

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

7:00 P.M.

CITY COUNCIL CHAMBERS DECEMBER 16, 2004
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE

MEMBERS PRESENT: Kenneth Smith, Chairman; Thomas Ferrini, City Council Representative; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; John Sullivan; Raymond Will; Donald Coker; George Savramis; John Ricci and Alternate Jerry Hejtmanek

MEMBERS EXCUSED: n/a

ALSO PRESENT: David M. Holden, Planning Director; and,
Lucy E. Tillman, Planner I

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I. OLD BUSINESS

A. The application of **Engel Family Trust, Owner, and API of New Hampshire, Applicant**, for property located at **50 Campus Drive**, wherein site plan approval is requested to construct a 108.4' x 111', 12,032 ± s.f. 1-story addition to an existing structure, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 267 as Lot 23 and lies within an Industrial district.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech, appearing on behalf of API, requested that the Board table this matter so that they will hopefully have the wetland report they have been waiting for available for the January meeting.

DECISION OF THE BOARD:

Councilor Ferrini abstained from voting.

Mr. Will made a motion to table this matter to the January 20, 2005 meeting. Deputy City Manager Hayden seconded.

The motion to **table** the application to the next regularly scheduled Planning Board meeting of January 20, 2005 passed unanimously.

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B. The application of **Moray, LLC, Owner**, for property located at **235 Commerce Way**, wherein site plan approval is requested to construct a 170' x 150' (irregular) 26,422 ± s.f. 3-story office building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 216 as Lot 1-8B and lies within the Office Research/Mariner's Village district.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Holden indicated that a request had been received that this application be tabled. He recommended that they table to the January 20, 2005 meeting. He also indicated that the Department was working with the applicant on some outstanding issues which included whether a Conditional Use may be required.

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

DISCUSSION AND DECISION

Mr. Will made a motion to table this matter to the January 20, 2005 meeting. Deputy City Manager Hayden seconded.

The motion to **table** the application to the next regularly scheduled Planning Board meeting of January 20, 2005 passed unanimously.

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II. PUBLIC HEARINGS

1. The application of the **City of Portsmouth, Owner**, for property located at **22 Deer Street**, wherein site plan approval is requested to construct a 16' x 23' addition to an existing building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 12 and lies within a Municipal district and Historic District A.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Peter Rice, City Engineer for the Water and Sewer Department, addressed the Board on behalf of the City. He indicated that this project was part of a larger sewer improvement plan. They are upgrading the pumping station to improve its capacity as well as address some mechanical issues such as odor control. In preparation of this application, they met with surrounding property owners and they appeared before and received approval from the HDC. Mr. Rice displayed renderings of the proposed building and pointed out where the addition would be placed and where the new transformers would go. Currently the transformers are above ground but they will underground all utilities as part of the project and eliminate the pole that carries three or four sets of wires across the street. They are also addressing the aesthetics as reflected by the renderings.

Mr. Rice reviewed the stipulations from TAC. The first stipulation was to eliminate a roundabout driveway which they were proposing. That has been eliminated from the plans. The second stipulation requested that they widen the sidewalks from 5' to 7' where possible, which is City standard. The third stipulation requested that they add a truncated dome tip-down section for the sidewalk access. Lastly, the fourth stipulation requested that they underground utilities for the electrical. Mr. Rice confirmed that all of these revisions had been made to the Site Plans.

Mr. Rice indicated that this project does not include the sign. At this point, they are working with Nancy Carmer, Director of Economic Development, on that.

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

DISCUSSION AND DECISION

Mr. Savramis made a motion to grant Site Review approval. Deputy City Manager Hayden seconded.

Mr. Coker indicated that he would like to add a stipulation to the motion. As the City does not have to follow "it's own rules" he would like to add a stipulation that construction hours be limited to what was allowed by the Zoning Ordinance as there are a fair number of residents at that location.

Mr. Rice confirmed that they conform to the Ordinance for their hours of construction.

Mr. Coker asked about delivery trucks? He referred to the Porter Street Construction when there were times when delivery trucks came in at 5:00 a.m. and the reverse "beeps" were very loud.

Mr. Rice indicated that their contractors are aware of delivery restrictions and they will also adhere to the allowed times. Mr. Rice indicated a site person will be on site at all times who can be contacted about any problems.

Deputy City Manager Hayden asked about the truncated domes.

Mr. Rice confirmed that was the current ADA requirement.

Deputy City Manager Hayden asked if they were the same 5-6 years ago?

Mr. Rice indicated they were different and, most likely, better.

The motion to approve passed unanimously.

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2. The application of **Joli Ann Foucher, Owner**, for property located at **566 Greenland Road** where Final Subdivision approval is requested to subdivide one lot into two lots with the following: Lot 1 having a lot area of 1.6304+ acres and 89.54+ feet of continuous street frontage off Greenland Road and Lot 2 having a lot area of 1.5093 ± acres and 89.53± feet of continuous street frontage off Greenland Road, and lying in a zone where a minimum lot area of 15,000 s.f. and 100' of continuous street frontage is required. Said property is shown on Assessor Plan 258 as Lot 1 and lies within a Single Residence B district.

The Chair read the notice into the record.

Councilor Ferrini recused himself from this hearing.

SPEAKING TO THE APPLICATION:

Attorney Bernard Pelech appeared on behalf of the applicant. He indicated that the Planning Board was looking for an easement for the common driveway and that has been prepared and forwarded to the City's Legal Department for review. The second issue from last month's meeting was the fence which was in the street right-of-way. Attorney Pelech indicated he met with Mr. Holden and Mr. Sullivan and unfortunately the fence was placed in it's present location upon instructions by the City Code Enforcement Officer who was unaware of where the actual City boundary was. There was a suggestion made that the applicant request a license from the City Council and that has been done, seeking a license for the fence to be in the right-of-way. This is the same procedure that the City has followed in other cases in the past. Attorney Pelech asked the Board to address the subdivision issues

and have the approval subject to the easement approval by the City Attorney. Although the fence is not really a sub-division issue it was good that it came to light. He didn't believe the approval needed to be conditioned on a license being granted because the fence is already there and it is unrelated to the sub-division.

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

DISCUSSION AND DECISION

Mr. Holden stated that the Department concurs with everything that Attorney Pelech indicated and if the Board would grant final sub-division approval subject to the six stipulations, that would effectively address all of the outstanding issues. The Department is satisfied that the applicant has met their burden and they will continue to work on the fence issue.

Deputy City Manager Hayden made a motion to grant final sub-division approval with the six stipulations. Mr. Savramis seconded the motion.

Mr. Sullivan indicated he would like to approve this subdivision but ever since the construction of the fence went up it has been an issue. Maybe a City employee made a mistake, but he would like to see a stipulation added to the motion that the fence be moved back onto private property before construction or anything takes place on the property. He indicated he could not vote for the motion without that stipulation.

Chairman Smith asked if he would like to do that as an amendment to the motion?

Mr. Sullivan indicated he would like that.

Chairman Smith asked for a second to the motion.

Mr. Will seconded for discussion only but indicated he would be voting against it.

Mr. Coker asked the Department to refresh his memory on how the fence ended up where it was.

Mr. Holden could not give a definitive answer, and he indicated maybe Attorney Pelech could help him, however the original request was for a fence that would be in the right-of way and the issue was to relocate it outside of the right-of-way. In an effort to find that location, they didn't quite get it right. Now, as part of the subdivision, they know exactly where the lot lines are and the fence is still somewhat in the right-of way. As the City cannot direct someone to do a survey, a best judgment was made by a City official and it is a couple of feet off.

Councilor Ferrini indicated that if the City Council did not give license then the fence would have to be relocated.

Mr. Will stated that he respected Mr. Sullivan's amendment but felt it was an honest mistake and the license would be a reasonable correction of that mistake.

Mr. Coker wanted to clarify that the resolution or relocation of the fence to the satisfaction of the City could mean the City says it has to be moved.

Chairman Smith confirmed that was correct.

Mr. Sullivan felt that the applicant has the burden of proof to conduct a survey and to put his fence on his own property without asking the City where it should go. He felt it was the responsibility of the homeowner. Also, when the new bridge comes by the cemetery the fence may have to be moved anyways.

Mr. Ricci asked, if the City Council granted a license for the fence, what would the term be?

Chairman Smith indicated it was usually for a 99 year period but that would be at the direction of the City Council.

The motion for the amendment failed with only Mr. Sullivan voting in the positive.

The motion to grant final subdivision approval passed, with Mr. Sullivan voting in the negative, with the following stipulations:

1. Installation of permanent boundary monuments as per the requirements of the department of Public Works;
2. Submission of electronic data for this Plat as required by the Board's Regulations;
3. Depiction on the Plat of the approved driveway location and appropriate details;
4. That the Final Plat and deeds shall reflect a driveway easement to the benefit of the appropriate lot so as to cause for a shared driveway;
5. That driveway easement shall be approved as to content and form by the Legal Department and shall be caused to become a part of the chain of title for each lot as is appropriate;
6. Resolution or relocation of the fence to the satisfaction of the City.

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3. The application of **Moray, LLC, Owner** for property located at **235 Commerce Way** and **Brora, LLC, Owner**, for property off **Portsmouth Boulevard** wherein Final Approval is requested for a lot line relocation whereby property located at 325 Commerce Way would have a lot area of 247,954 ± s.f. and 646.56' of street frontage and property located off Portsmouth Boulevard would have a lot area of 239,040 ± s.f. and 433.91' of street frontage, in a district where a minimum lot area of 3 acres and 300' of street frontage is required. Said properties are located in an Office Research/Mariner's Village district and are shown on Assessor Plan 213 as Lot 11 and Assessor Plan 216 as Lot 1-8B.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Mr. Holden indicated that a request had been received that this application be tabled. He recommended that they table to the January 20, 2005 meeting. He also indicated that the Department was working with the applicant on some outstanding issues which included whether a Conditional Use may be required.

DECISION OF THE BOARD:

Mr. Coker made a motion to table this matter to the January 20, 2005 meeting. Mr. Will seconded.

The motion to **table** the application to the next regularly scheduled Planning Board meeting of January 20, 2005 passed unanimously.

4. The application of **6-16 Congress, LLC, Owner** for property located at **6-16 Congress Street**, wherein site plan approval is requested to construct a 12,465 ± s.f. 4 & 5 story mixed use structure, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 117 as Lots 37, 38 & 39 and lies within the Central Business B district and Historic District A. (This application was tabled at the November 2, 2004 TAC meeting.)

The Chair read the notice into the record.

Mr. Holden, Councilor Ferrini and Mr. Coker all stepped down from this application.

SPEAKING TO THE APPLICATION:

John Chagnon, of Ambit Engineering, addressed the Board. Also present were Steve McHenry of McHenry Architects, Attorney Paul McEachern and Patrick Callaghan, Construction Manager. Mr. Chagnon stated that the project will make a major change to Market Square. They have received approvals from the HDC in August, the Board of Adjustment in August, TAC in December as well as the Traffic & Safety Committee and have had many meetings with their abutters. The first floor is proposed retail, the second is proposed office and the tops floors will include 18 residential units. They hope to start with demolition in the winter and hopefully have the building closed in by next winter. Their time line is for 18 months of construction. If they can't get it closed in by next winter then it turns into a 24 month project. Therefore, they are anxious to begin.

Mr. Chagnon reviewed the plan set that was provided to the Board. The Existing Conditions Site Plan and boundary survey shows the utilities and abutter information. The Demolition Plan shows the limits of the work, what is going to be taken out and notes about removing the brick sidewalk and lights. They will be taking over the sidewalk as has been done in other projects and will be closing Church Street at times to facilitate construction and will be worked out with the City Council in the near future. The Landscape Plan details the benching of the building where it sits on the property and the proposed landscaping for the site. The Utility and Grading Site Plan shows the utility connections (water, sewer, gas and electric). There are two Detail Sheets. The first includes a parking layout plan for 25 parking spaces that will be accessed by Church Street and will be below the first floor. The second Detail Plan shows a Striping and Signage Plan. Part of the project will include setting a new curb line along Congress Street and restriping the intersection of Fleet Street as they will be adjusting the lanes slightly. Additional signage will be added for loading zones, tow zones, no parking and other types of signs. Building renderings were included in the packet to show the Board what the project would look like when it was completed.

Mr. Chagnon addressed a few of the Stipulations from the TAC Committee meetings. Most of the stipulations had been addressed to the satisfaction of the City and he addressed those in a letter that was filed with the Board.

#1 – The Easement Plan was attached to the Plan set. The sidewalk on Church Street is substandard (only 2 ½ feet wide). They are bringing the building back from the property line and providing a sidewalk that is no less than 5' to provide for pedestrian safety. Therefore the developer is granting an easement to the City for those sidewalks.

#5 – The Easement deeds have been prepared for City review.

#7 – Walkway safety with regards to the project will be worked out with the Public Works Department and the City Council. They anticipate closing off some of Congress Street and will provide covered walkways around the project. They will be bringing in a crane and there will be off-site staging, similar to what was done at 100 Market Street. Materials will only be brought in as they are ready to

be used. They will be working with the City Council to work out agreements and obtaining approvals to do that. Mr. Chagnon asked them to keep in mind that there is no loss of parking under this proposal. There are currently two curbcuts going into the parking lot and those don't have parking in front of them. They will be keeping the same number of parking spaces and will also include a 40' loading zone in front of the site. Therefore, they will not be taking any parking spaces away from the City.

#9 – Street lighting detail they have added to the plan.

#15 – They needed to add some minor arrows to the plan.

#18 – The bike rack and bench need to be voted on by the Board.

#20 – The right-of way will be addressed with the City Council.

#24 – An Easement has been prepared and a copy distributed to the Board regarding the transformer.

#25 – They are currently waiting for DPW to sign off on the discharge permit and will submit that as soon as it is finalized.

#28 – The striping plan will be revised with some minor revisions.

#32 – The 5' clearance will be changed to 5'2" to allow access by the City snowplows.

#37 – McHenry Architects are addressing the vent grill relocation.

Steve McHenry, of McHenry Architects, stated that the original design of the exhaust vents for the parking garage would not be intrusive to the abutters. However, after meeting with the abutters it was decided that it was technically feasible to move them from the rear of the building to an area on Church Street. The idea was to keep them low and the configuration would be similar to a building around the corner. The purpose of the ventilation system is that there is not enough open air to allow for free ventilation so it has to be mechanical. Mr. McHenry pointed out that this would require approval from the HDC.

Mr. McHenry gave a general overview of the building. They started with a series of work sessions with the Historic District Commission. They started out stating that their ultimate goal was to create a building whose architecture complimented the best of its Market Street neighborhood and a building that respects its context to scale and detail as appropriate. After their long process beginning in April, he felt that was still appropriate and true. It is a mixed use building. The lower level is a parking garage. The first two levels are a mixture of retail and office space. The levels above are residential condominiums. The design of the building reflects the scale, materials and details of the buildings around it. They went through a study with the HDC of the surrounding buildings and they feel this building is highly appropriate.

Mr. Savramis asked what the material was on the back side of the building.

Mr. McHenry indicated it was brick.

Mr. Chagnon also wanted the Board to understand that the developer was agreeing to move the ventilation from the rear to Church Street at the request of the abutters and if the HDC would not favor this new location then the vent would remain on the rear. Mr. Chagnon introduced Attorney Paul McEachern.

Attorney McEachern indicated they have submitted the Sidewalk Easement for Church Street and the License Agreement to allow for overhangs and he expects to work those out with the City. They also will be submitting a proposal to the City Council for a Construction Easements to allow the crane to sit

in the front of the building and to use Church Street from time to time during construction. They are anxious to get on a time table that will allow construction to be completed as quickly as possible. Attorney McEachern also addressed the Memorandum of Agreement which they entered into with the Porter Street abutters which was made a Stipulation by TAC. The Planning Department was recommending that the Memorandum not be made a stipulation which he understood but he wanted to clarify that they would still be honoring the Agreement and most of the stipulations were already incorporated on the Site Plans.

Mr. Hopley asked about the Easements being prepared with the City and whether the footings that support the building would be included in those Easements?

Mr. Chagnon confirmed that the footings on the Congress Street side would be included in the Easements. The back side of the building doesn't go to the property line and the footings will not extend off of the property.

Mr. McHenry confirmed that no footings extend over the rear property line.

Mr. Sullivan asked Mr. Hopley if the building would be completely sprinkled?

Mr. Hopley indicated that it would be.

Mr. Sullivan asked if the water drainage system that surrounds the building was adequate to take care of the water run-off on the roof.

Mr. Chagnon stated that there will be no increase in impervious area on the site. The entire parking area drains out to the corner to a catch basin on Fleet Street and they will be tying the roof drains into that. This will be a better situation than present because it will be collected into the gutters and piped into underground drainage.

Mr. Sullivan asked about the ventilation grill being moved to Church Street and whether it had been approved yet?

Mr. Chagnon indicated this was something that the developer was willing to do at the request of the neighbors. The HDC has not seen that application yet and has not approved it at this time.

Mr. Sullivan did not want to see this ventilation blowing onto pedestrians using Church Street.

Mr. Chagnon stated that it was a low velocity flow but that was exactly their concern. However, they will make the effort to seek relocation, subject to the approval of the HDC.

Chairman Smith asked Mr. Chagnon to address the mechanicals of the building?

Mr. McHenry explained that the mechanical systems are based in the mechanical room in the basement with condensers on the rooftop which are hidden out of view. They are also away of the decimal levels that they must follow.

Deputy City Manager Hayden asked about the curbcuts and whether they would have flaired sides?

Mr. Chagnon indicated that they only tipdown one way as they go from 6".

Deputy City Manager Hayden was concerned about the drop off as people were walking from different directions. She asked why they wouldn't have flairs on both sides?

Mr. Chagnon indicated that they could put in flairs on both sides and it would probably be a good idea.

Deputy City Manager Hayden also stated that she would like to see it added that the details be provided and approved by DPW so that they are consistent with the rest of downtown. She also asked if they were removing any of the trees in the right-of-way?

Mr. Chagnon indicated there are currently six trees, one of which is dead. They are showing on the plan that they will be moved and replanted on some other city property and they will start out with new trees.

Deputy City Manager Hayden asked about the granite crosswalk across Church Street and whether they would be replacing that after the project.

Mr. Chagnon confirmed they would be replacing it at the direction of public works.

Deputy City Manager Hayden understood that specs for the lights and benches were to be provided to Public Works and she wanted to make sure they were in sync with what was currently in Market Square.

Mr. Chagnon confirmed that the details on the plans were actually provided by DPW. The only change was the wattage in the light where they changed it from 100 watts to a 75 watt hallogen.

Chairman Smith asked about snow removal and storage. He understood that the City will be plowing their sidewalks but what about their driveway area? He also asked if they had considered heated sidewalks along Church Street and between the Odd Fellows Building?

Mr. Chagnon indicated they had not specifically discussed heated sidewalks.

Attorney McEachern confirmed that the driveway to the garage would be heated.

Chairman Smith again asked about heated sidewalks. The Congress Street side will have the benefit of the sunlight but Church Street and between the building will not.

Mr. Chagnon stated that Church Street is city sidewalk and would be maintained by the City. He felt it might be a good idea to heat the walkway between the buildings.

Deputy City Manager Hayden stated that our downtown was a mighty busy place and it appeared that they had an 18 month time frame for construction. She felt a lot of details over that time period would have to be worked out with them, such as festivals, road races as well as what goes on at the North Church, such as weddings and funerals. She would like to add as a stipulation that a construction agreement be worked out with the City. She asked how they felt about that?

Patrick Callaghan, of Callaghan Construction, Project Manager, did not believe that would cause any issues for them. There would be a full staff on site at all times, including a full time superintendent, and he felt they could work around those and work with the City.

Deputy City Manager Hayden asked if that was a typical plan that could be put in place ahead of time, including things such as who to contact when there is an issue and things that the City knows ahead of time that would be a conflict.

Mr. Callaghan stated there would be no problem with that.

Deputy City Manager Hayden asked, with respect to the sidewalks being blocked off, how long would that be for and whether it would be a tunnel type structure to walk through.

Mr. Callaghan indicated that during heavy construction they would have pedestrians use the other side of the street, using police detail. Once the heavy construction is done, there will be a temporary barricade and the walkways will be covered.

Deputy City Manager asked how long the heavy construction period would be?

Mr. Callaghan indicated that would depend on how soon they could get started. If they get started now, it would go faster but it would be at least six months.

The Chair called for anyone from the public wishing to speak to, for or against the petition.

Attorney Gerald Giles, representing himself and his wife Judy as residents of Porter Street. He indicated they had met with Steven Kelm on at least 5 occasions and as a result of those meetings they came up with a Memorandum of Understanding including 19 issues that they came to agreement on. It was only this evening that the Planning Department indicated that they do not recommend that this Agreement be part of the stipulations. He had not planned to speak but if their Agreement is not going to be a condition of approval, then he opposes this project. He has a problem with the location of this building being so close to the Porter Street Townhouse area. The Church Street corner of the proposed building is almost on the property line. He does not understand how that building can be maintained without coming on to the Porter Street properties. In addition, he anticipated snow coming off of the roof and coming onto their property which would cause a problem.

Mr. Will indicated that some of the issues that Mr. Giles raised seem reasonable, such as deliveries, trash pick-up and lighting, but he didn't see why they had to look at it as an "all or nothing" proposition.

Ms. Tillman indicated that that the main issue was that the Agreement was between two private parties and the City is not party to it and therefore the City should not be involved in it.

Mr. Will asked if the Board couldn't review the Memorandum and address some of them?

Chairman Smith indicated that Mr. Will was free to take some of the issues from the Agreement and make them stipulations.

Mr. Will felt it would be reasonable if there was a contact person that the abutters could call whenever there might be a question or issue.

Ms. Tillman mentioned that the Construction Management Plan will address many of the issues.

Cindy Williamson, owner of Eagle Photo and previous owner of the subject property, addressed the Board. She stated that she lived through the Porter Street Townhouse construction as an abutter and they had problems with the construction and they had a number for the construction manager and they worked things out. There were a couple of times when her business was shut down due to lack of water and electricity. She gave the Porter Street townhouses electricity for almost 2 months so that they could work during construction. She stated that was what neighbors did – they helped each other. As a retail establishment having been downtown for 90 years and in that location for over 50 years, they wanted something to be built that was appropriate to the site. The developers and architects have done a wonderful job with that. She couldn't stress enough that they needed to get this project moving as quickly as possible so that the downtown could be impacted as little as possible. She felt the plan was worthy of their approval and she encouraged them to do so.

Tom Holbrook, owner of River Run Bookstore and a Portsmouth resident, did not feel he could express his feelings better than Ms. Williamson. He felt it was important that this project begin as soon as possible and that it happen because it will be great for downtown vitality.

Donald Coker, of 80 Fleet Street spoke as an abutter. He felt this project needs to move forward. He couldn't speak to every item in Attorney Giles Memorandum but he did feel that some of them were very reasonable. Having lived through the Porter Street Townhouse project, he recognizes that it takes an awful lot of cooperation between the construction project and the neighbors.

George Carlisle, of 59 Deer Street, addressed the Board. He indicated that he was very impressed with the plans for this project at a critically important location in downtown. He felt it was a beautiful multi-use building and he likes the condominium concept which will add to the City's tax base.

Joan Jones, Owner of the Bow Street Inn, stated that she has long felt that Market Square deserve an appropriate building in this location. This will be a huge improvement. There are many instances in Portsmouth where buildings are very close and everyone must work together. She encouraged the Board to grant this application.

Bob Philbrick, of Portsmouth, stated he was a third generation property owner in the City. He gave a short history of his family and the downtown. His father was co-owner of this property at one time and he eventually inherited it. Mr. Lowe, of the movie company, eventually bought it. He felt this would be a beautification of the area and a benefit to the City of Portsmouth.

Attorney McEachern confirmed that the Agreement with the abutters would still be upheld by agreement and therefore it shouldn't be of a great concern.

Chairman Smith asked if they were planning to have a construction trailer on site and if so could they have a telephone number for a contact person on the outside of it?

Attorney McEachern indicated that they would have someone on site during the day and an after hours phone number posted on the site as well.

Deputy City Manager Hayden asked if any changes would be made to the landscaping as a result of agreements with the abutters that would cause them to come back for site plan revisions?

Attorney McEachern indicated that they will work out something with the abutters and they will maintain it and all details will be worked out with the Planning Department.

Mr. Chagnon clarified that the Porter Street Townhouses have a fee simple ownership and they are all actual subdivided lots with a wall between them. They do have an Association to handle issues that are of common interest to them. However, the Agreement that has been discussed this evening is not with the Association but rather with some of the individual owners.

Mr. Sullivan asked for clarification on who Attorney Giles represents?

Attorney Giles indicated he represents himself and his wife and he can't speak for all of the property owners of the Porter Street Townhouses. It is important to him that the Memorandum of Understanding is made part of Site Review approval as he spent at least five meetings coming together on this Memorandum and it becomes a concern of his if it does not become a condition of approval.

Mr. Sullivan understood from Attorney McEachern that they had accepted and he had agreed to an understanding so whether it was part of the approval or not, the Agreement remained in place.

Attorney Giles indicated that if it became part of the approval then the City could enforce it.

Mr. Will felt that there was only so much that the City could do and some of the items the City just couldn't do.

Mr. Chagnon asked, if the Board were to make the Memorandum part of their approval, then they allow them the chance to explain how they addressed most of the issues.

Chairman Smith indicated he would do so.

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

DISCUSSION AND DECISION

Mr. Will made a motion to approval the Site Review application with the existing 39 stipulations, and stipulations regarding the heated driveway and accessway, flairs on the sidewalks, and a Construction Management Plan.

Ms. Tillman added the stipulation that the initial parking threshold be finalized and listed on the plans before a building permit is issued. Also, that by the passage of the plan the Planning Board is recommending approval of the use of the right-of-way and license agreements for any encroachments in the City sidewalks. Ms. Tillman indicated that normally it would have to come back to the Board for recommendation back to the City Council but this would take care of that step in the process. Also, that the Construction Management Plan be approved by the City prior to a Building Permit being issued. She also asked that Stipulation #39, regarding the Memorandum of Understanding, be eliminated.

Deputy City Manager Hayden asked that stipulations #10, 11 & 12 clarify that all information be approved by DPW and Planning Department staff as appropriate. And the same should be done for the Bike Rack stipulation as well. She would like staff coordination so that they are being consistent with other bike racks in downtown.

Deputy City Manager Hayden asked about the stipulation that stated that the lighting on Church Street be addressed.

Ms. Tillman stated that was addressed by the installation of the two pole fixtures on Church Street and the note that was added by TAC was to have a 5' separation between the wall and the fixtures was clarified by a 5'2" so that snow plows could get through.

Ms. Tillman also addressed Stipulation #3, regarding the Civil Works Letter, and indicated that should be eliminated as a Stipulation in the same way they are eliminating the Memorandum of Understanding.

Mr. Sullivan asked about the heated walkway between the proposed building and the Odd Fellow Building and whether they were also addressing lighting?

Chairman Smith indicated there was a light fixture on the building. He did confirm that the heated sidewalk should be added to the stipulations. Also, he noted that all of the light fixtures around this are all at 10'.

Deputy City Manager Hayden expanded on the Construction Management Plan and stated that the Plan should be in place before a building permit was issued on this project and also there should be input and approval from the Building Inspector, Planning Director, Public Works Director, Parking and Transportation Director, and City Manager. It will also include contact phone numbers, construction schedules, sidewalks and how and when they will be blocked off, how the North Church will be dealt with and many, many other things.

Mr. Will found five issues from the Memorandum of Understanding that he felt should be incorporated into Stipulations. The first was the contact number between the developer and the abutters, which is #4. Trash pick up must coincide to City regulations. Construction lighting should be turned off after construction is completed and, lastly, prior to construction the developer will provide abutters with a time line of construction.

Chairman Smith questioned the project timeline, which he could understand being part of the construction plan however he did not want that to be an agreement that they would holding their feet to the fire on.

Mr. Will agreed that they should not be holding their feet to the fire as far as the time line but communicating to the City and keeping them aware of what was going on should be adhered to.

Deputy City Manager Hayden asked about adding that all stipulations be met prior to the issuance of a building permit.

Ms. Tillman indicated that the Department generally goes through them and sign off that everything has been done, unless there is something that was unable to be done and bonding would take care of that.

Mr. Will indicated that all of the stipulations made by Board members were agreeable to him.

Mr. Savramis seconded the motion.

Mr. Sullivan mentioned that Mr. Will mentioned no lights at night but he felt the police may require some for safety reasons.

Mr. Will agreed that something may be needed but just not something that would shine into people's windows.

Deputy City Manager Hayden asked about the Civil Works letter.

Ms. Tillman stated that the letter from Civil Works was the start of the items that went into the Memorandum of Understanding so they are pretty much one in the same.

The motion to approve with stipulations passed unanimously.

Stipulations are as follows:

From the October 5, 2004 TAC meeting:

- 1) That an Easement Plan and License Plan shall be prepared for review and approval by the City Legal Department;
- 2) That it be determined what materials will be used for the streetscape, i.e. what is going to be new granite, what is going to be old granite, where will the new granite go and where will the old granite go;
- 3) That the egress to the National Block remain open so that they comply with City Codes;
- 4) That a detailed description be provided regarding sewer and a meeting with the Department of Public Works is recommended;
- 5) That Sidewalk Easements shall be prepared for review and approval by the City Legal Department;
- 6) That the termination of shut-offs be shown on the plans;
- 7) That walkway safety be addressed in the construction area and the Church Street and Congress Street area to protect pedestrians from falling objects;
- 8) That the roof drains be shown on the plans;
- 9) That details be provided on specifications for brick construction, concrete handicapped ramp, and lighting, and to be approved by DPW and Planning Department staff as appropriate;
- 10) That a determination be made for final paver material on Church Street, and to be approved by DPW and Planning Department staff as appropriate;

- 11) That tree species need to be identified, and to be approved by DPW and Planning Department staff as appropriate;
- 12) That electric metering should be shown on the plans;
- 13) That the sewer service shown on the plan should be 8" rather than 6";
- 14) That the water utility room should be shown on the detail sheet;
- 15) That the need for striping changes be referred to Traffic & Safety and a striping plan for Congress Street be submitted as part of the plans;
- 16) That trip generations be provided for existing development versus proposed development;
- 17) That lighting on Church Street be addressed;
- 18) That bike rack and bench specifications be provided for review and approval by DPW and the Planning Department staff to assure consistency with other downtown;
- 19) That the loading zone be widened to 40' on Congress Street;
- 20) That a note be added to the Demolition Site Plans stating that improvements and operation in the public right-of-way require approval from the City Council;
- 21) That the plans show a stand pipe for the automatic sprinkler system for the fire service in the basement and that the stand pipe be in service and available to supply water as each floor progresses during construction;
- 22) That the details for granite curbing should be set in concrete and the brick shall be to city specifications and that the detail show the granite banding insulation and detail on the curbing;
- 23) That the tree detail reflects the granite curbing that will surround it;
- 24) That the electrical transformer on the side of the building, is on the abutting property, and an Easement will need to be prepared and noted on the plans;
- 25) That a note be added to the plan indicating that a sewer discharge permit be obtained;

From the November 2, 2004 TAC Meeting:

- 26) That the four doors on Congress Street be recessed for safety purposes or have the doors swing into the building, if code compliant;
- 27) That a garage door be considered and researched so that further information can be provided at the next TAC meeting;
- 28) That a separate plan be prepared for signs and striping;
- 29) There are concerns over the landscaped area in the back of the building and there should either be a written agreement with the Porter Street abutters or it should be hardscaped;
- 30) That temporary arrangements for construction easements with the City need to be addressed, including the impact on abutters;
- 31) That construction hours will be added to the site plan;

From the November 30, 2004 TAC Meeting:

- 32) That there be a 5' clearance between the building and any obstructions to allow for snow plowing;
- 33) That a note be added to the Sign and Striping plan that all proposed pavement markings be ground off, suitable to DPW standards;
- 34) That the stop bar be at least 4' from the crosswalk;
- 35) That the roof drain be tied into the city drainage system;
- 36) That the hours of construction be modified on the plans to conform to the Zoning Ordinance, stating that Saturday hours are only allowed with the authorization of the Building Inspector;
- 37) That the ventilation grill be moved to the Church Street side and be placed at sidewalk level;

Stipulations from the December 16, 2004 Planning Board Meeting:

- 38) That the driveway leading into the garage be heated and so noted on the Site Plans;
- 39) That the walkway between the proposed building and the adjacent Odds Fellows Hall be heated and so noted on the Site Plans;
- 40) That a sidewalk curbcut detail (to include flaired sides if code compliant) be provided, which meets ADA standards, and be approved by DPW and so noted on the Site Plans;
- 41) That a Construction Management Plan be prepared by the applicant and approved by the City Manager, Director of Public Works, Director of Parking and Transportation, Police Chief, Fire Chief, and Building Inspector prior to a Building Permit being issued, and that the Construction Management Plan include a mechanism for communication with the North Church;
- 42) That the initial parking threshold shall be finalized and listed on the Building Permit as appropriate;
- 43) That by the passage of this plan, the Planning Board is recommending approval of the use of the right-of-way and license agreement for any encroachments in the City right-of-way to the City Council;
- 44) That all light fixtures shall be to City specs and so noted on the Site Plans;
- 45) That the developer shall provide the Porter Street abutters with the names, telephone number and cell phone numbers of the general contractor, all subcontractors and the on-site personnel in charge of any portion of the construction work;
- 46) That trash pickup and construction site deliveries shall be limited to allowed hours of construction work;
- 47) That construction lighting shall be limited to allowed hours of construction work and shall not spill onto or glare towards the Porter Street Townhouses; and
- 48) That all stipulations must be satisfied prior to the issuance of a building permit, except as noted by Planning Department staff.

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5. The application of **Harold J. Henry, Owner**, for property located at **235-245 Islington Street**, wherein site plan approval is requested to construct a 20' x 38' 3-story free standing building, with a 760 ± s.f. footprint, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 138 as Lot 45 and lies within the Central Business B district and Historic District A.

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Harold Henry, owner of the property, addressed the Board. He provided the Board information on the site and previous approvals that he had received from the HDC and TAC. TAC approved the application with seven stipulations. Mr. Henry did not have a problem with six of the stipulations, he worked with Public Works and they are reflected on the plans.

He felt there was a difference of opinion to bring all utilities underground. He did not object to bringing the utilities underground for the new unit however TAC is requiring that they also underground the utilities for the existing building. There is a six unit structure which exists on the property with no contemplated changes so in his opinion, site review is not required. He is proposing to construct a freestanding building on the panhandle on the rear of the property. He sees this as two condominium buildings. By itself, as a single unit it would not require site review approval. Site Review regulations state five units or more, when complete, therefore requiring site review approval by code. He took exception to that even though he wanted to be as cooperative as possible. He

understood that the Site Review approval require that utilities be underground, unless not feasible. He also understood that the Planning Board has the authority to waive underground connections. He is questioning the reasons for the applicability for a single unit addition. Currently, the utilities come from the street from a pole to a pole on his property. From that pole they run to the six unit building. These utilities are working just fine and the service is not unsightly. The removal of the pole and subsequent burying of the utilities will not improve the aesthetics of the building and the cost would be prohibitive. Also, in order to trench to the building, they would have to take the HVAC units off line. He spoke with NYNEX and PSNH, who both agree that the difficulty is great and the return is little and would be a very low priority for them. Therefore, he does not believe that underground utilities for the six unit building should have to be underground as part of this project. He requested that this stipulation be waived.

Chairman Smith asked about snow removal on the site and was that already contracted with the Condo Association?

Mr. Henry stated that he owns all six units and they have pushed the snow around for the six units when possible. They have 18 parking spaces and only need 6 so they have been able to move the snow around. The new building is going where some of the snow has been stored so they will do whatever is necessary in the future.

Councilor Ferrini confirmed that Mr. Henry had mentioned that it was his desire to sell the premises so he asked what would it cost to bury the utilities and is that something that could be passed along as an increased value of the site?

Mr. Henry stated that the cost to bury the utilities would be around \$20,000 and that would not include the HVCA interruption.

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

DISCUSSION AND DECISION

Mr. Will made a motion to approve with all seven stipulations. Councilor Ferrini seconded.

Mr. Holden advised the Board that it is appropriate for a request to be made for a waiver of the Site Review Regulations however the stipulation has been applied in the past and the reason it is here is because it is more than four units, it is the cost of doing business and it is how the City gets other properties into conformance. He felt the Board would be re-visiting this many times in the future if they start granting waivers on it. The Department also indicated that they should eliminate Stipulation #4 which requests a \$500 contribution to the City for brick sidewalks as the account that those monies would go into has not been prepared yet so it would be inappropriate to collect those funds at this time.

Chairman Smith also added a stipulation that the snow be removed from the site, which is standard procedure.

Mr. Will and Councilor Ferrini were agreeable to eliminating the sidewalk contribution and adding the snow removal stipulation.

Mr. Coker disagreed with the Department's opinion regarding the Site Review Regulations and felt that by adding just one unit, he was not subject to Site Review. He asked under what requirement under the Site Review Regulations do they require underground utilities.

Chairman Smith reminded Mr. Coker that this is a six unit lot and this will make the seventh unit and the Board needs to look at the entire lot. This is what brings buildings back to the Board to bring them up to the new standards, one of which is underground utilities.

Mr. Holden indicated this fell under the development criteria. Mr. Holden also indicated that the issue was not whether this matter belonged in Site Review but whether a waiver for underground utilities should be granted. He confirmed that this application was properly before them.

Mr. Will indicated that the only logical conclusion was to agree with the Department. Otherwise, developers would come to the City, four units at a time, and try to build things without coming to Site Review. As soon as you reach the threshold of five units, they must come before the Board.

The motion to approve as presented passed with Mr. Coker voting in the negative, subject to the following stipulations:

- 1) That all utilities on site shall be underground;
- 2) That the manhole shall be added to the Site Plan;
- 3) That the catch basin that the roof drains are tied into should be identified with the type and size of the pipe;
- 4) That it be determined whether the existing water feed is adequate for the new water service;
- 5) That a sewer clean out at the end of the sewer lateral shall be shown on the Site Plan;
- 6) That snow be removed from the site.

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6. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street**, wherein revised subdivision approval is requested to remove the sewer easement across Lot 3 shown on Plan D-32144 recorded at the Rockingham County Registry of Deed. Said property is shown on Assessor Plan 125 as Lot 1 and lies within a Central Business district and Historic District B.

Mr. Holden was not sure if the applicant was present but, as this involved the City he explained what the issue was. When this project was originally approved, the sewers were going to be provided on the lot itself as the condition of the sewers on Hanover Street were not known. In the meantime, the City and the applicant videotaped the sewers and found them to be in good condition and it was preferred at that point by the City to maintain the sewers within the street right-of-way. The Plan this Board approved showed the easements being on the lot and they are no longer necessary. The City took the position that it needed to come back to this Board to extinguish the creation of those easements as they were not longer needed. The Department recommends that the revised plan be approved as presented as its sole purpose is to extinguish a public right that was going to be created on private property that is no longer needed. He did feel it was unusual that the applicant or owner of the property to not be present to represent the issues. He had expected the applicant to be present.

Chairman Smith indicated they could table it to their next meeting and request that the applicant be present.

Mr. Will made a motion to table.

Chairman Smith went on to ask if the Board felt this was minor enough to go forward.

Deputy City Manager Hayden asked if they were aware of any issues this may create to the project if they were to put it off for another month and was there any hidden message in them not being present, like they wouldn't want it go forward?

Mr. Holden did not want to comment on what they may need for time as they have a number of issues that are going forward. The Department had represented to them that they did not see the extinguishing of this easement as a major issue that may explain why they were not present.

Deputy City Manager Hayden felt they should go forward.

Mr. Will withdrew his motion to table.

The Chair called for public speakers. Seeing none, he closed the public hearing.

Deputy City Manager Hayden made a motion to approve as presented. Mr. Hopley seconded.

The motion to approve revised subdivision approval passed unanimously.

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7. Notice is hereby given that the Planning Board is proposing to amend its Site Review Regulations as these pertain to membership on the Board's Technical Advisory Committee. Copies of the proposed amendment are on file at the Planning Department.

Mr. Holden indicated that this was brought up by the retirement of Alan Sturgis from the Conservation Commission. The other members of the Conservation Commission have other jobs and it would be difficult for them to attend the TAC meeting. Additionally, the Technical Advisory Committee is comprised of City officials so the proposal was to add Peter Britz, the City Environmental Planner, as the staff person to TAC with the ability of the Conservation Commission to replace him or supplement him at any point.

Also, the regulations date back to 1985 and some of the regulations reflected that. As TAC is a recommending body to the Board they had not been overly concerned about the changes in staff but it became apparent that it was time to correct that. They are recognizing the positions, rather than the names of the staff. The City Attorney has reviewed these changes and approves them.

Mr. Holden reminded the Board that this was a public hearing and these were the Board's regulations.

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

DISCUSSION AND DECISION

Mr. Sullivan asked if Peter Britz would be attending the Conservation Commission meetings so that the communication between that Commission and TAC was flowing properly?

Mr. Holden confirmed that Mr. Britz is currently serving as the staff person to the Conservation Commission. Mr. Sturgis and Mr. Cormier, the current Chairman, wanted to make sure that line of communication continued.

Deputy City Manager Hayden made a motion to approve. Councilor Ferrini seconded.

The motion to approve revisions passed unanimously.

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III. CITY COUNCIL REFERRALS/REQUESTS

A. Letters from Christ Episcopol Church and The Church of Jesus Christ of Latter-Day Saints

Mr. Holden indicated the City Council is interested in developing a procedure for way-finding signs. Back in the summer this Board came fairly close to that and they would like to bring John Burke in to review it and fine tune it. Mr. Holden asked that this be tabled until the February meeting.

Mr. Will made a motion to table this referral to the February meeting. Mr. Hopley seconded.

The motion to table passed unanimously.

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B. Parking Impact Fee

Chairman Smith stated that one of the main reasons that this was coming up was because of the new hotel that is going in downtown. The City has some interest in new parking garages. The proposed parking impact fee is more in line with what the actual cost would be for a space for one year.

Mr. Holden confirmed that the proposed \$1,200 figure is based on what it would cost to finance and operate a particular space for a year. The figure is now tied to an actual number. He reminded the Board members that the original figure that was proposed by the Board was \$5,000. That was cut to \$500 and one of the issues that arose out of that was that it seemed to be an arbitrary figure. That figure has generated a fair amount of revenue to the City which has been used consistently to support activities such as the rental of the Masonic Lot, payment towards the parking meters and payment for Mass transit with Coast. The issue was that it had not been looked at it in over 7-8 years. The Council wanted a fresh look at it. The EDC has convened a sub-committee that has been meeting over the past 9 months and, coming out of that, was a way to tie it to an actual figure. It was also vetted with members of the Development community who recognize that no figure would be universally popular but it was better to have a figure that was tied to something. It was also general consensus that this figure would not put a roadblock to development. Acknowledgement was made that it was a significant increase over the \$500 but the City and this Board have indicated that parking resources are becoming scarcer. The City is looking at constructing a parking garage on the Worth Lot. The City Council has entered into a Memorandum of Understanding with the Sheraton that may culminate in additional parking resources. The City is moving in a line where its public policy is that parking should be a publicly funded resource and not be a burden on the taxpayer.

Councilor Ferrini indicated that he would be supporting it and felt that the EDC has done an excellent job in creating a rational quantitative basis for the fee. Having said that, he did not believe he would be fully discharging his duties if he didn't say that he thought there was some dissent in the details of how the fee is managed. He indicated to the Planning Board that he would personally seek to address those issues as part of the Council meeting. He believes it is in the City's best interest to recommend this.

Mr. Will stated that he was one of the people early on who felt that \$5,000 was reasonable if not a little low because they are not just looking at a parking space for one year but rather the permanent loss of a parking space. That is a burden on the City. He felt this should be re-visited every year to see if it is adequate, especially because of what is in the pipeline and will be coming to downtown in the next few years. He felt they should be revisiting this at least for the first year at the same time next year.

Councilor Ferrini felt that what they were doing would achieve that. First, it is based on an annual basis and they can review something any time that they want subject to proper motion made and duly seconded. He didn't believe they had to put anything into this that they don't already have the ability to do. But, he did feel it was incumbent upon the Planning Board and the City Council to make sure that it is understood in terms of its financial impact both beneficially to the City and on the community. He felt it was their job to make sure that they listen and do the right thing.

Deputy City Manager Hayden made a motion to approve as presented. She felt the EDC and staff really did their homework on this, the City has an obligation to provide parking and this is their mechanism to getting there.

Councilor Ferrini seconded the motion.

The motion to approve as presented passed unanimously.

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IV. AMENDED SITE PLAN REVIEW

- 1) 72 Mirona Road, Mulberry Day Care – Guardrail placement

Mr. Holden indicated this change was reviewed with John Burke, who recommends this change as being more appropriate than the original proposal. The Department has authorized this change subject to the Boards concurrence that this constitutes a minor site change.

The Board was in agreement that this was a minor revision.

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Chairman Smith indicated that the Capitol Improvement Plan meeting was held and he felt they did a good job.

Councilor Ferrini asked for an update on Master Plan work sessions so that they can plan ahead.

Mr. Holden reminded the Board members that there are two meetings in January – The regular meeting is scheduled for January 20th and a Special Meeting is scheduled for January 27th.

V. ADJOURNMENT

A motion to adjourn at 9:50 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Jane M. Shouse
Acting Secretary for the Planning Board

These minutes were approved by the Planning Board on January 20, 2005.