

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

**7:30 P.M.**

**CITY COUNCIL CHAMBERS                      NOVEMBER 16, 2006  
CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**MEMBERS PRESENT:** Jerry Hejtmanek, Vice-Chairman; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; Raymond Will; George Savramis; Anthony Coviello; Paige Roberts, Alternate; and Timothy Fortier, Alternate;

**MEMBERS EXCUSED:** John Ricci, Chairman; M. Christine Dwyer, City Council Representative; and Donald Coker

**ALSO PRESENT:** David M. Holden, Planning Director; and, Lucy E. Tillman, Chief Planner  
Peter Britz, Environmental Planner

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**I. APPROVAL OF MINUTES**

A. Approval of Minutes from the October 19, 2006 Planning Board Meeting – Unanimously approved.

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David Holden, Planning Director, indicated that the Planning Board continues to work on the draft of the Zoning Ordinance and staff continues to work with the consultant. There is no discussion on the Zoning Ordinance this evening but there will be more information in December. Deputy City Manager Hayden added that the Re-Zoning Audit Report is on-line and available at the public library and the Planning Department. The report is just preliminary findings rather than concrete findings of the Planning Board. They have had several work sessions and Taintor & Associates is working on a draft which will come back to the Planning Board in draft form in January. The Planning Board will work on that in January, February and March and in May of 2007 the Planning Board will begin the public forum. There will be many opportunities to comment on the re-write. Acting Chairman Hejtmanek stated that the Planning Board will then recommend it to the City Council who will also have public hearings.

**II. PUBLIC HEARINGS**

A. The application of **Millennium Borthwick, LLC, Owner**, for property located at **155 Borthwick Avenue** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to add 13,771 s.f. of grading and pavement within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 259 as Lot 14-1 and lies within an Industrial District; (This application was tabled at the October 19, 2006 Planning Board Meeting.)

Mr. Will made a motion to take the application off of the table. Deputy City Manager Hayden seconded the motion.

Mr. Holden advised the Board that this application did not receive a favorable recommendation from the Conservation Commission and the applicant has requested that it be tabled.

Mr. Will made a motion to table indefinitely. Mr. Hopley seconded the motion.

The motion to table to a time indefinitely passed unanimously.

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B. The application of **Elizabeth Cummings, Owner**, for property located at **39 New Castle Avenue**, wherein Preliminary Subdivision approval is requested to subdivide one lot into two with the following: Proposed Lot 1 having 10,500 ± s.f. and 68' of street frontage on New Castle Avenue and 141' of street frontage on Humphrey's Court and Proposed Lot 2 having 6,870 ± s.f. and 83.00' of street frontage on New Castle Avenue, and lying in a zone where a minimum lot area of 5,000 s.f. and 80' of street frontage is required. Said property is shown on Assessor Plan 101 as Lot 36 and lies within a General Residence B District and Historic District A.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Corey Colwell, of AMES MSC, appeared on behalf of the applicant. He handed out a color plan for the Board's review. He stated it is a two lot subdivision on the corner of Humphrey's Court and Newcastle Avenue. The lot contains approximately 17,300 s.f. of lot area, or .4 acres, with 144' of frontage on Humphreys Court and 150' of frontage on Newcastle Avenue. There is an existing building and carriage house on the lot and the remainder is open space. The existing building is currently a 3-unit apartment building and they propose to reduce it to a two unit apartment building. This is important because only 2 units would be allowed on the reduced lot. They are proposing a 10,500 s.f. lot which is shown in yellow on the color plan. The green area represents proposed lot 2 which eventually will contain one single family dwelling. It will be 6,870 s.f. in size, or .5 acre, with 83' of frontage on Newcastle Avenue. There are city utilities and gas for both lots. They are seeking preliminary approval only. They would then proceed with a full survey showing the topography and existing features. These lots are also in the HDC District and the overlay district so they would have to appear before the HDC regarding the proposed new structure.

Mr. Will noted that one department recommendation is that the Zoning Officer will inspect 39 Newcastle Avenue but that doesn't seem to be in dispute. Mr. Holden stated that the applicant is suggesting that they will bring the building to two units and that is how they will determine that it is in concurrence.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.

Peter Rice, of 196 South Street, directly abuts the subdivision. He is the City Water and Sewer Engineer however he speaks as a private property owner. He requested that the Planning Board table the subdivision application until the further studies can be done to determine that the existing site is not a wetland, that the proposed development would not create drainage that would add to current problems of abutters and that the site will not adversely impact an already difficult traffic and parking problem in the area. He was concerned because this was the only opportunity for public comment on the proposed development. He displayed photos of the site showing standing water on this site which lasts for months. He also produced pictures showing the poor drainage on the lot. He is concerned that disturbance will result in the site draining onto his lot. Irresponsible development of this site will shift the drainage to other sites. He also was very concerned about the parking problem and did not believe this site meets the City's parking requirements. Because of the uniqueness of this site and because this is the only opportunity abutters will have to speak, he requested that prior to approval a full site development plan be prepared, showing how the site will be developed and how drainage, traffic and parking will be mitigated. Upon completing the plan, a public review of impact to abutters should be done. He also asked for deed restrictions regarding the number of units allowed on each lot.

He also added that his daughter did an informal survey and everyone she spoke to agreed this site should not be developed.

Mr. Will asked the Department if this would be the only time and place that this would be discussed at a public hearing? He asked about drainage issues being addressed as part of the Subdivision Regulations. Mr. Holden clarified that this is a one lot subdivision and is only subject to a building permit. He suggested that the Board continue with the public hearing and they may have a series of questions to ask the applicant.

Mr. Rice added that this is like a large bathtub and if you displace the water with a house, it will overflow to the abutting lots.

David Costa, of 172 South Street, abuts the Cummings and Rice property. He felt that any tampering with this property will flood him out. Last year they had ducks in the back yard. He is very concerned about his property.

Josh Gagnon, of 152 & 154 South Street, abuts Mr. Costa and the corner of the Cummings property. He has the same concerns as Mr. Costa. A petition was circulated in the immediate area regarding parking and flooding and the neighbors do not support the variance (sic). Mr. Holden corrected the record that they are not seeking a variance and they are requesting a subdivision only.

Clyde Low, of 10 Newcastle Avenue, is across the street from the subject property. He is concerned about traffic impact and parking. He also saw the ducks and stated this area is a complete wetland.

Tasha Kostantacos, 70 Newcastle Avenue, did not support this application. She is concerned about the traffic and additional density to the area will adversely affect them. She also provided signatures that objected to the application.

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. Holden advised the Board that the subdivision does meet all of the requirements of the Zoning Ordinance but the question is whether the lot is buildable. Under the purpose of the subdivision Rules & Regulations, #3 states "The avoidance of development which impedes the function of the natural drainage system and flood areas" so the Board may want more information made available to them and hopefully Mr. Colwell can address some of these issues to the Boards satisfaction.

Mr. Will asked the applicant to please elaborate on the concerns of the neighbors regarding drainage. Mr. Colwell felt that Mr. Rice described it very well as the area is a low depression and acts as a bathtub in the area. The surrounding properties and the existing building just to the right of the proposed lot are much higher and everything from that lot drains onto this lot. All surrounding properties, including the road, drain into this low area. If you leave it as it is, it will continue to be a depression area and all of the water will drain into that and during a storm event, it will overflow. The way to remedy a drainage problem is to fix it by grading, getting the water flowing back to a storage area, raise the house, put in landscaping and drainage and divert the water away from the abutting properties. They can make it as part of the development of the new house on Lot 2. Mr. Colwell felt that leaving it alone was the worse thing to do. Regarding traffic increase, there are currently 3 units which they are reducing to two units and they will add the new house, which will result in no net increase in traffic. The existing garage can handle all parking requirements for Lot 1 and the new house will have a driveway and off street parking. Mr. Colwell felt it might be best to have a wetland scientist visit the site and report back to the Board. He reminded the Board that this is just a request for preliminary approval.

Deputy City Manager Hayden asked about diverting water to a closed existing structure? Mr. Colwell stated it could go to a closed drainage structure on Humphrey's Court but it could not on New Castle Avenue. Perhaps that might be the solution to divert it down across Lot 2 and between the garage and the building. Newcastle Road is much higher. Deputy City Manager Hayden asked if drainage was an issue on Lot 1 right now? Mr. Colwell stated that drainage is quite good on Lot 1 because the building sits high. There is water leaving Lot 1. Deputy City Manager Hayden asked if they did build a closed drainage structure to address Lot 2, would they would also address issues on Lot 1? Mr. Colwell confirmed that was correct because Lot 1 drains almost completely on Lot 2. By leaving the lot undeveloped, the water will continue to pond.

Mr. Will understood that the applicant was open to having a wetland scientist go to the site and also more than happy to do a drainage plan. His only concern with the second part of that was that he would feel more comfortable, when they come back for final approval, that they come back with something more detailed for the Board members to review in addition to the abutters' comments and the City's comments. Mr. Will specified he would like to see a detailed drainage plan and a wetland survey prior to final approval. Mr. Colwell confirmed they are open to that and he would expect to provide those documents at the hearing for final approval.

Mr. Savramis asked, in light of discussion, if they could grant preliminary approval and add two more stipulations requesting a wetland survey and a drainage plan and whether that would be reasonable? Mr. Holden confirmed that the lot can legally exist but he felt that additional conditions would be appropriate and Mr. Colwell was correct in stating that they only do that after a preliminary hearing. He felt they might want to add that failing to satisfactorily comply with the additional conditions then this lot is non-buildable.

Mr. Savramis moved to approve preliminary approval with the four stipulations recommended by the Planning Department and the three new stipulations which were discussed. Mr. Will seconded the motion.

Mr. Hopley assumed, lacking TAC's review of drainage and traffic, this would be reviewed internally. Mr. Holden assumed the Board would want this reviewed by employees of DPW and TAC officials, other than Mr. Rice, for a report back. That recommendation was acceptable to the maker of the motion and the second.

Mr. Coviello asked if this was considered to be a preliminary plat plan because a lot of things seemed to be missing per the regulations. Mr. Holden pointed out that one and two lots do not require the additional information for preliminary and this plan meets the requirements.

The motion to approve preliminary subdivision approval passed unanimously with the following stipulations:

1. That a plan shall be prepared and stamped by a Wetland Scientist prior to final approval;
2. That a drainage report shall be prepared prior to final approval;
3. That if the applicant fails to satisfactorily comply with all conditions of approval then the lot shall be non-buildable;
4. That the Zoning Officer shall inspect 39 New Castle Avenue and report back to the Planning Board, Inspection Department and Assessor's Office as to the number of units at this site;
5. That assuming no more than two units are located at this site, that applicable property records should be updated to identify the present situation;
6. That a note shall be added to the Plat verifying compliance with the Zoning Ordinance in terms of residential units on both lots e.g. one unit and two units;
7. That a Final Subdivision Plat shall be prepared and submitted to the Board in accordance with the Board's *Regulations*.

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C. The application of **Arthur E. and Joan T. Jones, Owners**, for property located **off Merrimac Street** and **The Woman’s City Club of Portsmouth, Owner**, for property located at **375 Middle Street**, wherein Preliminary and Final Subdivision approval (Lot Line Revision) is requested between two lots having the following: Lot 20 as shown on Map 136 decreasing in area from 12,471 s.f. to 12,982 s.f. and with 79.10’ of continuous street frontage on Middle Street and newly subdivided lot which was previously a portion of Lot 18 on Map 136 increasing in area from 10,370 s.f. to 15,082 s.f. and with continuous street frontage on Merrimac Street. Said lots are shown on Assessor Plan 136 as Lot 20 and a newly subdivided lot which was previously a portion of Lot 18, said lots lie within a Mixed Residential Office District and Lot 20 on Map 136 lies partially in the HDC Overlay District;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Karen Lovejoy, of Ambit Engineering, presented on behalf of the applicant. She indicated they are seeking preliminary and final approval for a lot line revision. She mentioned there was some confusion on the square footage in the Agenda description. The Jones’ property will go from 10,370 s.f. to 12,471 s.f. and the Women’s City Club will go from 15,082 s.f. to 12,982. Mr. Holden confirmed that this does not create a problem as the lot is properly identified by district and map and lot number. Ms. Lovejoy stated that the Jones’ will acquire a 15’ strip of land owned by the Women’s City Club which has basically been a “tail” off of the back of the Women’s City Club lot. If that were joined to the Jones’ lot, it will create a more uniform and regularly shaped lot. The Jones’ frontage would increase from 100’ to 115’ on Merrimac Street and the Women’s City Club frontage on Middle Street would remain the same. Ms. Lovejoy stated there was a 15’ right of way across that strip that benefited the Jones’ lot which would, by merger, go away. She also noted they will correct the typo in Note 8 on the Site Plans.

Mr. Holden felt there had been a great deal of interest in the easement area by abutters and he asked for more explanation. Ms. Lovejoy stated that the Women’s City Club sold out the lot to their rear, which is currently part of the Jones’ lot, and they included in that a 15’ right of way to benefit the Jones’ lot only and no one else. It did not grant any benefit to any other lots. The deeds only say the right of way was for access. She read from the deed “Together with a right of way in common with the said Women’s City Club, successors and assigns, for all purposes between the premises above described and land of Charles M. Vale, along the easterly of the premises above described and said Merrimac Street, over and across a strip of land 15’ wide and extending northerly from said Merrimac Street 138.8’ and bounded on the west by land of said Benjamin Green and east by the premises above described”. That deed was dated 1936.

The Chair asked if anyone was present from the public, wishing to speak to, for, or against the petition.

Cheryl Wood, 75 Merrimac Street, was a direct abutter to the 15’ strip of land. She stated that when they purchased their property they were led to believe it was a deeded right of way in perpetuity. They have owned their home for 11 years and they have mowed it and maintained the strip. They have asked to purchase it for several years and had a good relationship with the Women’s Club and they indicated it would never be sold as they needed it and it would devalue the Women’s Club property. She was concerned about the Jones plan to build their house and how close it would be to their property. They would like to know what they can expect and would like assurance that the right of way can be sold. She is concerned that the value of their house would be reduced if a fence was constructed.

Deputy City Manager Hayden asked if the back or front of her house abuts the right of way. Mrs. Wood stated it was the back of the house that was on the right of way.

Paul Pudlowski, Esq., representing Mr. & Mrs. Jones, responded to the issues of the abutters. Mr. Pudlowski stated that Mrs. Woods indicated she was told in 1996 that she had some rights to the strip but she admits she has never seen any proof. The title search does not show that and 11 years of maintenance does not warrant adverse possession and their use of the strip was with permission of the City Club. They had expressed interest in purchasing the strip but they had no enforceable means of purchasing it. The Jones have a legal Purchase & Sales Agreement to purchase it. The Woods lot does not benefit from a deeded right of way. There are large trees in the middle of the strip so it could not be used for vehicular purposes. The strip increases the frontage of the Jones lot and makes it more uniform in shape. It is his understanding that the historic use of the strip was so that the coal truck could continue to deliver to the City Club property.

Deputy City Manager Hayden asked, in the deed research, did Attorney Pudlowski find anything that allowed others to use the way? Attorney Pudlowski stated that the City Club retained the strip in fee ownership. The right of way was over their strip to the larger lot of the Jones lot.

Mr. Coviello asked if his client would be willing to honor the 10' setback from the old lot line for a structure? Attorney Pudlowski indicated he would have to discuss that with them. When they bought the lot a few months ago they determined that they could build the house within the setbacks. The house they intend to build can be sited on the lot within the requisite setbacks.

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**

Deputy City Manager Hayden stated that typically the Board doesn't have any responsibility to enforce deeds. It sounds like a case where two parties want to purchase a strip of land and only one party was successful. The City would not have any role in any right of way as it was not a public right of way. Mr. Holden added that any dispute over the right of way or how a legal instrument is written, is between the owners and not the City. Mr. Hopley asked if with the newly created subdivision they wouldn't be a party of interest? Mr. Holden confirmed they would not. Regarding Mr. Coviello's question regarding the setback, he would not recommend burdening this lot with a special requirement. The existing residence is non-conforming in terms of it's side yard so they legally can get within 10' of the side yard.

Mr. Coviello stated he can't know what the planners were thinking about when they sited the house. It certainly seems like they were considering the easement when they sited the house. Mr. Holden reminded Mr. Coviello that at that time the lot line was different. Mr. Coviello felt it was a tough one and he will wait for a motion.

Mr. Savramis made a motion to grant Preliminary & Final approval with the 4 recommended stipulations. Deputy City Manager Hayden seconded the motion.

Mr. Coviello stated he is not going to support the motion without an additional 10' sideyard setback until the time that the adjacent lot removes their foundation for some construction purposes and it would be re-sited. Tim Fortier seconded the amendment to the motion. Mr. Savramis, the maker of the motion, did not agree to the amendment. Deputy City Manager Hayden was also not agreeable to the amendment.

Mr. Holden indicated they could propose it as an amendment and it would be a separate vote.

Mr. Will made a motion for the amendment, for discussion. Mr. Coviello seconded the motion. Mr. Will was a bit confused. He understands they don't want things abutting to the side lot. How do they do it so both property owners can enjoy their property with some distance between them? Mr.

Coviello felt they could make it a stipulation that the side yard setback on that side of the lot be 25' until the lot removes their foundation or does significant construction.

Ms. Roberts strongly disagrees with the amendment. This is not relevant to this application. It is totally legal the way it is. Deputy City Manager Hayden agreed and felt it was beyond the purview of the Board. Mr. Savramis also agreed with Ms. Roberts

The motion to add an amendment regarding the setback failed on a 2-9 vote, with Mr. Coviello and Mr. Fortier voting for the motion.

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

1. That the typo in Note 8 (benefited) shall be corrected or noted so as to conform to the deed reference;
2. That the Assessor's Office shall supply appropriate lot identification to this application before recording in the Registry;
3. That boundary monuments shall be placed in accord with the requirements of the Department of Public Works; and,
4. That appropriate GIS information shall be provided to the City's Department of Public Works for the purpose of updating the Tax Maps.

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D. The application of **The Home Depot U.S.A., Inc., Owner and Christmas Tree Shops, Inc., c/o Bed Bath and Beyond, Inc., Applicant**, for property located **Off Durgin Lane** wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* to demolish the existing building and replace with a retail plaza within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 239 as Lots 13-2, 16 & 18 and lies within a General Business District;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Malcolm McNeill, Esq., representing Bed Bath & Beyond, stated this was the site which is currently Home Depot. Also present was Greg Mikolaities from Appledore Engineering and Jim Gove. Attorney McNeill stated that Home Depot is in the process of relocating to a new building. They are present tonight because of impacts in the buffer area and there are no proposed wetland impacts associated with this project. There will be no new impervious surface proposed within the buffer area and there will be a net decrease of the impervious area within the buffer. More importantly, all work areas in the buffer are currently either paved, disturbed or consist of a building. Areas of this site are grandfathered or vested with regard to their present wetland impacts and they are either reducing them or placing them in areas where there is either pavement or buildings at the present time. Other paved areas on this site will be removed. The total impervious area will be reduced substantially. There was a unanimous approval from the Conservation Commission after significant discussion.

Attorney McNeill explained that the Home Depot site consists of 26.15 acres and presently the total disturbance is 10.18 acres. Access is derived from Durgin Lane and also from the area that is close to the Saturn Dealership. The present Home Depot footprint is 127,856 s.f. and was previously constructed for a Costco. Their proposed building will consist of a Christmas Tree Shop, a Bed Bath & Beyond and an unleased store. The proposed retail use will be reduced by 16,000 s.f. In terms of grandfathered impacts, the wetland buffer already impacts the existing building along with portions of the parking lot and the entrance site. Presently 45% of the site is impervious, 516,000 s.f. As a result

of the proposed development, the impervious areas will be reduced to 479,000 s.f., a reduction of 36,679 s.f. which is almost an acre.

In terms of the Conditional Use permit, the onsite impervious area within the buffer is 72,343 s.f. With this proposal that will be reduced 50,311 s.f., or a 22,032 s.f. reduction within the buffer. For this use, the wetlands buffer area has a 22,000 s.f. reduction in impact.

Attorney McNeill stated that another component is the fact that the area is not currently treated at all, similar to the new Home Depot Site. On this site, 366,508 s.f. of impervious area is not currently treated but will be treated as a result of their improvements. Another by-product is that the Hampton Inn property is not currently treated but will drain on to this property and will be treated. All matters of consequence to the Conservation Commission are addressed in this proposal.

Greg Mikolaites, of Appledore Engineering, addressed the Board. He reviewed the colored plan showing the flagged wetlands. The green areas are paved area being removed and replaced with landscaping and stormwater treatment areas. The red lines show the current configuration. They are removing 1 acre of pavement and are still maintaining the same parking count.

He discussed drainage which were Sheets 3 & 4 of the Site Plans. They evaluated the drainage system and the entire property is flowing into three different wetland areas and is untreated. He color-coded the three wetlands that are receiving drainage. He also displayed their proposed stormwater treatment plan which they worked with Jim Gove on. They added downstream defenders and put in a couple of bio-retention rain gardens. He pointed out the two downstream defenders being added where water is discharging to the wetlands. That will improve the stormwater quality before it reaches the wetland. Next to the connector road to Saturn they will add another defender. The existing Hampton Inn flows through the site and that will be picked up in one of the downstream defenders. They are adding two bio-retention rain gardens. This is a fairly significant reduction of pavement and they are proposing to treat all nine acres of pavement which is currently untreated.

Jim Gove, of Gove Environmental, advised the Board that he flagged the wetlands and they were shown in brown along the site on the plans. One wetland was a scrub shrub wetland and PSNH has cut everything down so it is even less so now. It has three primary functions. There is an isolated wetland, labeled as #2, which is also a scrub shrub and was cut down and functions primarily as flood flow alteration. Wetland #3 drains to a much larger wetland off-site and as a whole it is scrub shrub and moves in a northerly direction. It was receiving a lot of sand from the pavement after sanding and salting activities. The wetland on the western side is an area that is scrub shrub as well as an emergent wetland, or cattail marsh, allowing a lot of stormwater functions. This buffer area is incredibly dense and the wetland drops off very quickly. It is incredibly well vegetated. The functions of those areas, which are all essentially stormwater retention are going to be improved as run off is now going to be treated on the site. This will be an improvement to the wetlands.

Attorney McNeill reviewed the Conservation Commission conditions. One was that the area be returned from pavement to natural and be planted with a wildflower conservation seed mix. Secondly, that the areas at the edge of the buffer not be mowed. Both of those are acceptable to the applicant.

Attorney McNeill reviewed the Conditional Use criteria:

1. The land is reasonably suited to the use and the wetland values are not adversely impacted.

Attorney McNeill indicated that this does not add any new impervious surface or impacts to the areas within the jurisdiction of the Ordinance. The majority of the disturbance is to reduce the impact and is intended to enhance and not adversely impact the wetland area.

2. There is no adverse impact on the wetland values of the surrounding properties.



Attorney McNeill stated that Jim Gove testified that there is improvement to the site and the reduction of impervious surfaces will benefit water quality and Best Management Practices are being utilized for the treatment areas that had not been treated at all so there will be a benefit to treating surrounding properties.

- 3. The applicant shall demonstrate that alterations of the natural vegetative state or managed woodland will occur only to the extent necessary to achieve construction goals.

Attorney McNeill advised the Board that there are none of those there that were impacted.

- 4. The applicant shall demonstrate that the proposal is the alternative with the least averse impact to areas and environments under the jurisdiction of the ordinance.

Attorney McNeill felt in this case, as this is an existing site, all impacts are improved and impacts are reduced throughout the project.

Further, he stated that the Planning Department has recommended approval and he felt the applicant had met all criteria.

Attorney McNeill also confirmed that sweeping will be done once a month. They discussed this with the Conservation Commission.

Mr. Will asked why, if they were razing the existing building, were they building a small portion of the building in the buffer? Attorney McNeill stated they have had discussion regarding that and they felt the totality of the circumstances, with all the improvements, made it reasonable. Effective utilization of the site was a consideration.

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. Coviello made a motion to approve with stipulations. Deputy City Manager Hayden seconded the motion.

The motion to approve passed unanimously with the following stipulations:

- 1) That the areas being returned from pavement to natural be planted with a wildflower conservation seed mix;
- 2) That the areas at the edge of buffer not be mowed.
- 3) That the Stormwater Protection Plan (SWPP) shall include sweeping the lot once a month;

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E. The application of **Perry Silverstein and Kristin Magnus Silverstein, Owners**, for property located **off Penhallow Street and 19 Market Street** wherein Preliminary and Final Subdivision approval (Lot Line Relocation) is requested between two lots having the following: Lot 12 as shown on Assessor’s Plan 106 decreasing in area from 6,266 s.f. to 6,220 s.f. and with continuous street frontage on Market Street and Lot 9 as shown on Assessor’s Plan 106 increasing in area from 2,273 s.f. to 2,319 s.f. and with continuous street frontage on Penhallow Street. Said property is shown on Assessor Plan 106 as Lots 9 & 12 and lie in a Central Business B District, Historic District A and the Downtown Overlay District;

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Perry Silverstein, owner and applicant, addressed the Board. He was requesting a lot line relocation. He referenced his new plan and distributed photos for the Board to review. He was requesting to relocate the lot line so that the land will become part of Lot number 12. Lot 12 is fully built on and is covered entirely by a building. The transferred land, 46 s.f., is covered by a shed style roof as shown in the photo.

Mr. Coviello asked if the Lot #12 shed roof extends over the lot line? Mr. Silverstein confirmed that it does and the shed roof as approved by the HDC will be removed if he receives a building permit to build on this lot. He is proposing to build on the rear section of that lot.

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. Hopley asked if the stairs benefit Lot #12 and he owns Lot #9 & #10 as well, so it's all common ownership? Mr. Silverstein confirmed that was correct.

Mr. Holden asked if the lot line will be free and clear when he is done with his building? Mr. Silverstein indicated that the lot line will be even with the façade of the window so the answer is yes. Mr. Holden asked if they need to make sure the roof is removed? Mr. Hopley confirmed they do and there will be other issues with the door and window so it's not a problem.

Mr. Coviello made a motion to approve preliminary and final subdivision with three stipulations. Mr. Will seconded the motion.

The motion passed unanimously with the following stipulations:

1. That the Assessor's Office shall supply appropriate lot identification to this application before recording in the Registry;
2. That boundary monuments shall be placed in accord with the requirements of the Department of Public Works; and,
3. That appropriate GIS information shall be provided to the City's Department of Public Works for the purpose of updating the Tax Maps.

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F. The application of **Temple Israel, Owner**, for property located at **170 and 200 State Street**, wherein Site Review approval is requested to construct a 15'± x 8'± s.f. elevator enclosure and a 525± s.f. irregularly shaped entryway at the rear of the existing structure, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 107 as Lots 65, 66 and 75 and lies within the Central Business B, Historic District A and the Downtown Overlay Districts.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John DiStefano, Construction Manager representing Temple Israel, addressed the Board. He indicated that the Temple uses are the same and will continue to be used for assembly and classrooms. Internally they are adding space for classrooms and adding a second level. Exterior features include a new entry and a brick venire approved by HDC. There is no change in parking. The entrance is about

600 s.f. and there is an elevator shaft giving access to both floors. There are no changes to sewer to the site. They received approval from the Technical Advisory Committee.

Mr. Holden indicated that one comment was they were going to check with DPW on the need for a grease trap. Mr. DiStefano stated they are planning to do a grease trap and have make that provision,

Mr. Coviello asked if lights were being added? Tom Emerson, of Platt Hitchborn Architects, indicated they were not adding any lights.

Mr. Hopley asked about the grease trap. Mr. Holden stated there is a kitchen and existing food services so there will be a grease trap. Mr. Hopley asked if that will be underground? Mr. DiStefano stated it would be inside the building in the same location but completely renovated.

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. Hopley asked if the food service issue came up after TAC? Mr. Holden confirmed that was correct. Because of the Committee, no one from DPW was available so they did not pick up on it. They discussed it after TAC and determined there was a need. Deputy City Manager Hayden assumed that the Health Department was also involved in that? Mr. Holden was not sure because it came out of TAC. Deputy City Manager Hayden indicated they need to make sure that gets coordinated. Mr. Hopley asked if they had done any engineering to get the 1,000 gallon separator outside yet? Mr. Balfour, of Jones & Beach Engineers, stated they had not but either alternative would work. They prefer to keep it indoors. Mr. Hopley asked about a new sewer line? Mr. Balfour confirmed that is a new line and they will run a second line so they will have two sewer hook ups on Court Street.

Deputy City Manager Hayden asked, if they go with an outdoor greasetrap, where would that appear on the site plan? Mr. Balfour pointed out where they could put it either inside under the kitchen or outdoors in place of one of the parking spaces. Deputy City Manager Hayden encouraged them to contact the Health Department to coordinate.

Mr. Hopley stated he would have expected to see the new sewer line on the plans. Mr. Balfour showed the proposed utilities but as that line was existing it didn't show but he will add it. Sheet C-1 is the existing conditions plan that shows the line coming off the sewer into the ramp area. When the field survey was done there were markings on the floor that were sewer clean outs. That is the area where the grease trap would go. Mr. Hopley stated that the plan doesn't show the newest line. Mr. Balfour stated they will label that on the final plans. He will be speaking with CMA next week.

Deputy City Manager Hayden noted the handicapped parking spaces being added near the new front entry and asked about the State Street side? Can those be moved to the main entry as well? Mr. Balfour confirmed they are currently existing and there is an existing building that needs access as well. Deputy City Manager Hayden agreed to go with whatever would work best for their building.

Deputy City Manager Hayden made a motion to approve with 7 stipulations. Mr. Will seconded the motion. Mr. Coviello asked if they wanted to add a stipulation regarding the grease trap?

Mr. Hopley suggested that the applicant shall work with DPW on the final disposition of the grease trap.

Ms. Roberts asked that they make sure they have plans reflecting the current utility situation. Mr. Balfour will get ties from CMA to update the plans.

The motion to approve passed unanimously with the following stipulations:

Stipulations from the October 31, 2006 Technical Advisory Committee Meeting:

- 1) That Utility Note 8 shall be removed from the Site Plans;
- 2) That Utility Note 13 shall be revised to read that all water work shall be constructed in accordance with the Portsmouth Water Division standards;
- 3) That the existing 4" domestic service on Court street shall be deleted from the Site Plans as it does not exist;
- 4) That Note 18 on the Site Plans regarding sprinkler installation should include NFPA 13 as that is the sprinkler system design and installation code;
- 5) That all buildings with sprinklers shall require automatic notification of emergency forces, per Portsmouth City Ordinances;
- 6) That the lots shall be consolidated prior to the issuance of a building permit; and
- 7) That all new site lighting shall be Dark Sky Friendly and cut sheets shall be provided to DPW and the Planning Department for review and approval;

Stipulation from the November 16, 2006 Planning Board Meeting:

- 8) That the applicant shall work with DPW, the Planning Department and the Legal Department on the final disposition of the grease trap.

.....  
**Mr. Coviello recused himself from the next application.**

G. The application of **Strawbery Banke, Inc., Owner**, for property located on **Washington Street**, wherein Site Review approval is requested to construct an irregularly shaped 5,500± s.f. 2-story building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 108 as Lot 2 and lies within the Mixed Residential Office District and Historic District A.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Larry Yeardon, President of Strawberry Bank, addressed the Board and described the site as facing Washington Street. The building will house over 10,000 objects relating to Portsmouth. The building will also house offices and work space for staff and volunteers, along with a small gallery open to the public for exhibitions. The design is to fit into the Strawberry Banke campus and the neighborhood. The Historic District Committee was unanimous in their positive vote on the building. They received Board of Adjustment approval to site the building. He finished by stating that the building is important to the growth of Strawberry Banke.

Nick Issak of JSA Architects, stated that the building will be located on Washington Street between Penhallow Street and the former Café on the Banke. They went to the Board of Adjustment to have a portion of the building extend to the property line. The lower level has a small gallery, collections office, receiving area and some storage.

Jeff Clifford, of Altus Engineering, indicated that one thing that was interesting is that the property line jogs in one place which is why they required the variance. The drainage from the site will be collected in gutters and will go to the City's stormwater system to a catch basin. They minimized impervious on the site by using gravel pathways and they reduced stormwater on the site. The other utilities come in off of Washington Street and the CMA Engineers have coordinated that. The utilities will go underground into the building. Mr. Clifford stated that digging below 2' at Strawberry Banke results in archeological issues so they are only clear for 2'. To make sure they don't have frost they need to

extend the foundation insulation out 6'. They are getting a license for the right of way onto Washington Street from the City Council.

Deputy City Manager Hayden asked about the concrete insulation and whether it was a slab? Mr. Clifford stated it was full board. Deputy City Manager Hayden asked if they are working on the approvals they will need for that? Mr. Clifford confirmed that they have sat down with Suzanne Woodland, Assistant City Attorney, and she has set them up to have the appropriate documents executed.

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 approve with four stipulations. Mr. Will seconded the motion.

Ms. Tillman suggested they include a stipulation stating that they are making a favorable recommendation on the City Council license so that this does not have to come back to this Board. That was agreeable to the maker of the motion and the 2nd.

Motion to approve passed unanimously with the following stipulations:

- 1) That the applicant shall seek an easement and/or license from the City Council to install the insulation for the foundation;
- 2) That this Committee recommends that the easement and/or license be granted;
- 3) That automatic notification of emergency forces and a knox box shall be installed; and
- 4) That Strawberry Banke shall be responsible for paying for the installation of the new drain manhole that is required for their on-site drainage as well as their drainage stub which they are asking to be installed; and
- 5) That the Planning Board makes a favorable recommendation to the City Council regarding the easement and/or license agreement (as referenced in Stipulation #1) thereby fulfilling a requirement for a report back with recommendation.

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Mr. Coviello recused himself from this application.

H. The Portsmouth Planning Board, acting pursuant to NH RSA 12-G:13 and Chapter 400 of the Pease Development Authority Site Review Regulations, will review and make a recommendation to the Board of Directors of the Pease Development Authority regarding the following: The application of **Two International Group, LLC, Applicant**, for property located at **100 International Drive**, wherein site plan approval is requested for the construction of a 17,485 ± s.f. (footprint) 3-story addition to an existing office building, with related paving, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 306 as Lot 0007 and lies within an Industrial District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Attorney Bernard Pelech appeared on behalf of the applicant and indicated that this has been before TAC and they received a favorable recommendation with a number of conditions. The site engineer, Jennifer Viarengo, of Appledore Engineering, responded to all of the conditions listed in the TAC letter of decision and he felt she did an excellent job in dealing with those issues. This is a proposal to expand an existing structure and the original structure was built in anticipation of this expansion.

Many TAC conditions dealt with the fact that the original building and site work was not complete and they will certainly complete all of the site work but it did not make sense to do so when a good portion would just have to be dug up again to complete the expansion. Two International, the developer, has placed a bond with the PDA to assure the completion of the work.

Jennifer Viarengo, of Appledore Engineering, indicated that they are proposing a 17,485 s.f. 3-story addition. When they came for the first office building, all utilities were put in to support this expansion. They will be removing existing pavement and islands to construct the addition and then they will come in to repave. The drainage system was permitted with the State and was designed as a whole to include the expansion although this addition will actually have less square footage than what was permitted for. The water quality swale will support this expansion. The majority of the new pavement is in the rear of the building. There is a slight increase in the parking area to the east. During the TAC meeting, there were stipulations which she reviewed.

- 1) That the entire site, excluding the wooded and wetland areas, shall have at least 4" of loam and seed;

At the end of this project that will be done. The intent was to come back in after the expansion and then complete that. The staging area for this job will also receive the loam and seed.

- 2) That the sewer pump station shall provide six hours of storage space;

Currently due to the electrical conduits that run along International Drive there were some problems running them across the street. Therefore, the entire office building will be on a pump station and they will provide the storage that was requested;

- 3) That the concrete sidewalk that was started in Phase I shall be extended to the property lines in both directions;

That is now shown on the Site Plans and will be constructed as part of this project;

- 4) That finished pavement shall be provided on the entire site and the pavement shall be re-stripped, including stop bars and stop lines where appropriate;

The PDA has a bond for what is not shown. At the end of the project it will all be done;

- 5) That the plans shall indicate that the applicant shall follow the City of Portsmouth Aquifer Protection Guidelines;

The whole site has been designed in accordance to these guidelines and a note has been added to the Site Plans;

- 6) That the WSO symbol on the front of the building on the Site Plans shall be clarified;

They went in the field and a water shut off was not there so it has been removed from the plans;

- 7) That the applicant shall put in writing that the fire and domestic water services were originally sized to include this addition;

A letter was included in their packets stating that had been done and there is adequate capacity for the water service and the fire service;

- 8) That the Site Plans shall indicate that the silt fence shall be removed once the site is stabilized;

Any sediment trapped will be removed and then the silt fence will be removed and a note has been added to the Site Plans;

- 9) That the City Environmental Planner and a representative of DPW shall conduct a site walk in the Spring to review the swale and detention basin to make sure they are in good working order;

A representative from Appledore will coordinate that with DPW in the spring, once the addition is completed;

- 10) That the fire alarm box and the knox box relocation shall be coordinated with the City Fire Alarm Division (Fire Department);

A note has been added to the Site Plans.

- 11) That the tip downs for the handicapped ramp shall be appropriately labeled and that a stop sign and stop line shall be added, if they do not currently exist;

They have made these revisions. The handicapped tip downs have been marked, they added curb stops to the face of them, they identified existing ramps, added cross walks, added stop bars and proposed handicapped ramps where the sidewalk comes in from International Drive across the parking area;

- 12) That ADA tip downs and crosswalks shall be added to the existing sidewalks at the egress of the site;

They are currently there and have been labeled as such;

- 13) That the City and PDA staff shall work on calculating the appropriate traffic dollar contribution from the applicant;

They submitted a letter to the PDA, based on the exact dollar amount that was calculated for the original project, and she understands that is all set;

- 14) That documentation shall be provided to the Planning Board at their November 16, 2006 meeting regarding the maintenance schedule which has been followed on the existing site and also a proposed maintenance schedule, as outlined in the Drainage Report on the unnumbered page which is immediately prior to Appendix A;

They have included a letter from the Management Company that they will be maintaining this site and they will continue to clean them and sweep the lot; and

- 15) That the PDA will consider the removal of the existing sidewalk leading to the Portsmouth Herald site;

At the rear of the site there is a bituminous walk and they will work with the PDA to determine the best way to do that as it is in the wetland area. They will need to get a permit to remove it.

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 indicated that under normal circumstances he would vote against applications in the PDA that were in the wetland buffers, but as so much work was done between the City and the PDA to protect the wetlands, he would like to move to approve with the 15 stipulations. Deputy City Manager Hayden seconded the motion.

The motion to approve passed unanimously with the following stipulations:

- 1) That the entire site, excluding the wooded and wetland areas, shall have at least 4" of loam and seed;
- 2) That the sewer pump station shall provide six hours of storage space;
- 3) That the concrete sidewalk that was started in Phase I shall be extended to the property lines in both directions;
- 4) That finished pavement shall be provided on the entire site and the pavement shall be re-stripped, including stop bars and stop lines where appropriate;
- 5) That the plans shall indicate that the applicant shall follow the City of Portsmouth Aquifer Protection Guidelines;
- 6) That the WSO symbol on the front of the building on the Site Plans shall be clarified;
- 7) That the applicant shall put in writing that the fire and domestic water services were originally sized to include this addition;
- 8) That the Site Plans shall indicate that the silt fence shall be removed once the site is stabilized;
- 9) That the City Environmental Planner and a representative of DPW shall conduct a site walk in the Spring to review the swale and detention basin to make sure they are in good working order;
- 10) That the fire alarm box and the knox box relocation shall be coordinated with the City Fire Alarm Division (Fire Department);
- 11) That the tip downs for the handicapped ramp shall be appropriately labeled and that a stop sign and stop line shall be added, if they do not currently exist;
- 12) That ADA tip downs and crosswalks shall be added to the existing sidewalks at the egress of the site;
- 13) That the City and PDA staff shall work on calculating the appropriate traffic dollar contribution from the applicant;
- 14) That documentation shall be provided to the Planning Board at their November 16, 2006 meeting regarding the maintenance schedule which has been followed on the existing site and also a proposed maintenance schedule, as outlined in the Drainage Report on the unnumbered page which is immediately prior to Appendix A;
- 15) That the PDA will consider the removal of the existing sidewalk leading to the Portsmouth Herald site;



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**III. NEW BUSINESS**

A. Appointment of CIP Sub-Committee;

Mr. Holden stated this was for the fiscal year '08-'13. Chairman Ricci and Vice-Chairman Hejtmanek have volunteered to sit on this committee and they are looking for one or two additional Board Members.

Mr. Fortier asked how often they meet? Mr. Holden confirmed there is just one meeting at City Hall on December 19<sup>th</sup> from noontime to 6:00 pm. All Department Heads are invited to meet with the sub committee to determine the advisability of the project and whether it should be included in the CIP plan. A draft CIP comes back to the Board in January for the Board to approve. They send it back to the City Council who begins their work sessions. It is a very interesting way to get involved in the City process.

Mr. Fortier volunteered to be on the committee. Mr. Will also volunteered as a tentative member as he was uncertain of his schedule.

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B. Subdivision/Separation of Property Located at 126-128 Concord Way;

Mr. Holden stated that, pursuant to the Zoning Ordinance, these are two duplexs in the Heights asking to be recognized as two separate lots. They are asking the Board to so acknowledge them.

Mr. Holden also indicated another request had come in for the following addresses on behalf of the Clair E. Ewing and George Ewing Trust to subdivision and/or separate the lots:

- 127-129 Crescent Way
- 191 – 193 Crescent Way
- 38 – 40 Raleigh Way
- 112 – 114 Raleigh Way
- 202 – 204 Raleigh Way
- 86 Raleigh Way – 623 Kearsarge Way

All of these buildings are duplexes and meet the requirements of the Zoning Ordinance.

Because there was a subdivision done in 1919, for administrative purposes the City has indicated they will acknowledge the separation.

The Board so acknowledged the separation of all of the above lots.

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**IV. OLD BUSINESS**

A. 1855 Woodbury Avenue (Starbucks) – building foundation revision:

Mr. Holden stated that soil conditions were more difficult than assumed so they have switched to a piling system. This is a minor modification that does not require action by the Board so they are simply notifying the Board of this change.

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Acting Chairman Hejtmanek acknowledged three informational items which were included in their packets:

1. Letter from the Seacosat Metropolitan Planning Association (MPO) dated October 2, 2006 regarding the Newington-Dover Spaulding Turnpike Widening Project;
2. Letter from the Hodgson Brook Restoration Project dated October 20, 2006;
3. Letter from the New Hampshire Division of Historical Resources dated October 20, 2006 regarding proposed telecommunications installation at 300 Woodbury Avenue;

Mr. Holden indicated that they have been watching for some zoning issues coming down from the City Council. They referred two potential zoning amendments recently. One effects the CBA with second reading in January and they have also send an amendment to the Board that affects property on US Route 1, which was identified in the Master Plan as requiring special consideration. City Staff, working with the land owner, are proposing a zoning proposal by Attorney Pelech. There is also potential for additional items. He would suggest a special work session on December 7th to work through the above zoning amendments.

The Board was in agreement to schedule a special work session on December 7<sup>th</sup> at 7:00 pm.

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**V. ADJOURNMENT**

A motion to adjourn at 9:25 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 December 21, 2006.