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Reply to: Portsmouth Office
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September 1, 2021

Via Hand Delivery

Peter Stith, Principal Planner
Zoning Board of Adjustment of the City of Portsmouth
1 Junkins Ave., 3rd Floor
Portsmouth, NH 03801

Re: Stone Creek Realty, LLC - 53 Green Street

Dear Mr. Stith:

Enclosed for filing in the above-referenced matter, please find 11 copies of Intervenor's Motion to Dismiss Appellants' Appeal of Decision of the Portsmouth Planning Board.

Thank you for your attention to this matter.

Very truly yours,

/s/ Brian J. Bouchard

Brian J. Bouchard

BJB/smh
Enclosure

THE STATE OF NEW HAMPSHIRE
ZONING BOARD OF ADJUSTMENT
OF THE CITY OF PORTSMOUTH



In re Application of Stone Creek Realty, LLC, CPI Management, LLC, and Boston & Maine Corporation regarding the property located at 53 Green Street

**STONE CREEK REALTY'S MOTION TO DISMISS APPELLANTS' APPEAL
OF DECISION OF THE PORTSMOUTH PLANNING BOARD**

Stone Creek Realty, LLC ("Stone Creek") submits this Motion to Dismiss Appellants' Appeal of Decision of the Portsmouth Planning Board.

THE PROJECT

The project is located at 53 Green Street, a 1.78-acre parcel that is bound by Green Street to the south, the AC Hotel to the west, North Mill Pond to the north, and the railroad to the east. During the past 10 months, the project has been vetted and approved by the Technical Advisory Committee, the Conservation Commission, the Historic District Commission, and the Planning Board. None of the Appellants opposed the project before the Planning Board, and abutters and residents supported the project.ⁱ Because of the public benefits from the project and Stone Creek's responsiveness to the City's comments about the project, the project was well-received and approved by the Planning Board. Additionally, City Staff's report to the Conservation Commission included the following remarks:

- The current property is being improved to include a bicycle and pedestrian trail made of porous pavement and a new landscaping plan which enhances what is there today and provides public access along the water consistent with the North Mill Pond Greenway plan. The overall project reduces the amount of impervious surface.
- The proposed building is not closer to the edge of wetland and there is a reduction in impervious surface with this proposal.
- The project provides community space that will allow people to walk along the pond on a safe accessible trail and proposed a landscape plan which is an

improvement over the existing landscaping which is largely lawn and a mix of invasive species.

- The proposed project has plans to replace a large lawn area with long grass and trees adjacent to the water and more intensive landscaping up against the building. These landscape plans will be an enhancement over what landscaping exists today.
- This application propose[s] to provide enhancements to the tidal buffer zone over what exists today. The project will provide enhanced landscaping over what exists today and will provide public access this portion of the North Mill pond where none exists today. Given these improvements and the reduction of impervious surface and treatment of stormwater on the site staff believes this project has worked to provide an application which reduces the overall impacts. One improvement which was mentioned above would be to reconfigure the pedestrian/bike trail to move inland and outside of the 25 foot vegetated buffer further reducing impacts on the site.ⁱⁱ

Consistent with the Staff report, the Conservation Commission considered the wetlands conditional use criteria and recommended the plan to the Planning Board with an 8-0 unanimous vote because the proposed use has no adverse impact on the area or environment.

The project's property includes approximately 315 linear feet of tidal wetlands and buffers along North Mill Pond. The existing lot contains an L-shaped commercial building that is located within the southwestern portion of the project area and extends towards the center of the property. The existing building extends into Green Street and presents a public safety concern. The project will improve public safety by removing the existing building from Green Street and creating a public sidewalk. The eastern portion of the property consists mainly of large, paved parking and maintained lawn which extends down to the North Mill Pond. Several small and discontinuous disturbed forested areas lie to the west of this existing building and along the railroad track to the east, and a small discontinuous disturbed shrub thicket exists within the northernmost portion of the property, near the on-site utility tower. As recommended by the

Conservation Commission, the project will increase vegetation for water runoff and wildlife habitat on the lawn at North Mill Pond.

The property includes a portion of the City's long-planned improvements to the shoreline of the North Mill Pond including the 2016 Master Plan and North Mill Pond Vision Plan 2014. The 53 Green Street project will include the construction of a 5-story mixed-use residential building that includes basement level parking, a first-floor residential lobby, commercial space, and 45 upper-floor residential units. It is in keeping with the character of the neighborhood because it is located in the North End Incentive Overlay District, which as an incentive for development within the overlay district, allows one additional floor provided that certain public benefits are included in the project. The project also includes substantial site improvements, including a paved access driveway, pedestrian access, utilities, lighting, landscaping, and stormwater management systems that provide treatment for runoff. The stormwater management system is of particular importance because there is no existing stormwater treatment at the property. Water currently flows untreated over the existing asphalt directly into the pond. Additionally, the project is enhancing the buffer area which is currently a maintained lawn. The buffer will be improved with native grasses, trees, understory and other re-vegetation that will create a habitat for birds and other native animals.

The project includes many other public benefits. It will provide 22,621 square feet (29% of the total area) of community spaces, which will include 15,463 square feet of Greenway Community Space located between the North Mill Pond mean high water line and the 50-foot wetland buffer setback. This community space will be a significant step toward the City's goal in the Master Plan to create public access along North Mill Pond with a multi-use trail connecting to recently constructed public improvements on Market Street and a to-be-

constructed City park behind the AC Hotel. The project also has agreed to cover the cost of replacing the public water main along Green Street, as well as providing a sewer easement to the City along the railroad tracks. The project will benefit the 100-foot tidal wetland buffer by moving parking and portions of the building footprint away from North Mill Pond and reducing the overall amount of impervious surface, which will improve the habitat and provide additional trees and vegetation. The total overall reduction of impervious surface from the 100-foot tidal buffer will be 3,218 feet, with no impervious surface in the 0-25-foot buffer, the existing electric tower being the only remaining impervious surface in the 25-50-foot buffer, and additional reductions of impervious surface in the 50-100-foot buffer.

THE APPEAL SHOULD BE DISMISSED

I. None of the 17 individual Appellants has standing to pursue the appeal.

The names and addresses of the 17 individual Appellants are listed on Exhibit C to this motion to dismiss. They describe themselves as “citizens, residents and/or property owners in the City of Portsmouth.” However, none of the Appellants is an abutter to 53 Green Street. The City’s list of abutters to 53 Green Street is included as Exhibit D to this pleading, and none of the Appellants’ names appear on the City’s list. Additionally, none of the Appellants is a “visual abutter” to 53 Green Street; that is, none of their properties is located in proximity to 53 Green Street such that the view of the project from their property, if any exists, will have an adverse impact on their property. Nor could any of the Appellants credibly make such a claim given the close proximity of the existing AC Hotel and Sheraton Portsmouth Harborside Hotel.

As Peter Loughlin, the former City Attorney and author of the “Land Use” volume of the New Hampshire Practice Series wrote: “Planning board decisions cannot be appealed by just any citizen.”ⁱⁱⁱ The ZBA considers questions of “standing,” which simply means that the Board

determines who has a right to appear before it and offer testimony.^{iv} Standing to appeal a planning board decision to the ZBA requires that an appellant be a “person aggrieved” by the decision.^v If the person is not an abutter, (s)he must demonstrate a “direct, definite” interest to have standing.^{vi} It requires an interest that is distinguishable from the interest of other City residents, and the adequacy of a claim of direct and definite interest is determined by “the proximity of the challenging party's property to the site for which approval is sought, the type of change proposed, the immediacy of the injury claimed, and the challenging party's participation in the administrative hearings.”^{vii} Importantly, when a person’s standing is challenged, the individual “cannot rest on unsubstantiated allegations, but must sufficiently demonstrate his or her right to claim relief.”^{viii}

Here, none of the Appellants has claimed a direct and definite interest to create standing. None has articulated a right to claim relief. Additionally, none of the Appellants participated in the Planning Board proceedings or voiced any concern on the night of the approval. Appellants’ appeal must be dismissed because none of the Appellants has standing to pursue the appeal.

II. The ZBA lacks jurisdiction over Count II because Planning Board decisions regarding Conditional Use Permits must be appealed to the superior court.

Counts II challenges the Planning Board’s approval of a Wetlands Conditional Use Permit. Pursuant to RSA 674:21, conditional use permits are innovative land use controls. Pursuant to RSA 676:5, III the ZBA lacks jurisdiction over count II because the Planning Board’s decision on an innovative land use control, including a conditional use permit, is appealable only to the superior court.

It is universally recognized in New Hampshire that conditional use permits are innovative land use controls pursuant to RSA 674:21, and if a municipality affords the Planning Board authority over the administration of conditional use permits, any appeal of the Planning Board’s

decision must be taken to the superior court. For example, the New Hampshire Municipal Association (“NHMA”) informs its members that an appeal from a planning board decision on a conditional use permit must go to the superior court, not the zoning board of adjustment:

Ordinarily, when a planning board issues a decision that involves interpretation of a zoning ordinance, the decision should be appealed to the municipality’s zoning board of adjustment. However, if the planning board is given the responsibility of administering an innovative land use control, the board’s decisions on applications for conditional use permits should be appealed directly to the superior court instead of first going to the ZBA. RSA 676:5, III.

Many other municipalities including, Concord, Manchester, Durham, and Gilford, include a similar statement in their zoning ordinances.^{ix}

Count II should be dismissed because the ZBA lacks jurisdiction over an appeal of a Planning Board’s grant of a conditional use permit.

A. The project met the qualifications for a Wetlands Conditional Use Permit.

Although the ZBA lacks jurisdiction over Appellants’ challenge to the Planning Board’s issuance of a Wetlands Conditional Use Permit, the project satisfied the criteria for such permit. Appellants’ challenge to criteria 2 and 5 is misplaced. Appellants simply are wrong when they claim that criteria 2 and 5 cannot be satisfied if “it is possible to erect a building on the site which does not encroach upon the wetlands buffer.”^x

Criteria 2 provides that “[t]here is no alternative location outside the wetland buffer that is *feasible and reasonable* for the proposed use, activity or alteration.”^{xi} The New Hampshire Supreme Court has unequivocally recognized that “feasible” means that an alternative not only must be physically and legally possible, but also must not place an undue financial burden on the developer.^{xii} If a reduction in size of a project presents a “financial hardship,” the proposed reduced project is not feasible.^{xiii} In other words, while a conditional use permit should not be granted solely for economic considerations, section 10.1017.44, economic considerations help

determine whether a project is reasonable and feasible. Appellants' argument that cost, or their preferred term, "profitability," is irrelevant is as wrong as their contention that the project, which indisputably improves and enhances the wetlands buffer, "flout[s]" the wetlands ordinance.

Additionally, it is immaterial whether a different project could be built on the same property - the use proposed by the developer is the only issue.^{xiv} So is the question of whether it is possible to place a building outside the wetlands buffer. Anyone with an eraser and a pencil can reconfigure a building to fit outside the wetlands buffer, as the Appellants' pseudo-expert has done. However, simply not building in the wetlands buffer ignores the purpose and very existence of the Wetlands Conditional Use Permit. It is a buffer, not a setback. If Portsmouth wanted to preclude development in the wetlands buffer altogether, it would not have enacted a conditional use permit that permits development in the wetlands buffer. City Staff with expertise regarding the wetlands buffer correctly concluded: "The location of the property is primarily within the 100' wetland buffer. The location for the project is feasible as the applicant is reducing the impacts in the buffer with the proposed development."^{xv}

The foundational purpose of the conditional use permit is to balance development in the wetlands buffer with other planning objectives and inherent constraints on the subject property. Where, as here, a project improves property and enhances the environment, development is permitted through a conditional use permit. For all the reasons described on pages 1-4 above, the Planning Board correctly found that: "The proposed public greenway park along the waterfront is an appropriate use and improvement for the location. The project has been sited in a way to reduce the net impervious surface, provide adequate parking and safety access to the building, and maintain the required separation from the railroad. The design of the project is feasible and reasonable for the proposed use working within the property's constraints."

Criteria 5 states: “[t]he proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.” Here, the project followed the Conservation Commission’s suggestions and changed the original fire truck path to make it permeable, located closer to the building, and combined with the community trail. Additional understory plantings and native species were added to the planting plans. As a result, the Conservation Commission considered the wetlands conditional use criteria and recommended the plan to the Planning Board with an 8-0 unanimous vote because the proposed use has no adverse impact on the area or environment. The project substantially improves the area and environment for many reasons, including:

- The project will improve water quality by installing stormwater treatment where none currently exists.
- The natural habitat will be enhanced through the removal of invasive plants and revegetation of portions of the wetlands buffer with native species.
- The project will enhance the wetlands buffer by reducing overall impervious surface on the site, including within the 100-foot tidal buffer, by more than 3,200 square feet.
- It will provide public access to the North Mill Pond, which is a goal of the City’s master plan, where no public access, enjoyment, or recreation exists today.
- The public greenway trail will create currently nonexistent recreational opportunities like walking, jogging, cycling, and birdwatching.

In sum, criteria 5 is satisfied because rather than causing an adverse impact to the area and environments, it improves the area and environments.

III. A conditional use permit is not required to erect a building larger than 20,000 square feet in the North End Incentive Overlay District.

Appellants are wrong when they argue that the Planning Board should have required Stone Creek to obtain a conditional use permit to erect a building larger than 20,000 square feet at 53 Green Street. Most importantly, the City Attorney responded to Mr. Chellman with a letter

dated August 6, 2021 and advised him that his analysis was wrong. City Attorney Sullivan informed Mr. Chellman that he had conferred with City Planner Walker, and that “the proper analysis” is not through the ordinance sections referred to by Mr. Chellman but is through section 10.5A46.10.^{xvi}

As explained in the City Attorney’s letter, because 53 Green Street is located in the North End Incentive Overlay District, the applicable sections of the zoning ordinance are sections 10.5A46.10 and 10.5A46.20. Those sections plainly allow a 5-story building with a footprint of up to 30,000 square feet. Appellants’ argument relies on section 10.5A43.43 of the zoning ordinance, which the City Attorney and the City Planner agree does not apply to the project. While section 10.5A43.43 and the sections related to the North End Incentive Overlay District both provide development incentives, they are distinct. Stone Creek’s project does not involve the parking incentives referenced in section 10.5A43.43. Instead, Stone Creek’s project relies on the North End Incentive Overlay District community space incentives set forth in sections 10.5A46.10 and 10.5A46.20, neither of which requires a conditional permit. Section 10.5A46.10 provides that the maximum building footprint in the North End Incentive Overlay District is 30,000 square feet if the project provides community space in accordance with section 10.5A46.20. Section 10.5A46.20 provides certain conditions for the community space, including that it must be no less than 20% of the lot area. Appellants do not challenge the project’s compliance with the requirements of sections 10.5A46.10 and 10.5A46.20.

There is no truth to Appellants’ contention that the Planning Board was “misled” by an incorrect reference to 10.5A43.42 on the development plan. None. The error was both discovered before the Planning Board and addressed by it. City Attorney Sullivan’s letter to Mr. Chellman also addresses this error: “The error in the footnote reference which you have

identified was also identified by the City's Technical Advisory Committee (TAC). It will be corrected by the applicant on the final plan set before the Planning Board Chair would sign off on the plan and it will be recorded. No building permit would be issued to allow the project to proceed until this has occurred.”^{xvii} An express condition subsequent to the Planning Board’s site plan approval states as follows: “As discussed with the Planning Director, the Site Plan sheet C-102.1 note (3) in the Development Standards table shall be corrected to reference the applicable zoning ordinance section (Section 10.5A46.10 instead of Section 10.5A43.42).” Thus, the Planning Board with the assistance of the Planning Director, corrected the inadvertent error stated on the plan and made it a condition of approval. This condition was corrected on August 5, 2021,^{xviii} and sent to Planning Director Juliet Walker.

IV. The Planning Board properly approved a third story on the building located at 53 Green Street in the North End Incentive Overlay District pursuant to section 10.5A46.10.

Appellants concede that section 10.5A46.10 provides that a developer is entitled to an extra story on a building in the North End Incentive Overlay District if the project provides the community space referenced in the preceding section of this pleading. Appellants incorrectly argue that section 10.5A46.10 “is trumped” by sections 10.5A21.10 and 10.5A.20, which would limit the building height to two stories. Appellants’ argument that because sections 10.5A21.10 and 10.5A.21.20 are more restrictive than section 10.5A46.10, the stricter provisions control the situation is misplaced.

Article 6 of the zoning ordinance addresses overlay districts. Section 10.612 established the City’s eight overlay districts, including the North End Incentive Overlay District. Section 10.611 states the rules for overlay districts:

Overlay districts apply special rules to manage land use in specific areas that may be portions of a single zoning district or that may overlap two or more

zoning districts. The rules for overlay districts supplement the regulations contained in other sections of this Ordinance. Except as specifically provided otherwise in the regulations for an overlay district, all regulations of the underlying zoning district shall apply. **Where there is a conflict between the regulations of an overlay district and those of the underlying district, the overlay district regulations control.**

Section 10.611 unequivocally provides that overlay districts provide special rules to manage land in specific areas, and where there is a conflict between the overlay district's regulations and an underlying district's regulations, the regulations of the overlay district control.

Appellants' argument regarding Map 10.5A21B is similarly flawed. Consistent with section 10.611, section 10.5A46.10 states that in the Incentive Overlay Districts designated on Map 10.5A21B "certain specified development standards may be modified as set forth in Section 10.5A46.10" if the development provides community space in accordance with section 10.5A46.20. Here, it is undisputed that the project complies with sections 10.5A46.10 and 10.5A46.20. Accordingly, the Planning Board properly modified the building height referenced on Map 10.5A21B because of the project's compliance with sections 10.5A46.10 and 10.5A46.20, and the Planning Director acknowledged compliance with the zoning ordinance.^{xix}

WHEREFORE, Stone Creek Realty, LLC respectfully requests that the Portsmouth Zoning Board of Adjustment dismiss Appellants' Appeal of Decision of the Portsmouth Planning Board.

Respectfully submitted,
Stone Creek Realty, LLC
By its counsel,

Dated: September 1, 2021

By /s/ Michael D. Ramsdell
Michael D. Ramsdell (Bar No. 2096)
Brian J. Bouchard (Bar No. 20913)
Sheehan Phinney Bass & Green, P.A.
1000 Elm Street, P.O. Box 3701
Manchester, NH 03105-3701

(603) 627-8117; (603) 627-8118
mramsdell@sheehan.com
bbouchard@sheehan.com

CERTIFICATE OF SERVICE

On September 1, 2021, this Motion to Dismiss Appellants' Appeal of Decision of the Portsmouth Planning Board was forwarded via email to Portsmouth City Attorney Robert P. Sullivan and Duncan J. MacCallum, Esq.

By: /s/ Michael D. Ramsdell
Michael D. Ramsdell

ⁱ Attached to this Motion to Dismiss as Exhibit A are letters submitted to the Planning Board in support of the project.

ⁱⁱ Exhibit B – Environmental Planner Peter Britz's memo to the Conservation Commission.

ⁱⁱⁱ Peter Loughlin, Land Use Planning and Zoning, "Who Can File Appeal of Planning Board Decision," Vol. 15, § 33.01 (2020).

^{iv} Peter Loughlin, Land Use Planning and Zoning, "Who May Address the ZBA" Vol. 15, § 21.15 (2020).

^v RSA 676:5, I

^{vi} *Golf Course Investors of NH v. Town of Jaffrey*, 161 N.H. 675, 680 (2001).

^{vii} *Id.*

^{viii} *Id.*

^{ix} For example:

Manchester: Any persons aggrieved by a Planning Board decision on a Conditional Use permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. **A Planning Board decision on the issuance of a Conditional Use permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5, III).** Manchester Zoning Ordinance, Article 12, Section 12.07, <https://www.manchesternh.gov/pcd/Regulations/ZoningOrdinance.pdf>.

Concord: Appeals. Any persons aggrieved by a Planning Board decision on a conditional use permit may appeal that decision to the Superior Court in the manner provided by RSA 677:15, Court Review. **A Planning Board decision on the issuance of a conditional use permit cannot be appealed to the Zoning Board of Adjustment in accordance with RSA 676:5, III, Appeals to the Board of Adjustment.** Concord Zoning Ordinance, Section 28-9-4(a)(6), https://library.municode.com/nh/concord/codes/code_of_ordinances?nodeId=TITIVZOCO_CH28ZOOR_ART28-9ADEN_28-9-4DEPLBO.

Durham: Any persons aggrieved by a Planning Board decision on a Conditional Use Permit may appeal that decision to the Superior Court, as provided for in RSA 677:15. **A Planning Board decision on the issuance of a Conditional Use Permit cannot be appealed to the Zoning Board of Adjustment. (RSA 676:5 III).** Durham Zoning Ordinance, Article VII, Section 175-24, https://www.ci.durham.nh.us/sites/default/files/fileattachments/planning_and_zoning/page/21491/article_vii.pdf.

Gilford: A Planning Board decision on the issuance of a conditional use permit cannot be appealed to the Zoning Board of Adjustment. Any persons aggrieved by a Planning Board decision on a conditional use permit may appeal that decision to the superior court as provided in the manner provided by RSA 677:15, Court Review. Gilford Zoning Ordinance, Article 21.7, https://www.gilfordnh.org/assets/municipal/9/Whole_Ordinance_for_Web_2013_2_1365085892.pdf.

^x Appeal, p. 5.

^{xi} Section 10.1017.50 (emphasis added).

^{xii} *Malachy Glen Assoc. v. Chichester*, 155 N.H. 102, 108 (2007); *Boccia v. Portsmouth*, 151 N.H. 85, 93 (2004)

^{xiii} *Malachy Glen Assoc.*, 155 N.H. at 108.

^{xiv} *Malachy Glen Assoc.*, 155 N.H. at 108; *Boccia*, 151 N.H. at 93.

^{xv} Exhibit B to this Motion.

^{xvi} Exhibit E to this Motion.

^{xvii} Exhibit E to this Motion.

^{xviii} Exhibit F to this Motion.

^{xix} Exhibit E to this Motion.

Members of the Portsmouth Planning Board –

My name is Chris Benecick, and I reside at 7 Portwalk Place in Portsmouth. I **wanted to voice my support of this project**, as I feel the building design not only compliments the other new commercial and residential structures in the North End, but also pays tribute to Portsmouth's maritime history and its contribution to wooden shipbuilding and global commerce.

My wife and I moved back to New England in Aug 2019, after 20 years of working and raising a family in the Metro NY/NJ area. We chose Portsmouth as our next place to live due to the opportunity to live in an urban, active and vibrant community with proximity to the ocean, lakes and mountains. Another benefit was we could also reduce our carbon footprint by walking, biking or taking public transportation to Boston when needed by living downtown. Lastly, the history of the Portsmouth and Seacoast area was always very interesting to me, starting from my time as a History major at UNH in Durham.

In reviewing the drawings and models submitted to the city of this project, I immediately noticed that the lines of the building resemble a ship, or the hull of a wooden boat when viewed from traveling on Market St. south across the far end of the North Mill Pond. The design and scale fits in very nicely between the Sheraton to the southeast, the AC Hotel, and the new office building being completed on Maplewood and Raynes Ave. For those driving into Portsmouth from I-95 on Market, this design provides a very good impression as a "gateway" building.

I think this project has the opportunity to educate both residents and visitors alike to the important role that Portsmouth played in the expansion of the United States in the period between 1840-1860; also known as the "Age of the Clipper Ship". Portsmouth shipyards turned out 28 clippers during this period, and if you look at the town maps from this period, you will see that the largest and most successful of them all was located on this section of the North Mill Pond just slightly northwest of this project - the George Raynes shipyard. Legendary clippers like Sea Serpent, Wild Pigeon, Emily Farnum, and Witch of the Wave were all built here for Boston and NY shipping interests, ferrying miners and supplies around Cape Horn to the California Gold Rush, then onto China before returning

to the US loaded with gold, tea and spices. Before the last tall ship was launched from Portsmouth in 1886, these yards produced 61 ships – clippers, barks, brigs, and schooners. These ships and their crews opened the Pacific to US expansion and contributed millions of trade dollars to the US economy pre-Civil War. Once launched in Portsmouth, none ever returned but they told their stories in ports throughout the world. As the age of wooden ships ended at the end of the 19th Century, the wharves were filled in and repurposed for lumber and coal distribution, among other industrial purposes.

Part of the developer's plan submitted to the city includes constructing a pedestrian path along the North Mill Pond that will eventually connect Market St. to Maplewood Ave. This will create new access along the pond line where the Raynes/Fernald shipyard used to operate. Aside from a minor reference on a marker in the Union Cemetery where George Raynes and Frederick Fernald now rest, there is nothing to indicate the industry, commerce and craftsmanship that once existed here. It would be great if the developers and town officials could include along this path appropriate markers that interpret the historical significance of the mostly forgotten nautical past of this area of town.

George Raynes was well known in shipbuilding for his sense of "line, symmetry and proportion." I believe the developer's design pays tribute to this history of the area, which has been long since developed commercially and now is being revitalized to support the North End's return to residential use.

Thank you, and I hope that the Planning Board grants approval to this important project.

Respectfully,

Chris Benecick

Izak Gilbo

From: Christopher Moulton <cmoulton@colwenhotels.com>
Sent: Thursday, July 8, 2021 11:53 AM
To: Izak Gilbo
Subject: 53 Green Street Project Support
Attachments: Green St.jpg

Dear Members of the Planning Board,

I have been the General Manager at the AC Hotel since the opening in December 2019. We frequently give directions to our guests to go out and explore the City attractions and many excellent restaurants. Also, now that the worst of Covid is hopefully behind us, our guests also value outdoor public space more highly.

I am writing in support of the 53 Green Street application next door from a public safety and waterfront access standpoint. The attached picture shows the sidewalk condition on Green Street that will greatly be improved with the development of this project and our guests will enjoy walking along the North Mill Pond to access the park on Market Street. We are excited for the continued revitalization of the North End and its beautification of Portsmouth.

Since one of the owners, Cathartes, is also part owner in the AC Hotel, I will not comment on the design or architecture.

Thank you for your consideration and I hope you approve this project.

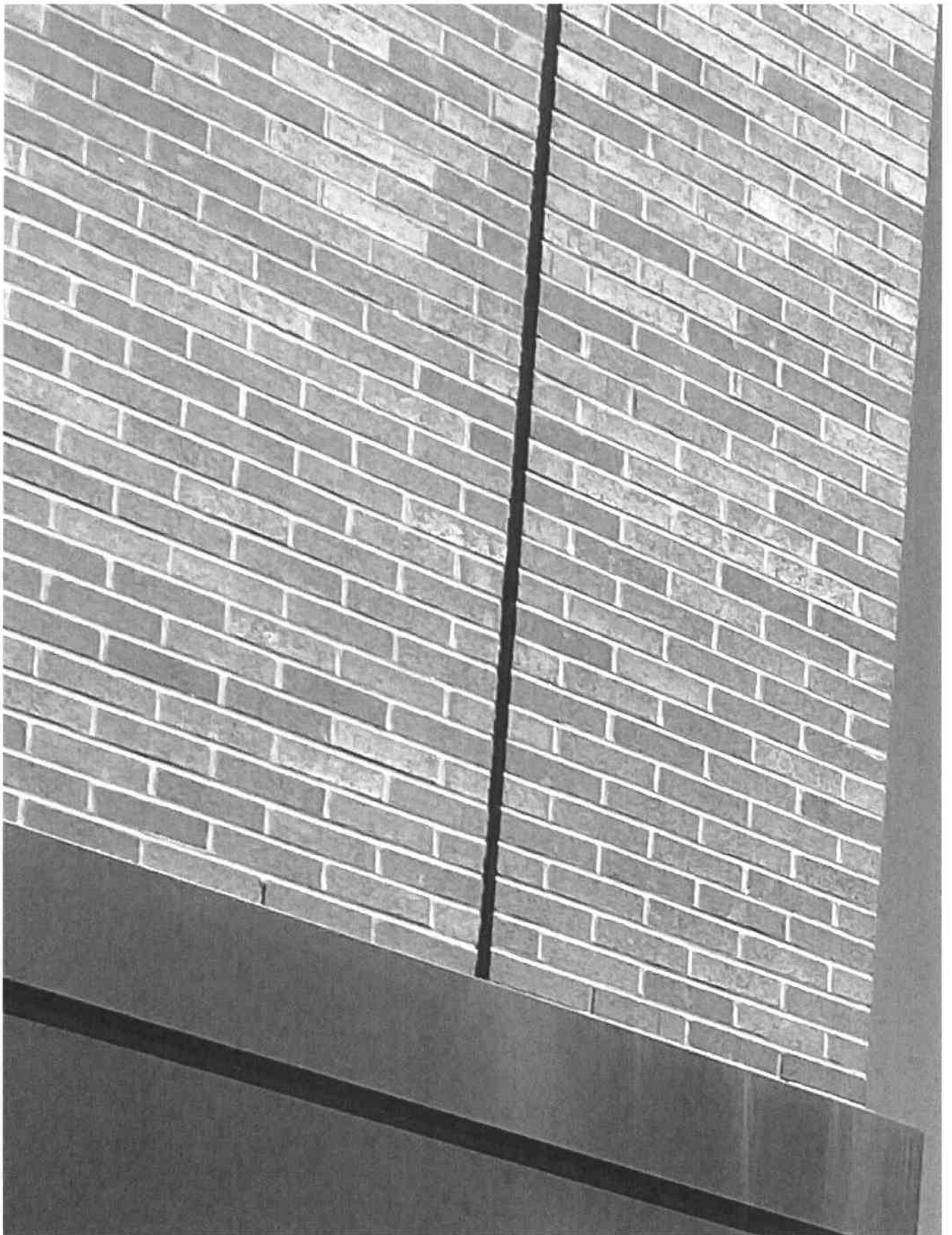
Chris Moulton

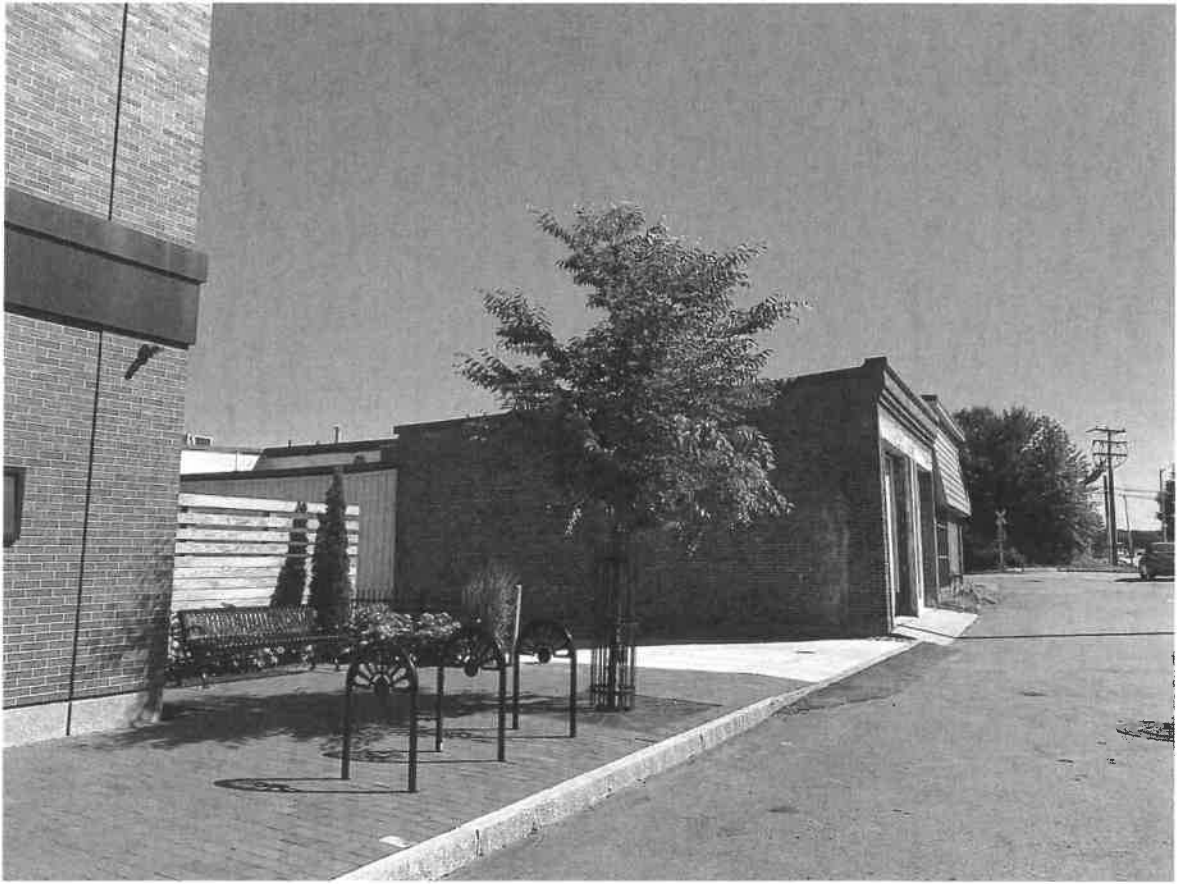
GENERAL MANAGER
cmoulton@colwenhotels.com
C. 561.573.9644

AC Hotel by Marriott Portsmouth Downtown/Waterfront
The Envio & Rooftop at The Envio
299 Vaughan Street
Portsmouth, NH 03801



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319 VAUGHAN STREET
PORTSMOUTH, NH 03801

July 7, 2021

Via electronic mail transmission only (iqilbo@cityofportsmouth.com)

Portsmouth Planning Board
c/o Izak Gilbo, Associate Planner
City Hall
1 Junkins Ave, 3rd Floor
Portsmouth, NH 03801

Re: 53 Green Street

Dear Members of the Planning Board:

On behalf of the Board of Directors of 3S Contemporary Artspace, Inc., I write to inform the Planning Board of the 3S Board's support for the proposed development of 53 Green Street.

The proposal seems to be in line with recent developments in the North End which have generally had a positive impact on our arts nonprofit. While the 3S Board takes no position on the project's design elements, including the scope and mass of the project, we are nevertheless excited about the potential for development of this parcel. We are particularly supportive of the proposed public art installations on the Green Street connection and our potential role in supporting and curating those installations. The 3S Board further believes that the proposed greenway connecting the North End to Market Street will have an overall positive impact on the neighborhood.

Cathartes has included 3S staff in its development process and has a long-standing working relationship with 3S. We look forward to continued partnerships with our North End neighbors and city leadership.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "JR", with a long, sweeping horizontal stroke extending to the right.

Joseph R. Russell, Vice Chair
3S Contemporary Artspace, Inc.

Memo

TO: Conservation Commission Members
FROM: Peter Britz, Environmental Planner
DATE: April 9, 2021
SUBJ: April 14, 2021 Conservation Commission Meeting



53 Green Street

This project proposes replacement of an existing building and reconfiguration of parking landscaping and the addition of a new waterfront pedestrian bicycle trail and new landscaping. Much of this work is proposed in the 100 foot tidal buffer zone of the North Mill Pond. While the building is not getting any closer portions of the proposed building are further back from the edge of the North Mill Pond with a result that the applicant was able to reduce the total impervious surface for the project area from 11,581 square feet to 8,523 square feet or a reduction of 3,058 square feet.

According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project.

1. *The land is reasonably suited to the use activity or alteration.* This project is located in an area along the North Mill Pond that is currently private and not open to the public. The current property is being improved to include a bicycle and pedestrian trail made of porous pavement and a new landscaping plan which enhances what is there today and provides public access along the water consistent with the North Mill Pond Greenway plan. The overall project reduces the amount of impervious surface. For these reasons the land is reasonably suited to the proposed alterations.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The location of the property is primarily within the 100' wetland buffer. The location for the project is feasible as the applicant is reducing the impacts in the buffer with the proposed development.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed building is not closer to the edge of wetland and there is a reduction in impervious surface with this proposal. The proposal also seeks to improve the treatment of stormwater on the site with a treatment and detention system. The pedestrian trail that is proposed is planned for porous pavement. Staff has one concern with the trail and its proximity to the proposed fire access. The proposed fire access is adjacent to the proposed trail. If the applicant were to combine the proposed trail with the fire access in the area that is within the 25' tidal buffer there could be greater reduction in impacts on the site. The project provides community space that will allow people to walk along the pond on a safe accessible trail and proposed a landscape plan which is an improvement over the existing landscaping which is largely lawn and a mix of invasive species.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project has plans to replace a large lawn area with long grass

and trees adjacent to the water and more intensive landscaping up against the building. These landscape plans will be an enhancement over what landscaping exists today.

5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* This application propose to provide enhancements to the tidal buffer zone over what exists today. The project will provide enhanced landscaping over what exists today and will provide public access this portion of the North Mill pond where none exists today. Given these improvements and the reduction of impervious surface and treatment of stormwater on the site staff believes this project has worked to provide an application which reduces the overall impacts. One improvement which was mentioned above would be to reconfigure the pedestrian/bike trail to move inland and outside of the 25 foot vegetated buffer further reducing impacts on the site.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant provided a landscape plan which includes plantings around the proposed building and within the 100' tidal wetland buffer. The use of native trees and plantings within the 100 foot buffer and removal of invasive species on this site.

Recommendation: Staff believes this application represents a reduction in impacts to the tidal buffer zone and provides public access through a location that has been private. The applicant has complied with section 10.1017.24 which requests the removal of impervious surface in the buffer to below what exists. Staff recommends approval of this application with the condition that the trail be brought further inland to coincide with the fire access proposed thereby reducing the footprint of the trail in the buffer.

Raynes Ave and Maplewood Ave Mixed Use Project

This project includes removing three buildings and impervious surface in the wetland buffer to be replaced with two new buildings parking a public access waterfront trail and landscaping. Overall the project has reduced impervious surface impacts in the first fifty feet of the tidal wetland buffer by 3,787 square feet. The project proposes an increase in the 50-100 foot wetland buffer by 55 square feet. Overall the net reduction amounts to 3,732 square feet of impervious surface removed from the tidal wetland buffer.

According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project.

1. *The land is reasonably suited to the use activity or alteration.* This project is located in an area along the North Mill Pond that is currently private and not open to the public. The current property is being improved to include a bicycle and pedestrian trail made of porous pavement and a new landscaping plan which enhances what is there today and provides public access along the water consistent with the North Mill Pond Greenway plan. The overall project reduces the amount of impervious surface. For these reasons the land is reasonably suited to the proposed alterations.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The location of the property is primarily within the 100' wetland buffer. The applicant has removed the majority of the impacts from the first fifty feet of the wetland buffer. Given the small amount off developable area outside of the wetland buffer there is no alternative location that is reasonable for a project in this area.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* The proposed development is significantly further from the edge of wetland and there is a reduction in impervious surface with this proposal. The proposal also seeks to improve the treatment of stormwater on the site with a treatment and detention system. The pedestrian trail that is proposed is planned for porous

pavement. The project provides community space that will allow people to walk along the pond on a safe accessible trail and proposed a landscape plan which is an improvement over the existing pavement and small area of vegetation currently in the buffer.

4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The proposed project has plans to remove a good deal of building and impervious surface from the buffer. The plans include a landscape plan which will provide a small amount of habitat and an amenity to the public using the greenway trail.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* This application propose to provide enhancements to the tidal buffer zone over what exists today. The project will provide enhanced landscaping over what exists today and will provide public access this portion of the North Mill pond where none exists today. Given these improvements and the reduction of impervious surface and treatment of stormwater on the site staff believes this project has worked to provide an application which reduces the overall impacts.
6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.* The applicant provided a landscape plan which includes plantings around the proposed building and within the 100' tidal wetland buffer. The use of native plantings within the 100 foot buffer and removal of invasive species on this site will provide a benefit over the vegetation in buffer which exists today.

Recommendation: Staff believes this application represents a reduction in impacts to the tidal buffer zone and provides public access through a location that has been private. The applicant has complied with section 10.1017.24 which requests the removal of impervious surface in the buffer to below what exists. Staff recommends approval of this application as presented.

145 Lang Road

This project is to install playground equipment in a lawn area of an existing play area in the Arbor View Pines development. The work will include removing existing lawn and replacing it with an area of woodchips to provide fall zones for the play equipment. The applicant also proposes to remove a debris pile and install a stormwater outfall which was approved as a part of a prior application.

According to *Article 10 Section 10.1017.50* the applicant must satisfy the following conditions for approval of this project.

1. *The land is reasonably suited to the use activity or alteration.* The lawn area is being disturbed to accommodate the playground equipment. It is likely that the woodchips and playground equipment will provide better infiltration than the lawn that is there today.
2. *There is no alternative location outside the wetland buffer that is feasible and reasonable for the proposed use, activity or alteration.* The proposed location is lawn area now and the use will not substantially change the way the area functions today.
3. *There will be no adverse impact on the wetland functional values of the site or surrounding properties.* This project as proposed should not create adverse impacts to the adjacent wetland area.
4. *Alteration of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.* The only vegetation proposed for removal is the existing lawn area.
5. *The proposal is the alternative with the least adverse impact to areas and environments under the jurisdiction of this section.* The proposed removal of lawn area and replacement with woodchips is a better alternative than an impervious surface for the fall zone below the playground equipment.

6. *Any area within the vegetated buffer strip will be returned to a natural state to the extent feasible.*
The plan provides for removal of lawn area and replacement with woodchips which is likely slightly better from an infiltration standpoint. .

Recommendation: Staff recommends approval of this application as proposed.

EXHIBIT C

James and Elizabeth Hewitt, McDonough Street

Richard Antal, 804 South Street

Mark Brighton Richards Street

William Castle, 229 Pleasant Street

Ramona Charland, Richards Street

Lawernce Cataldo, 133 Islington Street

Joseph Famularo, 141 Mill Pond Way

Abigail, Charlotte, and Julia Gindele, Sparhawk Street and Clinton Street

Catherine Harris, Clinton Street

John and Nancy Howard, 179 Burkitt Street

Elizabeth Jefferson, Sparhawk Street

April Weeks, 804 South Street

EXHIBIT D - ABUTTERS LIST

Property ID	Site Address	Account	Owner Name	Owner Name 2	Owner Address	City	State	Zip
0119-0002-0000	53 GREEN ST	37990	STONE CREEK REALTY LLC	C/O DOUGLAS PINCIARO MGR	PO BOX 121	NEW CASTLE	NH	03854
0124-0013-0000	GREEN ST	37482	BOSTON AND MAINE CORP	IRON HORSE PARK	HIGH STREET	NO BILLERICA	MA	01862
0119-0004-0000	MARKET ST	37425	PORT HARBOR LAND LLC		1000 MARKET ST BUILDING ONE	PORTSMOUTH	NH	03801
0119-0005-0000	555 MARKET ST	37744	STATE OF NH PEASE DEVEL AUTHORITY	FKA NH STATE PORT AUTHORITY	PO BOX 506	PORTSMOUTH	NH	03802
0123-0016-0001	VAUGHAN ST	53326	299 VAUGHAN ST LLC	C/O CATHARTES PRIVATE INVESTMENTS	100 SUMMER ST SUITE 1600	BOSTON	MA	02110
0124-0009-000A	319 VAUGHAN ST	62406	319 VAUGHAN STREET CENTER LLC	C/O KITTYHAWK COMPANY	PO BOX 789	GREENLAND	NH	03840
0124-0010-0000	299 VAUGHAN ST	37479	VAUGHAN STREET HOTEL LLC		1369 HOOKSETT RD	HOOKSETT	NH	03106
0124-0014-0000	233 VAUGHAN ST		233 Vaughan Street Condo Assoc.	Attn: Bruce Ocko, President	233 Vaughan Street, Unit 201	PORTSMOUTH	NH	03801
0124-0014-0000	233 VAUGHAN ST		233 Vaughan Street Condo Assoc.	CP Management Attn: Michael Street, Prop. Manager	11 Court Street, Suite 100	EXETER	NH	03833
0124-0014-0000	233 VAUGHAN ST	37483	233 VAUGHAN STREET LLC		3 PENSTOCK WAY	NEWMARKET	NH	03861
0118-0028-0000	DEER ST	37379	PORT HARBOR LAND LLC		1000 MARKET ST BLDG ONE	PORTSMOUTH	NH	03801
0119-0001-001A	DEER ST	37415	PH LOTS LLC		1000 MARKET ST	PORTSMOUTH	NH	03801
0123-0013-0000	31 RAYNES AVE	37981	31 RAYNES LLC	C/O PORTSMOUTH CHEVROLET	549 ROUTE 1 BYPASS	PORTSMOUTH	NH	03801
0123-0014-0000	1 RAYNES AVE	37462	ONE RAYNES AVE LLC		1359 HOOKSETT RD	HOOKSETT	NH	03106
0124-0008-0000	111 MAPLEWOOD AVE	37993	111 MAPLEWOOD AVENUE LLC		210 COMMERCE WAY SUITE 300	PORTSMOUTH	NH	03801
0124-0008-0001	145 MAPLEWOOD AVE	54065	145 MAPLEWOOD AVENUE LLC		210 COMMERCE WAY SUITE 300	PORTSMOUTH	NH	03801
CONDOS								
0124-0014-0101	233 VAUGHAN ST #101	62557	CJ KNIGHT LLC		233 VAUGHAN ST 101	PORTSMOUTH	NH	03801
0124-0014-0102	233 VAUGHAN ST #102	62556	SUNPORT PROPERTY MANAGEMENT LLC		14 LAUREL COURT	PORTSMOUTH	NH	03801
0124-0014-0103	233 VAUGHAN ST #103	62555	TWO FRIENDS HOLDINGS LLC	C/O DGI	PO BOX 23890	HARAHAN	LA	70189-0890
0124-0014-0201	233 VAUGHAN ST #201	62554	OCKO-DIPASQUALE TRUST	OCKO BRUCE & DIPASQUALE ANNA-MARIE TTEES	233 VAUGHAN ST UNIT 201	PORTSMOUTH	NH	03801
0124-0014-0202	233 VAUGHAN ST #202	62553	233 VAUGHAN STREET NOMINEE TRUST	HERRMAN KATHLEEN TRUSTEE	9 DITULLIO DR	FRAMINGHAM	MA	01701
0124-0014-0203	233 VAUGHAN ST #203	62552	VOUTHOUNIS GEORGIA		233 VAUGHAN ST #203	PORTSMOUTH	NH	03801
0124-0014-0204	233 VAUGHAN ST #204	62551	YAPP BENJAMINE E	YAPP HEIDI S	233 VAUGHAN ST #204	PORTSMOUTH	NH	03801
0124-0014-0301	233 VAUGHAN ST #301	62550	BALON JR THOMAS HAMILTON	BALON KIRSTEN SEETHALER	233 VAUGHAN ST #301	PORTSMOUTH	NH	03801
0124-0014-0302	233 VAUGHAN ST #302	62549	SOUTHERN STYLE HOLDINGS LLC		14 LAFAYETTE RD #9	NORTH HAMPTON	NH	03862
0124-0014-0303	233 VAUGHAN ST #303	62548	BELL MICHAEL W TRUST OF	BELL MICHAEL W TRUSTEE	233 VAUGHAN ST UNIT 303	PORTSMOUTH	NH	03801
0124-0014-0401	233 VAUGHAN ST #401	62547	STARCHER DIANA L TRUST	STARCHER DIANA TRUSTEE	233 VAUGHAN ST #401	PORTSMOUTH	NH	03801
0124-0014-0402	233 VAUGHAN ST #402	62546	MCKEON PAUL J	MCKEON JESSICA	233 VAUGHAN ST #402	PORTSMOUTH	NH	03801

Robert P. Sullivan

From: Synthia Ravell
Sent: Friday, August 6, 2021 10:05 AM
To: chellman@tndengineering.com
Cc: Rick Becksted (mayorbecksted@gmail.com); Peter Whelan (pawhelan@comcast.net); Esther Kennedy (estherkennedyportsmouth@gmail.com); Karen Conard; Robert P. Sullivan
Subject: Yours of August 5, 2021 regarding Planning Board
Attachments: Chellman ltr 8-6-21 RPS response.pdf

Rick,

Attached is my letter in response to the above-referenced matter.

RPS

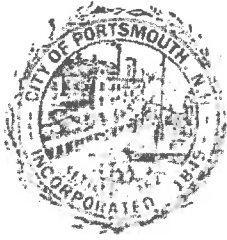
Robert P. Sullivan, City Attorney
City of Portsmouth
1 Junkins Avenue
Portsmouth, NH 03801

(603) 610-7204 (Direct Dial)
(603) 427-1577 (Fax)

rpsullivan@cityofportsmouth.com

City Hall Hours: Monday, 8:00 a.m. – 6:00 p.m.; Tuesday – Thursday, 8:00 a.m. – 4:30 p.m. and Friday, 8:00 a.m. – 1:00 p.m. (NOTE: If a holiday falls on a Monday, City Hall will be open until 6:00 p.m. on Tuesday).

The information in this message may be legally privileged and confidential. It is intended only for the use of the named individual. If you receive this communication in error, please notify me and delete the communication without making any copy or distributing it.



CITY OF PORTSMOUTH

Legal Department
Municipal Complex
1 Junkins Avenue
Portsmouth, New Hampshire
(603) 431-2000

August 6, 2021

Via Email – chellman@tndengineering.com

Rick Chellman
224 State Street
Portsmouth, NH 03801

RE: Yours of August 5, 2021 regarding Planning Board

Dear Rick:

This will respond to the captioned.

An important preliminary consideration to your email of August 5th which raises concerns about statements made by the Planning Director and the Chairman of the Planning Board is that while the City Legal Department advises and represents both of those persons, the Legal Department is not in the line of authority above them. The Planning Director is responsible to the City Manager. Actions of the Planning Board and its Chair are appealable in some instances to the Board of Adjustment and otherwise to the Court or the Housing Appeals Board. Moreover, the City Councilors to whom you copied the email have no direct authority over either the Planning Director or the Chair of the Planning Board.

Nonetheless, in looking at the substance of your concern about the Planning Board action on 53 Green Street, I have communicated with Planning Director Juliet Walker. She advises that the proper analysis to be followed in looking at the 53 Green Street application is not pursuant to the ordinance sections cited in your correspondence relating to liner buildings or buildings which contain parking facilities. Rather, the applicable section of the ordinance is Section 10.5A46.10, which I attach hereto for your convenience. As your review will indicate, that section of the ordinance allows for the increase of building footprint and height in the North End Incentive Overlay District (in which the Green Street property is located) if the development provides community space in accordance with the requirements of the ordinance. Those requirements are located at Section

10.5A46.21, also attached. The Green Street development has been found by the Planning staff to be compliant with these applicable zoning regulations and therefore the appropriate approvals were issued by the Planning Board.

The error in the footnote reference which you have identified was also identified by the City's Technical Advisory Committee (TAC). It will be corrected by the applicant on the final plan set before the Planning Board Chair would sign off on the plan and it will be recorded. No building permit would be issued to allow the project to proceed until this has occurred.

I trust that this email is responsive to your concerns. If you do not find it to be so, please advise.

Sincerely,

A handwritten signature in dark ink, appearing to be "R. Sullivan", written over a horizontal line.

Robert P. Sullivan
City Attorney

RPS/smr

Attachments

cc: Mayor Rick Becksted
Councilor Peter Whelan
Councilor Esther Kennedy
Karen S. Conard, City Manager
Juliet T.H. Walker, Planning Director

10.5A46 Incentive Overlay Districts

The Incentive Overlay Districts are designated on Map 10.5A21B. In such areas, certain specified **development** standards may be modified as set forth in Section 10.5A46.10 below, if the **development** provides **community space** or **workforce housing** in accordance with Section 10.5A46.20, as applicable:

10.5A46.10 Incentives to Development Standards

DEVELOPMENT STANDARDS	INCENTIVES	
	North End Incentive Overlay District	West End Incentive Overlay District
Maximum building coverage	No Change	80%
Maximum building footprint	30,000 sf	30,000 sf ^{1,2}
Maximum building block length	No Change	No Change ³
Minimum lot area	No Change	2,000 sf
Minimum lot area per dwelling unit	No Change	No minimum
Maximum building height	Plus 1 story up to 10 ft ⁴	Plus 1 story up to 10 ft ^{4,5}
Minimum ground story height	No Change	9 feet
Minimum off-street parking	No Change	Non-residential: 25% reduction from underlying standard
Ground story parking	Permitted with a liner building ⁶	Permitted with a liner building ⁶

¹ In CD4-L1 and CD4-L2 the maximum **building footprint** shall be 3,500 SF. Where the **building footprint** exceeds 2,500 SF, individual **building blocks** shall be separated by **open space**, **community space**, or surface parking areas of at least 30 feet in width. Parking areas located between **buildings** are not required to be set back from the **building** façade.

² For properties located within 200 feet of the North Mill Pond in the CD4-W District, the maximum **building footprint** shall be 20,000 sq. ft.

³ In CD4-L1 and CD4-L2 the maximum **building block** length shall be 100 feet.

⁴ In order to receive the **building height** incentive, the **sidewalk** width in front of any **façade** shall be at least 10 feet plus two feet for each story of **building height** above three stories. Any property area needed to comply with this requirement shall count as **open space** as required in Figures 10.5A41.10A-D (Development Standards) and as **community space**; even if less than 15 feet in width.

⁵ For parcels over 80,000 sq. ft. in area that are located south of Islington Street, up to two stories or 20 feet may be added to the maximum **building height** provided both requirements listed under Section 10.5A46.22 (1) and (2) are met.

⁶ If **ground story** parking is proposed, at least 50% of the **ground story** facing a **street** shall include a **liner building**.

10.5A46.20 Requirements to Receive Incentives to the Development Standards

10.5A46.21 For a **lot** located **adjacent** to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, the **development** shall provide **community space** equal to 20% of the **lot area** that includes a continuous public **greenway** at least 20 feet in width with a multi-use path and that is parallel and located within 50 feet of the waterfront. Trail connections to abutting **street(s)** and sidewalks shall be provided and there shall be no buildings between the waterfront and the greenway unless otherwise approved by the Planning Board. The **greenway** shall include legal and physical access to abutting **lots** or public ways. When access is not available due to current conditions on an abutting **lot**, provisions shall be made for future access in a location determined by the Planning Board.

10.5A46.22 For a **lot** that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, the **development** shall include either a **community space** or **workforce housing** as specified below:

(1) **Community space** option – All of the following criteria shall be met:

- (a) The **community space** shall be a **community space** type that is permitted within the applicable Character district.
- (b) The **community space** shall constitute at least 20% of the gross area of the **lot** and shall not have any dimension less than 15 feet.
- (c) The **community space** shall adjoin the public **sidewalk** and shall be open on one or more sides to the **sidewalk**.
- (d) The **community space** shall include trees and other **landscaping** to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other **street** furniture.
- (e) The **community space** shall be located on or **adjacent** to the same **lot** as the **development**, except as provided in (f) below.
- (f) The Planning Board may grant a conditional use permit to allow a proposed **community space** to be located on a different **lot** than the **development** if it finds that all of the following criteria will be met:
 - (i) An appropriate **community space** cannot feasibly be provided on the same **lot** as the **development**.
 - (ii) The proposed **community space** is within the same Incentive Overlay District as the **development**.
 - (iii) The proposed **community space** is suited to the scale, density, **uses** and character of the surrounding properties.

⁶ If **ground story** parking is proposed, at least 50% of the **ground story** facing a **street** shall include a **liner building**.

10.5A46.20 Requirements to Receive Incentives to the Development Standards

10.5A46.21 For a **lot** located **adjacent** to, or within 100 feet of, North Mill Pond, Hodgson Brook or the Piscataqua River, the **development** shall provide **community space** equal to 20% of the **lot area** that includes a continuous public **greenway** at least 20 feet in width with a multi-use path and that is parallel and located within 50 feet of the waterfront. Trail connections to abutting **street(s)** and sidewalks shall be provided and there shall be no buildings between the waterfront and the greenway unless otherwise approved by the Planning Board. The **greenway** shall include legal and physical access to abutting **lots** or public ways. When access is not available due to current conditions on an abutting **lot**, provisions shall be made for future access in a location determined by the Planning Board.

10.5A46.22 For a **lot** that is more than 100 feet from North Mill Pond, Hodgson Brook or the Piscataqua River, the **development** shall include either a **community space** or **workforce housing** as specified below:

(1) **Community space** option – All of the following criteria shall be met:

- (a) The **community space** shall be a **community space** type that is permitted within the applicable Character district.
- (b) The **community space** shall constitute at least 20% of the gross area of the **lot** and shall not have any dimension less than 15 feet.
- (c) The **community space** shall adjoin the public **sidewalk** and shall be open on one or more sides to the **sidewalk**.
- (d) The **community space** shall include trees and other **landscaping** to provide shade and reduce noise, and pedestrian amenities such as overlooks, benches, lighting and other **street** furniture.
- (e) The **community space** shall be located on or **adjacent** to the same **lot** as the **development**, except as provided in (f) below.
- (f) The Planning Board may grant a conditional use permit to allow a proposed **community space** to be located on a different **lot** than the **development** if it finds that all of the following criteria will be met:
 - (i) An appropriate **community space** cannot feasibly be provided on the same **lot** as the **development**.
 - (ii) The proposed **community space** is within the same Incentive Overlay District as the **development**.
 - (iii) The proposed **community space** is suited to the scale, density, **uses** and character of the surrounding properties.

