From looking at the plans tonight this is a general improvement. It will involve getting rid of buildings that are eyesores on the island and improving things on the island that have been ignored. Mr. Brown noticed a generator shack on the plans, and wondered if the developer could address the purpose of that. The assumption is that it would be back up power. It is quite close to the shore and could impact noise on Pleasant Point Drive. How will electric be brought to the island? It is currently powered by a line from Pleasant Point across the inlet to the island. The mainland side has a power line that has been brought down on Little Harbor Road. It would be nice to see the electric removed from over the water on Pleasant Point. It would provide access for sailboats.

Michael Singleton, 70 Pleasant Point Drive in Portsmouth. The main question is how much noise will there be? Construction will require heavy machinery and create noticeable noise. What hours of day will construction go on and what is the project timeline? On a day-to-day basis Mr. Singleton was envisioning a June evening at 8:30 at night and hearing tractors. Can there be limits set for no earlier than 8 am and no later than 4-5 in the evening? Mr. Singleton was also concerned about the lighting

on the tennis courts. His property is just west of the water it's enjoyable looking at stars at night. The tennis court will provide light pollution and would be an issue in the future.

Charles Bradbury, 60 Pleasant Point Drive, noted that Chris Brown reminded him about the electric power. It would be nice if a source now on the other side of the island could be used. Then sailboats could have access. One time a boat tried to make it under the wire and created a power outage.

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

DISCUSSION AND DECISION OF THE BOARD

Ms. Begala wanted to register major concern that four out of five of the structures in the plans are in the 50 foot to 100-foot tidal buffer. That building could be relocated to be in compliance with the wetland buffers. The same is true for part of the pool and pool deck and maybe part of the tennis court. As there is 11 acres on the island she felt they could reposition the new buildings to be in compliance with wetland buffers.

Chairman Legg requested Ms. Walker to respond to the public's concerns. Ms. Walker responded that the outdoor lighting and noise are not regulated in the site plan review. That's regulated by the ordinance. It does address that outdoor lighting and noise has to fall within certain hours of the day. The construction would be part of the Inspections department. The electrical service is not under the Planning Board authority either.

Chairman Legg asked the applicant to address the public's concerns. There is room to build the tennis court outside of the buffer. As proposed it's well within the 100 foot and partially in the 50-foot buffer. He asked if the applicant would consider moving the court to the other side of the buffer. Also, removing a small shed and replacing it with a larger shed within the tidal buffer seems to be a real expansion of what exists now. He asked if that shed could be located outside the buffer or between the 50 foot and 100 foot buffer and scaled more appropriately. The proposal does a lot to improve the property but it's hard to support it if those two things aren't addressed.

Mr. Colwell responded that the tennis court is going in an area on the lower side of the island that is flat and level. The plan also includes installing lots of landscaping to add around the area. Moving the court to the other side of the island would require a lot of landscaping removal and the land would need to be cleared and leveled. This is the most environmentally friendly location even though it is close. It is currently a horse paddock and when turned into a tennis court it will be better. As far as the shed goes there is a ratio of allowable accessory structures. This project is only proposing a shed and generator. It is well under what the state would allow. The location was chosen because it would replace the current shed and would store boat related items. It is right near the boat dock. Mr. Colwell responded to concerns from the abutters. The generator will be going behind the shed and will be used for emergency power. Today's generators are relatively quiet. It was 10 – 20 feet away with a decibel level of 40 or less. The nearest abutter is quite a distance away. The residential dwelling is close to the water. The building itself is currently within the 50-100 buffers. The decks and steps are in the 50-foot buffer. It's allowed in the state. The electrical service will be where it's been run since day one and there is no intention to move it. It would be very expensive and require a lot of construction that would adversely affect the environment.

Mr. Clark questioned if installing infiltration around the court was looked at. Mr. Colwell responded that they would not be opposed. There will be one further down with the path. Also, the tennis court won't be lighted.

Ms. Begala asked for clarification on the percentages of accessory dwellings vs. residential. Mr. Colwell responded that the majority of impact is landscaping. The buildings all exist today except for the pool house. The structural impact is 20% or less. The pool is going where the caretaker's house is. Ms. Begala noted again that it's within the 50-foot buffer.

Chairman Legg noted that it was not fair to talk to applicant after closing the public hearing.

Vice Chairman Moreau moved to grant Conditional Use Permit approval as presented, seconded by Mr. Gamester. The motion passed by a (7-2) vote. Ms. Begala and Chairman Legg voted against the motion.

Vice Chairman Moreau commented that this is an island that has been let go for many years and has many structures that have already been impacted. It is understandable to not want to disturb the vegetation that exists.

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D. The application of **James A. Mulvey Revocable Living Trust, Robert J. Bossie Revocable Trust and Peter Brown Living Trust, Owners**, for property located at **150 Spaulding Turnpike**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to remove two buildings, remove pavement and replace with pervious and impervious pavement, for a truck sales outlet with vehicle storage, with 2,570 ± s.f. of permanent impact to the wetland buffer. Said properties are shown on Assessor Map 236 as Lots 34, 35 & 36 and lie within the General Business (GB) District.

Chairman Legg read the notice into the record.

Mr. Leduc moved to postpone to the October 19, 2017 Planning Board Meeting, seconded by Mr. Gamester. The motion passed unanimously.

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E. The application of **409 Franklin Pierce Highway, LLC, Owner**, for four vacant lots located **off Woodworth Avenue and Swett Avenue**, requesting Preliminary and Final Subdivision Approval to consolidate and reconfigure lot lines to create two lots as follows:

- Assessors Map 243, Lot 25 consisting of 8,492 s.f. being merged and eliminated;
- Assessors Map 243, Lot 26 increasing from 10,181 s.f. to 14, 411 s.f. with 0' of continuous street frontage.
- 3. Assessors Map 243, Lot 27 increasing from 10,615 s.f. to 27,681 s.f. with 0' of continuous street frontage.

- 3. Assessors Map 243, Lot 28 consisting of 12,804 s.f. being merged and eliminated.

A variance was granted on April 25, 2017 by the Board of Adjustment to allow 0' of continuous street frontage. Said properties are shown on Assessor Map 243 as Lots 25, 26, 27, and 28 and lie within the Single Residence B (SRB) District where the minimum lot area is 15,000 s.f. and the minimum continuous street frontage is 100'.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Eric Weinrieb from Altus Engineering and David Cotton representing owner and Derek Durbin, Attorney, spoke to the application. This project involves combining four lots into two lots. Mr. Weinrieb showed what streets would be impacted and clarified which were paper streets and which were not. There is a wetland piece on this property, and the applicants are honoring the 100-foot buffer. The buildings will be entirely out of those buffers. An easement plan was shown and Mr. Weinrieb offered to go into the details of the application with the Board. Right now the roadway is very steep with limited sight distance. The road will be widened to 18 feet. The road will be extended beyond the roadway today. That will allow for city service vehicles to come all the way down and back up to turn around on the property. Right now the only way these service vehicles access the road is by backing down Swett Ave and the plows have to back out. This will be better to all of the lots in that area. The plans show how the sight line was being improved. There will be filling on the way up and the top will be cut to align with a driveway. It will be suitable for a 20 mph road with these improvements. Storm water management will be provided in the area. There is currently no treatment on the lots. The runoff goes through the woods. Storm water treatment areas will be provided in two locations on Swett Ave. The homeowners will honor the 50-foot no cut buffer that will be put in to protect that area. This project has been through Zoning and TAC who recommended approval with six stipulations. Note 11 on the utility plan addresses the first stipulation. Note 12 addresses another stipulation and widening the roadway. Item 4 which requested to correct the sign details has been updated in the plans. The easement plan doesn't specifically mention snow storage but there is 20 feet beyond the roadway that will allow for snow storage.

Vice Chairman Moreau mentioned that there is no Note 12 on the utility plan. Mr. Weinrieb responded that it's on the grading plan.

Ms. Walker noted that the Planning Department recommendations are different than the TAC stipulations. Mr. Weinrieb responded that items off the memo were addressed not specifically the TAC stipulations. Vice Chairman Moreau questioned if the applicants would be addressing the TAC stipulations. Mr. Weinrieb responded that they are all addressed in the plans. Ms. Walker requested if Mr. Weinrieb could point to the note for stipulation 2. Mr. Weinrieb responded that there was a note added that it should be in the physical deed. Vice Chairman Moreau responded that some drafters forget to get that note in. As long as it's a note in the plan, then it's accounted for. Ms. Walker questioned if that note was in the plan. Mr. Weinrieb responded note 12 on sheet C1 says storm water management devices shall remain and maintain in perpetuity. It can be modified in the plan to clarify more if needed. Vice Chairman Moreau requested that it's added.

Deputy City Manager Colbert Puff noted that on the Lot Line Adjustment Plan it seemed like dashed lines delineated Moffet Stret. Mr. Weinrieb responded that the former Moffet Street shows the gas line on the right and left of the property line. Deputy City Manager Cobert Puff clarified that for parcel 247 the lot line is through the paper Moffet Street. Mr. Durbin responded that Map 223 Lot 35 is the Richards lot. This came forward a few months ago and at that time it was unclear if the paper streets were released or not. They are aware that their lot line is toward the center of the paper street. The Honeyman's are also aware. Deputy City Manager Colbert Puff questioned if it was common to show this for lots that aren't on the application. Mr. Durbin replied that it's represented accurately.

Otherwise it would be shown as a right of way, which is wrong. Deputy City Manager Colbert Puff questioned how that gets documented. Mr. Durbin replied that it just happens through operational law. After a certain amount of time the rights are given back to the property owners. That point was made at the City level that the City felt like there were no rights that needed to be released. Ms. Walker clarified that the City had no clear evidence that the City had interest or not. There is no specific evidence. The City hasn't taken any actions to her knowledge for the one immediately across this property. Deputy City Manager Colbert Puff noted that she was not the expert on this, but it may not make sense to consolidate their lot as part of this plan. Mr. Durbin responded that it's not being consolidated. The Holman lot has worked out an agreement on common use of a repaved driveway. The lot line to be eliminated is being eliminated by operational law. Nobody has expressed that they have interest in it. Deputy City Manager Colbert Puff questioned that if this becomes a subdivision plan and the assessor sees it, then is it changing the subdivision plan for all the lots and how would they confirm ownership? Mr. Durbin replied through the subdivision plan. It's been reverted by operational law. Ms. Walker noted that TAC makes comments on technical details. TAC just raised the issue with Mr. Durbin that it's a subdivision by default without all parties signing off on it. The applicants are saying that the plan is showing lot lines that are the legal existing lot lines and if Mr. Durbin is wrong then it is their responsibility and the Planning Board has been presented wrong information. The City is not responsible to research if there is interest on any of it. Deputy City Manager Colbert Puff responded that she completely agreed with Ms. Walker. Ms. Walker commented that Mr. Durbin has presented that these are existing lot lines, not a change. Mr. Durbin confirmed that is correct, and felt that they have taken the appropriate action.

Mr. Clark had some engineering questions. The new proposed road looks like everything slopes down toward McClintock St. It doesn't look like anything helps the storm water until it peels off into the two driveways at the bottom. Mr. Weinrieb responded that they are just widening the roadway the changes in hydrology are minuscule. At the bottom there are two catch basins. That's where the water runs off today and will tomorrow as well. This was discussed at TAC. Mr. Clark noted that it's looks like the elevation is lower before the basin. Are there Cape Cod berms? Mr. Weinrieb responded that they will crown it and curbing will be added the whole way. Mr. Clark questioned if there would be more water pointing down the road than what's there today. Mr. Weinrieb responded not really it would be more controlled. Mr. Clark noted that the concern about curbing is that there will be a more concentrated amount of water that will go into the driveways before the basins. Mr. Weinrieb responded that there would be a lip on the driveways to prevent that. Mr. Clark commented that it was not on the plan. Mr. Weinrieb responded that it was not specifically in the details, but that is the intent. Mr. Clark questioned if this could be added into the detail. Mr. Weinrieb confirmed this could be done. Mr. Clark commented that he was still concerned about the low point. Mr. Weinrieb noted that the profile shows that everything is pitching back to the intersection. Everything absolutely does pitch. Mr. Clark responded that made sense.

Deputy City Manager Colbert Puff commented that the subdivision plan lot lines don't get carried through on the grading plan. It shows different lot lines. Mr. Weinrieb responded that this could be updated, so that they are all the same.

PUBLIC HEARING

Attorney Peter Loughlin commented that he had nothing to do with the petition, but has worked with paper streets. The paper street concept is counter intuitive. Mr. Loughlin had been practicing municipal law for 15 years before he understood the concept. The property owner owns to the center

of the street, but not until it's opened up. Mr. Loughlin believed that what was represented in the plans was accurate.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Gamester recused himself from the application.

Vice Chairman Moreau motioned to determine that the application for subdivision is complete according to the subdivision Rules and Regulations and to accept it for consideration, seconded by Mr. Leduc. The motion passed unanimously.

Deputy City Manager Colbert Puff commented that she had lingering concerns about the City receiving adequate information to make the new lots reflected on the plan. The plans need to be consistent and, in addition, it's not the City's obligation to look at ownership of the lots. These lots are required to be newly established in the Assessor's office and that lies with the applicants.

Vice Chairman Moreau motioned to grant Preliminary and Final Subdivision Approval, seconded by Mr. Leduc with the following stipulations:

1. The final roadway design shall be reviewed and approved by DPW.
2. An easement shall be granted to the City allowing snow storage on the private half of the end of the turnaround.
3. An easement is required to allow the turnaround to be constructed on public property.
4. Any easements and deeds involving the City shall be reviewed and approved by the Legal Department.
5. Lot numbers as determined by the Assessor shall be added to the final plat.
6. Property monuments shall be set as required by the Department of Public Works prior to the filing of the plat.
7. GIS data shall be provided to the Department of Public Works in the form as required by the City.
8. 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.
9. A note shall be added to the Plan that is recorded at the Registry of Deeds regarding a deed restriction that ensures private property owners will be responsible for maintaining storm water mitigation and drainage systems.
10. Provide detail regarding the design of the driveway and roadway intersection to show that run off will not pond at the driveway.
11. Revise typo in Drainage Study Conclusion to reflect that the impervious area of the site will be increased by 4,700 s.f., rather than decreased.
12. The lot lines should be carried forward on the Grading Plan and Utility Plan, to be consistent with the Lot Line Adjustment Plan.
13. Add note to Plan that is recorded that applicant will accurately depict all impacted lots and provide all necessary information needed by the City Assessor to adjust City records.
14. Property owners shown on the Lot Line Adjustment Plan shall be noticed of the lot line change to their lot, at the applicant's expense.

The motion passed unanimously.

Mr. Gamester moved to receive items past 10 pm, seconded by Vice Chairman Moreau. The motion passed unanimously.

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F. The application of **Flintatta, LLC, Owner, and Unitarian-Universalist Church of Portsmouth, Applicant**, for property located at **73 Court Street**, requesting Site Plan Review to construct a 286 ± s.f. (footprint) addition to provide a ramp and egress to and from the existing building, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 116 as Lot 19 and lies within the Character District 4-L1 (CD4-L1), the Downtown Overlay District (DOD) and the Historic District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

John Chagnon from Ambit Engineering and Eric Lipset from the church Board of Directors spoke to the application. This project is an addition to the property on 73 Court St. The existing conditions plan shows sewer lines to the west of the existing building. They run from State St. to Court St. The lines were put in without a formal easement at that time. The pipes service the corner lot and there is an easement for that. The proposal is to construct an addition that will house a stairway and an elevator. The building currently does not handicap access. The goal is to provide access to everyone. An addition will include an elevator and a walkway that will allow a ramp so people can access the first and second floor. The proposal includes taking over a driveway and adding a curb cut. The addition required set back and parking variances that have been approved. The landscaping plan is included. The plan also includes pictures of the proposed addition. The project has received TAC approval and they have responded to the comments. The staff memo indicated to recommended approval with stipulations and they are in agreement with those stipulations.

Mr. Clark questioned if the utilities under the building would still be in use after the addition. Mr. Chagnon responded that was correct. They are not able to relocate them around the addition because of the property line, but they will be putting in a sleeve to allow for maintenance. Mr. Clark questioned if the elevator pit would conflict with the lines. Mr. Chagnon responded that it has a very small under run and won't interrupt pipe.

PUBLIC HEARING

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Colbert Puff moved to grant site plan approval, seconded Vice Chairman Moreau with the following stipulations:

1. The sleeve detail for City sewer line and abutter drain pipe shall be approved by DPW.

- 2. The sewer and drain line easements shall be reviewed and approved by the Legal Department.
- 3. The Site Plan and any easement deeds and plans shall be recorded at the Registry of Deeds by the City or as deemed appropriate by the Planning Department.
- 4. The plan sheet(s) submitted for recording shall include the following notes:
 - 1. This Site Plan shall be recorded in the Rockingham County Registry of Deeds.
 - 2. All improvements shown on this Site Plan shall be constructed and maintained in accordance with the Plan by the property owner and all future property owners. No changes shall be made to this Site Plan without the express approval of the Portsmouth Planning Director.”
- 5. The plan sheet(s) showing landscaping and screening shall also include the following additional notes:
 - 1. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
 - 2. All required plant materials shall be tended and maintained in a healthy growing condition, replaced when necessary, and kept free of refuse and debris. All required fences and walls shall be maintained in good repair.
 - 3. The property owner shall be responsible to remove and replace dead or diseased plant materials immediately with the same type, size and quantity of plant materials as originally installed, unless alternative plantings are requested, justified and approved by the Planning Board or Planning Director.”
- 6. The applicant shall prepare a Construction Management and Mitigation Plan (CMMP) for review and approval by the City’s Legal and Planning Departments.

The motion passed unanimously.

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G. The application of **Borthwick Forest, LLC, and KS Borthwick, LLC, Owners**, and **Borthwick Forest, LLC, Applicant**, for property located **on proposed subdivision road to be created off Borthwick Avenue**, requesting Amended Site Plan Approval to increase the height of the proposed office building (footprint of 16,700 ± s.f.) from 3 stories to 4 stories (gross floor area of 66,800 ± s.f.), with related paving, lighting, utilities, landscaping, drainage, multi-use path and associated site improvements. (Original Site Review approval was granted by the Planning Board on May 18, 2017). Said properties are shown on Assessor Map 241 as Lots 25 & 26 and Assessor Map 233 as Lots 112, 113, & 114 and lie within the Office Research (OR) and the Single Residence B (SRB) Districts.

Chairman Legg read the notice into the record.

Vice Chairman Moreau moved to postpone to the October 19, 2017 Planning Board Meeting, seconded by Ms. Record. The motion passed unanimously.

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H. The application of **Merton Alan Investments, LLC, Owner**, for property located at **30 Cate Street**, requesting Amended Site Plan Approval to add one unit to the end of each of the 8-unit buildings to create two 9-unit buildings, to re-align and add three units to the building at the southern corner of the lot, and to make the drive closest to Bartlett Street exit only, with related paving, lighting, utilities, landscaping, drainage, and associated site improvements. (Original Site Review approval was granted by the Planning Board on February 16, 2017). Said property is shown on Assessors Map 165 as Lot 1 and lies within Character District 4-W (CD-4W).

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Joe Almeida, from Destefano Architects, spoke to the application. This application was before the Board back in February, and since then some modifications have been made. The 10 foot wide walkway has been removed. Three additional units have been added at the corner. Trees were added to shield sightline from the abutter. An exit only lane was created. Previously the plan included 26 units now the proposal is for 31 units. This was previously approved for 26 units with a list of stipulations that still apply.

Vice Chairman Moreau questioned why they were making this change Mr. Almeida responded that the easement that goes all the way through the site caused the plan to change. Vice Chairman Moreau questioned if the people that live here would be able to go into the adjacent land. Mr. Almeida responded that the intent is for the land to not use the easement.

Ms. Begala asked if Mr. Almeida could point out where the four guest parking spots are. Mr. Almeida pointed her to the sheet that specifically showed additional parking. This project meets all the parking requirements without them. TAC brought up visitor parking. It eats away at the green space a little. Ms. Begala questioned which version is correct because the landscape plan shows it as green space, not parking. Mr. Almeida responded that in the event additional parking was requested that is where it would be located. However, the intent is that the landscaping plan is the preferred choice. Ms. Walker clarified that TAC did not recommend parking, but it was brought it up as a question.

PUBLIC HEARING

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Clark appreciated the underground infiltration system.

Vice Chairman Moreau motioned to grant Amended Site Plan Approval, seconded by Ms. Record with the following stipulation:

- 1. All conditions of original Planning Board approval to remain in effect.

The motion passed unanimously.

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I. The application of **Heritage Hill Condominium Association, Owners, and the City of Portsmouth, Applicant**, for property located at **1275 Maplewood Avenue**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland and wetland buffer to separate the combined sewer/water system by creating a new drain outfall to the east of the driveway; a second 15" reinforced concrete pipe (RCP) with disturbance to the roadway, grassed area and sidewalk; and a new drain outfall at the low point of Maplewood Avenue, with 282 ± s.f. of temporary impact and 17 ± s.f. of permanent impact to the inland wetland and 14,215 ± s.f. of permanent impact to the inland wetland buffer. Said property is shown on Assessor Map 219 as Lot 45 and lies within the Single Residence B (SRB) District.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Peter Rice Director of Public Works, Joe Johnson and Chris Stairs, engineers, spoke to the application. This project involves making water and sewer improvements by separating the sewer. Mr. Johnson will give a brief overview of the project and Mr. Stairs will speak to the CUP. Mr. Johnson explained that the project was primarily driven by the need for water replacement on Maplewood Ave and storm water and sewage separation. In addition to making these updates it was looked at ways to improve the roadway that will be impacted. The initiative is to increase public safety. Biking and pedestrian access will be added. Traffic calming tactics will also be implemented. Mr. Stairs discussed the location of the disturbance in the wetland buffer to drain storm water. It is currently routed into the sewage system. This project will be splitting the system. The City has been working with Heritage Hills Condominiums to create an easement that will allow a wet pond to be installed on the property. This will allow for filtration. This was chosen because it will be a small footprint and the most effective. The pond will be dug down to ground water, so there will be a continuous pool. Plantings will be installed in and around the pond. There will also be an outfall to catch the remainder of the storm water because the pond won't be able to handle it all. A CPS unit will be used. The City has used this type of unit before. The goal is to take steps to ensure minimal effects on the elevation to the pond. There are currently two outfalls on the property. These will mitigate additional flow. The proposal includes installing a culvert, repairing a head wall and installing beaver fencing. This will improve city's storm water and sewage systems.

Mr. Clark questioned what rainfall data was used to generate the values in the plans. Mr. Stairs responded that the NRCC numbers were used. Mr. Clark questioned why 15 inches at the road was chosen. Mr. Stairs responded that they were matching what's there now. Mr. Clark questioned if that was the sufficient size. Mr. Stairs responded that it was. Mr. Clark wondered if they would ever be too small. Mr. Stairs responded that it was not over the top at a 100-year storm.

Ms. Begala understood the loss of forest in the buffer, but the landscape plan shows that only three mature trees will be added. Could the overall tree loss be reviewed? Mr. Stairs responded that they had a landscape architect design this. Five trees will be added along the Heritage roadway. Mostly bushes will be added along the pond area. There are a lot of invasive species now and a lot of the trees aren't native. The proposal is to replace them with native plants.

Vice Chairman Moreau was curious if the trees could continue down Maplewood Ave. Mr. Stairs responded that was definitely something that could be considered.

PUBLIC HEARING

Jason walls, 1113 Maplewood Ave, noted that the proposal says that it affects assessors map 219 lot 45, but that is not where it is shown in the easement. Therefore he is not sure what the problem is. Chairman Legg responded that they would check and make sure to clarify in the minutes.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau motioned to grant conditional use permit approval, seconded by Mr. Gamester with the following stipulation:

- 1. The applicant will consider adding an additional tree along Maplewood Avenue near the Heritage Condominium driveway.

The motion passed unanimously.

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J. The application of **Eversource Energy, Owner of a Right-of-Way**, for property located off **Ocean Road and Greenland Road**, requesting Amended Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within the inland wetland and inland wetland buffer for the reconstruction of 3 additional utility poles (for a total of 29), with an additional 120 ± s.f. of permanent impact to the inland wetland and 11,156 ± s.f. of impact to the inland wetland buffer. Said properties are shown on Assessor Maps 281, 282 and 258 lie within the Municipal, Natural Resource Protection (NRP), Rural and Industrial Districts.

Chairman Legg read the notice into the record.

SPEAKING TO THE APPLICATION

Tracy Tarr, from GZA Environmental, and Kurt Nelson and Kevin Buff, from Eversource, spoke to the application. This project was before the Board in July and was approved to replace 26 poles. Unfortunately the engineers found two more poles that need to be replaced. It is still in line with the project goal to replace all at once and not every year. An emergency replacement was needed for one pole. It was approved by DES and was added to the mitigation fee. The two structure replacements have been added on page one of the plans. This design allows us to overlap on existing work pads. The emergency replacement is shown on page 4. That’s the new work that is being adding to the CUP request.

Ms. Begala noted there are rare animal species there. Ms. Tarr noted the plans show number of species known rare species in that area. As part of the construction monitoring GZA will move turtles and snakes. The work will happen in the fall, so most animals should be in hibernation. A rare bird is also mapped in another location on the plans. The locations of rare plants have been mapped and GZA will ensure the matting will not be placed on them. Ms. Begala commented that the NH Fish and Game site

notes large animal locations in the marsh. What happens for fox and beavers? Ms. Tarr responded that if there were any new observations were made, then they would report back to the bureau. They are not as interested in common species, but certainly are trying to minimize impacts. This will be done in the fall after most of the birds have migrated.

Ms. Tarr noted that a condition from last time was to use silt socks. Could they use something else that is tubular material and is less wasteful? Vice Chairman Moreau responded that the intent was that a silt sock is low enough for animals to go across so as long they can still that. Ms. Tarr responded that they would be able to.

PUBLIC HEARING

Greg Dichiara, 566 Greenland Road, noted that item number two in the conservation commission review statement commented on a carefully considered plan. Can the public see the plan? Is there a project timeline as far as number of days to complete the project? Mr. Dichiara assumed a police detail would be put in place that could impact his driveway. Mr. Dichiara snowshoes and cross-country skis through the bog, so he had interest in the plan. Ms. Walker responded that all the plans are available in the Planning Department, and Mr. Dichiara could come talk through the timelines in Planning Department as well.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Gamester motioned to grant conditional use permit with all of the previous conditions carried forward, seconded by Vice Chairman Moreau. The motion passed unanimously.

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VII. CITY COUNCIL REFERRALS/REQUESTS

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

A. Request for waiver of referral regarding the acceptance of easements required for Andrew Jarvis Intersection Improvement Project.

Vice Chairman Moreau motioned to waive the City Council referral of the easements required for Andrew Jarvis Intersection Improvement Project, seconded by Mr. Gamester. The motion passed unanimously.

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B. Proposed amendments to the Zoning Ordinance and Zoning Map to implement Gateway Mixed Use Zoning. The proposed amendments include inserting a new Article 5B – Gateway Mixed Use Districts, consisting of proposed ordinance text, illustrations, and tables; and making conforming amendments to other sections of the Zoning Ordinance, including Article 4, Article 5A, and Article 7.

Ms. Walker provided a memo summarizing the changes to recommend to City Council for adoption. Including the additions to Article B and the amendments to Article 5A. The gateways districts will be removed and replaced with G1 and G2. Definitions were added. There is not a full list yet, but the recommendation to City Council would be to request the Planning Department finish putting that together. A summary page is provided to show modifications. Documents for the table of uses and the map are also included. They have not changed since it was last seen. The table of uses were discussed in the last meeting. Provided here is an exhibit that shows a parallel of what are the allowed uses today. The hotel uses are on the second page number 10. A red line version was provided but Ms. Walker offered to go into more detail on anything if needed.

Chairman Legg reiterated that the Board, the public and the Planning Department have moved this to as close to the final version as possible. Thank you everyone involved.

Vice Chairman Moreau questioned if the parking was going to be taken out, and the ordinance would point to Article 11. Ms. Walker responded that she would recommend adding that as a comment to point to Article 11 except for the transportation comment.

Ms. Begala noted that under the purpose it states to create quality places by allowing for whole site developments with meaningful public spaces and centers. Guess that's fine because it's statement intent. Every reader will have different interpretations to quality and meaningful. It will be hard to quantify, so it is vague. Ms. Walker responded that the general purpose of a purpose statement and intent is to remind the Board what the intent is. The details of what a meaningful space means are outlined in the standards and CUP requirements. Some of these statements came directly from the public.

Ms. Begala commented that the CUP criteria section read well, but wondered if specifically under number three they could add neighborhoods to the impacts. Chairman Legg noted that they would have to define neighborhoods. Vice Chairman Moreau suggested adjacent neighborhood character. Ms. Begala agreed.

Chairman Legg noted that he was comfortable with the density incentives, but ran into a conflict. Chairman Legg suggested correcting that dwelling units per acre to allow higher density than what is outlined above. Ms. Walker responded that it probably does work, but wanted to clarify that Chairman Legg had looked at City Council Representative Perkins's comments on this. By allowing a maximum per building it still held to dwelling units per acre. The properties were looked at and most will not restrain the 36 units per acre. Chairman Legg responded that was great and concluded that his suggested change is not needed.

Ms. Begala questioned the permitting site type, and table of various types. Ms. Walker responded that was a typo and it should be a community space type only. Ms. Begala commented it was great to show potential developers how to get various incentive bonuses. It would still be up to the Planning Board

to decide what mix of those would be allowed? Ms. Walker responded that this is explaining one of the requirements for site types. So yes through a CUP the Planning Board would have some input, but there is also a list in the requirements as to what's allowed. A cottage would not necessarily have a park but would have a patio.

Vice Chairman Moreau moved to change parking requirements to point to new section in Article 11 and move the ordinance forward to City Council, seconded by Mr. Gamester. The motion passed unanimously.

Ms. Walker clarified that the hotel special exceptions would be available for both districts for up to 250 rooms. The Board agreed.

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VIII. OTHER BUSINESS

A. Request for Preliminary Conceptual Consultation regarding property located at 145 Brewery Lane.

John Chagnon from Ambit Engineering presented a project that will be going through site plan application for more than 3 units. Eric Chinberg, is interested in purchasing the property and would like to get a feeling from the Board on their thoughts of the plans. The plan shows one of the more important features of the site zoned to CD4 west character district. The overlay is 200 feet from the boundary. The building can't be pushed any further to the west. There is consideration about creating a pass through connection from Chevrolet Ave. to Jewel Court. A speed bump would be installed to slow traffic. This was a feature of the previously approved plan. Two commercial buildings will remain in place. The secondary building is behind the principle building and has different setback requirements. This would be an 80-90-unit apartment building. Underground parking will be installed and that will make a grade change to the property. The building is shown as a box right now. The façade requirements will be incorporated into the next round. Community spaces will be added, along the outline of the property parking. The intent is to make enough open space to get the incentives. Community space would be a park landscaped area and urban park. The landscape architect threw together a rough plan based on the initial connectivity of what those spaces might look like. A retaining wall will have an elevated walkway so it will be a level up from the park. Some exterior space will be created for first floor units. ADA access will be available to the first floor and the basement. There will be an elevator for ADA access to the garage. There will be wide sidewalks and 20% open space that would allow for a number of things. The building height would reduce one space per dwelling unit. The maximum building footprint could go higher to 16,000 square feet with a unit density at 82.

Vice Chairman Moreau commented that she loved the design and the green space being located closer to Chevrolet Ave. Where would the access for moving trucks or delivery be? Would there be consideration to give workforce-housing units in the building? This project looks like it's on the right track.

Mr. Kisiel seconded everything Vice Chairman Moreau said.

Assistant City Manager Moore noted this will be the first time the Board will be implementing West End zoning requirements. It will be important for the Board to know the requirements and incentives. The connection is better than the last time this project was proposed. The neighborhood has always had a lack of penetration. It can only be accessed by going around Cate Stree. If there is an opportunity to open this up for pedestrian or bike access that would be great. The community space is not a planted space either. It is important to be purposeful about the plants that are put in. How will the edge be along the pick n pay parcel? This is a large site that would be creating an edge that will play with another lot at some point.

Chairman Legg noted this was an exciting project. This is what the Board hoped for when this property was brought before the Board last time. Chairman Legg echoed Assistant City Manager Moore that the natural wooded area could be thought about more purposefully to make it a wooded area but not necessarily preserving what exists. It's a mixed bag of vegetation there but could be brought to a natural state purposefully.

Mr. Clark made one general comment that in the West End there are several buildings with solar units on them. Mr. Clark encouraged that applicants to explore that. Building a prominent building like this one could set a tone in the neighborhood. He asked them to be conscious of storm water at the site. Mr. Clark was not advocating for LEED certification necessarily but noted that going the extra mile would go a long way.

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II. ADJOURNMENT

It was moved, seconded, and **passed** unanimously to adjourn the meeting at 11:32 p.m.

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Respectfully Submitted,

Becky Frey,
Acting Secretary for the Planning Board

These minutes were approved at the October 19, 2017 Planning Board Meeting.