

September 27, 2018

City of Portsmouth Planning Board
c/o Jane Shouse, Administrative Assistant
1 Junkins Avenue
Portsmouth, NH 03801

RE: Petition to Revoke and Motion for Rehearing for Site Plan Approval for Development at
996 Maplewood Avenue

Dear Chairman Legg,

The Petitioner submits the following petition to revoke the Site Plan approval and grant this motion for rehearing for the development at 996 Maplewood Avenue.

I respectfully ask that the Planning Board consider this petition.

Exhibits:

1. 12/5/2016 TAC Letter of Recommendation
2. 12/15/2016 Planning Board Meeting Agenda
3. 12/15/2016 Planning Board Meeting Legal Notice
4. 12/19/2016 Planning Board Letter of Decision
5. 12/15/2016 Planning Board Meeting Minutes
6. 2/21/2018 Planning Department Staff Report
7. 12/16/2018 996 Maplewood Avenue Site Plan
8. 9/11/2017 996 Maplewood Avenue Site Plan Review Agreement
9. 12/19/2016 Revised Planning Board Letter of Decision
10. Transcription of 12/15/2016 Planning Board Meeting Audio File
11. 9/19/2016 996 Maplewood Avenue Site Plan
12. Email of comments on 9/19/2016 996 Maplewood Avenue Site Plan.
13. Transcription of 10/4/2016 TAC Meeting Audio File
14. 11/1/2016 TAC Meeting Agenda
15. 10/19/2016 996 Maplewood Avenue Site Plan
16. 11/29/2016 TAC Meeting Agenda
17. 11/29/2016 TAC Meeting Minutes
18. 5/4/2018 Email from Juliet Walker to Jim Fernald
19. Transcription of 2/21/2018 Zoning Board of Adjustment Meeting Audio File
20. 8/16/16 Variance Letter of Decision

COMPLAINT REGARDING THE DEVELOPMENT AT 996 MAPLEWOOD AVENUE

The Petitioner, James Fernald abutter residing at 1000 Maplewood Avenue, respectfully submits the following Complaint in the above matter for consideration by the Planning Board.

A. The Site Plan Approval granted for the 996 Maplewood Avenue development should be revoked because the buildings erected do not conform to the Site Plan Approval.

1. A Site Plan approval may be revoked by the Planning Board when the developer has “performed work, erected a structure or structures, ... which fails to conform to the statements, plans or specifications upon which the approval was based, or has materially violated any requirement or condition of such approval (RSA 674-a I.(b)).
2. Within thirty (30) days of receipt of a recommendation from the TAC, the Planning Board shall place the application on its agenda for a public hearing (Site Plan Review regulations, Section 2.7.2).
3. Upon submission of a formal application for Site Plan Review, the Planning Board shall hold a public hearing on the application, with notice to abutters and the public as required by State statute, and shall determine if the application is complete according to these Regulations and shall vote upon its acceptance (Site Plan Review Regulations, Section 2.8.1).
4. The Technical Advisory Committee Letter of Recommendation (hereafter TAC LOD) states that the buildings have a footprint of 1,696±s.f (Exhibit 1). The agenda for the

December 15, 2016 Planning Board meeting states that the buildings have a footprint of 1,696±s.f. (Exhibit 2). The public notice for the December 15, 2016 Planning Board meeting states that the buildings have a footprint of 1,696±s.f. (Exhibit 3). The Site Plan Review Letter of Decision (hereafter LOD) states that the buildings have a footprint of 1,696±s.f. (Exhibit 4). The Planning Board Meeting Minutes indicate that the plans were read into the record and voted on as having a footprint of 1, 696 s.f. (Exhibit 5). The Site Plan does not contain any marking or other indication that it is approved (Exhibit 7). Thus, the evidence indicates that the Planning Board approved buildings should have a footprint of 1,696±s.f.

5. The Site Plan identifies a building footprint of 1,938 s.f. (Exhibit 7). The staff report for the February 21, 2018 Zoning Board of Adjustment (hereafter ZBA) hearing identify that the construction plans indicate a building footprint of 1,910 s.f. (Exhibit 6). When compared to the TAC LOD, legal notice, Planning Board agenda, LOD and Meeting Minutes, this is a difference of approximately 214 s.f. per building, or 13 percent. This is a significant deviation from the TAC LOD, legal notice, agenda, LOD and Meeting Minutes that define the approval of the Site Plan as 1,696±s.f.
6. The “±” (hereafter tolerance symbol) after the footprint indicates that the footprint may either grow or shrink, depending on the final outcome of the construction plans. There is no definition or use of tolerance in the Ordinance or Site Plan Review Regulations. But obviously it cannot be ± infinity. Merriam-Webster defines tolerance as “the allowable deviation from a standard”. The Ordinance and Regulations do not define what is allowable. Tolerance standards depend on the industry, the performance requirement to

be measured and the capability of the equipment. In the construction industry, the warp in a door or squareness of a room is typically less than 1 percent (*Residential Construction Performance Guidelines for Professional Builders & Remodelers, Fourth Edition, National Association of Home Builders, 2011*). However, it does not provide information on footprint. So the Petitioner assumes a tolerance 5 percent is allowable, which is reasonable and, at five times a construction industry standard, generous. Minor changes, such as addition of a bay window, changes to an outside deck, addition of a bulkhead for cellar entry and other small changes to dimensions would be permitted. Major changes in square footage, such as the addition of rooms or a major expansion would not be allowed. The difference between the approval and the Construction Plan is 13 percent, nearly 2.5 times above a reasonable allowable tolerance.

7. The tolerance symbol is not an indication that the site plan will deviate from the description. The site plan contains no tolerance information (Exhibit 7). Thus, the description in the site plan approval provides leeway to the developer and validation for the Building Inspector when comparing the construction plans to the site plan approval. In fact, as identified in the Staff Report for the February 21, 2018 ZBA appeal hearing on the subject property, the Building Inspector compared the construction plans to the site plans and identified a deviation of minus 1.4 percent (Exhibit 6)). The deviation from the approvals is nearly 10 times this percentage.
8. The LOD (Exhibit 4) states that “the 100' buffer shall be staked every 25' and maintained throughout the course of construction.” The 100' buffer is not staked every 25'. Therefore, the work performed fails to conform to the conditions of approval.

9. Thus, based on the approvals as defined in the TAC LOD, legal notice, agenda, LOD and Meeting Minutes, the developer has erected structures and performed work which fail to conform to the statements on which the approval was based, and the Site Plan approval should be revoked.

B. The Site Plan Approval granted for the 996 Maplewood Avenue development should be revoked because the Developer has failed to perform conditions of the approval in the time required.

1. A Site Plan approval may be revoked by the Planning Board when “the applicant or successor in interest to the applicant has failed to perform any condition of the approval within a reasonable time specified in the approval” (RSA 674-a I.(c)).
2. The LOD (Exhibit 4) states that “the site plan review process is not complete until a Site Review Agreement has been fully executed and a Site Review bond (i.e. Irrevocable Letter of Credit, Surety Bond or cash) has been approved by the City.” Paragraph 7 of the Site Plan Review Agreement (hereafter SPRA) states: “all work contemplated by this agreement shall be completed in no more than nine months from the date of this Agreement.” (Exhibit 8). The SPRA is dated September 11, 2017. Thus all work was required to be completed on June 12, 2018.
3. Paragraph 3 of the SPRA states that “The Owner shall complete all site improvements as shown on the Site Plan for Tax Map 219, Lot 4.” The Developer has not completed construction of the three proposed dwellings and corresponding driveways identified on

the site plan (Exhibit 7). In addition, the proposed decks, rain garden beds, sediment forebay, stepping stones, shed, picnic area, landscape fence, light post and sign are either incomplete or have not been started.

4. Since development of the lot began in September 2017, the Petitioner have experienced the following issues:

- Construction starting prior to 7 am.
- Construction ending after 6 pm.
- Equipment incursions onto my property without permission
- Construction debris on my property
- Damage to my property
- Unauthorized use of my property (which is still happening)
- Modification of my property
- Blocked access to my property by construction and other vehicles
- A rodent problem which was cautioned against during the first Technical Advisory Committee review
- Damage to the wetland buffer during tree removal
- Pumping of storm water into the wetland buffer
- Public safety issues.

5. The Petitioner has communicated these issues to the Developer and/or the City of Portsmouth with mixed results. The scope and sheer number of issues borders on a disregard of valid abutters' concerns at best and a violation of the law at worst. The development of the property is over three month past the deadline stated in the SPRA. Based on the current state of the development, completion could take months. The delay in completion of this project places an undue burden on abutters in having to deal with continued problems with the development of the lot.

6. Because the development of the property has not been completed within a reasonable timeframe as identified in the SPRA, we request that the Site Plan approval be revoked.

In addition, in accordance with Paragraph 6 of the SPRA, we respectfully ask the City of Portsmouth to file a surety claim against the Developer.

C. The site plan approval for three homes having a footprint of 1,938 s.f. was not granted during a public meeting, violating RSA 91-A:2.

1. The Planning Board holds a public hearing for any application recommended by TAC. (Site Plan Review City of Portsmouth Site Plan Review Regulations, Section 2.7.2).
2. The legal notice for public hearing at the December 15, 2016 Planning Board meeting identifies an application for three homes with a 1,696±S.F. footprint. (Exhibit 3).
3. The meeting minutes for the December 15, 2016 Planning Board meeting identifies that the application was read into the record as having three homes with a 1,696±S.F. footprint. (Exhibit 5 and Exhibit 10, page 3 line 11).
4. The Site Plan presented at the December 15, 2016 meeting identifies three homes with a 1,938 SF footprint. (Exhibit 7).
5. RSA 91-A:2 II requires:
 - a. All Meetings ... shall be open to the public.
 - b. Notice shall be posted.
 - c. Minutes of all such meetings, including nonpublic sessions, shall include ... a brief description of the subject matter discussed and final decisions.

6. As an abutter, the Petitioner has a Right to Know. The Planning Department hardcopy file contains a Planning Board Letter of Decision that states approval is for three homes with a 1,938±s.f. footprint. (Exhibit 9). It is not known where this letter came from or why it is different from that provided by the City when requested by the Petitioner (Exhibit 4).
 - d. There was no published legal notice for a public meeting on a proposal with three homes with a 1,938±s.f. footprint.
 - e. There is no record of a proposal being publically brought before the Planning Board for three homes with a 1,938±s.f. footprint hearing.
 - f. Although there was significant discussion by the Developer and the Board at the meeting, and multiple stipulations were made as a result of this meeting, there was no indication that the Site Plan identified anything other than 1,696±s.f. (Exhibits 5 and 10).
 - g. The Meeting Minutes do not indicate that any decision was made on a site plan with three homes each having a 1,938±s.f. footprint (Exhibit 5).
7. There is significant difference between the two Letters of Decision (Exhibit 4, Exhibit 9). The only explanation is that the LOD was changed after the meeting outside of public participation. It is not known if the Planning Board voted to change the LOD, whether all Board members were involved, only a quorum were involved, or whether the Board was made aware of the change at all. The public and more importantly the abutters were not notified that this change had even occurred. Thus, there was no notice, public meeting or

public decision to approve a site plan with three homes each having a 1,938±s.f. footprint. This violates RSA 91-A:2 II.

8. RSA 91-A:7 does not identify any statute of limitations on violations. Thus, this complaint is timely.
9. The Petitioner respectfully requests the Planning Board revoke the Site Plan approval and schedule a rehearing with proper notice.

D. The Legal Notice for the December 15, 2016 Planning Board Meeting to review and approve the site plan was defective.

1. RSA 676:4 I(d) states the “notice shall include a general description of the proposal which is the subject of the application and shall identify the applicant and the location of the proposal.”
2. Notices shall include a general description of the proposed development, the name of the applicant, the location of the property which is to be developed and the time, date and place of the meeting or public hearing. (City of Portsmouth Site Plan Review Regulations, Section 2.7.6).
3. The description of the proposal is identified in the legal notice as “The application of Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant, for property located at 996 Maplewood Avenue, requesting Site Plan Approval for the construction of three standalone single family homes on a single lot with one shared

driveway, each home and garage having a footprint of $1,696 \pm$ s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements.” (Exhibit 3).

4. All documents published by the Planning Department describing this proposal, up to and including the legal notice, contain the same description of three homes with a footprint of $1,696 \pm$ s.f. In addition, documents produced by the Planning Department after the legal notice also contain the description of three homes with a $1,696 \pm$ s.f. footprint. These include the December 15, 2016 Planning Board Meeting Agenda, the Planning Board LOD provided to the Petitioner, and the Meeting Minutes (Exhibits 2, 4 and 5).
5. The description of the proposal contains specific detail on 3 different features:
 - a. three stand alone single family homes
 - b. one shared driveway
 - c. each home and garage having a footprint of $1,696 \pm$ s.f.
6. Building footprint is defined as the “total area at or above 18 inches in elevation as measured from the outside walls at the grade plane of a detached building, or of two or more buildings separated only by fire walls, common walls or property lines.” (Ordinance Article 15, p. 15-7). As such it is a characteristic of the proposal. It is specifically identified on the Site Plan (Exhibit 7). There are over 20 uses of the term building footprint as a requirement in the Ordinance. In addition, it is closely related to building coverage, which essentially ties footprint to lot size as a measure of intensity of land use (Ordinance Article 15, p. 15-7). There are also over 20 uses of the term building coverage as a requirement in the Ordinance.

7. The legal notice must contain sufficient information to give “reasonable warning that his interests may be affected.” *Bradley v. City of Manchester*, 181 N.H. 329,332 (1996) (citing *Schadlick v. Concord*, 108 N.H. 319, 322 (1967)). The ‘specific detail need not be identified in the legal notice, as long as those interested were apprised of the nature of the change.’ *Id.*”
8. In *Bradley v. City of Manchester*, the Court stated “Although it did not contain a precise description of the proposed change to the applicable floor area ratio, an even greater lack of detail survived the test of adequacy in both *Carbonneau* and *Vachon*.” The adequacy of the site plan approval legal notice is different from that of *Bradley v. City of Manchester* in two key respects. First, it meets the minimum threshold of adequacy by containing enough detail to describe the proposal. Second, it contained a specific detail about the proposal, namely the footprint of each home. This precise description is a 1,696±s.f. footprint. The issue here is not that the notice was inadequate because it was missing information, but that it was defective because the precise description provided was different than the site plan. By all records of the Planning Department and Planning Board, including the reading of the description of the proposal into the record at the December 15, 2016 meeting, the description of each home had a 1,696±s.f. building footprint. The only indication of a 1,938±s.f. footprint is the physical site plan itself. Because the site plan approved at the December 15, 2016 Planning Board meeting contains a precise description of a different footprint than the legal notice contained for the meeting, the notice is defective and did not provide reasonable warning that the Petitioner’s, or the public’s, interests may be affected.

9. The intent of the notice requirement is to insure that there is at least enough information to provide sufficient and reasonable warning that interests may be affected RSA 676:4,I(d), *Bradley v. City of Manchester*, *Schadlick v. Concord*, and other legal precedents do not give the author of the notice the authority to provide inaccurate information above that threshold, nor does it absolve the author if this inaccurate information prejudices those interested who have read the notice and reviewed previous plan revisions with the same description.
10. Furthermore, the hard copy file for the 996 Maplewood Avenue project contains a copy of the LOD in the Planning Department that identifies dwellings with footprints of 1,938±s.f. (Exhibit 9). This is different than the LOD provided to the Petitioner. Somehow the description of the proposal in the LOD changed after the public meeting such that the footprint of the homes equaled the footprint identified in the site plan. However, there was no action stemming from the public meeting to change the description (Exhibit 10). The Planning Board did not identify this difference during the meeting (Exhibit 10). If the description containing a 1,696±s.f. footprint was adequate, why change it? The only reasonable explanation is that the description of the proposal did not contain sufficient information to adequately describe the proposal. Thus, by changing the description of the proposal, the Planning Board confirms that the notice was defective.

E. The defective Legal Notice for the December 15, 2016 Planning Board Meeting prejudiced the Petitioner and created a serious impairment of opportunity for notice

and participation. The Petitioner requests a motion for rehearing on the Site Plan Approval.

1. When this proposal was first presented for review by the TAC on October 4, 2018, the description of the property identified three homes, each having a 1,696±s.f. footprint. The Petitioner reviewed the Site Plan attached to the proposal and confirmed that the footprint of each home was defined as 1,696 s.f. (Exhibit 11). Thus, the Petitioner confirmed that the footprint identified in the description of the proposal was identical to the footprint identified on the site plan.
2. The Petitioner did not attend the October 4, 2016 meeting as it was scheduled at 2 p.m. during the work week. However, valid concerns from the Petitioner were provided to the TAC relating to landscaping along the shared property line (Exhibit 12). These concerns were shared with the TAC (Exhibit 13, page 38, line 9-14), but were never acted upon.
3. The Agenda for the November 1, 2016 TAC meeting also identified the proposal as having footprints of 1,696±s.f. (Exhibit 14). The Petitioner did not attend the November 1, 2016 TAC meeting as it was scheduled for 2 p.m. during the work week. However, the Petitioner reviewed the plans dated 10/19/2016 prior to the meeting. These plans identify a building footprint of 1,696 s.f. (Exhibit 15). Thus the Petitioner again confirmed that the footprint in the description of the proposal was identical to the footprint on the site plan.
4. All documents published by the Planning Department describing this proposal, up to and including the legal notice, contain the same description of three homes with a footprint of

1,696±s.f. The footprint in the description on these previous documents produced by the Planning Department equal the footprint on the site plans reviewed by the Petitioner.

Thus, a reasonable person would conclude that if other documents contain the same footprint in the description, then the site plan would indicate the same footprint.

5. During the November 1, 2016 TAC meeting, Lorax presented a revised site plan where the footprint changed to 1,938 s.f. This is a 14.2 percent change in footprint over previous site plan revisions, well above a reasonable tolerance (see paragraphs A.6 and A.7). However, the description of the proposal did not change with the publishing of the November 29, 2016 TAC Agenda (Exhibit 16), Meeting Minutes (Exhibit 17) or TAC LOD (Exhibit 1).
6. In the November 29, 2016 TAC meeting, TAC Chair Walker advised the Developer to be cognizant of any expansion of the footprint given that a variance was granted by the Zoning Board of Adjustment (Exhibit 17). Thus, both the Planning Department and the Developer were both aware that the site plans no longer equaled the description of the proposal during the TAC meeting.
7. In a later conversation with the Petitioner, Chair Walker confirmed that descriptions of proposals can and have changed in the past (Exhibit 18). However, the description of the proposal was not changed, despite the significant changes to the site plan.
8. “Within thirty (30) days of receipt of a recommendation from the TAC, the Planning Board shall place the application on its agenda for a public hearing.” (*City of Portsmouth Site Plan Review Regulations, Section 2.7.2*). The TAC Letter of Recommendation

identifies a 1,696 s.f. footprint. (Exhibit 1). The agenda for the public hearing identifies a 1,696±s.f. (Exhibit 2). There is no TAC Letter of Recommendation or any agenda item identifying a 1,938 s.f. footprint. If that is the case, then how could an application for 1,938 s.f. be publically heard?

9. Upon receipt of the legal notice for the site plan approval (Exhibit 3), the Petitioner identified that the footprint in the description had not changed. Having previously viewed two versions of the site plan that equaled the description (Exhibits 11 and 15), the Petitioner reasonably concluded that any changes to the proposal did not affect his interest in footprint. The Petitioner then made the decision not to attend the meeting.
10. The proposal was read into the record as having a footprint of 1,696 s.f. (Exhibits 5 and 10). There was no mention of a tolerance symbol, and a 1,938 s.f. footprint was not mentioned at all. After stipulations were added, a motion to approve the proposal passed. There was no indication from the Planning Board meeting that the footprint had changed. In fact, the meeting minutes and an audio transcription of the Planning Board meeting confirm the above information, identifying a 1,696 s.f. footprint with no mention of 1,938 s.f. (Exhibits 5 and 10). Thus the Petitioner rightly concluded that the site plan approved at the public hearing identified a footprint of 1,696 s.f.
11. Based on the defective notice and combined with the actions of the Board during the meeting, the Petitioner and the public in general were led to believe that the site plan being approved was for three homes with a 1,696 s.f. footprint. Since the Petitioner had reviewed and decided not to object to the 1,696 s.f. footprint, no appeal of the Planning

Board's decision would be warranted. Thus the notice and meeting prejudiced the Petitioner.

12. RSA 677:15, I requires that a person "aggrieved by any decision of the planning board" present a petition to the superior court "within 30 days after the date upon which the board voted to approve or disapprove the application."
13. Because of the defective notice and the actions of the Planning Board and other participants during the Planning Board meeting, the Petitioner was prejudiced and was thus denied his right to appeal under the provisions of RSA 677:15. The Petitioner and the public lost the opportunity to object to a decision of which they were not made aware. Also because the defective notice prejudiced the Petitioner, the Petitioner was also deprived of his right to due process.
14. However, RSA 676:4 IV accounts for this, stating judicial action is warranted "when such defects create serious impairment of opportunity for notice and participation". The defective notice certainly represents a serious impairment of opportunity. The Petitioner had no knowledge of the 1,938 s.f. footprint site plan until after the building permit was issued and construction began.
15. Furthermore, the Petitioner was concerned about footprint size, was an active opponent of the approvals and was a litigant in the ZBA appeal (Becksted et. al. v. City of Portsmouth, Docket 218-2016-CV-1149). If that is the case, why would the Petitioner wait until buildings were under construction instead of appealing just 30 days after the decision? Certainly the ZBA appeal and the appeal of the Planning Board decision could

have been combined into one hearing on the issues, given the similarities. The issue would be limited to the site plan and this request for revocation would not be required.

The only reasonable answer is that the Petitioner was so prejudiced by the notice that he had no knowledge the plans had changed.

16. Thus, the defective notice did create serious impairment of opportunity for notice and participation (RSA 676:4 IV), and action is warranted. The Petitioner respectfully requests a motion for rehearing pursuant to RSA 677.3.

F. The proposed development exceeds the granted variance and should have been sent back to the Board of Adjustment for review and approval.

1. The Petitioner first identified significant deviation from the variance when the building permit was issued. Within 30 days of this identification, the Petitioner appealed to the Board of Adjustment (hereafter ZBA) (Exhibit 19). The ZBA concurred that the development shown on the site and construction plans was different from what was presented to it during the variance application process. However, the ZBA ruled that the permit could not be overturned because it believed it lacked the legal tools to do so. This matter is currently pending in Superior Court. (Fernald v. City of Portsmouth, Docket Number 218-2018-CV-0544).
2. During the appeal hearing, the ZBA made the following statements (Exhibit 19). These statements confirm that the Site Plan and Construction Plan deviate from the granted variance and that this deviation is significant:

- a. “it would be hard to deny that when you are trying pick and choose the amount of units the on the site that the size of the units... if the original proposal was for three 5,000 SF houses I have a hard time believing it would have passed.”
(page 34, line 20 to page 35 line 3)
- b. “he has a Checklist ... does it have Planning Board approval, does it have Planning Department approval, does it have its variances...” (page 82 lines 8-13)
- c. “We rehear cases all the time where....the open space changes by 0.1% and we get the variance back... I’m a little surprised that we didn’t see it back...” (page 67 line 22 to page 68, line 10).
- d. “I also think this was something that fell through the cracks.” (page 68 line 23 to page 69 line 2)
- e. “If we are reviewing it for density, it would make sense that if the density changes to get it back”. (page 69, lines 16-18)
- f. “It’s all about size and placement and setbacks. It’s all about numbers. I think 14% is significant.” (Page 71, lines 4-6)
- g. “I think there has been a lot of bait-and-switch on this project...certainly we have a reasonable expectation that what comes before us when the project goes through the process... something reasonably close to what we were shown comes out the back end....I am disappointed with the result....It is something that is different than what was presented to this board” (page 74, line 15 to page 76, line 8).
- h. “In this particular case this changing and evolving project was never properly ...reflected in what was being... advertised” (page 79 lines 17-21).

- i. “walking by the site you can clearly tell that it is squeezed for more than it is worth. I do think that bait and switch is right term” (page 87 lines 18-21).
 - j. “with the legal tools we have in front of us... I don’t think that there is anything that we can do differently.” (page 87 line 22 to page 88 line 3)
3. As part of his arguments during both the ZBA hearing and the subsequent Motion for Reconsideration, the Petitioner identified the following discrepancies made by Code Officials during the Site Plan Review process:
- a. Representations made by the variance applicant during the hearing were not properly considered. (Ordinance, Section 10.235)
 - b. The intent of the language in the variance was not properly considered. (1808 Corporation v. Town of New Ipswich, 161 N.H. 772, 775, 20 A.3d 984, 986)
 - c. The intensity of similar area developments was never determined (Exhibit 20). Thus the impact to the character of the neighborhood was never properly considered.
 - d. The determination of building coverage was not based on the more restrictive OS-PUD requirement as represented by the Developer (RSA 676:14, Ordinance Section 10.723.10, Exhibit 18).
 - e. The Site Plan Review Regulations do not require any review of the application against the variance (Site Plan Review Regulations, Section 2.9).
 - f. The TAC LOD and Site Plan LOD do not confirm whether the application meets the intent and conditions of the variance (Exhibits 1 and 4).

4. The Petitioner could have made all of these arguments in a motion for re-hearing for the Site Plan review, if the Notice did not prejudice the petitioner as to the footprint of the buildings on the Site Plan.
5. As a result, the Site Plan deviation negatively impacts the character of the neighborhood, the overdevelopment negatively affects abutters, and is a material violation of the conditions of the approval (RSA 674-a I.(b)). The Petitioner therefore requests that the Site Plan Approval be revoked and the motion for re-hearing be granted.

WHEREFORE the Petitioner prays that

- A. This Board revoke the Site Plan approval granted to the Developer.
- B. This Board grant this motion for re-hearing for the Site Plan approval.
- C. For such other and further relief as the Board deems just and proper.

RESPECTFULLY SUBMITTED

 Date: 9/27/18

JAMES FERNALD,
1000 Maplewood Avenue
Portsmouth, New Hampshire 03801
(603) 430-8929



EXHIBIT 1

CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

TECHNICAL ADVISORY COMMITTEE

December 5, 2016

Carol I. Cooper
205 Linden Avenue
Wellingford, PA 19086

TAC voted to recommend approval of 1696 SF footprint. There is no record that TAC voted to recommend approval of 1938 SF footprint.

RE: Site Plan Application for Property Located at 996 Maplewood Avenue

Dear Ms. Cooper:

The Technical Advisory Committee, at its regularly scheduled meeting of November 1, 2016, considered your Site Plan Review application for the construction of three stand alone single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. As a result of said consideration, the Committee voted to **recommend approval** this matter to the Planning Board, with the following stipulations:

- 1) The following revisions shall be made to the Site Plans:
 - a.) Add a note regarding fertilizer that is consistent with the Zoning Ordinance Section 10.1018.24.
 - b.) The internal driveway widths shall be increased to a minimum of 10'.
 - c.) The Grading Plan should blend with the future layout plans and profiles for Maplewood Avenue that are being developed for the City by GPI.
 - d.) Fire service lines for Units 2 and 3 should be located closer to the driveway so that they are not under the rain gardens.
 - e.) At the first pull box location shown, a note shall be added to the plan indicating that this may also be the location of a transformer and/or communication pull electric boxes, if needed.
 - f.) The Committee was uncertain whether the City Plumbing Inspector would allow basement pump systems as shown on the detail sheets; therefore, review and approval of these pump systems by the Plumbing Inspector is required. If not allowed, they should be shown exterior to the structures.
 - g.) A note shall be added regarding the 6" ductile iron fire line indicating it is to be in a polyethylene sleeve to prevent corrosion; brass wedges are also required in the pipe joints for conductivity. These details are to be reviewed by DPW prior to Planning Board submission.

Page Two.

RE: 996 Maplewood Avenue

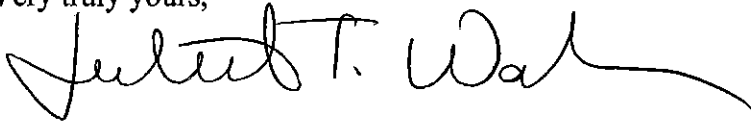
December 5, 2016

- h.) The applicant will be responsible for an appropriate contribution toward creating a drainage system off of Diamond Drive that the pond can drain into given the increase in stormwater volume that will flow into that pond. That funding amount will be \$10,000.
- i.) All water connections shall be approved by the Water Department.
- j.) The appropriate valve shut offs for the different water lines in the Maplewood Avenue ROW shall be shown on the plans.

This matter will be placed on the Planning Board Agenda for Thursday, December 15, 2016 at 7:00 pm. Twelve (12) copies of revised plans and/or exhibits must be filed in the Planning Department no later than Wednesday, December 7, 2016. Please remember to include a CD with a pdf of all exhibits.

The minutes and audio recording of this meeting are available through the Planning Department.

Very truly yours,



Juliet Walker, Assistant Planning Director
Chair of the Technical Advisory Committee
JW/jms

cc: Robert T. Marsilia, Building Inspector
Michael Brigham, Lorax Sustainable Development
John Lorden, P.E., MSC Engineers

D. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of **1,696 ± s.f.**, with related paving, lighting, utilities, land-scaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District.

Footprint of 1696 SF on agenda,
1938 SF not on agenda.

V. CITY COUNCIL REFERRALS

A. Proposed acceptance of a permanent easement between Porpoise Way and Portsmouth Boulevard for the purpose of constructing an emergency access road for the Atlantic Heights neighborhood.

VIII. ADJOURNMENT

NOTICE TO MEMBERS OF THE PUBLIC WHO ARE HEARING IMPAIRED

If you wish to attend a Planning Board meeting and need assistance, please contact the Human Resources Office at 610-7270 one week prior to the meeting.

**LEGAL NOTICE
PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

NOTICE IS HEREBY GIVEN that the Planning Board will hold a public hearing on the following applications on **Thursday, December 15, 2016** starting at 7:00 p.m. in the Eileen Dondero Foley Council Chambers, City Hall, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire.

A. The application of Deer Street Associates, Owner, for property located at 165 Deer Street and 181 Hill Street requesting design review of proposals to construct three mixed-use buildings fronting on Deer Street and a fourth mixed-use building fronting on a future public street off Bridge Street to be created in association with the City’s new parking garage. Said properties are shown on Assessor Map 125 as Lot17 and Assessor Map 138 as Lot 62 and all lots lie within the CD5 District and the Downtown Overlay District (DOD) and two of the proposed buildings lie within the Historic District.

B. The application of Linda-Marie and William L. Jones, Owners, for property located at 400 Middle Road, and Seacoast Trust, LLP, Owner, for property located at 150 Route 1 By-Pass, requesting Preliminary and Final Subdivision (Lot Line Revision) approval between two lots as follows:

- a. Map 231, Lot 57 increasing in area from 8,898 ± s.f. (.20 acres) to 9,355 ± s.f. (.21 acres) with 132’ of continuous street frontage along Middle Road.
- b. Map 231, Lot 58 decreasing in area from 130,658 ± s.f. (2.9994 acres) to 130,201 ± s.f. (2.99 acres) with 132’ of continuous street frontage along Middle Road and 709’ of continuous street frontage along Route 1 By-Pass.

Said lots lie within the Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100’ of continuous street frontage.

C. The application of the Henderson Family Trust, Owner, Hayes H. and Carla C. Henderson, Trustees, for property located at 205 Odiorne Point Road, requesting a Conditional Use Permit under Section 10.1017 of the Zoning Ordinance for work within the inland wetland buffer to adjust the grade of the existing lawn, to replace a granite curbing retaining wall and to move a fire pit area, with 6,960 ± s.f. of impact to the inland wetland buffer. Said property is shown on Assessor Map 224 as Lot 10-29 and lies within the Single Residence A (SRA) District.

1696 SF Footprint in legal notice, 1938 SF footprint is not.

D. The application of Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant, for property located at 996 Maplewood Avenue, requesting Site Plan Approval for the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District.

Rick Taintor,
Planning Director

Note: The Agenda for the Planning Board meeting will differ from the Legal Notice. For information on the Agenda call the Planning Department at 610-7217 during the week of December 9, 2016, or check the City’s website at www.cityofportsmouth.com.
Notice to the members of the public who are hearing impaired – if you wish to attend a meeting and need assistance, please contact the Human Resources office at 610-7274 one week prior to the meeting.



PLANNING DEPARTMENT

December 19, 2016

Carol Cooper
205 Linden Avenue
Wellingford, PA 19086

RE: Site Plan Application for Property Located at 996 Maplewood Avenue

Dear Ms. Cooper:

IDENTIFIES THE
FOOTPRINT OF
BUILDINGS ON LOT.

The Planning Board, at its regularly scheduled meeting of December 15, 2016, considered your Site Plan Review application requesting the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. As a result of said consideration, the Committee voted as follows:

- A. Voted to determine that the application for site plan approval is complete according to the Site Plan Review Regulations and to accept it for consideration.
- B. Voted to **grant** Site Plan Review approval with the following stipulations:
 - 1. The following notes shall be added to the Site Plan (Sheet C-2) and the Landscape Plan (Sheet C-5):
 - “1. The Site Plan and the Landscape 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.”
 - 2. The Landscape Plan (Sheet C-5) shall include the following additional notes:
 - “3. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
 - 4. 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.

Page two.

RE: 996 Maplewood Avenue

December 19, 2016

5. 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.”
3. The Conservation Easement area shall be extended to include the entire 100-foot buffer area.
4. The Conservation Easement shall incorporate the maintenance of the rain gardens and shall address the impact of the rain gardens on the easement area.
5. The Conservation Easement and Easement Plan shall be submitted to the Planning and Legal Departments for review and approval.
6. The applicant shall make a payment in the amount of \$10,000 to the City toward the cost of creating a drainage system off Diamond Drive in compensation for the additional stormwater volume that will flow from the site into the pond.
7. The Site Plan, Landscape Plan and Conservation Easement shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
8. Prior to construction, the 100’ buffer shall be staked every 25’ and maintained throughout the course of construction.

Please submit three sets of the revised Site Plans to the Planning Department for record keeping purposes.

The Site Plan Review process is not complete until a Site Review Agreement has been fully executed and a Site Review bond (i.e. Irrevocable Letter of Credit, Surety Bond or cash) has been approved by the City.

The building/construction plans must be reviewed and approved by the Inspection Department prior to a Building Permit being issued.

As a reminder, digital as-built plans are required in a CAD or ESRI file format prior to the release of your Site Review Bond. Please refer to the Site Plan Review Regulations for special requirements.

The minutes and audio recording of this meeting are available through the Planning Department.

Very truly yours,

Rick Taintor, Planning Director
for John Ricci, Chairman of the Planning Board
RT:jms

cc: Robert T. Marsilia, Building Inspector
Rosann Maurice-Lentz, City Assessor
Lorax Sustainable Development, LLC
John Lorden, P. E., MSC/TFMoran Engineers

D. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, land-scaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District.

The Chair read the notice into the record.

**1696 SF
FOOTPRINT**

SPEAKING TO THE APPLICATION

Mr. John Lorden, TFMoran, explained that each home will have shared access onto Maplewood Avenue via a shared driveway. The plan has been coordinated with the Maplewood Avenue project. Each unit will have its own sprinkler system and propane source. The stormwater will be directed towards the rain gardens. The invasive species around the pond will be removed and blueberry bushes will be planted. The conservation easement is proposed for 50' to protect the area from development.

Vice Chairman Moreau questioned why only 50' for conservation versus the whole 100' buffer. Mr. Lorden felt it would be a reasonable compromise.

Mr. Lorden replied to Ms. Colbert Puff that the condominium association will maintain the rain gardens. Vice Chairman Moreau asked what the City can do in the event that the rain gardens are not maintained. Mr. Taintor believed that typically there isn't, however, there may be an opportunity through review of the cross easements.

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

DISCUSSION AND DECISION OF THE BOARD

Vice Chairman Moreau to grant Site Plan Review approval with the following stipulations:

1. *The following notes shall be added to the Site Plan (Sheet C-2) and the Landscape Plan (Sheet C-5):*
 - “1. *The Site Plan and the Landscape 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.*”
2. *The Landscape Plan (Sheet C-5) shall include the following additional notes:*
 - “3. *The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.*
 4. *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.*

- 5. *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.*
- 3. *The Conservation Easement area shall be extended to include the entire 100-foot buffer area.*
- 4. *The Conservation Easement shall incorporate the maintenance of the rain gardens and shall address the impact of the rain gardens on the easement area.*
- 5. *The Conservation Easement and Easement Plan shall be submitted to the Planning and Legal Departments for review and approval.*
- 6. *The applicant shall make a payment in the amount of \$10,000 to the City toward the cost of creating a drainage system off Diamond Drive in compensation for the additional stormwater volume that will flow from the site into the pond.*
- 7. *The Site Plan, Landscape Plan and Conservation Easement shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.*

Seconded by Mr. Legg.

Mr. Leduc asked for the reasoning to increase the easement from 50' to 100'. Vice Chairman Moreau explained that it would ensure there is no possibility of building into the buffer by making the entire buffer the conservation easement.

Chairman Ricci asked to include an additional stipulation as follows:

- 8. *Prior to construction, the 100' buffer shall be staked every 25' and maintained throughout the course of construction.*

The motion passed unanimously (7-0).

.....
V. CITY COUNCIL REFERRALS

A. Proposed acceptance of a permanent easement between Porpoise Way and Portsmouth Boulevard for the purpose of constructing an emergency access road for the Atlantic Heights neighborhood.

Mr. Moore explained that the easement acceptance was discussed as a condition of subdivision approval in a previous application from Eversource. The stipulation required the granting of the easement in favor of the City to address emergency access concerns out of the neighborhood. The easement language associated would be drafted in a manner that fits the project goals and satisfaction of the City prior to presenting to Council.

Vice Chairman Moreau moved to accept the permanent easement, seconded by Mr. Legg. The motion passed unanimously.

.....
VIII. ADJOURNMENT

A motion to adjourn at 9:39 pm was made, seconded and passed unanimously.

.....

TO: Zoning Board of Adjustment
FROM: Peter Stith, AICP, Planning Department
DATE: February 14, 2018
RE: Zoning Board of Adjustment February 21, 2018 Meeting

OLD BUSINESS

1. 996 Maplewood – Appeal

NEW BUSINESS

1. 180 Sherburne Avenue
2. 50 Lovell Street
3. 325 Thaxter Road
4. 86 Emery Street
5. 465 Cutts Avenue
6. 287 Maplewood Avenue

The following petitions will be heard on Tuesday February 27, 2018:

7. 75 Congress Street
8. 530 Dennett Street
9. 242 State Street
10. 64 Mount Vernon
11. 201 Kearsarge Way
12. 225- 299 Vaughn
13. 57 Mount Vernon
14. 39 Sagamore Avenue

OLD BUSINESS

Case #12-1

Petitioners:	James M. Fernald
Property:	996 Maplewood Avenue
Assessor Plan:	Map 219, Lot 4
Zoning District:	Single Residence B District (SRB)
Description:	Appeal
Requests:	Appeal from an Administrative Decision regarding the issuance of a building permit for Unit C of the above property.

The applicant is appealing the issuance of a building permit for Unit C located at 996 Maplewood that was issued on November 15, 2017. On August 16, 2016, the BOA granted a variance for three dwellings on a single lot in the SRB district. Subsequently, the Planning Board granted Site Plan Review approval on December 15, 2016. In the original application submitted to the BOA, the square footage of each unit was originally estimated as 1,696 s.f. and the site plan approved by the Planning Board identified each unit as approximately 1,938 s.f. In both cases, the application complied with all applicable density and dimensional requirements of the zoning ordinance. The only nonconforming aspect of the proposal was the three free standing single family dwelling units on one lot, which became conforming based on the BOA approval.

The Planning Department does internal consistency reviews throughout the permitting process and, while the final architectural design and footprint changed (addition of a garage underneath, shorter and wider footprints for all units resulting in an actual square footage closer to 1910 s.f.), the overall proposal was found to be consistent with both the BOA's and the Planning Board's approvals. If that had not been the case, the applicant would have been advised to return to the BOA for a new variance and to the Planning Board for an amended site plan review approval.

At the time the variance was granted in August 2016, the zoning ordinance did contain language that a variance or special exception shall expire after one year if a building permit is not issued. However, that language was not consistent with state law, which provides for a 2-year period before the approval expires. On January 9, 2017, the zoning ordinance was amended to be consistent with state law.

The first image below is the conceptual layout that was presented to the BOA at their August 16, 2016 meeting. The second and third images are from site plan submittals to the Planning Board for their review. The third image shows the final footprint that was approved.

Image 1: Concept Plan submitted to BOA on August 16, 2016

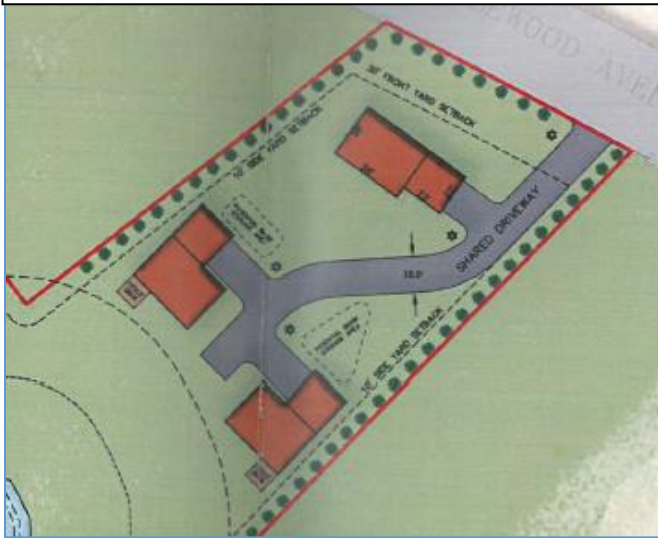


Image 2: Site Plan submitted to Planning Board on September 19, 2016

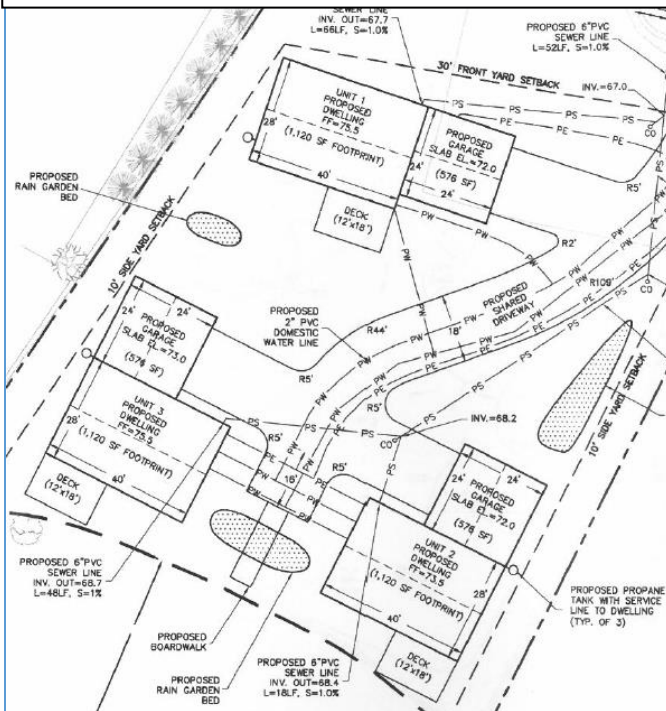
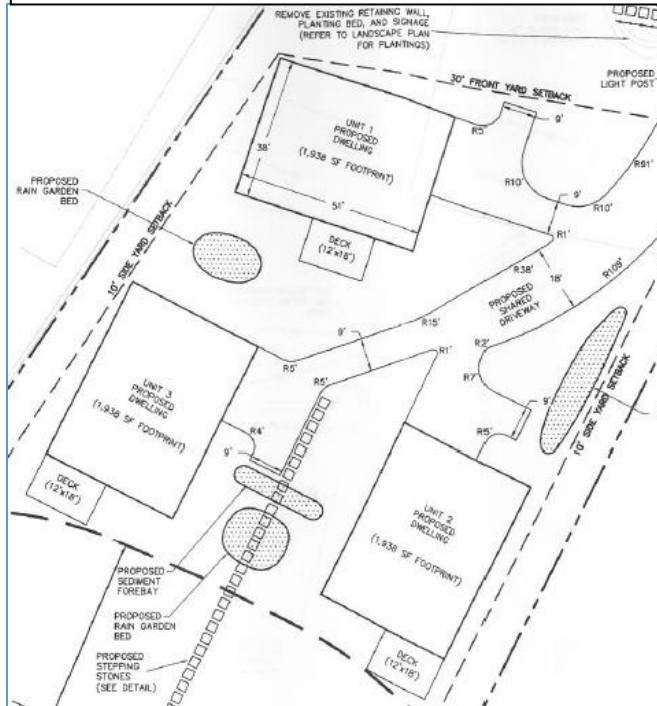


Image 3: Plan submitted to the Planning Board on November 16, 2016 showing final layout



Previous Board of Adjustment Actions

November 12, 1985 - The Board **granted** a Special Exception to allow construction of a greenhouse adjacent to an existing business.

May 27, 1997 – The Board **denied** a request to allow the sale of wedding apparel and formal wear in a grandfathered floral shop and to allow the expansion of a nonconforming retail floral business by selling wedding apparel and formal wear.

June 17, 1997 – The Board **denied** a request for rehearing regarding the above.

February 15, 2005 – The Board **denied** a request to allow a 4,944 s.f. chiropractic office on the first floor and one apartment on the second floor with associated parking where the current use was a retail florist.

June 28, 2005 – The Board **denied** a request to allow six dwelling units (a 4-unit and a 2-unit building) where only one dwelling per lot was allowed.

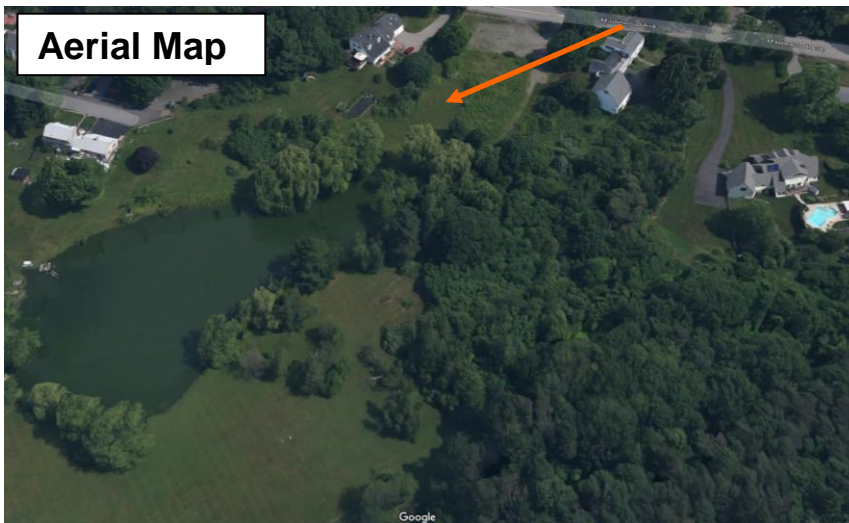
July 19, 2016 – The Board **denied** a request to construct five free-standing dwellings on a lot where one is the maximum allowed.

August 16, 2016 – The Board **granted** a variance to construct three free-standing dwellings allowing more than one free-standing dwelling on a lot. The petition was granted with a stipulation that the proposal be referred to the Planning Board for

placement of a protective conservation easement on a portion of the undeveloped area around the pond.

September 27, 2016 – The Board **denied** a request for rehearing regarding the above decision. Note: A subsequent appeal to the Superior Court was filed by an appellant group containing abutters and non-abutters. After reviewing the record and the Board’s application of the criteria, the Court, in a decision rendered April 26, 2017, **affirmed the Board’s decision** and dismissed the appeal.

Neighborhood Context



LEGEND

	PROPERTY LINE
	EDGE OF WETLAND
	100' WETLAND BUFFER
	EXISTING UTILITY POLE
	SGC STRAIGHT GRANITE CURB

SITE DATA

ZONED: SRB
 EXISTING USE: VACANT
 PROPOSED USE: RESIDENTIAL

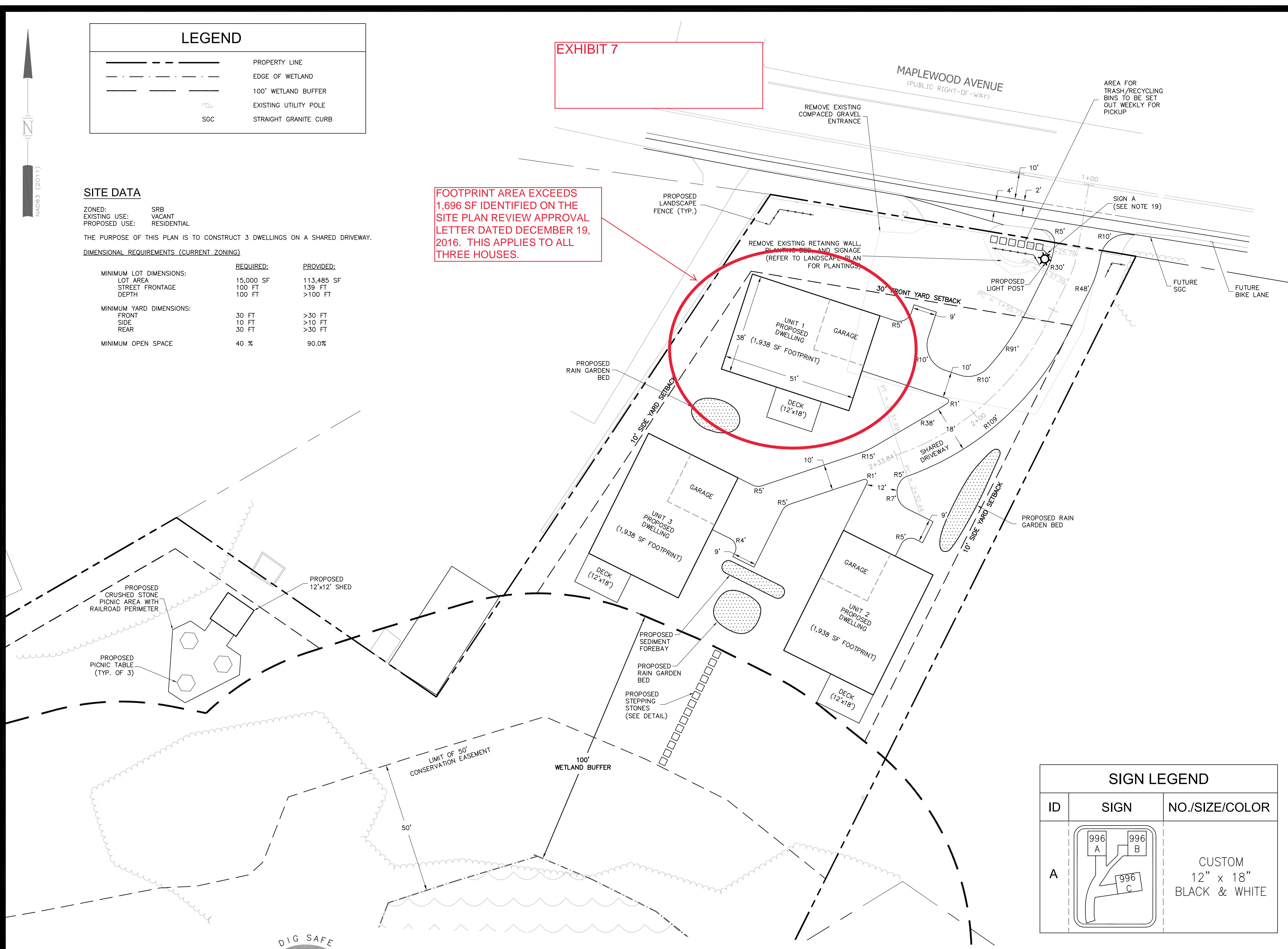
THE PURPOSE OF THIS PLAN IS TO CONSTRUCT 3 DWELLINGS ON A SHARED DRIVEWAY.

DIMENSIONAL REQUIREMENTS (CURRENT ZONING)

	REQUIRED:	PROVIDED:
MINIMUM LOT DIMENSIONS:		
LOT AREA	15,000 SF	113,485 SF
STREET FRONTAGE	100 FT	139 FT
DEPTH	100 FT	>100 FT
MINIMUM YARD DIMENSIONS:		
FRONT	30 FT	>30 FT
SIDE	10 FT	>10 FT
REAR	30 FT	>30 FT
MINIMUM OPEN SPACE	40 %	90.0%

FOOTPRINT AREA EXCEEDS 1,696 SF IDENTIFIED ON THE SITE PLAN REVIEW APPROVAL LETTER DATED DECEMBER 19, 2016. THIS APPLIES TO ALL THREE HOUSES.

EXHIBIT 7



SITE NOTES

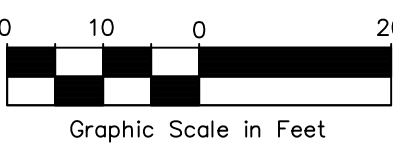
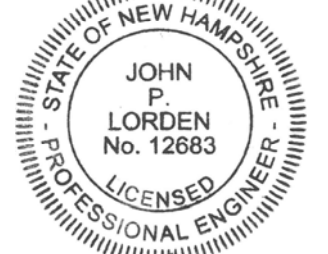
- THESE PLANS ARE PERMIT DRAWINGS ONLY AND NOT INTENDED FOR CONSTRUCTION OR BIDDING.
- PRIOR TO COMMENCING ANY SITE WORK ALL LIMITS OF WORK SHALL BE CLEARLY MARKED IN THE FIELD.
- AN ALTERATION OF TERRAIN PERMIT IS NOT REQUIRED AS THE DISTURBANCE IS LESS THAN 100,000 SF.
- ALL WORK SHALL CONFORM TO THE APPLICABLE REGULATIONS AND STANDARDS OF THE CITY OF PORTSMOUTH, AND SHALL BE BUILT IN A WORKMANLIKE MANNER IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS.
- ALL WORK TO CONFORM TO CITY OF PORTSMOUTH, DEPARTMENT OF PUBLIC WORKS STANDARD SPECIFICATIONS. ALL WORK WITHIN THE RIGHT-OF-WAY OF THE TOWN AND/OR STATE SHALL COMPLY WITH APPLICABLE STANDARDS.
- ALL DEMOLITION SHALL INSURE MINIMUM INTERFERENCE WITH ROADS, STREETS, WALKWAYS AND ANY OTHER ADJACENT OPERATING FACILITIES. PRIOR WRITTEN PERMISSION FROM THE OWNER/DEVELOPER AND LOCAL PERMITTING AUTHORITY IS REQUIRED IF CLOSURE/OBSTRUCTIONS TO ROADS, STREET, WALKWAYS AND OTHERS IS DEEMED NECESSARY. CONTRACTOR TO PROVIDE ALTERNATE ROUTES AROUND CLOSURES/OBSTRUCTIONS PER CITY/GOVERNMENTAL REGULATIONS.
- REFER TO ARCHITECTURAL PLANS FOR LAYOUT OF BUILDING FOUNDATIONS AND CONCRETE ELEMENTS WHICH ABOUT THE BUILDING SUCH AS STAIRS, AND DECKS. DO NOT USE SITE PLANS FOR LAYOUT OF FOUNDATIONS.
- IN THE EVENT OF A CONFLICT BETWEEN PLANS, SPECIFICATIONS, AND DETAILS, THE ENGINEER SHALL BE NOTIFIED IMMEDIATELY FOR CLARIFICATION.
- IF CONDITIONS AT THE SITE ARE DIFFERENT THAN SHOWN ON THE PLANS, THE ENGINEER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH THE AFFECTED WORK.
- THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF A LICENSED PROFESSIONAL ENGINEER. MSC A DIVISION OF TFMORAN, INC. ASSUMES NO LIABILITY AS A RESULT OF ANY CHANGES OR NON-COMFORMANCE WITH THESE PLANS EXCEPT UPON THE WRITTEN APPROVAL OF THE ENGINEER OF RECORD.
- MSC A DIVISION OF TFMORAN, INC. ASSUMES NO LIABILITY FOR WORK PERFORMED WITHOUT AN ACCEPTABLE PROGRAM OF TESTING AND INSPECTION AS APPROVED BY THE ENGINEER OF RECORD.
- AT COMPLETION OF CONSTRUCTION, THE SITE CONTRACTOR SHALL PROVIDE A LETTER CERTIFYING THAT THE PROJECT WAS COMPLETED IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS, AND A LETTER STAMPED BY A QUALIFIED ENGINEER THAT THEY HAVE OBSERVED ALL UNDERGROUND DETENTION SYSTEMS, INFILTRATION SYSTEMS, OR FILTERING SYSTEMS PRIOR TO BACKFILL, AND THAT SUCH SYSTEMS CONFORM TO THE APPROVED PLANS AND SPECIFICATIONS.
- IF ANY DEVIATIONS FROM THE APPROVED PLANS AND SPECIFICATIONS HAVE BEEN MADE, THE SITE CONTRACTOR SHALL PROVIDE AS-BUILT DRAWING STAMPED BY A LICENSED SURVEYOR OR QUALIFIED ENGINEER ALONG WITH A LETTER STAMPED BY A QUALIFIED ENGINEER DESCRIBING ALL SUCH DEVIATIONS, AND BEAR ALL COSTS FOR PREPARING AND FILING ANY NEW PERMITS OR PERMIT AMENDMENTS THAT MAY BE REQUIRED.
- WHERE PROPOSED PAVEMENT MEETS EXISTING PAVEMENT, THE SEAM SHALL BE A SAW CUT EDGE AND TREATED WITH EMULSION.
- CONTRACTOR SHALL PROVIDE A FINISH PAVEMENT SURFACE FREE OF LOW SPOTS AND PONDING AREAS. CRITICAL AREAS INCLUDE STOREFRONT, ACCESSIBLE PARKING, LOADING AREA AND FRONT ENTRANCE.
- THE GRADE SURFACE TOLERANCE AT THE INTERFACE BETWEEN EXISTING PAVEMENT TO REMAIN AND PROPOSED NEW PAVEMENT SHALL NOT VARY MORE THAN 3/8" FROM A 10' STRAIGHT EDGE, MEASURED IN ANY DIRECTION PLACED AT ANY LOCATION ALONG THE INTERFACE.
- CONTRACTOR'S RESPONSIBILITIES:
 - TO NOTIFY ENGINEER IN WRITING OF ANY DISCREPANCIES OF PROPOSED LAYOUT AND/OR EXISTING FEATURES.
 - EMPLOY A LICENSED SURVEYOR TO DETERMINE ALL LINES AND GRADES AND LAYOUT OF SITE ELEMENTS AND BUILDINGS.
 - PROVIDE AN AS-BUILT PLAN AT THE COMPLETION OF THE PROJECT TO THE PLANNING DIRECTOR AND PER CITY REGULATIONS.
 - PROTECTING NEW AND EXISTING BURIED UTILITIES DURING INSTALLATION OF ALL SITE ELEMENTS. DAMAGED UTILITIES SHALL BE REPAIRED OR REPLACED AT NO ADDITIONAL COST TO THE OWNER.
 - TAKE APPROPRIATE MEASURES TO REDUCE, TO THE FULLEST EXTENT POSSIBLE, NOISE, DUST AND UNSIGHTLY DEBRIS.
 - COORDINATE WITH ALL UTILITY COMPANIES AND CONTACT DIGSAFE (811 OR 888-344-7233) AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION.
 - THE CONTRACTOR IS RESPONSIBLE FOR THE MEANS AND METHODS OF CONSTRUCTION AND FOR CONDITIONS AT THE SITE. THESE PLANS, PREPARED BY MSC A DIVISION OF TFMORAN, INC. DO NOT EXTEND TO OR INCLUDE SYSTEMS PERTAINING TO THE SAFETY OF THE CONSTRUCTION CONTRACTOR OR THEIR EMPLOYEES, AGENTS OR REPRESENTATIVES IN THE PERFORMANCE OF THE WORK. THE SEAL OF THE SURVEYOR OR ENGINEER HEREON DOES NOT EXTEND TO ANY SUCH SAFETY SYSTEMS THAT MAY NOW OR HEREAFTER BE INCORPORATED INTO THESE PLANS. THE CONSTRUCTION CONTRACTOR SHALL PREPARE OR OBTAIN THE APPROPRIATE SAFETY SYSTEMS WHICH MAY BE REQUIRED BY THE US OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) AND/OR LOCAL REGULATIONS.
 - VERIFY LAYOUT OF PROPOSED BUILDING FOUNDATIONS WITH ARCHITECT AND THAT PROPOSED FOUNDATION MEETS PROPERTY LINE SETBACKS PRIOR TO COMMENCING ANY FOUNDATION CONSTRUCTION.
 - THE CONTRACTOR SHALL BID AND PERFORM THE WORK IN ACCORDANCE WITH ALL LOCAL, STATE AND NATIONAL CODES, SPECIFICATIONS, REGULATIONS AND STANDARDS.
 - IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO BECOME FAMILIAR WITH THE SITE AND ALL SURROUNDING CONDITIONS. THE CONTRACTOR SHALL ADVISE THE APPROPRIATE AUTHORITY OF INTENTIONS AT LEAST 48 HOURS IN ADVANCE.
 - THE CONTRACTOR SHALL MAINTAIN EMERGENCY ACCESS TO ALL AREAS AFFECTED BY WORK AT ALL TIMES.
 - IF BULKHEADS ARE INCLUDED, THEY MUST BE UNDER 18" OR OUTSIDE OF THE YARD SETBACKS.
 - SIGN A TO BE UPDATED WITH ACTUAL DWELLING ADDRESSES UPON ISSUANCE.
 - PROPOSED DECKS ARE TO BE ABOVE 4-6" OF A CRUSSED STONE BASE. DECK BOARDS ARE TO BE SPACED WITH AT LEAST A 1/4" GAP.

SIGN LEGEND

ID	SIGN	NO./SIZE/COLOR
A		CUSTOM 12" x 18" BLACK & WHITE

TAX MAP 219 LOT 4
SITE PLAN
LORAX SUSTAINABLE DEVELOPMENT
996 MAPLEWOOD AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
 OWNED BY
CAROL I. COOPER

SCALE: 1" = 20' (22X34)
 1" = 40' (11X17) SEPTEMBER 19, 2016



Copyright 2016 © Thomas F. Moran, Inc.
 48 Constitution Drive, Bedford, N.H. 03110
 All rights reserved. These plans and materials may not be copied, duplicated, replicated or otherwise reproduced in any form whatsoever without the prior written permission of Thomas F. Moran, Inc.
 This plan is not effective unless signed by a duly authorized officer of Thomas F. Moran, Inc.
 CONTACT DIG SAFE 72 BUSINESS HOURS PRIOR TO CONSTRUCTION

REV.	DATE	DESCRIPTION	DR	CK
3	12/6/16	Revised per Technical Review	CWG	JPL
2	11/16/16	Revised per Technical Review	CWG	JPL
1	10/19/16	Revised per Technical Review	CWG	JPL

TFM **MSC**
 A division of TFMoran, Inc.

Civil Engineers
 Structural Engineers
 Traffic Engineers
 Land Surveyors
 Landscape Architects
 Scientists

170 Commerce Way, Suite 102
 Portsmouth, NH 03801
 Phone (603) 431-2222
 Fax (603) 431-0910
 www.msceengineers.com

45926.11 C-2

Dec 07 2016 - 10:14am
 F:\MSC Projects\45926.11\dwg\45926.11_CO2_Site.dwg

SITE PLAN REVIEW AGREEMENT

This Site Plan Review Agreement is entered into this 11th day of Sept, 2017, between **CHINBURG DEVELOPMENT, LLC, OWNER**, with a mailing address of 3 Penstock Way, Newmarket, NH 03857, and the **CITY OF PORTSMOUTH**, a New Hampshire Municipal Corporation, with its principal place of business located at City Hall, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire 03801. This agreement is addressed to the Site Plan entitled: "Lorax Sustainable Development, "The Village at Thompson Pond", 996 Maplewood Avenue, Portsmouth, New Hampshire" dated September 19, 2016 and revised on 10/19/16, 11/16/16, 12/06/16 and 01/16/17. Said site plan concerns the development of property at 996 Maplewood Avenue (Tax Map 219, Lot 4).

It is agreed that the Owner and its successors and assigns, shall implement the development of the site in accordance with the Site Plan that received final approval of the Planning Board of the City of Portsmouth, on December 15, 2016. All revisions to the approved Site Plan must be approved by the Planning Director.

It is understood that the Site Plan Review Regulations require that this agreement include conditions and stipulations to secure the public health, safety, and welfare and insure compliance with ordinances and codes, including the posting of a bond or other security to insure that all site development and construction is completed according to the approved Plan.

It is further agreed that these actions shall be obligated and bound by the following terms and standards:

1. The Owner shall abide by all Ordinances, Rules and Regulations of the City of Portsmouth, New Hampshire that relate to site development.
2. The Owner shall secure all necessary Federal, State and local permits and approvals prior to the initiation of any construction activity.

3. The Owner shall complete all site improvements as shown on the Site Plan for Tax Map 219 Lot 4.

4. The Owner shall implement the Site Plan only as approved by the Planning Board or, in the appropriate situation by the Planning Director.

5. The Owner shall submit any proposed changes to the approved Site Plan to the Planning Department, and such proposed changes shall require prior approval by the Planning Board or Planning Director, as determined by the Planning Director.

6. Prior to the initiation of any construction activity, or the issuance of a building permit for the work contemplated by this Agreement the Owner shall provide a performance bond, letter of credit or such other form of security as deemed acceptable by the City Attorney to secure the performance of all work contemplated by this Agreement. Such site plan security shall be in the amount of **ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00)**.

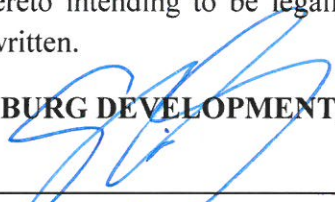
7. It is understood that all work contemplated by this Agreement shall be completed in no more than 9 months from the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto intending to be legally bound have set their respective hands the day and year above first written.

Witness:



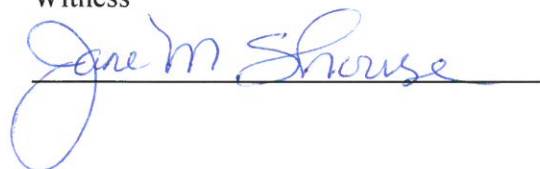
CHINBURG DEVELOPMENT, LLC, OWNER



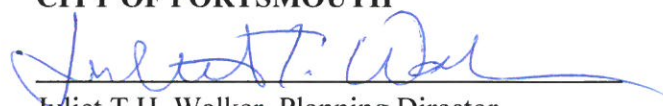
Print Name: Eric Chinburg

Title: Manager

Witness

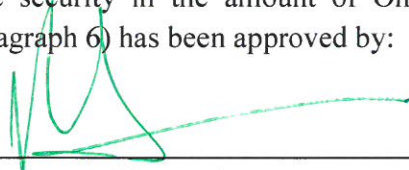


CITY OF PORTSMOUTH



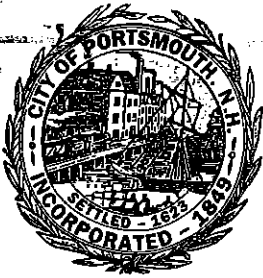
Juliet T.H. Walker, Planning Director
Chairman, TAC

The security in the amount of One Hundred Twenty Thousand Dollars (\$120,000.00) (see paragraph 6) has been approved by:



Robert P. Sullivan, City Attorney

to HANOVER Site Review Bond # 1141610



CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

EXHIBIT 9

PLANNING DEPARTMENT

December 19, 2016

Carol Cooper
205 Linden Avenue
Wellingford, PA 19086

Modified from
Exhibit 4, why?

RE: Site Plan Application for Property Located at 996 Maplewood Avenue

Dear Ms. Cooper:

The Planning Board, at its regularly scheduled meeting of December 15, 2016, considered your Site Plan Review application requesting the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,938 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. As a result of said consideration, the Committee voted as follows:

- A. Voted to determine that the application for site plan approval is complete according to the Site Plan Review Regulations and to accept it for consideration.
- B. Voted to grant Site Plan Review approval with the following stipulations:
 1. The following notes shall be added to the Site Plan (Sheet C-2) and the Landscape Plan (Sheet C-5):
 - "1. The Site Plan and the Landscape 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."
 2. The Landscape Plan (Sheet C-5) shall include the following additional notes:
 - "3. The property owner and all future property owners shall be responsible for the maintenance, repair and replacement of all required screening and landscape materials.
 4. 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.

RECEIVED

FEB 9 2018

1 Junkins Avenue
Portsmouth, New Hampshire 03801
Fax (603) 427-1593

BY: _____

Page two.
RE: 996 Maplewood Avenue
December 19, 2016

5. 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.”
3. The Conservation Easement area shall be extended to include the entire 100-foot buffer area.
4. The Conservation Easement shall incorporate the maintenance of the rain gardens and shall address the impact of the rain gardens on the easement area.
5. The Conservation Easement and Easement Plan shall be submitted to the Planning and Legal Departments for review and approval.
6. The applicant shall make a payment in the amount of \$10,000 to the City toward the cost of creating a drainage system off Diamond Drive in compensation for the additional stormwater volume that will flow from the site into the pond.
7. The Site Plan, Landscape Plan and Conservation Easement shall be recorded at the Registry of Deeds by the City or as determined appropriate by the Planning Department.
8. Prior to construction, the 100' buffer shall be staked every 25' and maintained throughout the course of construction.

Please submit three sets of the revised Site Plans to the Planning Department for record keeping purposes.

The Site Plan Review process is not complete until a Site Review Agreement has been fully executed and a Site Review bond (i.e. Irrevocable Letter of Credit, Surety Bond or cash) has been approved by the City.

The building/construction plans must be reviewed and approved by the Inspection Department prior to a Building Permit being issued.

As a reminder, digital as-built plans are required in a CAD or ESRI file format prior to the release of your Site Review Bond. Please refer to the Site Plan Review Regulations for special requirements.

The minutes and audio recording of this meeting are available through the Planning Department.

Very truly yours,



Rick Taintor, Planning Director
for John Ricci, Chairman of the Planning Board
RT:jms

cc: Robert T. Marsilia, Building Inspector
Rosann Maurice-Lentz, City Assessor
Lorax Sustainable Development, LLC
John Lorden, P. E., MSC/TFMoran Engineers

RECEIVED

FEB 9 2018

BY: _____

EXHIBIT 10

In The Matter Of:
PLANNING BOARD MINUTES
In Re: 996 Maplewood Avenue

December 15, 2016

Duffy & McKenna Court Reporters, LLC



P.O. Box 1658 Dover, NH 03821

1-800-600-1000

603-743-4949 | 603-743-4952 (fax)

www.dmreporting.com

dmreporting@stenosearch.com (Scheduling)
camille@stenosearch.com (Billing/Production)

OUT-OF-TOWN DEPOSITIONS?



WWW.DEPOSPAN.COM

Duffy & McKenna
Court Reporters, LLC

DEPOSPAN'S TRUSTED LOCAL CONNECTION

Min-U-Script®

PLANNING BOARD

MINUTES

PORTSMOUTH, NEW HAMPSHIRE

HELD AT

City Hall,

Municipal Complex, 1 Junkins Avenue

Portsmouth, New Hampshire

on

December 15, 2016 at 7:00 p.m.

Recorded Video

In Re: 996 Maplewood Avenue

Transcribed September 21, 2018

Transcribed by:
Camille M. Palladino-Duffy
NH LCR 105, RPR

DUFFY & MCKENNA COURT REPORTERS

P.O. Box 1658
Dover, NH 03821-1658
(603) 743-4949
1-800-600-1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

APPEARANCES

Members Present:

John Ricci, Chairman

Elizabeth Moreau, Vice Chairman

Nancy Colbert-Puff, Deputy City Manage

David Moore, Assistant City Manager

Colby Gamester

Jay Leduc

Dexter Legg

Jody Record

Jeffrey Kisiel, alternate

Mr. Taintor, Planning Director

Jessa Berna, Planner I

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

P R O C E E D I N G S

CHAIRMAN RICCI: We'll move onto tonight's last public hearing, new business, item D, the application of Carol I. Copper, owner, and Lorax Sustainable Development, LLC applicant, for property located at 996 Maplewood Avenue requesting site plan approval for the construction of three single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1696 square feet with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property shown on Assessor Map 219 as Lot 4 and lies within the single residence B district.

Who is here tonight on behalf of the applicant?

- A. Good evening, Mr. Chairman, members of the board, John Lorden with MSC, a division of TF Moran, here tonight representing the applicant Lorax Sustainable Development. With me from Lorax is Mike Brigham.

1 What's proposed is to develop this
2 currently vacant 2.6 acre lot with three
3 single family homes. It's going to be
4 ownership of condominium association style.
5 We did receive a variance from the Zoning
6 Board back in August to allow more than one
7 dwelling unit on a single lot. Each home
8 will have shared access onto Maplewood Ave.
9 via a shared driveway. There's an attached
10 garage and an attached deck to each house.

11 Over on the left side of the plan there
12 is a picnic area. It's kind of a crushed
13 stone, just some picnic tables. There's a
14 small shed out there for some storage, maybe
15 a barbecue or some furniture.

16 We have coordinated this plan with the
17 future improvements on Maplewood Ave. They
18 are going to be coming through and replacing
19 utilities, kind of regrading, repaving.

20 The bike lane is as shown, the grading
21 and the utilities are all coordinated.

22 In terms of utilities we are making
23 connections for electric water and sewer to

1 the existing utilities in Maplewood. Each
2 home will have a sprinkler system and a
3 propane tank.

4 In regards to storm water, we are
5 directing our storm water run off from the
6 houses and the driveways into three separate
7 rain gardens for treatment as well as for
8 storage.

9 There's also a pond to the south, so this
10 is Tompsons Pond, I believe it's called.
11 The majority of it is on this property. We
12 are doing a few things with that. One is,
13 going in and removing the invasive species
14 that are around it. Planting blueberry
15 bushes at the 25 yard set back from the pond
16 every 10 feet on center. It's approximately
17 40 bushes or so.

18 And then also proposing to place a
19 conservation easement at the first 50 feet.
20 You know, this buffer here is a hundred feet
21 so it would be halfway through that, putting
22 something into conservation. Just to keep it
23 undeveloped, keep it scenic. It's beautiful

1 full out there. And we'll just keep it so it
2 will not be developed and stay as open space.

3 We did provide a draft of that easement
4 to the city, but I believe part of that
5 review is getting feedback from the board on,
6 I guess, the location and who would own that,
7 whether it would be the city of Portsmouth,
8 the Conservation Commission or the
9 condominium association. That's everything
10 I wanted to highlight. I'd be happy to take
11 any questions.

12 CHAIRMAN RICCI: Questions for the
13 application. Ms. Moreau.

14 MEMBER MOREAU: Why only 50 feet for the
15 conservation easement, why not the full
16 hundred for the buffer since it's seems to
17 stay outside of all the development.

18 A. Yes. I don't think we'd have a restriction
19 with that. It's just, we thought the 50 feet
20 was a good, fair, that's the vegetative
21 buffer I believe, so we're just, that was
22 kind of our first line that we drew.

23 MEMBER COLBERT-PUFF: Chair?

1 CHAIRMAN RICCI: Oh, I'm sorry. Were you
2 done?

3 MEMBER MOREAU: Yes, I am. MS.
4 Colbert-Puff.

5 MEMBER COLBERT-PUFF: Thank you. I see
6 that there's a note regarding the maintenance
7 of the rain gardens but it doesn't really go
8 so far as to say who will be responsible for
9 maintaining them. Is that going to be part
10 of the condo docs?

11 A. That's exactly right. The on-going
12 maintenance of those will be written into the
13 condominium documents.

14 MEMBER COLBERT-PUFF: Okay.

15 CHAIRMAN RICCI: Other questions? Ms.
16 Moreau.

17 MEMBER MOREAU: It might be actually for
18 Rick so does the city have any recourse if
19 the condominium association doesn't keep up
20 the rain gardens?

21 MR. TAINTOR: The short answer I think is
22 no. When we did the Sanderson Fields
23 subdivision.

1 MEMBER MOREAU: I was trying to remember
2 what we did there and I can't remember.

3 MR. TAINTOR: There was a, that was an
4 issue because the storm water or the
5 grading -- the storm water actually was being
6 treated before it headed into a wetland.

7 I guess that's pretty much the same
8 situation here, but we don't -- we actually
9 had the city look at the condominium
10 documents, but it's an unusual -- it's
11 unusual situation. We actually may even have
12 had some cross easement so we actually had
13 some direct connection to that drainage at
14 that point. I think that may be the case.

15 MEMBER MOREAU: Right. And here we
16 really don't have any?

17 MR. TAINTOR: That's because the street
18 was going to bottom a public street.

19 MEMBER MOREAU: Right.

20 MR. TAINTOR: That was why.

21 MEMBER MOREAU: And one of the rain
22 gardens was in the middle of the the public
23 street.

1 MR. TAINTOR: Yeah, exactly. So that was
2 why that was different than this is.

3 MEMBER MOREAU: I was just curious
4 because I feel like, you know, no one's going
5 to be watching or maintaining so we really
6 have no way of knowing that those are going
7 to be maintained. It's a concern, obviously.

8 MR. TAINTOR: There's a possibility that,
9 you know, through the reading of the --
10 review of the conservation easement and we
11 don't know who the conservation easement
12 benefits, we could look at that.

13 MEMBER MOREAU: Look at that that way.
14 That would be helpful.

15 CHAIRMAN RICCI: Okay. Other
16 discussion, comments? No? Thank you.

17 A. Thank you.

18 CHAIRMAN RICCI: I'll now open up the
19 public hearing. If there's anybody in the
20 public wishing to speak to, for, against.
21 Call second time speakers. I'll call third
22 and final time. Seeing no one rise, I'll now
23 close the public hearing.

1 MR. TAINTOR: Mr. Chair, I have some
2 suggested additions to the TAC
3 recommendations.

4 CHAIRMAN RICCI: I do, too. Sure. Go
5 ahead.

6 MR. TAINTOR: So they are actually passed
7 out in the suggested -- there were two
8 sheets. One's the stapled sheet at the
9 bottom of the first page of the stapled
10 sheet, and then on the second separate sheet,
11 these are just some -- the one at the bottom
12 of the stapled sheet is a TAC recommendation
13 that, through an oversight wasn't carried
14 forward to the staff recommendation and this
15 is the recommendation about the applicant
16 making a payment in the amount of \$10,000 to
17 the city toward the cost of creating a
18 drainage system off Diamond Drive in
19 compensation for the additional storm water
20 volume that will flow from the site into the
21 pond.

22 And this was something that was voted on
23 at TAC and just through an oversight it

1 didn't get into the Planning Department
2 recommendation, so that's an addition.

3 And then there are, on the separate
4 sheet, these are just standard stipulations
5 that we usually include and, again, through
6 an oversight didn't include in the
7 recommendation.

8 One is that the three notes that our site
9 plan review regulations require to be
10 included on the landscape plan, and that's
11 number 4, those three notes, and the other
12 one is just about recording the site plan,
13 the landscape plan and the conservation
14 easement by the city or as determined
15 appropriate by the Planning Department.

16 CHAIRMAN RICCI: Okay.

17 MR. TAINTOR: The standard stipulations
18 just didn't get included through an
19 oversight.

20 CHAIRMAN RICCI: Okay. Ms. Moreau.

21 MEMBER MOREAU: Can we add to those
22 stipulations that, I mean, obviously, the
23 legal department is going to review --

1 CHAIRMAN RICCI: Do you want to have a
2 motion?

3 MEMBER MOREAU: Okay.

4 CHAIRMAN RICCI: And then we can make a
5 motion.

6 MEMBER MOREAU: I'll make a motion that
7 we vote to approve with all the stipulations
8 that have been added and in the memo, plus
9 possibly some more.

10 CHAIRMAN RICCI: Add them.

11 MEMBER MOREAU: All right. I would like
12 to add that the legal department in its
13 review of the conservation easement considers
14 a full hundred foot buffer as the easement
15 area and that they consider how the rain
16 gardens will affect that area, if they are
17 not maintained; is that the right way to put
18 it?

19 MR. TAINTOR: I would rather, rather than
20 leaving the width of the conservation
21 easement up to the legal department, I would
22 rather the Planning Board voted on it.

23 MEMBER MOREAU: Okay.

1 MR. TAINTOR: If you wanted to go beyond
 2 50, I would rather you did that because the
 3 legal department shouldn't have discretion as
 4 to where that is.

5 MEMBER MOREAU: Okay. So we need to add
 6 it right now that it be a hundred feet.

7 CHAIRMAN RICCI: Yep.

8 MEMBER MOREAU: I'm happy to do that.

9 CHAIRMAN RICCI: Okay. Is that it for
 10 stipulations?

11 MEMBER MOREAU: I think so.

12 CHAIRMAN RICCI: Do we have a second?

13 SPEAKER: Second. You added two -- no,
 14 you added stipulations.

15 MEMBER MOREAU: Right, we're going to do
 16 the 100 foot buffer --

17 SPEAKER: And the legal department look
 18 at the conservation --

19 MEMBER MOREAU: Easement.

20 SPEAKER: Easement to incorporate the
 21 maintenance of the rain gardens.

22 MEMBER MOREAU: Right. Just make sure
 23 that the conservation easement isn't damaged

1 because the rain gardens aren't maintained.

2 CHAIRMAN RICCI: Right.

3 MEMBER MOREAU: That's really, I think
4 the way to --

5 SPEAKER: I've second that.

6 CHAIRMAN RICCI: Okay. Any --

7 SPEAKER: What's the reasoning of
8 increasing the easement from 50 to a hundred?
9 I missed that.

10 MEMBER MOREAU: Because then we ensure
11 that all of that areas is protected and that
12 no one tries to even build in there. We
13 don't want them to build in the buffer
14 anyways. We actually, as a board, have
15 completely kept people from building. This
16 just ensures that can't possibly happen, that
17 no one comes back and tries to do further
18 integration of building into the buffer.
19 Since the buffer, they are already outside
20 the whole buffer, I say let's protect it.

21 SPEAKER: I'm missing something. I
22 thought it was a 50 foot buffer and you are
23 asking to increase to a hundred foot.

1 MEMBER MOREAU: No, it's a hundred foot
2 buffer. They are doing a 50 foot
3 conservation easement.

4 SPEAKER: Oh, I see.

5 MEMBER MOREAU: I'm saying do the whole
6 buffer distance.

7 SPEAKER: As the conservation.

8 MEMBER MOREAU: Correct.

9 SPEAKER: It doesn't really affect the
10 scope of this project, so --

11 MEMBER MOREAU: No.

12 SPEAKER: They are amenable to it.

13 SPEAKER: I got you.

14 CHAIRMAN RICCI: And I'd just like to add
15 a stipulation if it's okay to the maker and
16 the second. You know, that they stake every
17 25 feet, a hundred foot buffer, grade stakes
18 are set prior to construction just so that,
19 you know, it looks good on a plan but when
20 you go out there, it moves.

21 MEMBER MOREAU: Nobody knows where it is.

22 CHAIRMAN RICCI: So I'd like that as
23 a condition --

1 MEMBER MOREAU: Absolutely.

2 CHAIRMAN RICCI: I'd like that as a
3 conditional of approval and that they are
4 placed every 25 feet and they are maintained
5 throughout the course of construction.

6 MEMBER MOREAU: Absolutely.

7 SPEAKER: That's fine for me.

8 CHAIRMAN RICCI: So, okay. Any other
9 discussion?

10 Call the vote. All those in favor?

11 THE FLOOR: Aye.

12 CHAIRMAN RICCI: Any opposed? The Chair
13 votes aye. Thank you.

14 (Session ends.)

15

16

17

18

19

20

21

22

23

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C E R T I F I C A T E

I, Camille M. Palladino-Duffy, a
Licensed Court Reporter in the State of New
Hampshire, do hereby state that the foregoing
transcript is a true and accurate transcription of
the recorded media to the best of my knowledge,
skill, ability and belief.



*Camille M.
Palladino-Duffy*

CAMILLE M. PALLADINO-DUFFY
LCR 105, RPR

LEGEND:

- | | | |
|-----------------|-------------------------------------|--------------------|
| BK /PG. | BOOK/PAGE | WETLAND FLAG |
| EP | EDGE OF PAVEMENT | UTILITY POLE |
| NET | NEW EXH. AND TELEPHONE | DECIDUOUS TREE |
| N/F | NOW OR FORMERLY | CONIFEROUS TREE |
| PEP | PROPOSED EDGE OF PAVEMENT | PROPERTY LINE |
| PSNH | PUBLIC SERVICE OF NEW HAMPSHIRE | SETBACK LINE |
| RCRD | ROCKINGHAM COUNTY REGISTRY OF DEEDS | OVERHEAD UTILITIES |
| S.F. | SQUARE FEET | EDGE OF POND |
| VGC | VERTICAL GRANITE CURB | EDGE OF WETLANDS |
| MAP 219 / LOT 9 | ASSESSOR'S MAP NUMBER / LOT NUMBER | TREELINE |
| | WETLANDS | |
| | OPEN WATER | |
| | CONSERVATION EASEMENT | |

NAD83 (2011)

I HEREBY CERTIFY THAT THIS PLAN IS ACCURATE AND COMPLIES WITH NHRSA 356-B:20(1). ALL UNITS OR PORTIONS THEREOF DEPICTED ON ANY PORTION OF THE SUBMITTED LAND OTHER THAN WITHIN THE BOUNDARIES OF ANY CONVERTIBLE LAND HAVE NOT YET BEGUN.

I certify that this survey and plan were prepared by me or by those under my direct supervision. This survey is an Urban Survey as classified in the NH Code of Administrative Rules of the Board of Licensees for Land Surveyors. I certify that this survey was made on the ground and is correct to the best of my knowledge and belief. The traverse was completed by Total Station, with a precision greater than 1:15,000.

LICENSED LAND SURVEYOR

DATE

Sep 18, 2016 - 12:33pm
P:\45926.11\Map\45926.11_C2_CSP.dwg

Copyright 2016 © Thomas F. Moran, Inc.
48 Constitution Drive, Bedford, N.H. 03110

All rights reserved. These plans and materials may not be copied, duplicated, replicated or otherwise reproduced in any form whatsoever without the prior written permission of Thomas F. Moran, Inc.

This plan is not effective unless signed by a duly authorized officer of Thomas F. Moran, Inc.

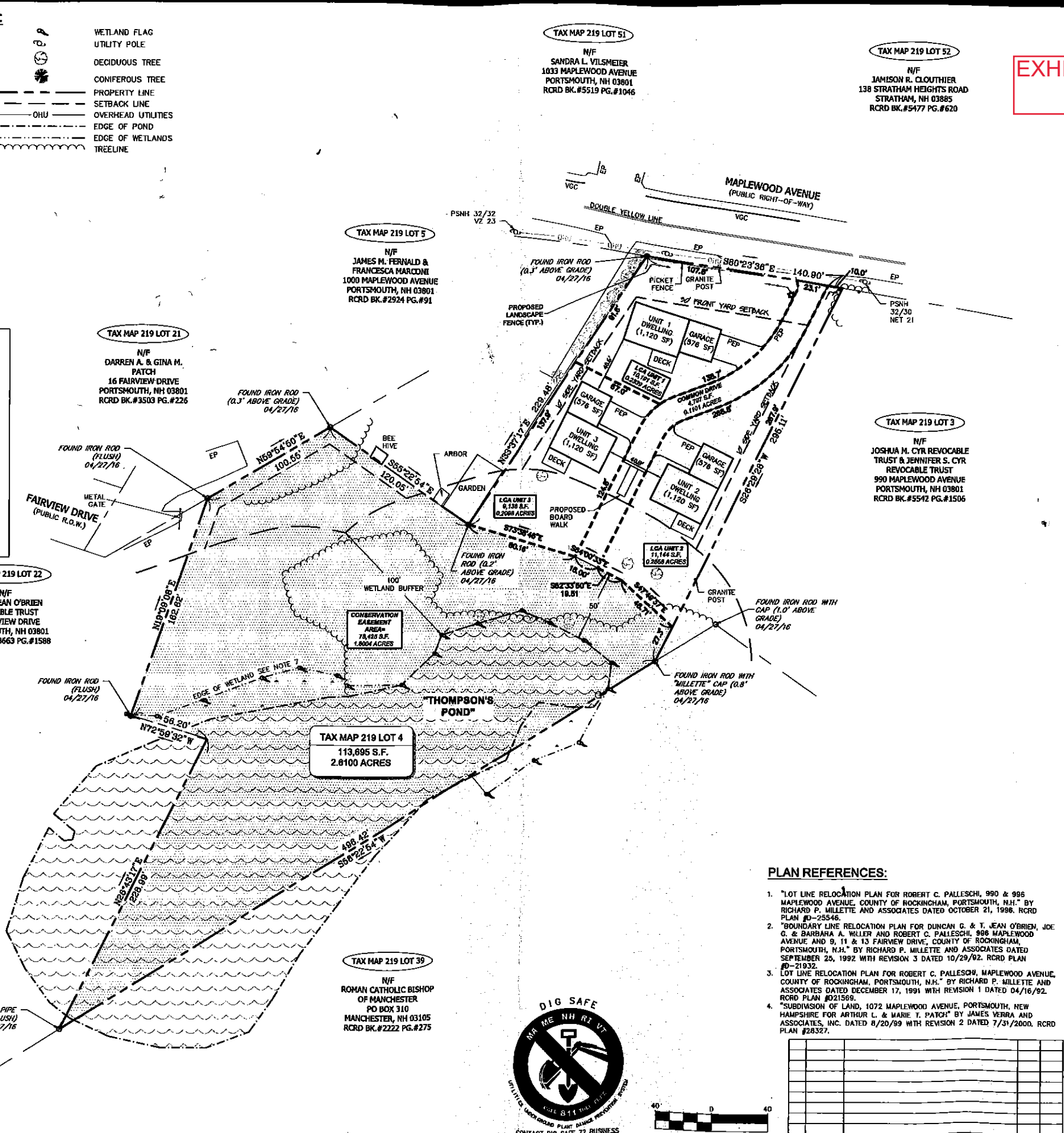
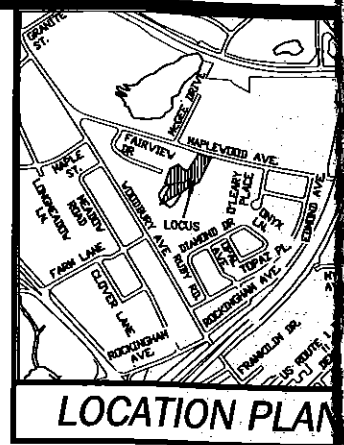


EXHIBIT 11



- NOTES:**
- THE PARCEL IS LOCATED IN THE SINGLE RESIDENCE B (SRB) ZONE.
 - THE PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 219 AS LOT 4.
 - THE PARCEL IS LOCATED IN FLOOD ZONE X AS SHOWN ON FLOOD INSURANCE RATE MAP ROCKINGHAM COUNTY, NEW HAMPSHIRE, PANEL 259 OF 681, MAP NUMBER 33015C02596 EFFECTIVE DATE: MAY 17, 2005
 - ZONING REQUIREMENTS:

MINIMUM LOT DIMENSIONS	15,000 S.F.
LOT AREA	15,000 S.F.
CONTINUOUS STREET FRONTAGE	100'
DEPTH	100'
MINIMUM YARD DIMENSIONS	
FRONT	30'
SIDE	10'
REAR	30'
MAXIMUM STRUCTURE DIMENSIONS	
STRUCTURE HEIGHT	35'
ROOF APPURTENANCE HEIGHT	5'
BUILDING COVERAGE	20%
MINIMUM OPEN SPACE	40%
 - TOTAL PARCEL AREA:
MAP 219 LOT 4
113,695 S.F.
2.6100 ACRES

SUBMITTED AREA:
113,695 S.F.
2.6100 ACRES

COMMON AREA:
113,695 S.F.
2.6100 ACRES

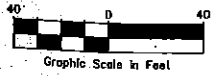
LIMITED COMMON AREA:
UNIT 1 = 10,191 S.F. (0.2338 ACRES)
UNIT 2 = 11,144 S.F. (0.2558 ACRES)
UNIT 3 = 9,138 S.F. (0.2098 ACRES)
 - OWNER OF RECORD:
MAP 219 LOT 4
CAROL I. COOPER
205 LINDEN LANE
WALLINGFORD, PA 18086
RCRD BK.#4645 PG.#1517
 - JURISDICTIONAL WETLANDS SHOWN ON THIS PLAN WERE DELINEATED ON AUGUST 25, 2011 BY CHRISTOPHER K. DANFORTH CWS #077 OF IFMORAN, INC. THE WETLANDS WERE DELINEATED ACCORDING TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL (1987) AND THE REGIONAL SUPPLEMENT TO THE CORPS OF ENGINEERS WETLAND DELINEATION MANUAL: NORTH-CENTRAL AND NORTHEAST REGION, VERSION 2, JANUARY 2012. DOMINANT HYDRIC SOILS WITHIN THE WETLAND(S) WERE IDENTIFIED USING EITHER FIELD INDICATORS FOR IDENTIFYING HYDRIC SOILS IN NEW ENGLAND, (VERSION 3), NEW ENGLAND INTERSTATE WATER POLLUTION CONTROL COMMISSION (NEWPCC), APRIL 2004 OR FIELD INDICATORS OF HYDRIC SOILS IN UNITED STATES, A GUIDE FOR IDENTIFYING AND DELINEATING HYDRIC SOILS, VERSION 7.0, USDA, NRCS, IN COOPERATION WITH THE NATIONAL TECHNICAL COMMITTEE FOR HYDRIC SOILS. DOMINANCE OF HYDROPHIC VEGETATION WAS DETERMINED USING THE NORTH-CENTRAL AND NORTHEAST 2013 REGIONAL WETLAND PLANT LIST, US ARMY CORPS OF ENGINEERS, (VER. 3.1), AND FIELD LOCATED BY MSC.
 - THE INTENT OF THIS PLAN IS TO SHOW THE LOCATION OF BOUNDARIES IN ACCORDANCE WITH THE CURRENT LEGAL DESCRIPTIONS. IT IS NOT AN ATTEMPT TO DEFINE UNWRITTEN RIGHTS OR DETERMINE THE EXTENT OF OWNERSHIP OR DEFINE THE LIMITS OF TITLE.
 - THE PURPOSE OF THIS PLAN IS TO ILLUSTRATE THE APPROXIMATE LOCATION OF 3 PROPOSED CONDOMINIUM UNITS, THEIR ASSOCIATED IMPROVEMENTS, THE COMMON & LIMITED COMMON AREAS OF THE PROPERTY.
 - HORIZONTAL DATUM IS NAD 83 (2011) PER STATIC GPS OBSERVATIONS.
 - A PORTION OF THE PROPERTY IS SUBJECT TO RESTRICTIONS AS DESCRIBED IN RCRD BK.#442, PG.#442.
 - FIELD SURVEY COMPLETED BY TODD C. EMERSON IN AUGUST 2014 USING A TOPCON DSI0 AND TOPCON TESLA DATA COLLECTOR.
 - EASEMENTS, RIGHTS, AND RESTRICTIONS SHOWN OR IDENTIFIED ARE THOSE WHICH WERE FOUND DURING RESEARCH PERFORMED AT THE ROCKINGHAM COUNTY REGISTRY OF DEEDS. OTHER RIGHTS, EASEMENTS, OR RESTRICTIONS MAY EXIST WHICH A TITLE EXAMINATION OF SUBPARCEL WOULD DETERMINE.

- PLAN REFERENCES:**
- "LOT LINE RELOCATION PLAN FOR ROBERT C. PALLESCHI, 990 & 996 MAPLEWOOD AVENUE, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." BY RICHARD P. MILLETTE AND ASSOCIATES DATED OCTOBER 21, 1996. RCRD PLAN #0-25546.
 - "BOUNDARY LINE RELOCATION PLAN FOR DUNCAN G. & T. JEAN O'BRIEN, JOE C. & BARBARA A. WILLER AND ROBERT C. PALLESCHI, 986 MAPLEWOOD AVENUE AND 9, 11 & 13 FAIRVIEW DRIVE, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." BY RICHARD P. MILLETTE AND ASSOCIATES DATED SEPTEMBER 25, 1992 WITH REVISION 3 DATED 10/29/92. RCRD PLAN #0-21932.
 - LOT LINE RELOCATION PLAN FOR ROBERT C. PALLESCHI, MAPLEWOOD AVENUE, COUNTY OF ROCKINGHAM, PORTSMOUTH, N.H." BY RICHARD P. MILLETTE AND ASSOCIATES DATED DECEMBER 17, 1991 WITH REVISION 1 DATED 04/16/92. RCRD PLAN #021569.
 - "SUBDIVISION OF LAND, 1072 MAPLEWOOD AVENUE, PORTSMOUTH, NEW HAMPSHIRE FOR ARTHUR L. & MARIE T. PATCH" BY JAMES VERRA AND ASSOCIATES, INC. DATED 8/20/99 WITH REVISION 2 DATED 7/31/2000. RCRD PLAN #28327.

TAX MAP 219 LOT 4
CONDOMINIUM SITE PLAN
LORAX SUSTAINABLE DEVELOPMENT
996 MAPLEWOOD AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
 OWNED BY
CAROL I. COOPER

SCALE: 1" = 40' (22x34)
 1" = 80' (11x17)

SEPTEMBER 16, 2016



REV.	DATE	DESCRIPTION	DR	CK

TFM **MSC**

A division of TFMoran, Inc.

Civil Engineers
Structural Engineers
Traffic Engineers
Land Surveyors
Landscape Architects
Scientists

170 Commerce Way, Suite 11
Portsmouth, NH 03801
Phone (603) 431-2222
Fax (603) 431-0910
www.msconline.com

45926.11 DR FB
CK CADFILE

C-2
(TO BE RECORDED)

Lizbeth Good

From: Fernald, James <James.Fernald@Teledyne.com>
Sent: Tuesday, October 04, 2016 12:39 PM
To: Lizbeth Good
Cc: francesca177@comcast.net
Subject: 996 Maplewood Ave Site Development

Exhibit 12

Hi Liz,

Thank you for taking the time to speak with me today. The comments below are in response to the Planning Department Technical Advisory Committee Meeting Scheduled for 2 pm today – new business – 996 Maplewood Avenue

I have reviewed the plans for the 996 Maplewood Avenue development and have some concerns I would like to be considered during the meeting today. My concerns are primarily with the Landscaping plan. The landscape plan shows a row of arborvitae being planted along the property line abutting my property, 1000 Maplewood Avenue. I understand that this is a scaled rendering, and the plans may not reflect actual tree position. From my own experience, I know these plantings can grow upwards of 20 feet.

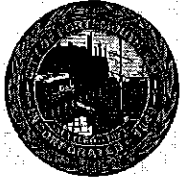
1. Based on the plan, the arborvitae appear to encroach on my property. I want to make sure that the plantings do not encroach on my property.
2. I'm concerned that as the plantings mature, they will encroach on my property, and require maintenance. I do not want to have to perform maintenance on any overhanging portions of the plantings.
3. A good portion of the property line where the trees are positioned is abutted by a stone wall on my property. I'm concerned that if planted as shown, root growth will undermine the structural integrity of the wall, requiring maintenance or repair over time.
4. The start of the line of plantings does coincide with plantings of blueberry bushes on my property. I am concerned that when the plantings are mature, they will negatively affect the growth of the bushes and production of fruit, which is netted and picked each summer for consumption. I would have to move these bushes if their yield is affected. Will there be any consideration given to maintaining the height of the plantings over time?
5. While I appreciate the developer's efforts to maintain a privacy screen between properties, I am concerned that the density of the screen may impact airflow and sunlight. This is one of the reasons for the 1-3 house per acre density requirement of the zoning ordinance. Is there any potential either to limit the height of the plantings?

Thank you for your consideration.

On a separate note, the technical advisory meeting agenda on the city website for current land use applications is dated August 30th. The Oct 4th agenda is not listed.

Regards,

James Fernald
Project Engineer
Teledyne DGO
Tel: 603-760-5696
Fax: 603-760-5796
Email: james.fernalld@teledyne.com



**City of Portsmouth
 Planning & Inspection Departments
 1 Junkins Ave
 Portsmouth, NH 03801
 Phone: 603-610-7216**

Receipt #: 285318

Date: 7/10/2018

PLANNING

Paid By:

Transaction Receipt

James Fernald

----- Bills Paid -----					
Invoice #	Principal	Costs	Interest	Amount Applied	
	Description / Location			Balance Due	
2018 OC-MISCREV-MS-113001	1.00	0.00	0.00	1.00	
Copy	James Fernald			0.00	
Total Applied:		1.00	0.00	0.00	1.00

----- Payments -----				
Type	Reference	Fees	Amount	Total Paid
CHECK	996 Maplewood Ave	0.00	1.00	1.00
				<u>0.00</u>

EXHIBIT 13

In The Matter Of:
TECHNICAL ADVISORY COMMITTEE MEETING v.
In Re: 996 Maplewood Avenue

October 04, 2016

Duffy & McKenna Court Reporters, LLC



P.O. Box 1658 Dover, NH 03821

1-800-600-1000

603-743-4949 | 603-743-4952 (fax)

www.dmreporting.com

dmreporting@stenosearch.com (Scheduling)
camille@stenosearch.com (Billing/Production)

OUT-OF-TOWN DEPOSITIONS?



WWW.DEPOSPAN.COM

Duffy & McKenna
Court Reporters, LLC

DEPOSPAN'S TRUSTED LOCAL CONNECTION

Min-U-Script®

SITE REVIEW
TECHNICAL ADVISORY COMMITTEE MEETING

Held at
Eileen Dondero Foley Council Chambers
Municipal Complex, 1 Junkins Avenue
Portsmouth, New Hampshire

on
October 4, 2016 at 2:00 p.m.

Recorded Video
In Re: 996 Maplewood Avenue
Transcribed September 21, 2018

Transcribed by:
Camille M. Palladino-Duffy
NH LCR 105, RPR

DUFFY & MCKENNA COURT REPORTERS

P.O. Box 1658
Dover, NH 03821-1658
(603) 743-4949
1-800-600-1000

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

APPEARANCES

Members Present:

Juliet Walker, Chairperson, Transportation Planner

Peter Britz, Environmental Planner

Jessa Berna, Planner

David Desfosses, Engineering Technician

Ray Pezzullo, Assistant City Engineer

Eric Eby, Parking/Transportation Engineer

Robert Marsilia, Chief Building Inspector

P R O C E E D I N G S

1
2 CHAIRWOMAN WALKER: Okay. The next item
3 of business is 996 Maplewood Avenue. The
4 application of Carol I. Cooper owner and
5 Lorax Sustainable Development, LLC,
6 applicant, for property located at 996
7 Maplewood Avenue, requesting site plan
8 approval for the construction of three stand
9 alone single family homes on a single lot
10 with one shared driveway. Each home and
11 garage having a footprint of 1696 square feet
12 with related paving, lighting, utilities,
13 landscaping, drainage and associated site a
14 improvements. Said property is shown on
15 Assessor Map 219 as Lot 4 and lies within the
16 Single Resident B District.

17 Okay. Go ahead.

- 18 A. Good afternoon, John Lorden, and MSC, a
19 division of TF Moran. With me today and is
20 Mike Brigham from Lorax Sustainable
21 Development and also Chris Gagnon from MSC.
22 The project before you is a condominium
23 association of three net zero energy homes.

1 people have concerns and want to be
2 participating. We are a technical advisory
3 committee and we are staff and that's why
4 this is -- we meet during the day.

5 The Planning Board also has public
6 hearings as part of their process and those
7 are in the evening and that is another option
8 for people to express their input.

9 We also do receive -- people are welcome
10 to submit input in writing and we did receive
11 an e-mail from James Fernald who stopped by
12 earlier today, which I shared with the TAC
13 members and that will go in the record as
14 well.

15 So we had some discussion already, some
16 comments. I guess I'd welcome a
17 recommendation, a motion from TAC.

18 MEMBER DESFOSSES: A couple more things,
19 please, if you don't mind real quick.

20 CHAIRWOMAN WALKER: Go ahead. Yep.

21 MEMBER DESFOSSES: John, the driveway for
22 this property, you should shape the first
23 four feet so it's shedding back toward

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C E R T I F I C A T E

I, Camille M. Palladino-Duffy, a
Licensed Court Reporter in the State of New
Hampshire, do hereby state that the foregoing
transcript is a true and accurate transcription of
the recorded media to the best of my knowledge,
skill, ability and belief.



*Camille M.
Palladino-Duffy*

CAMILLE M. PALLADINO-DUFFY
LCR 105, RPR

EXHIBIT 14

**SITE PLAN REVIEW TECHNICAL ADVISORY COMMITTEE
PORTSMOUTH, NEW HAMPSHIRE**

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

2:00 PM

NOVEMBER 1, 2016

AGENDA

I. OLD BUSINESS

A. The application of **J&M Family Properties, LLC, Owner, and Dunkin' Donuts, c/o JFS Management Co., LLC, Applicant**, for property located at **802 Lafayette Road**, requesting Amended Site Plan Approval to re-develop the parking lot for improved site and drive-thru circulation, revised parking layout, new trash enclosure, drainage improvements and stormwater management, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 244 as Lot 2 and lies within the Gateway (G) District. (This application was postponed at the October 4, 2016 TAC Meeting).

B. The application of **Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 ± s.f. and gross floor area of 4,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (G) District. (This application was postponed at the October 4, 2016 TAC Meeting).

C. The application of **Seacoast Trust, LLP, Owner, and Stonegate NH Construction, LLC, Applicant**, for property located at **150 Route 1 By-Pass**, requesting Site Plan Approval for the demolition of the existing building and the construction of a 246' x 85' 3-story multi-family building with a footprint of 17,667 ± s.f. and gross floor area of 53,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 231 as Lot 58 and lies within the Single Residence B (SRB) District. (This application was postponed at the October 4, 2016 TAC Meeting).

D. The application of **Alden Watson Properties, LLC, Owner**, for property located at **56 Lois Street**, **Milton and Dixie Pappas, Owners**, for property located **off Lois Street**, and **Ann N. Grimbilas Trust, Owner**, for property located **off Lois Street**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots and to extend the Lois Street right-of-way, as follows:

1. Proposed lot #1 having an area of 42,189 ± s.f. (0.9685 acres) and 100.8' of continuous street frontage on Lois Street;
2. Proposed lot #2 having an area of 119,264 ± s.f. (2.7379 acres) and 20' of continuous street frontage on Lois Street;
3. Map 232, Lot 12 decreasing in area from 12,000 ± s.f. to 8,825 ± s.f. with 120' of continuous street frontage on Lois Street;
4. Map 232, Lot 13 decreasing in area from 13,473 ± s.f. to 11,073 ± s.f. with 120' of continuous street frontage on Lois Street; and
5. A street right-of-way will be created to extend Lois Street, having an area of 10,970 ± s.f.

Said properties are shown on Assessors Map 232 as Lots 8, 12 and 13 and are located in the Single Residence B (SRB) District where the minimum lot area is 15,000 s.f. and minimum continuous street frontage is 100'. (This application was postponed at the October 4, 2016 TAC Meeting).

E. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three stand alone single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District. (This application was postponed at the October 4, 2016 TAC Meeting).

II. NEW BUSINESS

A. The application of **Jonathan Smith, Owner, and Sophie Lane, LLC, Applicant**, for property located at **1283 Woodbury Avenue**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

1. Proposed lot #1 having an area of 15,274 ± s.f. (0.3506 acres) and 147' of continuous street frontage on Woodbury Avenue;
2. Proposed lot #2 having an area of 15,142 ± s.f. (0.3476 acres) and 100' of continuous street frontage on Granite Street.

Said property is shown on Assessors Map 217 as Lot 4 and is located in the Single Residence B (SRB) District where the minimum lot area is 15,000 s.f. and minimum continuous street frontage is 100'.

B. The application of **Alissa C. Bournival Revocable Trust, Owner, and Bournival Jeep Dealership, Applicant**, for property located at **2355 Lafayette Road**, requesting Amended Site Plan Approval for the construction of an irregularly shaped 2,775 s.f. addition to the rear of the existing building, to be used as a six-bay detailing shop, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 272 as Lot 7 and lies within the Gateway (GW) District.

LEGEND	
	PROPERTY LINE
	EDGE OF WETLAND
	100' WETLAND BUFFER
	EXISTING UTILITY POLE

SITE DATA

ZONED: SRB
 EXISTING USE: VACANT
 PROPOSED USE: RESIDENTIAL

THE PURPOSE OF THIS PLAN IS TO CONSTRUCT 3 DWELLINGS ON A SHARED DRIVEWAY.

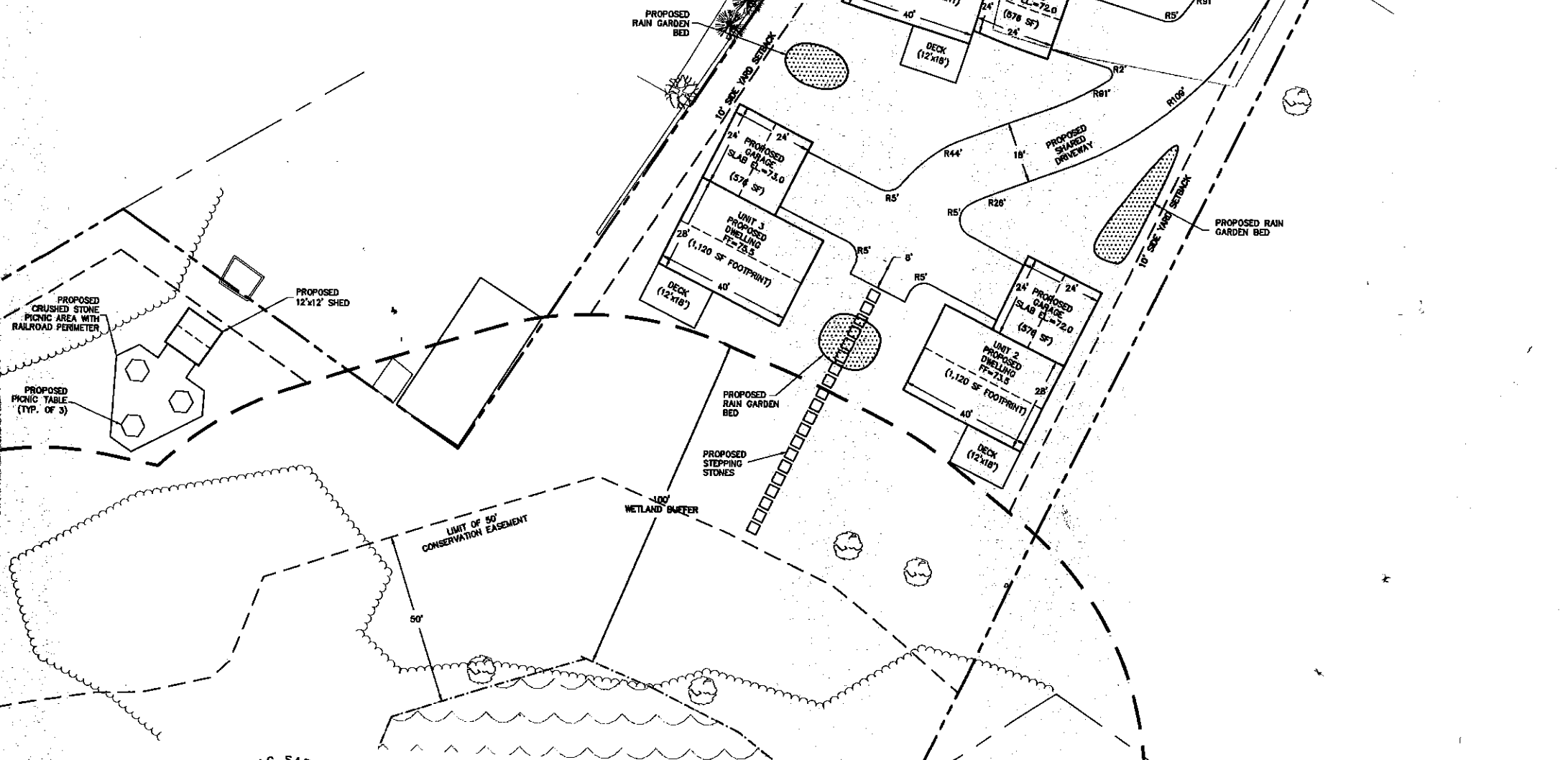
DIMENSIONAL REQUIREMENTS (CURRENT ZONING)

	REQUIRED:	PROVIDED:
MINIMUM LOT DIMENSIONS:		
LOT AREA	15,000 SF	113,485 SF
STREET FRONTAGE	100 FT	139 FT
DEPTH	100 FT	>100 FT
MINIMUM YARD DIMENSIONS:		
FRONT	30 FT	>30 FT
SIDE	10 FT	>10 FT
REAR	30 FT	>30 FT
MINIMUM OPEN SPACE	40 %	91.2%

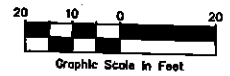
EXHIBIT 15

SITE NOTES

- THESE PLANS ARE PERMIT DRAWINGS ONLY AND NOT INTENDED FOR CONSTRUCTION OR RIDING.
- PRIOR TO COMMENCING ANY SITE WORK ALL LIMITS OF WORK SHALL BE CLEARLY MARKED IN THE FIELD.
- AN ALTERATION OF TERRAIN PERMIT IS NOT REQUIRED AS THE DISTURBANCE IS LESS THAN 100,000 SF.
- ALL WORK SHALL CONFORM TO THE APPLICABLE REGULATIONS AND STANDARDS OF THE CITY OF PORTSMOUTH, AND SHALL BE BUILT IN A WORKMANLIKE MANNER IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS.
- ALL WORK TO CONFORM TO CITY OF PORTSMOUTH, DEPARTMENT OF PUBLIC WORKS STANDARD SPECIFICATIONS. ALL WORK WITHIN THE RIGHT-OF-WAY OF THE TOWN AND/OR STATE SHALL COMPLY WITH APPLICABLE STANDARDS.
- ALL DEMOLITION SHALL INSURE MINIMUM INTERFERENCE WITH ROADS, STREETS, WALKWAYS AND ANY OTHER ADJACENT OPERATING FACILITIES. PRIOR WRITTEN PERMISSION FROM THE OWNER/DEVELOPER AND LOCAL PERMITTING AUTHORITY IS REQUIRED IF CLOSURE/OBSTRUCTIONS TO ROADS, STREET, WALKWAYS AND OTHERS IS DEEMED NECESSARY. CONTRACTOR TO PROVIDE ALTERNATE ROUTES AROUND CLOSURES/OBSTRUCTIONS PER CITY/GOVERNMENTAL REGULATIONS.
- REFER TO ARCHITECTURAL PLANS FOR LAYOUT OF BUILDING FOUNDATIONS AND CONCRETE ELEMENTS WHICH ABUT THE BUILDING SUCH AS STAIRS, AND DECKS. DO NOT USE SITE PLANS FOR LAYOUT OF FOUNDATIONS.
- IN THE EVENT OF A CONFLICT BETWEEN PLANS, SPECIFICATIONS, AND DETAILS, THE ENGINEER SHALL BE NOTIFIED IMMEDIATELY FOR CLARIFICATION.
- IF CONDITIONS AT THE SITE ARE DIFFERENT THAN SHOWN ON THE PLANS, THE ENGINEER SHALL BE NOTIFIED PRIOR TO PROCEEDING WITH THE AFFECTED WORK.
- THESE PLANS WERE PREPARED UNDER THE SUPERVISION OF A LICENSED PROFESSIONAL ENGINEER. MSC A DIVISION OF TFMORAN, INC. ASSUMES NO LIABILITY AS A RESULT OF ANY CHANGES OR NON-COMFORMANCE WITH THESE PLANS EXCEPT UPON THE WRITTEN APPROVAL OF THE ENGINEER OF RECORD.
- MSC A DIVISION OF TFMORAN, INC. ASSUMES NO LIABILITY FOR WORK PERFORMED WITHOUT AN ACCEPTABLE PROGRAM OF TESTING AND INSPECTION AS APPROVED BY THE ENGINEER OF RECORD.
- AT COMPLETION OF CONSTRUCTION, THE SITE CONTRACTOR SHALL PROVIDE A LETTER CERTIFYING THAT THE PROJECT WAS COMPLETED IN ACCORDANCE WITH THE APPROVED PLANS AND SPECIFICATIONS, AND A LETTER STAMPED BY A QUALIFIED ENGINEER THAT THEY HAVE OBSERVED ALL UNDERGROUND DETENTION SYSTEMS, INFILTRATION SYSTEMS, OR FILTERING SYSTEMS PRIOR TO BACKFILL, AND THAT SUCH SYSTEMS CONFORM TO THE APPROVED PLANS AND SPECIFICATIONS.
- IF ANY DEVIATIONS FROM THE APPROVED PLANS AND SPECIFICATIONS HAVE BEEN MADE, THE SITE CONTRACTOR SHALL PROVIDE AS-BUILT DRAWING STAMPED BY A LICENSED SURVEYOR OR QUALIFIED ENGINEER ALONG WITH A LETTER STAMPED BY QUALIFIED ENGINEER DESCRIBING ALL SUCH DEVIATIONS, AND BEAR ALL COSTS FOR PREPARING AND FILING ANY NEW PERMITS OR PERMIT AMENDMENTS THAT MAY BE REQUIRED.
- WHERE PROPOSED PAVEMENT MEETS EXISTING PAVEMENT, THE SEAM SHALL BE A SAW CUT EDGE AND TREATED WITH EMULSION.
- CONTRACTOR SHALL PROVIDE A FINISH PAVEMENT SURFACE FREE OF LOW SPOTS AND PONDING AREAS. CRITICAL AREAS INCLUDE STOREFRONT, ACCESSIBLE PARKING, LOADING AREA AND FRONT ENTRANCE.
- THE GRADE SURFACE TOLERANCE AT THE INTERFACE BETWEEN EXISTING PAVEMENT TO REMAIN AND PROPOSED NEW PAVEMENT SHALL NOT VARY MORE THAN 3/8" FROM A 10' STRAIGHT EDGE, MEASURED IN ANY DIRECTION PLACED AT ANY LOCATION ALONG THE INTERFACE.
- CONTRACTOR'S RESPONSIBILITIES:
 - TO NOTIFY ENGINEER IN WRITING OF ANY DISCREPANCIES OF PROPOSED LAYOUT AND/OR EXISTING FEATURES.
 - EMPLOY A LICENSED SURVEYOR TO DETERMINE ALL LINES AND GRADES AND LAYOUT OF SITE ELEMENTS AND BUILDINGS.
 - PROVIDE AN AS-BUILT PLAN AT THE COMPLETION OF THE PROJECT TO THE PLANNING DIRECTOR AND PER CITY REGULATIONS.
 - PROTECTING NEW AND EXISTING BURIED UTILITIES DURING INSTALLATION OF ALL SITE ELEMENTS. DAMAGED UTILITIES SHALL BE REPAIRED OR REPLACED AT NO ADDITIONAL COST TO THE OWNER.
 - TAKE APPROPRIATE MEASURES TO REDUCE, TO THE FULLEST EXTENT POSSIBLE, NOISE, DUST AND UNSIGHTLY DEBRIS.
 - COORDINATE WITH ALL UTILITY COMPANIES AND CONTACT DIOSAFE (811 OR 888-344-7233) AT LEAST 72 HOURS PRIOR TO ANY EXCAVATION.
 - THE CONTRACTOR IS RESPONSIBLE FOR THE MEANS AND METHODS OF CONSTRUCTION AND FOR CONDITIONS AT THE SITE. THESE PLANS, PREPARED BY MSC A DIVISION OF TFMORAN, INC., DO NOT EXTEND TO OR INCLUDE SYSTEMS PERTAINING TO THE SAFETY OF THE CONSTRUCTION CONTRACTOR OR THEIR EMPLOYEES, AGENTS OR REPRESENTATIVES IN THE PERFORMANCE OF THE WORK. THE SEAL OF THE SURVEYOR OR ENGINEER HEREON DOES NOT EXTEND TO ANY SUCH SAFETY SYSTEMS THAT MAY NOW OR HEREAFTER BE INCORPORATED INTO THESE PLANS. THE CONSTRUCTION CONTRACTOR SHALL PREPARE OR OBTAIN THE APPROPRIATE SAFETY SYSTEMS WHICH MAY BE REQUIRED BY THE US OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) AND/OR LOCAL REGULATIONS.
 - VERIFY LAYOUT OF PROPOSED BUILDING FOUNDATIONS WITH ARCHITECT AND THAT PROPOSED FOUNDATION MEETS PROPERTY LINE SETBACKS PRIOR TO COMMENCING ANY FOUNDATION CONSTRUCTION.
 - THE CONTRACTOR SHALL END AND PERFORM THE WORK IN ACCORDANCE WITH ALL LOCAL, STATE AND NATIONAL CODES, SPECIFICATIONS, REGULATIONS AND STANDARDS.
 - IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO BECOME FAMILIAR WITH THE SITE AND ALL SURROUNDING CONDITIONS. THE CONTRACTOR SHALL ADVISE THE APPROPRIATE AUTHORITY OF INTENTIONS AT LEAST 48 HOURS IN ADVANCE.
 - THE CONTRACTOR SHALL MAINTAIN EMERGENCY ACCESS TO ALL AREAS AFFECTED BY WORK AT ALL TIMES.



Thomas F. Moran, Inc.
 25 Bedford, N.H. 03110
 These plans and materials may not be
 replicated or otherwise reproduced in any
 form without the prior written permission of Thomas
 F. Moran, Inc.
 Active unless signed by a duly authorized
 representative of Thomas F. Moran, Inc.



REV	DATE	DESCRIPTION	CWC	JPL
1	10/19/16	Revised per Technical Review	CWC	JPL
			DR	CK

TAX MAP 219 LOT 4
SITE PLAN
LORAX SUSTAINABLE DEVELOPMENT
996 MAPLEWOOD AVENUE
PORTSMOUTH, NEW HAMPSHIRE
COUNTY OF ROCKINGHAM
 OWNED BY
CAROL I. COOPER
 SCALE: 1" = 20' (22X34)
 1" = 40' (11X17) **SEPTEMBER 16, 2016**

 A division of TFMoran, Inc.	Civil Engineers Structural Engineers Traffic Engineers Land Surveyors Landscape Architects Scientists	170 Commerce Way, Suite 102 Portsmouth, NH 03801 Phone (603) 431-2222 Fax (603) 431-0910 www.msceingineers.com
	46926.11	DR CWC FB CK JPL CADFILE

**SITE PLAN REVIEW TECHNICAL ADVISORY COMMITTEE
PORTSMOUTH, NEW HAMPSHIRE**

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

2:00 PM

NOVEMBER 29, 2016

AGENDA

I. OLD BUSINESS

A. The application of **Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 ± s.f. and gross floor area of 14,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (G) District. (This application was postponed at the November 1, 2016 TAC Meeting).

Footprint of 1696 SF on agenda,
1938 SF not on agenda.

B. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three stand alone single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District. (This application was postponed at the November 1, 2016 TAC Meeting).

C. The application of **Alissa C. Bournival Revocable Trust, Owner, and Bournival Jeep Dealership, Applicant**, for property located at **2355 Lafayette Road**, requesting Amended Site Plan Approval for the construction of an irregularly shaped 2,775 s.f. addition to the rear of the existing building, to be used as a six-bay detailing shop, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 272 as Lot 7 and lies within the Gateway (GW) District. (This application was postponed at the November 1, 2016 TAC Meeting).

Withdrawn

C. The application of **Karen E. Kapelos Revocable Trust of 1995, Owner, and Karen E. Kapelos, Applicant**, for property located at **3310 Lafayette Road (also known as 88 & 100 Cardinal Lane)**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

1. Proposed lot #1 having an area of 26,292 ± s.f. (0.60 acres) and 200' of continuous street frontage on Cardinal Lane;
2. Proposed lot #2 having an area of 15,000 ± s.f. (0.34 acres) and 140' of continuous street frontage on Lafayette Road.

Said property is shown on Assessors Map 292 as Lot 164 and is located in the Single Residence B (SRB) District where the minimum lot area is 15,000 s.f. and minimum continuous street frontage is 100'. (This application was postponed at the November 1, 2016 TAC Meeting).

EXHIBIT 8

MINUTES

SITE REVIEW TECHNICAL ADVISORY COMMITTEE MEETING

2:00 PM

NOVEMBER 29, 2016

EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

MEMBERS PRESENT: Juliet Walker, Chairperson, Transportation Planner; Peter Britz, Environmental Planner; Jessa Berna, Planner; David Desfosses, Engineering Technician; Ray Pezzullo, Assistant City Engineer; Eric Eby, Parking and Transportation Engineer; Robert Marsilia, Chief Building Inspector; Carl Roediger, Fire Department;

MEMBERS ABSENT: N/A

I. OLD BUSINESS

A. The application of **Five Hundred Five Lafayette Road, LLC, Owner, and Lens Doctors, Applicant**, for property located at **605 Lafayette Road**, requesting Site Plan Approval for the demolition of the existing building and the construction of a proposed 2-story office building, with a footprint of 7,000 ± s.f. and gross floor area of 14,000 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 229 as Lot 9 and lies within the Gateway (G) District. (This application was postponed at the November 1, 2016 TAC Meeting).

The Chair read the notice into the record.

DISCUSSION AND DECISION OF THE BOARD

Mr. Desfosses moved to postpone Site Plan Review application to the January 3, 2017 TAC Meeting, seconded by Mr. Britz. The motion passed by a unanimous voice vote.

Footprint of 1696 SF in meeting minutes 1938 SF not in meeting minutes.

B. The application of **Carol I. Cooper, Owner, and Lorax Sustainable Development, LLC, Applicant**, for property located at **996 Maplewood Avenue**, requesting Site Plan Approval for the construction of three stand alone single family homes on a single lot with one shared driveway, each home and garage having a footprint of 1,696 ± s.f., with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 219 as Lot 4 and lies within the Single Residence B (SRB) District. (This application was postponed at the November 1, 2016 TAC Meeting).

The Chair read the notice into the record.

EXHIBIT 8, PAGE 2
No discussion of changes to footprint, either in meeting minutes or in video of meeting.

SPEAKING TO THE APPLICATION

Mr. John Lorden, MSC Division of TFMoran, Inc., briefly highlighted revisions made to the plan since the last meeting to include changes to the following: setback, sewer system, water line, turn arounds for each unit, and stepping stones. It was confirmed with USPS that a mailbox is not required. A future bike lane and signage was added to the Plan.

Mr. Roediger questioned how Unit 3 was revised from an 18-foot to 9-foot driveway width. He suggested at least a 10 to 11-foot width.

Ms. Walker questioned the feasibility of the driveway turnaround. Ms. Berna suggested to instead have vehicles maneuver the turnaround along the unit structure.

Mr. Lorden noted a signage legend was added to the plan.

Mr. Britz indicated the site plan notes should be amended to indicate the use of any fertilizer is prohibited in a wetland or vegetated buffer stripe. Also, the use of fertilizers other than low phosphate is prohibited in the wetland buffer, per Section 10.1018.24.

Ms. Walker questioned the feasibility of the footpath since it travels through the rain garden. Mr. Britz felt it would not be of concern.

Mr. Roediger confirmed that there is sprinkling in all three units.

Mr. Desfosses suggested the curbing should be taken into account on the grading plan. Walkways should be delineated to the utilities for each unit. The fire services for Unit 2 and Unit 3 should be extended further towards the pond. He suggested that the applicant contact the plumbing inspector to verify the pump system.

Mr. Desfosses highlighted various changes regarding the water connections. The ductile iron fire line should be sleeved in polyethylene and the tracing wire be 10-gauge. He mentioned the grading plan does not take into account the curbing because right now it directs the water off the road into the yard. Once the curb is put in, it would be a flat plane.

Ms. Walker advised to be cognizant of any expansion of the footprint given that a variance was granted by the Zoning Board of Adjustment.

PUBLIC HEARING

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

DISCUSSION AND DECISION OF THE BOARD

*Mr. Desfosses moved to **recommend approval** to the Planning Board, with the following stipulations:*

1) The following revisions shall be made to the Site Plans:

- a.) *Add a note regarding fertilizer that is consistent with the Zoning Ordinance Section 10.1018.24.*
- b.) *The internal driveway widths shall be increased to a minimum of 10’.*
- c.) *The Grading Plan should blend with the future layout plans and profiles for Maplewood Avenue that are being developed for the City by GPI.*
- d.) *Fire service lines for Units 2 and 3 should be located closer to the driveway so that they are not under the rain gardens.*
- e.) *At the first pull box location shown, a note shall be added to the plan indicating that this may also be the location of a transformer and/or communication pull electric boxes, if needed.*
- f.) *The Committee was uncertain whether the City Plumbing Inspector would allow basement pump systems as shown on the detail sheets; therefore, review and approval of these pump systems by the Plumbing Inspector is required. If not allowed, they should be shown exterior to the structures.*
- g.) *A note shall be added regarding the 6” ductile iron fire line indicating it is to be in a polyethylene sleeve to prevent corrosion; brass wedges are also required in the pipe joints for conductivity. These details are to be reviewed by DPW prior to Planning Board submission.*
- h.) *The applicant will be responsible for an appropriate contribution toward creating a drainage system off of Diamond Drive that the pond can drain into given the increase in stormwater volume that will flow into that pond. That funding amount will be \$10,000.*
- i.) *All water connections shall be approved by the Water Department.*
- j.) *The appropriate valve shut offs for the different water lines in the Maplewood Avenue ROW shall be shown on the plans.*

Seconded by Mr. Britz The motion passed by a unanimous voice vote (8-0-0).

.....

C. The application of **Alissa C. Bournival Revocable Trust, Owner, and Bournival Jeep Dealership, Applicant**, for property located at **2355 Lafayette Road**, requesting Amended Site Plan Approval for the construction of an irregularly shaped 2,775 s.f. addition to the rear of the existing building, to be used as a six-bay detailing shop, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 272 as Lot 7 and lies within the Gateway (GW) District. (This application was postponed at the November 1, 2016 TAC Meeting).

The application was withdrawn and required no action.

.....

D. The application of **Karen E. Kapelos Revocable Trust of 1995, Owner, and Karen E. Kapelos, Applicant**, for property located at **3310 Lafayette Road (also known as 88 & 100 Cardinal Lane)**, requesting Preliminary and Final Subdivision Approval to subdivide one lot into two lots as follows:

- 1. Proposed lot #1 having an area of 26,292 ± s.f. (0.60 acres) and 200’ of continuous street frontage on Cardinal Lane;
- 2. Proposed lot #2 having an area of 15,000 ± s.f. (0.34 acres) and 140’ of continuous street frontage on Lafayette Road.

Juliet T.H. Walker <jthwalker@cityofportsmouth.com>

5/4/2018 9:22 AM

RE: 996 Maplewood Ave

Exhibit 18, p1

To JAMES FERNALD <jmfernald@comcast.net>

The building coverage was calculated the same way we calculate building coverage anywhere in the City.

To my knowledge the application was not advertised by the City as an OS-PUD. The applicant may have used that as a comparison for the purposes of their presentation to the BOA, but I have not confirmed that.

In general the rest of your statements appear to be accurate, but I have not reviewed the files or spent time reviewing the meeting minutes or transcripts to confirm your statements about the advertising and accuracy of the legal descriptions.

*Juliet T. H. Walker, AICP
Planning Director
Planning Department
1 Junkins Ave
Portsmouth, NH 03801
(603) 610-7296
www.planportsmouth.com
Twitter: @PlanPortsmouth*

From: JAMES FERNALD [mailto:jmfernald@comcast.net]
Sent: Thursday, May 03, 2018 7:03 AM
To: Juliet T.H. Walker <jthwalker@cityofportsmouth.com>
Subject: Re: 996 Maplewood Ave

Dear Director Walker,

Thank you for taking the time yesterday to meet with me regarding my request for public records relating to the 996 Maplewood Avenue project. This email is just to document some of the topics discussed during our meeting. If you see any errors, or have any concerns, please contact me.

1. The Planning Department methodology for determining building coverage was based on that used for a lot in an SRB district, namely aggregate structure size divided by the total lot size.
2. Although the application was presented and advertised that this was an OS-PUD except for size, Planning Department did not use the building coverage methodology identified in the OS-PUD section of the Ordinance, even though it is more restrictive. This is because the variance was granted for more than one home in an SRB district.
3. The Planning Department recognizes that there are gaps in the Ordinance when it comes to multiple homes on a single lot.
4. Statements made during the November 29, 2016 TAC meeting in relation to the increase in building footprint were not due to a more stringent criteria for building coverage, but due to

concerns that the increase had deviated from what was presented to and approved by the Zoning Board of Adjustment.

5. Legal descriptions of projects can change and have been changed by the Planning Department in the past.
6. The legal description of this project, although identified prior to and/or during the November 29, 2016 TAC meeting, was not changed prior to publishing the legal notice for the December 15, 2016 Planning Board meeting. However, the plans reviewed by the Planning Board were the current site plans at the time of the meeting.

Public correspondence relating to building coverage/intensity that is not available to the public on the City's website will be made available to me by Friday, May 4th. I will swing by before noon to review.

Thanks again for your assistance.

Exhibit 18, p2

Regards,

Jim Fernald

1000 Maplewood Avenue

On May 2, 2018 at 1:30 PM "Juliet T.H. Walker" <jthwalker@cityofportsmouth.com> wrote:

The documents you have requested will be available for you to review on Friday. We are open from 8am to 1pm. Please come to the Planning Department and our staff will have them set aside for you.

Juliet T. H. Walker, AICP

Planning Director

Planning Department

1 Junkins Ave

Portsmouth, NH 03801

(603) 610-7296

www.planportsmouth.com

Twitter: @PlanPortsmouth

EXHIBIT 19

In The Matter Of:
BOARD OF ADJUSTMENT MEETING
In Re: 996 Maplewood Avenue

February 21, 2018

Duffy & McKenna Court Reporters, LLC



P.O. Box 1658 Dover, NH 03821

1-800-600-1000

603-743-4949 | 603-743-4952 (fax)

www.dmreporting.com

dmreporting@stenosearch.com (Scheduling)
camille@stenosearch.com (Billing/Production)

OUT-OF-TOWN DEPOSITIONS?



WWW.DEPOSPAN.COM

Duffy & McKenna
Court Reporters, LLC

DEPOSPAN'S TRUSTED LOCAL CONNECTION

Min-U-Script®

BOARD OF ADJUSTMENT MEETING

Held at

Eileen Dondero Foley Council Chambers

Municipal Complex, 1 Junkins Avenue

Portsmouth, New Hampshire

on

February 21, 2018 at 7:00 p.m.

Recorded Video

In Re: 996 Maplewood Avenue

Transcribed September 20, 2018

Transcribed by:
Camille M. Palladino-Duffy
NH LCR 105, RPR

DUFFY & McKENNA COURT REPORTERS

P.O. Box 1658
Dover, NH 03821-1658
(603) 743-4949
1-800-600-1000

APPEARANCES

Members Present:

David Rheaume, Chairman

Jeremiah Johnson, Vice-Chairman

Arthur Parrott

Peter McDonell

Christopher Mulligan

Peter Stith, Planning Department

Mr. Mulligan and Mr. Formella were recused.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

1 (Meeting already in progress.)

2 CHAIRMAN RHEAUME: So for this evening we
3 have six members who are present. We have
4 two members who are excused. Our alternate
5 Mr. Formella who will be sitting in on all
6 cases, except for the one that he'll be
7 recusing on, which is actually our next order
8 of business. We'll be going into old
9 business.

10 So we have two members who are recusing
11 for this, Mr. Mulligan and Mr. Formella will
12 be recusing, so there are only four sitting
13 members, so I'll read this into the record.

14 So our first old business case is case
15 12-1, the petitioner is James M. Fernald for
16 property located at 996 Maplewood Avenue.
17 The assessor plan is Map 219, Lot 4. Zoning
18 district is Single Resident B. The
19 description is an appeal from an
20 administrative decision regarding the
21 issuance of a building permit for Unit C
22 of the above property.

23 Who is here to speak on behalf of this?

1 Please come forward.

2 So I just want to remind you before we
3 get going, so with four members present a
4 quorum, our minimum vote is four. So you
5 would need to have all four of the sitting
6 members agree to grant your appeal for it to
7 be able to be granted. If we were to delay
8 this one week, we are meeting again, as I
9 indicated, on February the 27. Our
10 estimation, at this point, is that we would
11 have six?

12 MR. STITH: Six --

13 CHAIRMAN RHEAUME: Six voting members.
14 Again, you would still need to have four
15 voting members; however, that would give you
16 the ability to have two additional folks who
17 maybe disagreed with -- with you. I can't
18 guarantee one way or the other that would
19 affect the outcome, but I just want to make
20 sure that you understand the implications of
21 proceeding forward this evening instead of
22 waiting, really, not even a week. It's going
23 to be six days. So you would need to have

1 all four members concur with what you are
2 proposing.

3 So with that, I just want to make that
4 crystal clear to you before we proceed. It's
5 up to you.

6 A. Thank you, Mr. Chairman. I understand that
7 there are only four board members present who
8 can vote on the appeal, and I'm okay with
9 that.

10 CHAIRMAN RHEAUME: Okay. Please proceed
11 forward.

12 A. Okay. Members of the board, my name is James
13 Fernald I live at 1000 Maplewood Avenue and
14 I'm the appellant in this case.

15 996 Maplewood, boy, it's been quite an
16 adventure over the last 25 years. Flowers by
17 Leslie were great neighbors. And in 1997, I
18 spoke in favor of a variance to include a
19 bridal boutique which was denied.

20 In 2005, I spoke against a variance to
21 allow a change in the use to a chiropractic's
22 office and that was also denied.

23 Also in 2005, I spoke for the development

1 of the parcel into two residential dwellings
2 with a conservation easement. In my
3 presentation, I cited that the odd shape lot
4 was a hardship. The motion to deny was put
5 forth and the motion was stated that this
6 proposal was a major move against the Zoning
7 ordinance. It would be completely out of
8 character for the neighborhood, and there was
9 also no hardship.

10 The motion was seconded by another board
11 member who stated there is no hardship in the
12 land. The board voted 7-0 to deny the
13 petition.

14 At the time that decision was made, I can
15 remember thinking that there would only be
16 one building on this lot going forward.

17 Eleven years later, a developer brought a
18 proposal for five buildings on the lot with a
19 similar overall foot print to the 2005
20 proposal, and a driveway that actually
21 crossed the wetland buffer close to my back
22 yard.

23 In fact, two of the homes would be just

1 10 feet from my backyard. I was puzzled as
2 to why the board would even agree to here a
3 proposal that was substantially similar in
4 certain aspects and substantially worse in
5 others in the denied 2005 proposal. After
6 all, nothing in the neighborhood had changed
7 in 11 years.

8 I researched the ordinance and I
9 identified a lack of hardship: A density
10 greater than 1 to 3 homes per acre, and the
11 spirit of the ordinance. And I demonstrated
12 a lack of congruity with the character of the
13 neighborhood.

14 I spoke against the application in a
15 marathon zoning board meeting, which included
16 some 30 or so residents. This application
17 was denied.

18 A month later, the same developer was
19 back with an application for three buildings
20 on the lot. Three buildings is still more
21 than two, so again I was puzzled.

22 I dug deeper into the ordinance and, in
23 addition to density, I showed that there were

1 similar lots in the area that had similar
2 features in the land and could be developed
3 using the same rationale that this developer
4 was using, and that would add 13 more houses
5 in the neighborhood. So this lot really
6 wasn't unique.

7 I also showed that the character of the
8 neighborhood excluding nonconforming lots as
9 required by the ordinance would negatively be
10 affected, and I was really disappointed that
11 the application was approved.

12 A group of neighbors appealed the
13 decision to Superior Court, and I dug even
14 deeper into the ordinance to develop and
15 present and argument. After the
16 presentation, a lawyer reviewed my arguments
17 and identified that Fisher verses the City of
18 Dover applied.

19 In this case, the initial five building
20 proposal should have been reviewed by the
21 Zoning board prior to the meeting as a
22 threshold matter. Given it's substantial
23 similarity to the original 2005 proposal of

1 two buildings, the ZBA should have rejected
2 the five building application before the
3 marathon meeting even began, which would have
4 saved both the city and those speaking to and
5 for and against the application the
6 aggravation.

7 Another rational for Fisher versus the
8 City of Dover is that repeatedly having to
9 defend oneself against overdevelopment of a
10 lot with substantially the same or similar
11 variance applications a hardship on the
12 abutters and neighbors of a property.

13 We tried to bring this up to the court
14 after the appeal motions were heard, but we
15 were too late bringing this particular
16 argument to the court and the appeal was
17 denied. And we decided not to appeal to the
18 Supreme Court.

19 So I took a wait and see approach. I
20 knew from the ordinance research I had done
21 that the variance would stand for one year
22 and then expire. A year came and went and no
23 building permit was issued and the variance

1 expired.

2 A month later, however, excavation on a
3 lot began, and I decided to wait for the
4 building permits to be issued. I noticed
5 that the houses didn't look like what was
6 proposed in the variance. I knew that the
7 footprint had increased via work with the
8 Technical Advisory Committee, but it wasn't
9 suppose to be this big of an increase.

10 With changes to the plans since approval,
11 the total footprint is now on the order of 38
12 percent greater than what was granted in the
13 three building variance or 92 percent of the
14 rejected five building variance.

15 This increased building coverage
16 negatively affects the character of the
17 neighborhood and will also negatively affect
18 my property value.

19 So I dug into the Planning Board files on
20 line and I noticed a significant number of
21 discrepancies with the approvals, and I
22 decided to file this appeal.

23 It appears that the approval process was

1 not followed properly and that the variance
2 had expired prior to the issuance of a
3 building permit. Perhaps the discrepancies
4 that I've raised are minor and that the
5 intent of the ordinance was followed. But
6 the number of discrepancies and its impact on
7 the neighborhood and my property is a
8 concern. And I request that the ZBA grant my
9 appeal.

10 I assume you all have a copy of the
11 appeal that I filed, so I'll just review that
12 quickly. So the first point that I'm making
13 is that pursuant to RSA Section 91-A:2 is
14 that the Planning Department did not give
15 proper legal notice for the public meeting
16 for approval of an application of three homes
17 with a 1938 square foot footprint and,
18 as a result, intentional or not, as a
19 resident and abutter, I did not have the
20 opportunity to speak to the revised plans
21 with the increased footprint.

22 A legal notice for the public hearing at
23 the -- on December 15, the 2016 Planning

1 Board meeting, Exhibit number 1, identifies
2 that the application is actually for 1696
3 square feet. The plans presented at the
4 Planning Board meeting, Exhibit 2, identify
5 three homes with a 1938 square foot
6 footprint.

7 There was no record in the legal notice
8 of any application for three homes with a
9 1938 square foot footprint. My rationale is
10 that, you know, the variance was granted in
11 August and allowed three homes per lot in the
12 SRB district. As part of the presentation,
13 the developer presented plans and information
14 on three homes and those plans and
15 information identified one large home located
16 in the front of the lot and two smaller in
17 the rear of the lot averaging about 1500
18 square feet.

19 During the ZBA hearing on the variance
20 application opponents argued that the
21 intensity of land use was too extreme for the
22 developable area of the lot and constituted
23 overdevelopment, and that this application

1 was not in keeping with the character of the
2 neighborhood.

3 Pursuant to Article 2, Section 1035 --
4 10.235 of the, ordinance representations made
5 at public hearings or materials submitted to
6 the board by an applicant for special
7 accepting a variance concerning features of
8 proposed buildings, structures, parking or
9 uses which are subject to regulations shall
10 be deemed conditions upon the special
11 exception or variance.

12 For Article 1, the purpose and intent of
13 the ordinance is to regulate the intensity of
14 lands use. Therefore, significant changes to
15 intensity and land use and open space would
16 directly affect the conditions upon which a
17 variance is granted.

18 At the October 4, 2016 Technical Advisory
19 Committee Meeting, plans were presented
20 indicating three homes with a 1696 square
21 foot footprint. I reviewed those plans prior
22 to the meeting and I provided comments to the
23 Planning Board because I could not attend.

1 I did not address the increase in
2 footprint as I assumed that the increase was
3 just part of the plus or minus tolerance
4 associated with the development. You know,
5 plans change, I understand that. It
6 represents about a 15 percent change, which
7 is a little extreme, but I decided not to
8 object to that. I decided to wait until the
9 building permit was issued to identify any
10 additional concerns.

11 After the building permit was issued and
12 I reviewed the plans, I was greatly surprised
13 by the magnitude of the change in the plans.
14 The 1938 square foot plan represents a 30
15 percent increase in footprint over the
16 application that was presented and advertised
17 by the Zoning Board meeting. And it's well
18 outside any reasonable tolerance associated
19 with the legal notice.

20 This additional footprint is essentially
21 equivalent to an additional home. So instead
22 of three homes, we actually have four homes,
23 kind of.

1 Changes to the site plans represent a
2 significant increase in density that is not
3 in keeping with the character of the
4 neighborhood and I firmly believe it is not
5 in keeping with conditions of the variance.
6 There is sufficient justification to
7 challenge this increase against the as
8 presented and advertised variance approval.

9 Had I been notified of the changes in the
10 plans by the legal notice, I would have
11 spoken all of this at the Planning Board
12 meeting on December 15, 2016.

13 My second argument is that pursuant to
14 ordinance, Article 2, Section 10.221.30 that
15 no building permit may be issued until all
16 the required local approvals have been met,
17 included but not limited to site plan
18 approval.

19 The Planning Department did not properly
20 review or approve site plans for the
21 construction of three homes with a 1938
22 square foot footprint.

23 Also, the Technical Advisory Committee

1 did not recommend an approval of site plans
2 for the construction of three homes with a
3 1938 square foot footprint.

4 There were significant question as to the
5 weather the Planning Board voted to approve
6 site plans for the three homes with a 1938
7 square foot footprint at Maplewood Avenue.
8 Evidence in the public record of the project
9 indicates that agendas, meetings, action
10 items, minutes and approvals revolved around
11 site plans with a 1696 square foot footprint.
12 And I've listed below all of the documents
13 that referenced the 1900 -- excuse me, the
14 1696 square foot footprint, and those are all
15 on the web site and/or part of the record on
16 file with the city.

17 Included in those documents is a
18 recommendation for approval from the TAC
19 Committee in the Planning Board, as well as
20 the Planning Board approval of the plans.
21 They both list 1696 square feet.

22 Based on the information -- if the
23 approval lists the square footage of 1696

1 square feet, then the building permit cannot
2 be issued because the plans actually
3 submitted are now for 1938 square feet.

4 The third issue. Pursuant to the
5 ordinance, Article, Section 1020 -- 10.221.
6 30, no building permit may be issued until
7 all required local approvals have been met
8 but not limited to variances.

9 The variance originally granted to
10 construct three homes on one lot has expired.
11 Therefore, the issuance of the building
12 permit is in violation of the ordinance.

13 Variance was granted to the board on
14 August 16, 2016, which allowed three homes
15 per lot in the district where one is
16 required.

17 The revision of the ordinance at the time
18 of the variance was dated July 11, 2016. In
19 this version of the ordinance, it states
20 variances and special exceptions shall expire
21 until a building permit is obtained within a
22 period of one year from the date granted.
23 The board may for good cause shown extend

1 such a period by as much as one year if such
2 extension is requested and acted upon prior
3 to the expiration date. No other extensions
4 may be requested.

5 Building permit for the first house was
6 issued on November 15, 2017. Three months
7 passed the one year deadline. Also as of
8 November 15, 2017, there was no record that
9 any exception was requested on the variance.
10 Therefore, since the term of the variance
11 expired and no exception was granted, the
12 Planning Board cannot issue a building
13 permit.

14 Thank you. Any questions?

15 CHAIRMAN RHEAUME: Okay. Thank you.
16 Questions for the applicant? Appellant, I
17 guess in this particular case. No?

18 All right. Thank you very much. I
19 appreciate it.

20 A. Okay.

21 CHAIRMAN RHEAUME: Now we'll open up the
22 public hearing. Is there anyone here to
23 speak in favor of the petition, that is to

1 say in favor of the appeal being granted?

2 Please come forward.

3 A. Good evening. Francesca Marconi Fernald. I
4 reside at 1000 Maplewood Avenue direct
5 abutter to 996 for the last 25 years.

6 I'm gonna kind of speak rather freely.
7 Today's Portsmouth Herald's page A3,
8 "Drainage study delays downtown development."
9 Very interesting article. Just goes to show
10 there may be some inconsistencies in some
11 things, and I'm going to leave that there.

12 Since construction began, I've had to
13 deal with construction starting prior to 7
14 a.m., equipment incursions on my property
15 without permission, some of which is still
16 occurring five months later. Damage to my
17 property, blocked access to my property, a
18 rodent problem, which I cautioned against
19 during the first TAC meeting, and some public
20 safety issues.

21 That point just shows that there may be
22 too much development on that lot if they
23 can't contain their construction vehicles. I

1 understand vehicles come and go, cement
2 trucks come and go, but the fact that my
3 driveway is blocked and I call Code
4 Enforcement, they tell me to call the police
5 department. It didn't sit too well with me.

6 A review of the site plan shows that on
7 site inspection performed by the soil
8 scientists occurred in the middle of a 70
9 year drought. Many residents with first-hand
10 knowledge of the wetland conditions of the
11 property raised significant concerns about
12 development too close to the pond, which is
13 the drainage issue that I made reference to.

14 After the permit was issued and
15 excavation began, I watched as Unit B's eight
16 foot foundation hole became a swimming pool
17 after a solid rain. It's a spring fed pond
18 out back. We know there's a lot of water out
19 there. There just happened to not be water
20 when the scientists were out there.

21 Two weeks later that pool was -- still
22 had four feet of water in it. Two weeks --
23 yeah, two weeks, and they filled it in a

1 little bit because, in order to do
2 construction on the rest of the lot since
3 they raised the bottom of the foundation
4 partially by filling in the hole.

5 The last week we poured the footing and
6 foundation for Unit B and have been pumping
7 water nonstop. I didn't understand what the
8 little noise was that I was hearing out
9 there. There's a lot of rustling around that
10 goes on at night due to the animals out
11 there, so I don't -- I don't go out into the
12 dark out there because I don't know what's
13 out there. Figured out it was a pump in the
14 foundation hole and it was pumping out which,
15 to take the water out of the hole that they
16 are working in, but it's draining out back
17 into the field which is leaching into the
18 pond.

19 As of today, I noticed that that had been
20 fixed. I don't know if somebody came out and
21 inspected that or whatever. They made some
22 changes. There's some black plastic that the
23 water pumps into before it goes out into the

1 field now and then there into the pond.

2 My concern there is with caustic elements
3 that are in the cement that are pouring --
4 they are pouring, you know, the crushed stone
5 is coming in from off site, everything is
6 come in from off site, construction
7 materials, what's leaching into the pond?

8 There were -- there was already a new
9 home built over on the Woodbury Avenue side
10 and that has a lot of water issues because,
11 again, it's a spring fed pond there. Those
12 of us that have lived around there a little
13 while know where the water is and where it's
14 coming from and where it needs to go and we
15 all kind of leave it alone and let it do its
16 thing naturally.

17 I just hope that the owners of those
18 units don't have the same problem that
19 Woodbury Avenue did.

20 I recommend that the development on the
21 property be suspended until a new inspection
22 by the soil scientists is performed and the
23 impact of pumping water into the wetland

1 buffer be evaluated.

2 This is the first time in 25 years that
3 I've been there that there have been no
4 Canadian geese that over wintered. There's
5 been no nesting and there have been no babies
6 born. Very unusual. Normally, there's a
7 family, I call them a family of geese that
8 stay there all winter. They nest in the
9 summer, have their babies, everybody flies
10 off and then they come back again. Nothing
11 this winter.

12 In closing, I'll say that I'm not
13 anti-development. I just think that that
14 happens to be over development. If there
15 were two houses on that piece of property, I
16 would have been okay with it. I just -- I
17 just think that it has changed my way of life
18 where I live. It impacted my home and my
19 daily routine and it's just, on the emotional
20 side of it, I think it's just a little bit
21 too much, and I thank you for your time.

22 CHAIRMAN RHEAUME: Thank you.

23 Appreciate it.

1 CHAIRMAN RHEAUME: Anyone else here to
2 speak in favor of the petition?

3 A. Good evening. My name is T. Jean O'Brien. I
4 live at 13 Fairview Drive. I'm a direct
5 abutter to this property.

6 First of all, I was not notified about
7 this meeting. I had no indication. It was
8 just verbally.

9 Secondly, I do have a Terminex problem.
10 I've had to have Terminex come in first time,
11 and I've been there 58 years. Also, for the
12 first time in 58 years the wild Canadians are
13 not on the pond. I fed them. All babies,
14 next year they'd come back as grownups, bring
15 their babies. I fed them. It's not safe
16 there anymore. They are -- it was a quiet
17 place where they were safe and it's -- it's
18 disturbed, everything going on.

19 This is a natural springs there. That
20 water went down to the fish pole, gold fish
21 pond of the Frank Jones estate. Maybe you
22 people don't know anything about that. That
23 was there for years. It's on the corner of

1 Fairview Drive. There were two new houses
2 put in down there. Everybody has water, and
3 they are gonna have water. The water table,
4 it's -- you can't interfere with the way the
5 water goes.

6 That's my objection. That they are over
7 building. The buildings are too big, and
8 it's destroying the neighborhood. Thank you.

9 CHAIRMAN RHEAUME: Okay. Thank you.

10 Anyone else to speak in favor of the
11 petition?

- 12 A. Good evening. My name is Zoe Stewart. I
13 live at 8 Fairview Drive. I'm really
14 concerned about the water being pumped out of
15 those homes into that pond. When this
16 project was first proposed, there was lots of
17 talk about the pond and protecting it. And
18 there was mention of maybe this land around
19 the pond going into conservation. That was,
20 I think stipulated as part of the whole
21 process. I'm not sure if that was ever done,
22 but if that pond is indeed in conservation
23 land, then it's illegal to pump water out of

1 a basement into a property that belongs to
2 conservation, just can't be done.

3 And I'm also concerned about the
4 incredible infestation of rodents in the
5 neighborhood. I've had people come in. I've
6 set Have a Heart traps, I've poisoned. I've
7 had -- in one week I took out seven rats, 3
8 vols and a shrew. And I tell that to people
9 and people haven't heard of shrews. That's
10 because they don't come out. We don't see
11 them. But you look them up and they are
12 viscous. So I'm being subjected to vicious
13 animals living in my basement. That's not
14 okay. That's not okay for our neighborhood.

15 And I think when you start to build, you
16 know, and I think they came in with a
17 presentation, we'll put five houses and
18 everyone well that's too many. Well, then
19 we'll just put three. Oh, that's great.
20 It's so much better. How about one, which is
21 what it was zoned for?

22 I personally built a house at 960
23 Maplewood Avenue. I never claimed that the

1 land was hardshipped. It's a big lot. I put
2 one house on it. And I was very lucky to
3 live in a beautiful house on a beautiful lot.

4 I'm concerned that we're overdeveloping
5 this land. It's adversely impacting the
6 neighborhood, and I think two houses on that
7 lot are plenty. Thank you.

8 CHAIRMAN RHEAUME: Thank you. Anyone
9 else to speak in favor? Okay.

10 Anyone to speak in opposition? That is
11 to say that believes that the appeal should
12 not be granted.

13 A. Yes. Thank you, Mr. Chairman. Tim Phoenix
14 from Hoefle Phoenix Gormley & Roberts in
15 Portsmouth. I'm here tonight on behalf of
16 Chinburg Development, LLC who is the
17 developer of the project. With me tonight is
18 Paul Carrigan of Chinburg Development.

19 The first thing I'd like to say is to
20 thank the Fernalds for agreeing to go forward
21 tonight. This project on this Building C as
22 it's called has been delayed now for about
23 three months, so we'd like to move the matter

1 forward. So we do appreciate their doing so.

2 The second thing I'd like to say is that
3 the comments of the neighbors, which I
4 respect, disrespectfully is not the forum for
5 their concerns about water and those other
6 things. This is about the issuance of a
7 building permit and the history leading up to
8 the issuance of that building permit.

9 So the issues about water and the other
10 things that have been mentioned are more
11 properly dealt with in another forum.

12 So to go through the history of this
13 matter, and I represented the former
14 developer Lorax who was under contract to
15 purchase. Lorax got the initial approvals
16 and then turned the project over to Chinburg.

17 So on August 16, 2016, this board granted
18 the variance request. We needed a variance
19 request for more than one home on a lot, and
20 there were three, as you know and as has been
21 stated, a previous application was for five.
22 We came back for three. Based in part upon
23 comments of the board member on the five

1 that, perhaps, a lesser number, three or so,
2 would be acceptable.

3 The neighbors appeared at that and made
4 whatever arguments they wanted to make and
5 the Zoning Board agreed to grant the variance
6 to allow the three buildings on one lot.

7 It's important to note that no variance
8 was required so none was requested for the
9 size of the buildings, and that gets a little
10 more important later.

11 So, but subject to an appeal, all of the
12 appeal rights with respect to the variance
13 would have expired in -- on September of
14 2016. Well, the Fernalds, as well as some
15 other neighbors did appeal to the Superior
16 Court, and by a final decision was on May 31
17 of 2017 where their appeal was denied.

18 And that, therefore, the decision on the
19 variance became final 30 days after the
20 original decision. So there's no issue about
21 appealing variances at this time.

22 After that, after the variance was
23 granted, Lorax went to TAC. It is true that

1 the original application was for 1610 square
2 feet, and that the notice said that. But
3 through the TAC process, which included at
4 least one public hearing for which abutters
5 were noted -- notified, the building
6 footprint changed to the present 1938 square
7 feet, which is the basis of the subject
8 of the appeal for Unit C.

9 It's important to note that no further
10 review of the footprint size was required.
11 You've probably all read the staff report on
12 this. It was probably issued before the
13 January meeting, but I have the report dated
14 February 21, and I'm going to read a part of
15 it. It says, "In the original application as
16 submitted to the BOA, the square footage of
17 each unit was originally estimated as 1696
18 square feet."

19 And it was estimated. In the original
20 submission it said, the final design, these
21 are estimates only. The final design to be
22 determined. That's me talking, not the staff
23 memo.

1 Continuing the staff memo, "And the site
2 plan approved by the Planning Board
3 identified each unit as approximately 1938
4 square feet. In both cases, the application
5 complied with all applicable density and
6 dimensional requirements of the zoning
7 ordinance. The only nonconforming aspect
8 of the proposal was the three free standing
9 single family dwellings on one lot, which
10 became conforming based upon BOA approval."

11 The memo goes onto state, "The Planning
12 Department does internal consistency reviews
13 throughout the permitting process and while
14 the final architectural design and footprint
15 changed, which was the addition of a garage
16 underneath, shorter and wider footprints" --
17 and, by the way, these buildings are shorter.
18 The originally approved ones were taller
19 above the ground.

20 "The overall proposal was found to be
21 consistent with both the BOA's and the
22 Planning Board's approvals. If that had not
23 been the case, the applicant would have been

1 advised to return to the BOA for a new
2 variance and to the Planning Board for an
3 amended site plan review."

4 So that's where the planning staff stands
5 on it. The planning -- the TAC recommended
6 the 1938, the plans showed 1938, but there
7 wasn't -- there was a mistake in the notice
8 that said 16 -- whatever, the 1636, 1696
9 square feet. But, again, the Planning Board
10 held a public hearing on this at which
11 abutters were notified.

12 And the law is pretty clear that the
13 purpose of the notice is to advise an abutter
14 or a neighbor that their rights might be
15 affected and, therefore, to check it out.

16 So although there was the typographical
17 mistake of showing the original 1696 square
18 feet, there was certainly enough going on
19 here and Mr. Fernald has said, he was paying
20 pretty close attention to this for him to
21 come -- be present at any meeting, review any
22 minutes, and determine for himself that the
23 1938 was approved, both at TAC and at

1 Planning Board after a public hearing.

2 CHAIRMAN RHEAUME: I'll need to just stop
3 you there. Your five minutes are up. But
4 you are more than welcome to come back up
5 during the, to, for or against period, if you
6 have additional thing you want to say.

7 A. I do.

8 CHAIRMAN RHEAUME: It's out of fairness
9 to the public, and you can ask, do you have a
10 question at this point?

11 MEMBER JOHNSON: Just a couple of quick
12 questions.

13 CHAIRMAN RHEAUME: Okay.

14 MEMBER JOHNSON: I just want to
15 understand something that you said in the
16 beginning and something in the literature.

17 Is the claim that the change in square
18 footage was TAC driven, or was it an owner
19 driven decision?

20 A. It was owner driven.

21 MEMBER JOHNSON: Okay. And so you
22 don't -- you don't disagree with the
23 statement that, although the representative

1 footprint of each building differed from
2 Zoning Board approval to Planning Board, TAC
3 and Planning Board presentation, it was
4 improperly advertised; is that true?

5 A. The square footage on, at least one, maybe
6 more, did carry the 1696.

7 MEMBER JOHNSON: Okay. Just wanted to
8 clarity. I mean, I understand what you are
9 saying about it's on the abutters. It's --
10 the weight is on the abutter to monitor, you
11 know, they are notified that there is a
12 meeting, but I -- it would seem rather
13 difficult to be precisely monitoring the
14 progress of a project if it's incorrectly not
15 -- if it's legally notified incorrectly.

16 I mean, to me, part of what the approval
17 was for allowing the three dwelling units
18 would certainly -- there was no density
19 requirement or no density variance requested,
20 but it would be hard to deny that when you
21 are trying to pick and choose the amount of
22 units that are going to be allowed on a site
23 that the size of those units, you know, if

1 the original proposal had been for three,
2 5,000 square foot houses, I have a hard time
3 believing that it would have passed because
4 it would have -- I mean, you show three,
5 5,000 --

6 CHAIRMAN RHEAUME: Is there a question
7 there somewhere?

8 MEMBER JOHNSON: Yeah, sort of, yeah.

9 CHAIRMAN RHEAUME: Before we get into --
10 A. Would you like my to try to address that now
11 or --

12 MEMBER JOHNSON: No, the two questions I
13 had, you answered. Okay.

14 A. Okay. So sit down and come back?

15 CHAIRMAN RHEAUME: Yep. I apologize, but
16 if there is somebody else that wants to speak
17 and they have to rush home, I just want to be
18 fair to all of our --

19 MEMBER PARROTT: David, I do have a
20 question for Mr. Phoenix.

21 CHAIRMAN RHEAUME: All right. Just
22 quickly.

23 MEMBER PARROTT: In your presentation you

1 are glossing over this increase which, to my
2 mind, is a fairly large increase. This is
3 not the plus or minus stuff that we deal with
4 all the time. Is it your position that that
5 was just a minor thing that happened and just
6 wasn't of much significance going from 16
7 plus 1700 to over 1900?

8 A. That's about between 13 and 14 percent
9 increase, but it's also a shorter building.

10 MEMBER PARROTT: No, no, it's a lot
11 bigger, 16 --

12 A. I'm not saying that's it's not--

13 MEMBER PARROTT: No, 1696 to 1900 is a
14 whole lot bigger than 13 or 14 percent.

15 A. If you -- if you take 1938 and subtract from
16 it 1696, that's 242. If you divide that by
17 1696, it's 14.2 percent.

18 MEMBER PARROTT: It's -- all right.

19 A. About 200 and some odd square feet.

20 MEMBER PARROTT: Is it your position
21 that's a minor change out of the -- out of
22 the eyes of the public?

23 A. It's my position that it is -- it was found

1 to be appropriate by TAC, and it was found to
2 be appropriate by the Planning Board. I
3 don't know that I would consider it minor. I
4 don't consider it major. What I -- I
5 consider it to be within the realm of what's
6 reasonable as reviewed by your Planning
7 Department staff and approved without the
8 need for coming back to this board.

9 MEMBER PARROTT: So -- all right. So TAC
10 can go ahead and change something to that
11 degree, in your view, that already been
12 approved by this board and that's okay?

13 A. Absolutely, that's okay, and that's what your
14 planning staff has determined.

15 MEMBER PARROTT: That's okay by you?

16 A. Yes.

17 MEMBER PARROTT: Okay. All right. I
18 disagree, but that's all right.

19 A. Okay.

20 CHAIRMAN RHEAUME: Thank you. We'll --
21 again, they'll be another opportunity for
22 speakers on both sides.

23 Is there anyone else here to speak in

1 opposition? Please come forward. Okay.

2 Anyone here to spoke to, for or against?

3 Could be the pro or con.

4 A. Hi. Jim Fernald, 1000 Maplewood Ave. I'm
5 back again. As far as the legal notice of
6 discussion goes, during my presentation and
7 the points brought up by Mr. Phoenix, in the
8 letter of objection to his appeal, the
9 developer states that, During the TAC review
10 process, the public hearing for which
11 includes abutter notices, Lorax changed the
12 layout of the proposed dwellings resulting in
13 an increased footprint of 1938 square feet
14 for each dwelling.

15 At the time of the public hearing, which
16 included abutter notices, site plans actually
17 identified a footprint of 1696 square feet.
18 The change to 1938 square feet happened after
19 that TAC meeting, okay?

20 Also in the letter of objection to the
21 appeal, the developer claims that the appeal
22 is unwarranted. The developer also states
23 that you the notice regrettably did not list

1 the original 19 -- 1696 square foot footprint
2 which appears to have been carried through
3 from the initial filing; however, the purpose
4 of the notice is to give the reader a
5 reasonable warning that his interest may be
6 affected.

7 The developer further states that,
8 indeed, the inclusion of the plus or minus
9 would have informed a reasonable reader that
10 the footprints could change.

11 The developer also states that during the
12 TAC review process public hearing for which
13 includes -- I read that. Sorry about that.

14 As the developer has demonstrated, my
15 arguments against the proposal have focused
16 on the intensity of development. I don't
17 disregard that. I reviewed the plans
18 containing the 1696 square foot footprint at
19 the time of the first TAC meeting. The
20 record shows, it's actually in the record
21 that I couldn't attend the meeting and I
22 actually e-mailed comments to the TAC Board.

23 Those comments revolved around

1 landscaping issues that I had. Trees a
2 little bit too close to my property line and
3 could they be moved or shortened or spaced
4 out a little bit differently.

5 I looked at this increase from the
6 original proposal that was presented during
7 the meeting requesting the variance, and I
8 noticed that the increase from 1501 square
9 feet, which was for a one large building and
10 two smaller buildings up to the 1696 square
11 foot footprint was about a 15 percent
12 increase, and I said okay. I'm going to give
13 the developer and the TAC the benefit of the
14 doubt and they moved things around and
15 they've expanded things and 15 percent seems
16 a little bit unreasonable, but it's not
17 within the realm of possibility, okay.

18 My review of the site plans indicated
19 that where presented and advertised variance,
20 one large building in front and two in the
21 back, I actually did the math and I made the
22 decision not to object to this change. I
23 said, okay, let it go.

1 The exhibits I presented show that the
2 subsequent filings, including the legal
3 notice, they all list the 1696 square foot
4 footprint. In justifying that reasonable
5 warning was given, the developer cites
6 Bradley versus the City of Manchester in his
7 letter. And I actually had to look that up.
8 And he's correct. It says that the wording
9 doesn't have to be exact but it does have to
10 give reasonable warning that -- let me get
11 the right wording here -- "sufficient to
12 apprise those interested in proposed
13 changes."

14 Okay. So it does that. Hey, changes or
15 coming, but if I had reviewed the site plans
16 back at the first TAC meetings and the square
17 footage was 1696, and then I see the legal
18 notice and it still says 1696, if my main
19 objection to any increase in development was
20 the footprint area, I would say, it didn't
21 change. I don't need to go. I don't care if
22 they need to move water lines or they need to
23 change the wetland buffer or they are going

1 to turn the building sideways or stick a
2 garage in or make them, you know, two stories
3 or one story instead of three stories. I
4 don't care about that. The footprint hasn't
5 changed. So I didn't attend. Absolutely
6 right.

7 And I didn't object to that because I
8 didn't attend because I thought the buildings
9 were 1696 square feet based on all the work
10 I'd done. So I think it is unreasonable to
11 assume that if the legal notice says one
12 thing, but the actual plans say another
13 thing, that I've had my fair warning and it's
14 reasonable.

15 For example, the actual change to 1938
16 square feet from the original square footage
17 footprint presented during the variance --
18 the Board of Adjustment meeting where the
19 variance was granted is actually a 30 percent
20 increase over the intensity of land use
21 during the -- during the variance.

22 If property taxes were scheduled to go up
23 by 15 percent and they actually went up 30

1 percent, do you think this room would be
2 filled with people complaining to the city?
3 Absolutely.

4 If someone's salary was cut by 15 percent
5 without warning, any reasonable employee
6 would question this as well. So I'm focusing
7 on the square footage because it is important
8 to me, and I made a decision based on what
9 was advertised by the city, intentional or
10 not, that the square footage hadn't changed.
11 So that was my reason for not attending.

12 Any reasonable reader of the legal
13 notice, having previously reviewed the site
14 plans identifying the 1696 square foot
15 footprint, would conclude that while the
16 details may have changed, the footprint did
17 not. By omitting the change to the
18 footprint, the notice did not adequately
19 apprise me of the proposed changes and failed
20 to provide reasonable warning as stated in --
21 let get it right here -- Bradley versus the
22 City of Manchester.

23 The intent of this argument is not to

1 relitigate the issue of footprint size, but
2 to show that there was reasonable and valid
3 arguments that could have been made at the
4 Planning Board meeting if the legal notice
5 was correct.

6 Lastly, based on the current site plans,
7 believe it or not, the actual footprint
8 increased from the presented and advertised
9 variance now stands at 44 percent.

10 If you do the math, on the Planning Board
11 review document that is attached to the
12 latest building permit, the math works out to
13 over 2100 square feet per building. so we've
14 gone from 1501 to over 2100. So that's a 44
15 percent increase, plus or minuswise, that is
16 unreasonable.

17 I wonder, if the Board of Adjustment had
18 known that the size of buildings would
19 increase by 44 percent, would they have
20 approved three buildings or would they have
21 suggested two of that size, or would they
22 have put a limit on the intensity of land
23 use? Thank you.

1 CHAIRMAN RHEAUME: Thank you. Any
2 questions? I actually have one question for
3 you, if I could?

4 A. Sure.

5 CHAIRMAN RHEAUME: So I think you talked
6 a little bit earlier about your waiting for
7 the building permit to be issued before you
8 wanted to make an appeal. Could you just go
9 over that again, what your thinking was in
10 regards to that?

11 A. Sure. When I first reviewed the site plans
12 that were available for review for the first
13 TAC meeting, my concern was intensity. So I
14 looked at the building layout and I noticed
15 that the building layout had changed. Some
16 buildings had turned sideways a little bit
17 for the driveways and there was discussion
18 about fire truck access and how they were
19 going to get something in, and there was talk
20 about the wetlands and how those were going
21 to be protected, and that really didn't
22 concern anything I had.

23 And I looked at the original proposal and

1 I looked at the revised plans which now said
2 16 -- or the difference between the
3 presentation made during the ZBA meeting and
4 what the TAC plans showed, and I said, okay.
5 15 percent, 14.2 percent, I can live with
6 that. It's not a dig deal, you know.

7 And I just decided to wait because
8 everything seemed to be okay. Everything
9 moved along. They got approved. I said
10 okay, the buildings are that size.

11 When they actually started digging the
12 ground, I noticed the size of the holes and I
13 saw the foundation for the first building go
14 in and I saw them put the floor on and I saw
15 the size of the first building, and I went,
16 what is up with that?

17 So that's what drove me to go down and
18 look at the actual site plans that were
19 approved by the Planning Board and that's
20 what started this whole ball rolling.

21 CHAIRMAN RHEAUME: Okay. Thank you. I
22 appreciate that.

23 MEMBER MCDONELL: Can -- can --

1 CHAIRMAN RHEAUME: Oh, I'm sorry. Mr.
2 McDonell --

3 MEMBER MCDONELL: Can I ask one question
4 just to follow-up on that. So -- so, you --
5 I just want to make sure I understand. You
6 saw the Planning Board approval, you realized
7 it was 1938 square feet per dwelling unit at
8 that time and said 14.2 percent, I can live
9 with that --

10 A. No.

11 MEMBER MCDONELL: Okay. I'm missing
12 something.

13 A. Let me just rewind a little bit. During the
14 presentation made by the applicant for the
15 variance, the information presented on the
16 size of the homes worked out to be about 1500
17 square feet per home.

18 MEMBER MCDONELL: Okay.

19 A. Okay. The variance was granted. It went to
20 TAC. The first set of plans that were
21 available for public review and comment from
22 TAC indicated 1696 square feet. At that
23 point, I did the math and said, okay, 1500,

1 1696, it's about 15 percent. It's a little
2 bit high for me, but I'm okay with that.
3 I'll let it go.

4 MEMBER MCDONELL: That's the difference
5 you are talking about seeing --

6 A. That's the difference I'm talking about.

7 MEMBER MCDONELL: -- and you were okay
8 with. Okay.

9 A. Every document after that, every agenda,
10 every meeting minutes, every legal notice all
11 said 1696 square feet. So as I'm looking at
12 the process going through, the footprint
13 hadn't changed. So that was my main concern,
14 so I decided not to attend the meeting by the
15 Planning Board. And the plans got approved
16 at 1696 square feet. That's what the
17 approval letter says, but the plans actually
18 say 1938.

19 MEMBER MCDONELL: Right. Yes, okay. I
20 understand. I was confused about what you
21 had said -- what change you had said you were
22 okay with, but I get it now.

23 A. Okay.

1 MEMBER MCDONELL: Thank you.

2 CHAIRMAN RHEAUME: Other speakers to, for
3 or against?

4 A. (Mr. Phoenix) I'm back. To follow-up on some
5 of the questions as we talked about, it's --
6 it's definitely the case that the notices had
7 the 1696 square feet. That was -- those were
8 issued by the city.

9 In my opinion, it's unfair to say the
10 originals were 1500 square feet and, standing
11 here today, I don't know what they were.
12 That hasn't been raised as an issue as far as
13 I'm concerned because Mr. Fernald has said
14 he's okay with the 1696. So we're talking
15 about the difference between that and the
16 1938, which the Planning Department staff
17 found was closer to 1910.

18 And I understand the argument that I saw
19 in the -- I saw in the notices that it was
20 1636 and I could live with that. To
21 Mr. Parrot's concern, I respectfully
22 disagree. I don't think this is that
23 significant and neither did your staff, but

1 the important thing is that, even if
2 Mr. Fernald believed that the 1696 was okay,
3 he has said that he's looked in this very
4 carefully. It seems to me that the prudent
5 person, even if they didn't attend the
6 meeting, would check the plans and check the
7 minutes and find out what was actually
8 granted so that he'd know whether he was okay
9 with the 1696 and there weren't any -- any
10 significant changes. He didn't do that.

11 He let that decision go. The Planning --
12 the Zoning Board decision was final,
13 appealed, became final when the Superior
14 Court denied it. The Planning -- the TAC
15 approval had the plans, were the correct
16 plans, the Zoning -- the Planning Board
17 approval had the correct plans and approved
18 1938 square feet.

19 And for the neighbor, for Mr. Fernald not
20 to check that and instead wait to see what
21 happens and he said himself that he waited
22 until he learned about what was going on and
23 then decided to wait until the building

1 permit was issued.

2 Well, before the building permit was
3 issued in, I think October, the foundation
4 permits were issued and then he said he saw a
5 foundation going in. And so, if he saw a
6 foundation going in, he didn't appeal that.
7 He saw a foundation going in and decided to
8 wait for the building permit.

9 And then by the time that he appealed
10 this building was up. The last exhibit in my
11 submission shows that it's up. It's framed,
12 it's everything.

13 So in reliance upon what's happened at
14 the Zoning Board and the Planning Board
15 level, and in reliance upon dealing with your
16 staff, your Planning Department staff who
17 said the changes to 1938 square feet were
18 okay and did not require us to come back
19 here, it's unreasonable and unfair at this
20 last date, almost a year to a year and a half
21 after all of these approvals were granted, to
22 now come in on the technicality of a building
23 permit after a foundation permit has already

1 been issued, the foundation poured, and he
2 said he saw the first floor going on to it,
3 to then appeal the technical issuance of a
4 building permit, particularly when it's up.

5 He makes three arguments: That the
6 Planning Board erred by granting approval of
7 three dwelling units with a greater footprint
8 than presented to the ZBA; 2. That the
9 Planning Board's public notice inadvertently
10 identified the 1696 that's been the focus of
11 this discussion, and that the variance
12 approval expired.

13 Well, the first two relate to the
14 Planning Board's December 15, 2016 site plan
15 approval, which he didn't appeal. The state
16 statute, RSA 677:15 is a very clear that if
17 you disagree with a decision of the Planning
18 Board, you have 30 days to appeal it. And
19 the case law says that compliance with the 30
20 day filing deadline is strict compliance is
21 required.

22 So the failure to go back and check what
23 happened at the meeting when he was okay with

1 1696 to find out that it changed, is on him
2 and should not be on this applicant who is
3 now relied upon everything and put the
4 building is pretty much up.

5 The claim that the variance expired prior
6 to the issuance of the building permit for
7 Unit C is also invalid. It was granted --
8 the ZBA was granted on August 16, 2016. And
9 at the time, it is true, that the ordinance
10 said that variances would be valid for one
11 year, but in early 2017 in compliance with
12 the state change to the 2-year requirement,
13 the zoning ordinance changed and we got the
14 benefit of that two year period.

15 More importantly, the reason for the
16 delays was primarily due to Mr. Fernald's
17 appeal. That delayed everything by about
18 nine months, from August to the end of May of
19 2017. So, really, the decision of the Zoning
20 Board or the Planning Board -- the Zoning
21 Board in this case, did not become final
22 until that appeal was over. So that's when
23 the period would start to run. So even if it

1 is one year, it would be -- we would have
2 until sometime in 2018 to appeal.

3 And to -- commonsense tells that that
4 make sense because if it's not the case, if
5 we can't rely upon the new statute or we
6 can't rely upon the tolling of the time
7 period while there's an appeal pending, then
8 element any project that requires variances
9 could be stopped by any neighbor because if
10 you go -- if you do an appeal, it takes
11 somewhere around 9 or 10 months to get to
12 Superior Court. Then you got to wait for two
13 or to three months sometimes for a decision.
14 Then you got to go to appeal it to the
15 Supreme Court, which is another year.

16 So to say that it's untimely because we
17 didn't get a building permit within a year of
18 that granting is just incorrect and unfair.

19 And I want to bring you back to the
20 reason we needed variances in the first
21 place. It was not building size. The
22 Planning Board has the -- within its purview
23 the right to make adjustments. And I dare

1 say that it has the right to make adjustments
2 to the plans approved by this board which
3 were, I'm saying 1696. That's what we are
4 dealing with. I don't know exactly what they
5 were at that time, but when the -- when the
6 approvals have been granted and we review it
7 with the staff and vet it with your staff and
8 the staff says you are okay, and we rely upon
9 that, and then put the building up, it's
10 totally unreasonable and unfair to say
11 because Mr. Fernald waited on his own -- on
12 his own admission, he waited until a building
13 permit was issued to do anything about it by
14 which time this building was up.

15 So, and I'll close with, and he cited it,
16 the Bradley case, it's in my filings as well,
17 "The purpose of notice is to give a reader
18 reasonable warning that his interests may be
19 affected." And while there was a mistake in
20 the size as it went forward from 1696 to
21 1938, he certainly was on notice that issues
22 were happening that affected him, and he had
23 the obligation to check out and make sure

1 that the final decision didn't affect him in
2 a negative way. And he should have appealed
3 that decision within 30 days after the the
4 Planning Board decision that granted the
5 1938.

6 Unless you have questions, that's all
7 I have.

8 CHAIRMAN RHEAUME: Yep. Mr. McDonell.

9 MEMBER MCDONELL: Thanks. I have -- so I
10 understand your point on that we can relying
11 on the passage of time from the site plan
12 approval and getting the building permit and
13 so on.

14 And I just want to make sure I understand
15 about -- I understand your argument about the
16 appeal of the issuance of the building
17 permit. It's not your -- well, tell me, is
18 it -- is it your position that you couldn't
19 appeal the issuance of a building permit or
20 that you can't appeal the issuance of this
21 building permit because the basis on which
22 the appeal is made is the -- was dealt with
23 in the site plan approval and an appeal of

1 that should have happened at some earlier
2 time.

3 A. If I understand your question correct, the
4 latter.

5 MEMBER MCDONELL: Yeah.

6 A. I'm not saying that somebody doesn't have the
7 right to appeal a building permit issuance.
8 That's an administrative act, and I think
9 anybody has the right to appeal an
10 administrative decision, whatever it may be.
11 I'm saying that, on the facts of this case,
12 that while he can appeal it and he has, the
13 appeal should not be upheld. Does that
14 answer your question.

15 MEMBER MCDONELL: Yeah, it does. Thank
16 you.

17 CHAIRMAN RHEAUME: Okay. Thank you very
18 much. Last opportunity for people to spoke
19 to, for or against, just briefly if we could,
20 please. I think we've heard a lot from
21 everyone, so we'll let you get a few more
22 words in.

23 A. Sorry for the delay. I'm an engineer. I'm

1 not a lawyer, so I don't have the gift of
2 brevity.

3 CHAIRMAN RHEAUME: It happens to the best
4 of us.

5 A. So just to expound upon a comment that
6 Mr. Phoenix made about relying on the
7 Planning Board staff in their ability to make
8 decisions and they are counting on that,
9 well, you know, what? So am I. I'm counting
10 on the Planning Board to accurately identify
11 the square footage of the building on every
12 single document. I can understand, you know,
13 if they screw it up, they'll catch the next
14 time, but the meeting minutes, the agendas,
15 the legal notice and the letter of approvals.
16 Why did I wait? Because the letter of
17 approval said 1696 square feet. The letter
18 of approval does not say 1938. So it is very
19 reasonable for someone to look at that letter
20 and say, up, okay, we're all set.

21 You know, again, if property taxes are
22 scheduled to go up 15 percent and the city
23 broadcasts that out to the world and they

1 actually go up 30 percent, do you think
2 people would be a little pissed off?
3 Absolutely. That's my point.

4 My point isn't to relitigate the square
5 footage of the building. It's to say, hey,
6 Board of Adjustment, if you realized that
7 these buildings were going to increase in
8 size by 44 percent -- remember, the actual
9 number as of today is over 2100 square feet.
10 It's not the 1938 that is on the plans that
11 were part of the site review site plans, and
12 it's not the 1696 in the approval letters.
13 It's actually over 2100 square feet.

14 If you knew that -- if you knew now -- if
15 you knew then what you know now, would you
16 still make the same decision? That's what
17 I'm asking for. And I'm asking for somebody
18 to review the whole process and say, hey, how
19 did this get so out of whack?

20 With respect to the expiration date
21 discussion, the developer cites that the
22 variance shall be valid for two years and
23 that the actual expiration date was -- it

1 should based be on the issuance of the final
2 judgement from the Superior Court during the
3 the appeal process.

4 Well, RSA 677.9 states that if a decision
5 is appealed to the Superior Court, which it
6 was, this action does not prevent the
7 applicant from utilizing the approval unless
8 the person appealing obtains an order from
9 the court restraining or preventing the
10 applicant from using the approval, okay.

11 So we appealed to the Superior Court.
12 The developer of his own initiative decided
13 not to do anything and wait for the appeal.
14 Okay. The clock doesn't stop running on the
15 expiration date for the variance. The
16 applicant is more than -- is more than
17 capable of proceeding. It's not at -- it's a
18 matter of law. They can -- they can do that.
19 They could have started working the day after
20 you guys granted them the approval.

21 CHAIRMAN RHEAUME: Mr -- quickly, please,
22 if you can.

23 A. The fact that the developer choose not to

1 develop the property until after the Superior
2 Court appealed does not extend the variance
3 period, and the application did not file for
4 an extension. And that's it.

5 CHAIRMAN RHEAUME: Okay. Thank you.

6 A. Thank you.

7 CHAIRMAN RHEAUME: Final opportunity
8 quickly.

9 A. (Mr. Phoenix) Well, maybe two sentences.

10 (Parties speaking over each other.)

11 A. I thought I heard Mr. Fernald say that
12 nothing showed the 1938. Exhibit 5 to my
13 submission is the December 19, 2016 decision
14 of the Planning Board in which, in the very
15 first paragraph, three sentences in it says
16 that 1938 square feet were approved.

17 And the only other thing I want to
18 comment is on the statute he cited about an
19 applicant may continue with the project.
20 That's an applicant continuing with the
21 project at its peril and virtually no
22 applicant that's got -- that's gonna spend
23 tens or hundreds of thousands of dollars in

1 construction is going to do that while
2 there's an appeal pending.

3 Everybody waits, which is what's happened
4 here. The project has essentially stopped
5 while this is determined.

6 In closing, this building's pretty much
7 up. I think that it would be a travesty,
8 frankly, on these facts. I respect
9 Mr. Fernald's concerns about the notice. I
10 wish they had all said 1938, we wouldn't be
11 hear probably, but it didn't. But he had
12 notice. As of December 16 -- December 19,
13 2016 he knew with a phone call or a trip over
14 here, knew what the size was and he did
15 nothing about it for nine or ten months when
16 the building was essentially up. Thank you.

17 CHAIRMAN RHEAUME: Thank you. Quickly,
18 please.

19 A. (Mrs. Fernald) I'm going to be really quick.
20 We do rely on you guys to protect us. You
21 are part of the government and I realize
22 that. Your job is an attorney and that is
23 your job to look --

1 CHAIRMAN RHEAUME: And please speak to
2 the board, okay.

3 A. Look into every detail, and I understand that
4 and I'm a little frustrated this evening and
5 I apologize for that. So if a mistake is
6 made everyone makes mistakes. No one is
7 perfect. And a mistake is made and the
8 building is up, oh, too bad for you.
9 That's -- that is is how I feel this evening.

10 CHAIRMAN RHEAUME: Okay. Thank you.

11 A. Thank you for your time and I apologize --

12 CHAIRMAN RHEAUME: It's partly our time
13 and probably that of everyone else who has
14 business before us this evening so we try and
15 balance that out as best we can.

16 All right. Final opportunity to speak?
17 Seeing no one rise, I close the public
18 hearing.

19 All right, board. I'll open it up for
20 any thoughts. I know we're not a very big
21 board so, yep, go ahead Mr. Johnson.

22 MEMBER JOHNSON: I just have a question
23 to start off, I guess. Do we have the power

1 to send this back to Planning Board for an
2 amended review or not?

3 MR. STITH: I don't think so.

4 CHAIRMAN RHEAUME: I don't believe so
5 either, yeah, that will be my thought, right?
6 What's before us is an appeal for the
7 building permit, whether that was justified
8 or not. Yeah, I'm not -- I'm not sure we can
9 give that kind of remedy -- I guess we could
10 try. Just it would be very tenuous ground
11 would be my guess.

12 Additional thoughts?

13 MEMBER JOHNSON: At the moment, no.

14 CHAIRMAN RHEAUME: How about on this
15 side?

16 MEMBER MCDONELL: I have some thoughts.

17 CHAIRMAN RHEAUME: All right.

18 Mr. McDonell. Thank you.

19 MEMBER MCDONELL: Thanks. So I would --
20 so that the Appellant made three arguments
21 and I would -- I think we could probably at
22 least dispose of the one saying that the one
23 year variance approval period had expired.

1 I'd be curious to see what anyone else -- if
2 anyone else has different thoughts, but that
3 ordinance was inconsistent with state law and
4 the ordinance was amended before the period
5 expired.

6 It's clear to me that the -- that it
7 should have been a two year period and that
8 period didn't expire. So I don't know what
9 everybody else's take is, but at least with
10 respect to that one, I'd say that's the easy
11 one and that's -- we could look to the next
12 questions.

13 CHAIRMAN RHEAUME: Okay. Just on that,
14 Peter, I don't know if you have any -- what's
15 the planning department's interpretation of
16 the RSA? Are they treating all cases
17 approved as two year or one year?

18 MR. STITH: As two year. The amendment
19 was made in January of last year to be
20 consistent with state code.

21 CHAIRMAN RHEAUME: Yes.

22 MR. STITH: Which was, the variance was
23 granted in August and then that amendment was

1 made in January.

2 CHAIRMAN RHEAUME: So even if something
3 was approved beforehand, the intent is that
4 the Planning Department's interpretation
5 of the RSA and our subsequent change in
6 requirements is that the new ordinance was
7 that two years is what you guys are using as
8 a standard --

9 MR. STITH: Yes.

10 CHAIRMAN RHEAUME: For everything that is
11 currently before that is in a pending status.

12 MR. STITH: Correct.

13 CHAIRMAN RHEAUME: Okay.

14 MEMBER MCDONELL: That was all I had for
15 now. But, I guess I would go -- I -- I
16 think, so the question was also raised about
17 whether the planning board had approved the
18 larger footprint, and I think that the --
19 there's been a lot of discussion about what
20 numbers were shown where and when, but I
21 think it was pretty clear that both the TAC
22 and Planning Board approved the 1938. I
23 don't know. So, for me, it really comes down

1 to whether there was something less than
2 proper legal notice, and I don't have a
3 strong opinion one way or the other at this
4 point.

5 CHAIRMAN RHEAUME: Okay. Thank you.
6 Additional thoughts, Mr. Johnson.

7 MEMBER JOHNSON: Yeah, just kind of a
8 statement to tag onto what Mr. McDonell said
9 is, part of what I consider myself is, I
10 agree with you, after being at TAC meetings
11 and Planning Board meetings, I have, without
12 a doubt, I'm sure that the actual board
13 members themselves were well aware of what
14 that square footage was. Were they looking
15 at three units that the square footage
16 represented, were they under the belief that
17 they were looking at the same thing that the
18 Zoning Board had provided the variances for?
19 You know, I guess, to me, the implication
20 would be yes, we're giving the same press --
21 I mean, it's a little -- it seems a little
22 strange to me because I feel like we rehear
23 cases all the time on the Zoning Board where

1 something has changed by a fraction of a
2 percentage. The open space changes by point
3 1 percent and we get the variance back again.

4 CHAIRMAN RHEAUME: Yes, I think we have
5 one this month.

6 MEMBER JOHNSON: Yeah, right. Set back
7 changes or a dormer is extended by a foot and
8 we approved it at a foot over, so I guess I'm
9 surprised that we have didn't actually get to
10 bounced to us. I'm sure part of that has to
11 do with the fact that this specific variance
12 for density wasn't requested, but it couldn't
13 not have -- again, back to my soap box for a
14 minute with Mr. Phoenix was, if we had been
15 presented with three 5,000 square foot units,
16 would we have approved it? Certainly, the
17 square footage plays into a proportion to
18 the, you know, the scale of the site, the
19 shape and location of the buildings, and how
20 big they are, are they four stories, one
21 story, are they -- so I'm a little surprised
22 that we didn't see it back, I guess.

23 But I also see how it's something that

1 just kind of fell, you know, mildly fell
2 through the cracks a little bit, too. I
3 mean, it did receive proper review and you
4 certainly can't blame the original applicant
5 from moving forward. They got everybody
6 signed off and said you are okay, you are
7 okay, you are okay, please, you know, here's
8 your building permit. I mean, how are they
9 supposed to know, so --

10 CHAIRMAN RHEAUME: Okay. Thank you.

11 MEMBER MCDONELL: Also --

12 CHAIRMAN RHEAUME: Yes.

13 MEMBER MCDONELL: I mean, it's a fair
14 point that it's -- that it's, at this stage
15 we're looking at it, it's a concept plan and,
16 yeah, if we are reviewing it for density it
17 would make sense if the density changes to
18 get it back. I can -- I can understand why
19 this doesn't come back to us, you know.

20 I don't think that's necessarily improper
21 or unreasonable or anything. But I take your
22 point, Jeremiah, that we see the tiniest
23 little changes and they come right back.

1 MEMBER JOHNSON: Right.

2 CHAIRMAN RHEAUME: Mr. Parrot, any
3 thoughts?

4 You're contemplating over there.

5 MEMBER PARROTT: I probably talked -- I
6 -- case everyone doesn't realize I was on the
7 short end of the vote, and haven't, for the
8 record, I have not changed my mind. Still
9 SRB, still 140 feet on the road. It's got a
10 big pond. All this happy talk about over
11 100,000 square feet, of course, is misleading
12 we don't build on the water. So there's a
13 lost -- in or around the water, or over the
14 water. So there's a lot of factors that
15 certainly make this an unusual situation.

16 And, but to the point about the thing
17 being changed after the fact with respect to
18 what the -- this board did, I think that is
19 significant. When we approve something, I
20 think -- I think we expect that it's going to
21 go -- if it has to go to other boards it will
22 be the same presentation, the same project,
23 the same project; however you want to phrase

1 it, so.

2 And I respectfully disagree with anybody
3 who says a 14 percent change in a project
4 such as this where it's all about size and
5 placement and set backs, it's all about
6 numbers. I think 14 percent is significant
7 and it should -- and Mr. Johnson has made a
8 very good point with respect to the
9 significance of that, of that type of a
10 change so.

11 Which is not helping you any, but I don't
12 think this is a trivial issue in front of us,
13 and we can just broom it along and say, well,
14 everybody didn't do -- everybody could have
15 been a little more careful in their review
16 and so on and so forth, and maybe the
17 neighbors should have looked, gone in there
18 every day or called every week to the
19 Planning Department and checked up on things.
20 I think that's probably unreasonable. I
21 think they rely on the boards and the staff,
22 both of which represent the city, obviously,
23 in different respects to -- to apply the

1 rules and apply them fairly and accurately
2 and consistently, so that's my thought.

3 CHAIRMAN RHEAUME: Okay. Thank you.
4 Other thoughts at this point?

5 MEMBER JOHNSON: I just have one more
6 question.

7 CHAIRMAN RHEAUME: Yep.

8 MEMBER JOHNSON: Just to quickly think
9 this through. If we were to approve the
10 appeal, what does that leave the property
11 owner -- what's their next step?

12 CHAIRMAN RHEAUME: Yeah and I'm not
13 entirely sure if it comes back to the city.
14 It's tuff to say if this would ultimately
15 impact the property owner or if it would
16 ultimately impact the city, i.e. that it
17 would open up the city to some type of a
18 lawsuit or something along those lines.

19 MEMBER JOHNSON: Right.

20 CHAIRMAN RHEAUME: I'm not sure at this
21 point with the foundation being approved,
22 building permit, it's kind of -- I don't know
23 if there's been any discussion on the

1 Planning Department?

2 MR. STITH: I think you are correct, and
3 this was specifically for Unit C. I mean,
4 there have been other permits pulled for
5 Units A and B.

6 CHAIRMAN RHEAUME: Right.

7 MR. STITH: I guess it would revoke this
8 permit.

9 MEMBER JOHNSON: Right. So from a sort
10 of a back door kind of way, does that -- does
11 the applicant then -- excuse me, not the
12 applicant, the property owner then have the
13 opportunity to then go to the Planning Board
14 and say I'd like to present to you again?

15 CHAIRMAN RHEAUME: My sense is is that --
16 that -- my sense is, at that point, it's
17 ending up in the courts somewhere.

18 MEMBER JOHNSON: Okay.

19 CHAIRMAN RHEAUME: And some court would
20 decide what the right way forward is and,
21 ultimately, might say, you know, City, you
22 granted a building permit, built, property
23 owner, you get the building permit, build

1 your building. City, shame on you, and
2 here's your penance. It's tough to say.
3 It's really -- I very much doubt that it will
4 go back through the system.

5 MEMBER JOHNSON: Yeah. Okay. Yeah.

6 CHAIRMAN RHEAUME: My sense is the system
7 is done, done with this, other than us.
8 Lucky us. Anything else?

9 MEMBER JOHNSON: No.

10 CHAIRMAN RHEAUME: At this point. All
11 right. So my thoughts on this. First of
12 all, I share a lot of the frustrations that
13 both members of the public, abutters and
14 board members have expressed. I think that
15 there's been a lot of bait and switch that
16 went on with this project. We had a, oh,
17 hey, we got a great developer. They are
18 world renowned or whatever for homes that
19 have environmentally friendly and all this
20 and that and, oops, well, actually, we're not
21 going to develop the property. Somebody else
22 is going to develop the property.

23 We had the, well, we are building homes

1 of this size that was presented to this this
2 board. As it went through the TAC and
3 Planning Board process, that suddenly grew,
4 maybe shortened, but grew. Just was
5 different than certainly what this board got
6 a chance to see. Now, we do have our -- we
7 put on there as presented and advertised
8 exactly what that means and what the rule of
9 law is associated with that, and even in our
10 own, you know, our own rules and regulations,
11 those that the city uses, exactly what that
12 means is probably not extremely well defined,
13 at least from what I've seen over the years
14 being part of this board.

15 But, certainly, we have a reasonable
16 expectation that what comes before us is
17 going to be kind of like when the whole
18 entire factory gets done with all of the
19 various processes and they are very lengthy
20 processes, that something reasonably close to
21 what were shown is going to be coming out the
22 back end, right?

23 In this case here, I'm not entirely sure

1 that's what we got out the back end. I think
2 it's somewhat different. I'm certainly
3 disappointed in the result. Would it have
4 changed my vote? I'm not sure. I don't want
5 to go down that path. I'm not sure. I have
6 to look at it strongly but, certainly, it's
7 something that's different than what was
8 presented to this board.

9 Legally, and I think that's where we are
10 coming down to now is, okay, so there's lots
11 of frustration and, you know, the other
12 aspects have been brought up about, you know,
13 water that's being poured into the lake, the
14 little pond that's back there.

15 Perhaps, all valid concerns. I'm not
16 going to judge again on those. Positive or
17 negative, any construction had somebody
18 proposed a single family home and built a
19 giant mansion here, many of those same
20 problems would likely be occurring now,
21 certainly construction noise, impact to
22 construction, water being pumped out, impact
23 to surrounding properties, all those things

1 could have still happened regardless of
2 whether this was one buildings, three
3 buildings, five buildings.

4 While -- while I share frustrations,
5 those aren't necessarily germane to what this
6 board is trying to take a look at right now.

7 And so, frustrations all aside, that's
8 what this board ultimately has to do is, in
9 my mind, is to put aside a lot of those
10 frustrations because I share them, too, and
11 look at this from a very legalistic
12 standpoint.

13 So what are the legal trip wires that we
14 have here? One is an appeal of the Zoning
15 Board's approval that went through its
16 course, went through the courts even, and
17 ultimately affirmed that.

18 Second is an appeal of the Planning Board
19 decision. And, again, recognizing that there
20 was certainly some misleading information
21 that was being put out there in terms of what
22 was being presented, does that rise to a
23 level of invalidating the Planning Board's

1 decision and, more importantly at this point,
2 that's not what's being appealed here. The
3 Planning Board's decision specifically is not
4 being appealed. It's the resulting building
5 permit.

6 Now, I understand, is that a matter of
7 timing? Yeah, but I, unfortunately, from a
8 very legalistic standpoint, which is where we
9 are at now, and, you know, I fully agree with
10 being an engineer versus a lawyer, but at
11 the same point in time my job is to look at
12 this from a very legalistic standpoint, is
13 that window hadn't -- there was an
14 opportunity. There was certainly a letter
15 that was issued that indicated the 1938
16 number. There was certainly plenty of plans
17 and things that were available that was out
18 there, and was not appealed at that point.

19 So then we come down to this building
20 permit. So we're appealing that at this
21 point in time. I'm recognizing that, yeah,
22 some of the things have certainly changed
23 from the beginning of this process. There

1 were some -- a lot of confusion along the way
2 caused by, perhaps, some lack of diligence on
3 the part of the Planning Department in being
4 very careful that what the Planning Board was
5 really looking at was, in fact, congruent
6 with what the Planning Department was putting
7 out for notice.

8 Now, again, from a very legalistic
9 standpoint, how much notice does -- is the
10 Planning Department obligated to give? Some
11 other communities from what I've seen and,
12 you know, when they put out notices on this
13 sort of stuff, it's more generic. We tend to
14 try and give a lot more information, perhaps,
15 you know, usually I think on the plus side;
16 however, there are some negative consequences
17 to that which is, in this particular case,
18 where this changing and evolving project
19 never really reflect -- was properly
20 reflected in what was being, at least
21 advertised at this very high level of, hey,
22 you are getting an abutter's notice. There's
23 something going on in the property next door

1 to you. It's got this kind of an impact
2 wasn't updated.

3 Is that enough to say that the city and,
4 in particular, the building -- the inspection
5 department and those who issued the building
6 permit were in vio -- you know, in error in
7 issuing that building permit? And I guess
8 that's really, ultimately, in my mind,
9 legalistically, after we burn all that other
10 stuff away, if we get rid of the emotion, is
11 this rising to the level that we can say that
12 there was an error?

13 And my initial thought is, is no, it was
14 not. This is something that, yeah, through
15 the whole entire process, lots of things
16 changed. There were opportunities to -- to
17 witness what was going on. You know, we have
18 a incredibly transparent system overall, but
19 it does require a lot of attention on the
20 part of interested parties to make sure that
21 they know and understand what is going on.

22 That is, you know, the dilemma. It's,
23 yeah, you know, we are not hiding things but,

1 at the same point in time, there is a need to
2 go and be diligent about these sorts of
3 things and I've also personally been burned
4 by decision that went on that I wasn't paying
5 close attention to and I kicked myself
6 afterwards for not being a part of.

7 But, at the same point in time, that's
8 the Yin and Yang, right? We have great
9 things that are offered to us, but we also
10 have certain responsibilities that we have in
11 the system as well.

12 So my thought is is that, at this stage
13 and this point in the whole entire process
14 that, most likely, what was issued, a
15 building permit was issued accordingly to the
16 end result of that whole entire process.
17 Whatever flaws occurred in there, at this
18 point, it's a legitimate thing to have been
19 done.

20 So that's -- that's my thoughts, and I'm
21 open to counter thoughts or other thoughts
22 from board members.

23 Yes. Mr. Johnson.

1 MEMBER JOHNSON: You sold me, I have to
2 admit. When you really break it down and you
3 really to evaluate what it is, you know, you
4 are basically talking about the building
5 inspector's tasked with issuing a building
6 permit, and I'm very familiar with what he
7 goes through to decide if it's worthy of a
8 building permit. He has a checklist and
9 there's all these different boxes that have
10 to get checked off. Does it have Planning
11 Board approval, does it have Planning
12 Department approval, does it have its
13 variances, does it have con -- you know,
14 whatever.

15 And if we are really just evaluating the
16 building permit, then I think what you are
17 saying makes a lot of sense.

18 CHAIRMAN RHEAUME: Okay. Other thoughts,
19 Mr. McDonell?

20 MEMBER MCDONELL: Just a question just to
21 help me to clarify for me. So, so the
22 building permit would be issued in accordance
23 with the site plan that was approved, right?

1 So, presumably, if it's issued in accordance
2 with a site plan that was approved, what
3 would -- what would the grounds for an appeal
4 of one be? Would the grounds be it was
5 issued not in accordance with the site plan
6 or something like along those lines?
7 Because if that's the case, I would, I think
8 I agree, there's -- the ship on the site plan
9 approval has sailed, right?

10 CHAIRMAN RHEAUME: Certainly, all the
11 stuff that I see on the applicants, you know,
12 discussion, really revolves around what
13 ultimately happened at other boards.

14 Now, I know there was some discussion
15 that perhaps the property's grown even more
16 beyond what that was approved, but I didn't
17 see or hear a lot of real significant
18 argument as to how that made the building
19 permit invalidated.

20 So I am going by what I, at least, see
21 and heard from the applicant for this appeal.
22 There may be some other ground that are in
23 that I wasn't really hearing or maybe you did

1 hear, but that's what my thought is anyway.

2 MEMBER MCDONELL: No. Yeah, that's in
3 line with what I thought, and that's --
4 that's my initial inclination, too.

5 CHAIRMAN RHEAUME: Like I say, on a
6 frustration level, I share a lot of the
7 frustrations. I really do. But I think we
8 as a board have an obligation and we have a
9 quasi judicial purpose here that is to also
10 help to protect, ultimately, protect the city
11 and what is going on through the process and
12 through what our laws and through what are
13 ordinances are telling us. So we have an
14 obligation to put some of the motion aside.
15 Not to get rid of it completely, but -- so
16 with that, is anyone willing to make a
17 motion?

18 MEMBER MCDONELL: I'll move to deny the
19 appeal.

20 CHAIRMAN RHEAUME: Okay. Is there a
21 second for that motion?

22 MEMBER JOHNSON: Second.

23 CHAIRMAN RHEAUME: Okay. Your motion,

1 please.

2 MEMBER MCDONELL: Thanks. So I guess I
3 would want to incorporate some of the earlier
4 discussion into the motion, but like we were
5 talking about, we've got a few grounds or a
6 few arguments that were made on the part of
7 the Appellant.

8 I don't think the -- I think it's clear
9 that the -- the time for construction under
10 the variance hasn't expired. We've been over
11 that. We discussed that.

12 And then, I think it was clear, I guess,
13 this motion isn't as well crafted as I would
14 like it to be but, it was clear that, that
15 the Planning Board approval and the -- yeah,
16 sorry. The Planning Board approval was
17 granted on the -- the grant of the Planning
18 Board -- that the Planning Board made was,
19 was for this larger footprint or the larger
20 square footage of the units. So I don't
21 think I buy that argument, either, on the
22 part of the Appellant.

23 And then, lastly, I think as, as the

1 Chair said, it's -- there were some
2 unfortunate steps taken along the way, but I
3 think, ultimately, when you consider
4 technically whether proper legal notice was
5 given, it was. And the missteps that were
6 made weren't an error that would rise to the
7 level of making the notice improper.

8 So I don't think I can get behind that
9 argument, either on the part of Appellant.
10 So I guess that's my argument.

11 And then, finally, just to address both
12 party's discussion about reliance. I mean, I
13 understand it. It's reasonable on both parts
14 to rely on Planning Department staff and
15 city, other city officials. I don't think
16 legally you can go too far down that road. I
17 think, ultimately, the responsibility lies on
18 the builder, you know, if the builder built
19 something that's not allowed, that's, that's
20 the builder's issue, regardless of his
21 potentially improper reliance. And, by the
22 same token, if the Appellant doesn't appeal a
23 decision that was made because he didn't,

1 unfortunately, dig into the weeds enough, you
2 know, that's an unfortunate outcome, but I
3 don't think it would be grounds to overturn
4 that building permit issuance.

5 So that's all I have.

6 CHAIRMAN RHEAUME: Okay. Thank you.
7 Your second, please.

8 MEMBER JOHNSON: I echo my earlier
9 comments and certainly agree with most of
10 what Mr. McDonell has stated. I think when
11 given the tools that the building inspector
12 is given to have to make a decision on
13 issuing a building permit, that he was -- the
14 information that he was given and predicated
15 his issuing of the permit on was proper.

16 I mean, I certainly understand the issues
17 of the abutters. I think by driving by the
18 site and walking by the site you can clearly
19 tell it's squeezed for more than its worth.
20 And I do think that bait and switch is the
21 paper term. I do think that we've been a
22 little bit okie-doked here, but with the
23 legal tools that we have in front of us, I

1 agree that I don't think there's anything
2 that we, in particular, can do differently at
3 the moment, so.

4 CHAIRMAN RHEAUME: Okay. Thank you.
5 Other discussion from board members on the
6 motion? Mr. Parrott.

7 MEMBER PARROTT: Based on the information
8 that we have in front of us, there wasn't --
9 it's -- what we are being asked to rule on
10 here is a relatively narrow issue, namely,
11 the actions of one of the official who is not
12 here, unfortunately, to explain it to us.
13 But no information has been presented within
14 my hearing that says that the -- whoever
15 signed -- whoever that signed it, and I don't
16 know who it was, the permit, did something
17 wrong or egregious or incorrect in any way
18 and that's -- that's what's in front of us, I
19 believe. So I think that's what -- even
20 after all the interesting discussion, I think
21 that's what it comes down to.

22 CHAIRMAN RHEAUME: Okay. Thank you. Any
23 other comments? I'll just say that, you

1 know, the thing I do hope comes out of this
2 is the Planning Department goes back and
3 really takes a look at some of the things
4 that went wrong here. You know, we can't
5 specifically mandate that, but I -- this
6 would be critique worthy --

7 MEMBER PARROTT: May I say --

8 CHAIRMAN RHEAUME: Level 2 problem.
9 Right? Yeah. So I do think it's something
10 that we want to go back and learn some
11 lessons from, try and make sure that we can
12 made some improvement in the future because I
13 do think that we let ourselves down a little
14 bit, but does it rise to the level of
15 invalidating this project? In my mind, no,
16 but I do think that we want to make sure that
17 we learn from it and try and do better in the
18 future.

19 And also, we really do need to be
20 thinking in terms of this when this board
21 approves something as presented and
22 advertised and as it goes through the factory
23 to come out the far end, what point, really,

1 do we think that -- because as has been
2 pointed out and we'll see here later tonight,
3 I mean, on dimensional standard variances,
4 we're going to be talking about a half a foot
5 later tonight. Something changed by a half a
6 foot.

7 This is far bigger than a half a foot,
8 but because of the nature of the approval
9 from this board, the as presented and
10 advertised language does not carry quite the
11 same weight as, we said you can get 10 and a
12 half feet and you took 11. So we need to
13 think a little bit about -- more about that,
14 and I think even if we need some kind of
15 joint, you know, Planning Board session to
16 work through that issue, we need to learn
17 from that.

18 All right. With that, the motion is to
19 deny, Mr. McDonell.

20 MEMBER MCDONELL: Yes.

21 CHAIRMAN RHEAUME: Mr. Parrott.

22 MEMBER PARROTT: Yes.

23 CHAIRMAN RHEAUME: Mr. Johnson.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

MEMBER JOHNSON: Yes.

CHAIRMAN RHEAUME: And the Chair also
votes yes. The request has been denied.
Okay.

(This session ends.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

C E R T I F I C A T E

I, Camille M. Palladino-Duffy, a
Licensed Court Reporter in the State of New
Hampshire, do hereby state that the foregoing
transcript is a true and accurate transcription of
the recorded media to the best of my knowledge,
skill, ability and belief.



*Camille M.
Palladino-Duffy*

CAMILLE M. PALLADINO-DUFFY
LCR 105, RPR



EXHIBIT 3

CITY OF PORTSMOUTH

Community Development Department
(603) 610-7232

Planning Department
(603) 610-7216

PLANNING DEPARTMENT

August 22, 2016

Carol I. Cooper
205 Linden Avenue
Wallingford, PA 19086

Re: Property at 996 Maplewood Avenue, Permit 16-933
Assessor Plan 219, Lot 4

Dear Applicant:

The Board of Adjustment at its regular meeting on August 16, 2016 completed its consideration of your application described as follows:

Application:

5) Case #8-5

Petitioners: Carol I. Cooper, owner & Lorax Sustainable Development, LLC,
applicant

Property: 996 Maplewood Avenue
Assessor Plan 219, Lot 4

Zoning District: Single Residence B

Description: Construct three free-standing dwellings.

Requests: The Variances and/or Special Exceptions necessary to grant the required relief from the Zoning Ordinance, including the following:
1. A Variance from Section 10.513 to allow more than one free-standing dwelling on a lot.

Action:

The Board voted to **grant** the petition as presented and advertised with the following stipulation:

Stipulation:

- The proposal is referred to the Planning Board for placement of a conservation easement on a portion of the undeveloped area around the pond that will protect that portion of the pond and wetland area, the nature and extent of that protection to be determined by the Planning Board in their site plan review process.

Carol I. Cooper - Page Two
August 22, 2016

Review Criteria:

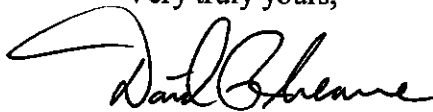
The petition was granted for the following reasons:

- The addition of three appropriately sited single-family homes, will not change the essential character of the neighborhood nor threaten the public health, safety, or welfare so that granting the variance will not be contrary to the public interest and the spirit of the Ordinance will be observed.
- Granting the variances will do substantial justice since the benefit to the applicant will not be outweighed, particularly with the protection of the attached stipulation, by any harm to the general public.
- The value of surrounding properties will not be diminished by three new single-family homes on a large lot with no greater intensity than similar area developments. The setbacks are met so that the structures will not encroach on neighboring properties and there is good access to Maplewood Avenue for fire and emergency services.
- The special distinguishing conditions of the property include a large, irregularly shaped lot with a pond that affects the placement of structures so that there is no fair and substantial relationship between the general public purposes of the Ordinance provision and the specific application of that provision to the property.

As provided for in NH RSA Chapter 677, the Board's decision may be appealed 30 days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process. Construction drawings or sketches must be reviewed and approved by the Building Inspector prior to the issuance of a building permit. Approvals by other land use boards may also be required prior to the issuance of a building permit.

The minutes and tape recording of the meeting may be reviewed in the Planning Department.

Very truly yours,



David Rheaume, Chairman
Board of Adjustment

mek

c: Robert Marsilia, Chief Building Inspector
Roseann Maurice-Lentz, City Assessor
Lorax Sustainable Development, LLC
R. Timothy Phoenix, Esq.