

**MINUTES
OF
REGULAR MEETING**

**PLANNING BOARD
PORTSMOUTH, NEW HAMPSHIRE**

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

7:00 P.M.

MAY 21, 2009

MEMBERS PRESENT: John Ricci, Chairman; M. Christine Dwyer, City Council Representative; Paige Roberts, Vice Chairman; Donald Coker; Anthony Coviello; John Rice; Anthony Blenkinsop; Cindy Hayden, Deputy City Manager; Richard A. Hopley, Building Inspector; and MaryLiz Geffert, Alternate

MEMBERS EXCUSED: Norman Patenaude, Alternate

ALSO PRESENT: David M. Holden, Planning Director; Peter Britz, Environmental Planner

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I. PUBLIC HEARINGS

A. The application of the **City of Portsmouth, Owner**, for property located **off Ceres Street** and **Portsmouth Navigation Corp, Owner**, for property located at **34 Ceres Street**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between two lots having the following: Lot 46 as shown on Assessor Plan 106 decreasing in area from 5,141 ± s.f. to 5,131 ± s.f. and continuous street frontage on Ceres Street increasing from 90' to 99' and Lot 45 as shown on Assessor Plan 106 increasing in area from 11,339 ± s.f. to 11,349 ± s.f. and continuance street frontage on Ceres Street decreasing from 172' ± to 161' ±, and lying in a district where a minimum lot area of 1,000 s.f. and no continuous street frontage is required. Said properties are shown on Assessor Plan 106 as Lots 45 and 46 and lie in the Central Business A District, Historic District A and the Downtown Overlay District (DOD). *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

David Allen, Deputy Director, Public Works Department, addressed the Board on behalf of the City of Portsmouth. He gave a history of the project. This is part of a long standing public-private partnership to improve waterfront access and involves the relocation of Poco's deck. The City is designing a new park area and a critical element is the relocation of a current dumpster enclosure. Abutters have worked with the City for a new location and this property line revision is intended to take care of that. He pointed out on an aerial map where the properties were. The Board was given a copy of the surveyed plan and essentially there is an existing chain link fence and Portsmouth Navigation currently is paved up to their parcel. Beyond their property line is the city's parcel. The City is going to exchange one piece of land for a small parcel onto their property to allow them to

relocate the current dumpster further back. They have worked closely with Portsmouth Navigation and property owners who use the dumpster. Waste Management has also been involved and they are improving the situation. They are cleaning up the area and removing the eye sore.

Councilor Dwyer noted that there had been questions raised about truck access and the ability of trucks to turn and empty the dumpster. Mr. Allen explained that was one of the large parts of the preliminary design. They met with the people who used the dumpster and met with Waste Management and this configuration was based on what they would need as well as something that was amenable to both Portsmouth Navigation and the City.

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 Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Holden advised the Board that the Department is recommending preliminary and final approval subject to some conditions and he would add two more. The zoning district needs to be corrected to show that it is Waterfront Industrial. There is no procedural problem in that as the hearing notice is to provide that notification but it should be corrected on the Site Plan.

Mr. Hopley made a motion to approve preliminary and final approval with the 5 Department stipulations. Mr. Rice seconded the motion. Deputy City Manager Hayden indicated that the other stipulation would be that the City Council will have to accept this conveyance so the 6th stipulation is that the Board recommends that the City Council act by authorizing these land conveyances.

Mr. Coker asked if there will or will not be a BOA action? Mr. Holden responded that the final determination has not been made but in all likelihood it will be required.

Mr. Coker asked about the waiver that the Board is granting to allow for one of the lots not to be presented as required. Mr. Holden indicated this was not unusual. A lot line change may not have both lots fully surveyed. The Portsmouth Navigation lot is private and the other lot is public so it was not necessary to survey both lots. The lot line being revised is being surveyed.

The motion to grant preliminary and final subdivision approval passed unanimously with the following stipulations:

1. That, as appropriate, approval from the Board of Adjustment shall be secured for the reduction in continuous street frontage;
2. That the Board grants a waiver to allow for one of the lots to not be completely presented on the Subdivision Plan as required by the Subdivision Rules and Regulations;
3. That GIS data shall be provided to DPW in the form that is required by the City;
4. That property monuments as required by DPW shall be set prior to the filing of the plat;
5. That the zoning district on the Subdivision Plan shall be revised to show the Waterfront Industrial District; and
6. That the Planning Board recommends that the City Council authorize these land conveyances.

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B. The application of the **City of Portsmouth, Owner, and TCG New Jersey, Inc., Applicant**, for property located in the **Echo Avenue Right of Way**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the placement of 4" PVC conduits for installation of buried fiber optic cable, connecting between existing utility poles, all within an Inland Wetlands Protection District. Said property is shown between Assessor Plan 238, Lot 2 and Assessor Plan 237, Lots 56 & 57, and lies within the General Business district and the Single Residence B District. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Joe Aggresta, from Sienna Engineering Group, presented on behalf of TCG New Jersey. Jessica Day is present from New England Environmental. They have applied for a conditional use permit in connection with the placement of 327 linear feet of communications conduit. The conduit will be placed within the limits of the right of way of Echo Avenue and the Spaulding Turnpike. The proposed PVC conduit will connect three existing utility poles and will be placed 48" deep. The required excavation will be a trench 18-24 inches wide, totally 654 sf of disturbance. The wetland resource areas were delineated by Randall Shute, New England Environmental. The project has received a favorable recommendation from the Conservation Commission. All work will take place in the right of way or the buffer zone and there will be no disturbance in the wetland resource areas and protective silt fencing will be placed. Excavated material will be placed on filter fabric prior to back filling to protect the existing ground. The disturbed areas will be restored to original grade and preconstruction conditions by applying loam and conservation seed mix or bituminous concrete as appropriate.

Chairman Ricci was curious how the conduits will be installed in an 18" wide trench that is 4' deep? Mr. Aggresta indicated they use a narrow bucket backhoe to dig the trench. The conduit is laid in the bottom of the trench.

Mr. Coker referred to the statement that a condition of approval is the proposed construction is in the public interest. He asked if this is part of a larger network of fiber optics? Mr. Aggresta confirmed it is an expansion of the TCG network and the main target in terms of providing a more readily accessible access point to its network is to get the facilities over to Pease.

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

DISCUSSION AND DECISION OF THE BOARD

Mr. Holden mentioned two other issues. One, because it is going under a right of way, a license needs to be issued by the City Council. Those materials have been submitted and it going before the next City Council meeting. Steve Parkinson would like an opportunity, after the license is issued, to review the plans to make sure they are appropriate. He would recommend that both of these points be made as stipulations.

Mr. Coker made a motion to approve with the above stipulations. Deputy City Manager Hayden seconded the motion.

The motion to grant a Conditional Use Permit passed unanimously with the following stipulations:

1. That the applicant shall receive a license from the City Council prior to commencing any work in the right-of-way;
2. That the Conditional Use Permit approval is subject to review and approval by the Department of Public Works;

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C. The application of **Bruce and Suzanne Phinney, Owners**, for property located at **165 Bartlett Street**, wherein a Conditional Use Permit is requested as allowed in Article VI, Section 10-608(B) of the *Zoning Ordinance* for the construction of two retaining walls to control run off and erosion of back yard, all within an Inland Wetlands Protection District. Said property is shown on Assessor Plan 158, Lot 10, and lies within the General Residence A district. *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Bruce Phinney, owner of property located at 165 Bartlett Street, indicated their property was located adjacent to a large paved parking lot and they have had problems with erosion and run off water from the parking lot. They constructed a steep embankment and two retaining walls to solve their problems. Their work is about 90% complete but they were told that retaining walls did not require a permit however they were eventually told they did need one so they stopped their work as there was a wetland issue. They then put an application in.

Mr. Coker asked if he designed this retaining wall? Mr. Phinney designed the retaining wall and he is a builder.

Councilor Dwyer noted in the Conservation Commission minutes they raised the issue whether there were some plantings that would hold the water better. Have they made any plans to further mitigate the problem? Mr. Phinney confirmed it has been a grass back yard for some time. If they require some wetland plants they are happy to do it but otherwise they will plant grass.

Mr. Coker noted in their materials, there is a photo which made him wonder where the water flows and will this solve the problem. Mr. Phinney explained how it works and felt it was an adequate design.

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

Miles Bratter, owner of two abutting properties, spoke against but he thought what they are doing will look great and will accomplish what they are asking. There was a hill there previously which was required by this Board. There was also an 80' long trench underground that collected all the water. Before that the property was owned by the Douglas' and there was a river running through the property. His concern is that there was a lot of dirt taken out and moved around and a lot of fill was brought in. The back of the property is where the majority of the wetland is located. He would like to see a site survey done and probably a wetland study showing that this wall is not going to cause further erosion on his property. He handed out pictures of how it previously looked showing how much dirt has been taken out. The wood will rot out and then it won't work as well. He also

stated that the Phinneys knew it was in the wetland buffer as they showed him the survey showing it.

Mr. Coviello asked which property Mr. Bratter owned? Mr. Bratter owns 177 Bartlett Street and 48 Clinton Street.

Councilor Dwyer asked if anything about this water flow will be affected by the sewer work that will be going on in the area. There was no one from the City to address that concern.

Mr. Coviello stated that if this wall was allowed and it caused damage it would be the owners responsibility to correct it. Mr. Bratter agreed, but it would be a civil matter. It was required of him when he put an oil water separator in.

Mr. Coker was confused because Mr. Bratter said he built a drainage system. Mr. Bratter explained he installed in from one end of his property, running 80' towards Bartlett Street. It goes down 3' and is 2 ½' wide. It cost him about \$20,000 to install. Mr. Coker felt if that is installed properly there shouldn't be any water running onto their property. Mr. Bratter stated that it did work but the hill that they removed used to absorb the water. Mr. Coker asked if it was Mr. Bratter's assertion that his property does not have any run off? Mr. Bratter stated that was correct because of his drainage system.

Mr. Hopley asked if the pipe is 4' in the ground, how does the water get into it? Mr. Bratter stated there is 3' of stone on top of it. Mr. Hopley asked how does this retaining wall affect him? Mr. Bratter said it won't and if an engineering study was done, it would tell him that.

Mr. Coviello asked if the drainage system is working, what would cause an erosion problem? Mr. Bratter indicated that the retaining wall is 2' within his stone trench and when the wood erodes, it may effect his system. The wood will eventually rot and go away.

Mr. Coker understood that he was worried about erosion but if his system works there is no erosion. Mr. Bratter confirmed that was correct.

Ana Layangose, 147 Bartlett Street, spoke in favor. Her property catches all of the run off and it is wet most of the time. Any improvement to the drainage would be appreciated by her. The only good time on her property is in the really dry summer. Otherwise it is muddy. Chairman Ricci asked if there was an increase in run off since the retaining wall went up? Ms. Layangose had not seen any increase and, in fact, it seems drier. Mr. Coker asked if she had gone out after a rain storm to see where the water is coming from? Ms. Layangose stated it is just running across two properties to her property.

Suzanne Phinney, co-owner, clarified that they are not doing this for landscaping but, rather, they are doing it to protect their back yard. They did not bring fill in. They just took fill that was brought it when he worked on the property and all they did was disburse it.

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 Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Holden explained one minor difference. Mr. Bratter speaks about appearing before the Planning Board as his project was significant and did require site review. This one does not require site review. The applicant's representations on how it was handled are correct. The City did not realize it was in a wetland buffer until they blew up the maps. The applicant has always been

stepping forward to address this issue and the Conservation Commission minutes speak to this issue.

Mr. Coviello made a motion to approval. Mr. Rice seconded.

Mr. Coviello understood the applicant’s desire to improve their property as long s it doesn’t effect other properties. He felt it was an undue burden to require any further studies. This wall may actually improve the water. If the wall deteriorates, there will be time to put a new one in.

Mr. Rice indicated that, for the record, Mr. Coker and Mr. Rice did not receive a Memorandum on this. Mr. Holden explained that the Memorandums were switched in their packet. Mr. Rice assumes that in the review of TAC there was a soil engineer that was present? Mr. Holden indicated that was not necessarily the case but a lot of work was done on Mr. Bratter’s lot on the drainage. This project only needed a building permit and they later realized it needed Conditional Use. It was the adjacent lot that was required to go through the entire review process due to the scope of that project.

Mr. Blenkinsop referred to one of the pictures and asked the Board engineers if there was any concern that where the retaining wall stops is it just going to channel water there?

Peter Britz, City Environmental Planner, indicated that he went to the site and stopped their work on the project. The area Mr. Blenkinsop is talking about is all lower so it will not channel any water. Rather than slope, it will have a chance to go into the ground. Their goal is to infiltrate more water into the ground. Mr. Blenkinsop asked if there would be no issue of water flowing off the parking lot and flowing down to the property line. Mr. Britz did not feel there would be an issue because it is flat and the water might already flow that way but it will not create any additional flow.

Chairman Ricci felt this would minimize the run off and will be supporting the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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D. The application of **2422 Lafayette Road Associates, LLC, Owner**, for property located at **2454 Lafayette Road**, wherein Site Review approval is requested to construct a 25,500 ± s.f. retail addition, to construct a 27,350 ± s.f. stand alone retail building, and to demolish 155 ± s.f. of existing building to separate the buildings, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 273 as Lot 3 and lies within the General Business district; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Gregg Mikolaities, of Appledore Engineering, was present with Doug Richardson from Waterstone Development. He handed out color plans. He indicated this is Southgate Plaza on Lafayette Road and they are proposing extensive improvements. They have had a number of meetings with the City. Three meetings with TAC, 2 meetings with Traffic & Safety, and now they are meeting with the Planning Board. The building expansion will be a separate retail building and a small addition on the site. They will remove a small section to separate the existing building and create a walkway. There will be extensive renovations in the front entranceway as they want to improve the Route One view. As they come in there will be pavers or bricks and Waterstone wants to create

something different. On Sheet E-2 there is a fairly extensive decorative wall they will construct with granite post and wood beam. They will construct sidewalks to connect with the crosswalks to get across the street. A major improvement is the introduction of 180 trees that will be planted, extensive landscaping, planted islands and they will be removing a ledge where the new retail building is proposed. The parking lot will be ADA accessible and they are trying to create a pedestrian environment. The existing lighting will be reduced to 24' high. On the plans it shows extensive modifications along the front of the building. They will bump out the sidewalks, create a brick band with plantings and oriental lightings similar to downtown. The sidewalk will be larger and there will be benches. There is a Coach bus stop and bike racks. There will be granite curbing on the islands. He pointed out that the vacant bank building lot is not part of this property.

Mr. Mikolaities explained that some things they will not see but are fairly extensive is the stormwater quality and treatment system. They did an extensive geotechnical study done and they are going to infiltrate and treat the majority of the water coming off the site. They will install 12 tree block filters on the landscaped islands which will direct stormwater to those areas and will go through filters before they go to perforated underdrains. There will be an underground infiltration basin and there is some existing drainage that will remain and they will install hoods and water quality units. They have heard today from DES that they will get approval on the drainage. They will reduce peak flow as well as volume. That was prompted by TAC to alleviate the drainage problem. This project received a parking variance from the Board of Adjustment. They received approval from the Traffic & Safety Committee on March 14th. Steve Pernaw conducted a traffic study and his findings were that the Route One corridor functions very well and there will be a 4% increase in traffic at the Constitution intersection and he recommends leaving it the same as this project will absorb that increase in traffic. They went to TAC three times and at the last meeting there were 2 stipulations that they had to address. They needed to meet with Tom Cravens and the new plans reflect those discussions. Stipulation #10 is that a drainage report shall be provided to David Desfosses and it is his understanding he was in the process of getting something to the Board.

Mr. Coviello asked Mr. Mikolaities to discuss the parking. Mr. Mikolaities indicated that they are providing 731 spaces. There was a discussion on what was required. The shopping center was designed on individual uses but the subsequent shopping center Ordinance that came out in 1995 works on the aggregate. They went to the BOA to clear up the confusion. It is now designed for the aggregate based on each individual use. They are meeting parking requirement by BOA. Mr. Coviello asked about the tree wells? Mr. Mikolaities explained there is a 6' concrete structure and the tree sits up top and the water goes into the 6' diameter hole. It will percolate and it absorbs a 2 year storm. The balance will go down to the conduit and into the infiltration system. It is a fairly new detail that UNH has done some research on, they are doing it on State Street and it is a green feature they are adding.

Mr. Coviello asked about lighting. They are asking for taller lighting than they like? Mr. Mikolaities confirmed they show a 22' fixture with a 2' base. Mr. Holden confirmed that Mr. Desfosses has indicated he will be working with them on the height. Approval should be subject to conformance with the lighting standards and with David Desfosses approving it.

Councilor Dwyer asked them to talk about why they selected that particular area for the pervious pavement and why limit it? Mr. Mikolaities explained it was because that was new pavement. Mr. Richardson added that they have a corporate sustainability policy under LEED so they have made a very cognizance design decision to put LEED elements in. This area is in the corner of the site and will be the employee area so it would be an appropriate place to do pervious. They are not looking for certification. Councilor Dwyer thought it was a fabulous place for green roofs. Mr. Richardson responded that they did not look at green roofs as they have been using lighter colored roofs for any replacement to reduce heat.

Deputy City Manager Hayden asked where do they put snow? Mr. Mikolaities pointed out snow storage areas on Sheets 3-A and 3-B. They are around the perimeters of the buildings where there is

no landscaping. It would get plowed and moved. Mr. Richardson indicated that for big storms they will have someone relocate the large piles off site.

Mr. Coker heard them say that the majority of the runoff will be treated. He asked them to estimate what they mean by majority. Mr. Mikolaities responded that it is probably close to 90%. He distributed a plan showing the areas that will not be treated but everything else will be treated. He confirmed that roof run off is being treated as well. The system is designed for up to a 100 year storm. Typically they are not required to reduce volume. They went out and did infiltration tests and a geotech study to see how much they could infiltrate. For a 2 year storm they will have a 33% reduction in volume coming of the sit and for a 100 year storm there will be a 20% reduction.

Mr. Coker asked if there is a trigger at the traffic light? Mr. Mikolaities indicated that Mr. Pernaw made the point that at peak Saturday hour is going to see an additional 2 vehicles per minute. Rather than adjust the signal he is saying they have enough capacity on the site so that they do not have to mess with Route One. An extensive traffic study was done. Mr. Coker wondered why the Board didn't get it in their packets. Mr. Holden confirmed the applicant reviewed it with both TAC and T&S.

Mr. Rice asked them to describe the screening on Route One from the north. Can you see the parking lot from Lafayette Road? Mr. Mikolaities felt they have done as much as they can and he reminded them that they don't own the bank property. Mr. Rice felt one visual problem today is that they have a vast wasteland of asphalt and it can be improved with landscaping. He is concerned the property should be screened from Lafayette Road. Mr. Mikolaities felt there was enough of a visual break from Lafayette Road. On Sheet E-2 it shows the depth of the landscaping.

Chairman Ricci asked what was the height of the existing light poles? Mr. Mikolaities indicated they are 32'. Chairman Ricci asked what conditions the traffic study was based on? Mr. Mikolaities confirmed the property is only 40% occupied so Mr. Pernaw adjusted it up to 100% occupied and it was adjusted for peak months.

Chairman Ricci felt this was one of the nicest and well detailed site plan sets he has ever seen. He asked if there was any thought about going to the bank to ask if they could extend landscaping to their property. Mr. Richardson confirmed that the bank is vacant currently although someone is looking to occupy the bank. They have extended out a relationship with that party and as they share a parking easement. They would love to extend their granite post and rail fence further down.

Mr. Coviello asked if they are taking out a lot of material? Mr. Mikolaiatites confirmed they are taking out the ledge. They will try to crush the stone and use it for trenching. Mr. Coviello thought they would then have to remove soil from the trenches. Mr. Richardson indicated they can forward an actual count but the contour rises in a hump as well as slopes towards the Shaw's so the quantities are quite small. They are doing bidding right now.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden asked about Stipulation #5 where it says a Traffic Memo shall be prepared with additions. Mr. Holden explained that part of this proposal was to construct an out building and at one time this project might have been separated so they would be looking at the earth products removal. But they are now combined and that stipulation has been met. She asked about Stipulations #9 and #10 where they were awaiting feedback from DPW? Mr. Holden confirmed those are both still outstanding. Mr. Desfosses recommended that this be approved subject to these two stipulations as well as the corrections to the lighting plan.

Deputy City Manager Hayden felt this is a great improvement to Southgate Plaza and she made a motion to approve with 10 stipulations, eliminating #5, plus a new stipulation that the lighting pole height needs to be reviewed with David Desfosses.

Mr. Coviello seconded the motion and added a stipulation that a CMMP would be produced and would specifically address a report on the amount of material leaving the site and have plans for that, satisfactory to DPW.

Mr. Coviello asked if they change the use of the retail building to restaurant, would they have to come back? Mr. Holden stated they would be under the general shopping center requirements so he believes they would not have to come back. The ordinance changed after this project was built and they have an overabundance of parking. In the near future they will be looking at a new ordinance which will lighten the parking standard further.

Mr. Coker notices in the minutes of TAC, the question was raised by Mr. Holden to include motorcycle parking. Mr. Holden confirmed that was taken care of.

Mr. Holden added that the real plus of this project is because this is such an old shopping center there was no infiltration of water and it was all flowing off the site. He would like to commend the applicant for working cooperatively with the City.

Mr. Coker congratulated them on a great plan.

The motion to grant Site Review Approval passed unanimously with the following stipulations:

Stipulations from the December 30, 2008 Technical Advisory Committee Meeting:

- 1) That easements shall be required for all gate valves and service shut offs to the individual units, for review and approval as to content and form by the City Legal Department;
- 2) That a copy of the as-builts in electronic format, compatible with the City's GIS format, shall be provided to DPW;
- 3) That the water meter shall be relocated to where it is tapped off the fire service;
- 4) That any domestic service that is tapped off of fire service should be brought in from the main in front of the building to a separate domestic service and it should then have a meter;
- 5) That the applicant shall be required to appear before the Traffic & Safety Committee for review and approval;
- 6) That the applicant shall meet with Deborah Finnigan and Lucy Tillman to review and approval of the Landscaping Plan;
- 7) That a copy of the SWIFF shall be provided to DPW;

Stipulations from the May 5, 2009 Technical Advisory Committee Meeting:

- 8) That the applicant shall meet with representatives of DPW to resolve the water issues;
- 9) That the applicant shall review their final drainage report with representatives of DPW and a Memo shall be submitted to the Planning Board at their May 21st meeting;

Stipulations from the May 21, 2009 Planning Board Meeting:

- 10) That the lighting pole heights shall be reviewed and approved by DPW;
- 11) That a Construction Management Plan shall be prepared by the Applicant and reviewed and approved by the City, prior to the issuance of a building permit, and said CMP shall specifically report the amount of material leaving the site and include plans for review and approval by DPW.

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E. The application of **The Hill Unit Owners Association, Owner**, for property located off **Deer Street and High Street, commonly known as "The Hill"**, wherein Site Review approval is requested to construct eleven new parking spaces with brick pavers, reconstruct the service road entrance at High Street and construct a new loading area, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 118 as Lot 26 and lies within the Historic District A and Central Business B Districts; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Corey Colwell, of MSC Engineers and Land Surveyors, presented on behalf of The Hill Homeowners Association. This application was presented and approved in January of 2009. The approval was good for one year. Since part of the project is to be constructed as part of the Portwalk Project, construction was never started. With Phase 1 of the Portwalk project now going forward, the Hill is ready to proceed.

The project had three components. The first is to construct 11 new parking spaces with brick pavers. They are shown on the 11 x 17 color plan in blue. The dark blue represents existing deeded spaces and light blue represents non deeded spaces. Afterwards, 6 spaces will be removed.

The second component is to construct a new entrance to service road at its entrance on High Street. They will create a curved entrance making it more difficult for traffic to enter the wrong way. By creating the small radius curve and sidewalk, as recommended by T&S, they will circumvent that traffic.

The third component was to construct a new loading area to service the Hilton Garden Inn and The Hill, and is being constructed by Portwalk.

Mr. Colwell referred to the drawings included in their packet. Sheet 1 shows the entire site. Sheet 2 is a blow up of the proposed loading area. It has a loading and access easement to benefit the Hilton Garden Inn. They are giving the Portwalk owners access to land on the Hilton Garden Inn for a loading truck to come in and unload. Sheet 3 contains all of the details to construct the project.

Mr. Colwell confirmed that this is a request for re-approval.

Deputy City Manager Hayden asked, for the record, are there any changes to what was approved in 2008? Mr. Colwell confirmed there were no changes.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden made a motion approve as presented. Mr. Coker seconded the motion, to include all stipulations from the previous approval.

Councilor Dwyer felt Stipulation #5 should be for a loading easement rather than a parking easement. Mr. Colwell confirmed that should be changed.

The motion to grant Site Review Approval passed unanimously with the following stipulations:

Stipulations from the May 5, 2009 Technical Advisory Committee Meeting:

- 1) That the 11 parking spaces shown on the Site Plan shall be the only legally recognized parking spaces;
- 2) That the text "One Way" shall be removed from the service road, leaving only the arrows on the Site Plans;
- 3) That the handicapped tip down in front of the Fitch House shall be verified with David Desfosses, of DPW;
- 4) That the Site Plans shall indicate that the brick sidewalk and granite curb will be replaced with paving where the service road enters High Street;
- 5) That the loading area easement shall be approved for content and form by the City's Legal Department.

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F. The application of **Dilorenzo Real Estate, LLC, Owner**, and **Poco's Bow Street Cantina, Applicant**, for property located at **33 and 37 Bow Street**, and the **City of Portsmouth, Owner**, for property located **off Ceres Street**, wherein Site Review approval is requested for the construction of a new 1,050 ± s.f. deck, after the demolition of an existing deck and patio, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 106 as Lots 46. 48 and 49 and lies within the Historic District A and Central Business A Districts; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).*

The Chair read the notice into the record.

Mr. Coviello indicated that he is employed by the applicant's architect. Mr. Holden suggested that he step down.

Mr. Coviello stepped down.

SPEAKING TO THE APPLICATION:

Gregg Mikolaities, of Appledore Engineering, presented. Also present was John Golumb and Rob Harberson, of Destefano Architects. He explained that this is a follow up to the first item tonight. This is to create a City park. He pointed out the existing Poco's deck and patio area and where the deck will be relocated. In 2007 this Board granted a land swap with Mr. DiLorenzo to relocate the deck. The existing deck and patio are 1350 s.f. and combined deck will be 1050 s.f. A portion of the deck will have a flat roof and there will be outdoor seating. He handed out a truck turning exhibit showing the separation between the deck and the Ferry Landing building. The Access Agreement requires that a standard sized pick up truck can make it past this property. They have shown a 12' separation between the deck and the Ferry Landing building. They have worked very closely with David Desfosses regarding relocation of utilities. They went to TAC on May 5th with one stipulation regarding the easement and the applicant has met with the abutters and they agree to that stipulation. That form will be approved by the City Legal Department. He displayed renderings showing what the deck will look like afterwards.

(

ML Geffert arrived at the meeting at 8:25 pm.)

Mr. Coker noted that on page 20 of the TAC minutes it says the deck will be 150 s.f. and it should say 1050 s.f.

Mr. Blenkinsop asked about the second story deck. Rob Harborson, of Destefano Architects, pointed it out on the renderings. The second floor deck is accessed from the second floor interior of restaurant. It is only for seating.

Councilor Dwyer asked how it interfaces with the roof? Mr. Harborson stated there was a half wall behind the awning which will slope up to a half wall and then it is an open rail when you are passed the awning.

Mr. Coker asked if the deck is out from the building? Mr. Harborson confirmed it was 10’ out from the building. Mr. Holden confirmed that the City has taken care of air rights.

Mr. Hopley understands that it may not be part of tonight’s review but have they looked at travel distance from this? Mr. Harborson confirmed they have.

Chairman Ricci stated that the Board received correspondence from Mary Lou Hodgson indicating she was in favor of this application.

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

DISCUSSION AND DECISION OF THE BOARD

Deputy City Manager Hayden made a motion to approve with one stipulation. Mr. Blenkinsop seconded the motion.

Mr. Coker noted that the letter from Mary Lou Hodgson refers to the deeded right of way vs. right of way. Deputy City Manager Hayden confirmed they often refer to that area as an alley. There are deeded right of ways down that alleyway that benefit property owners but the City does not have any interests in them. Mr. Holden added that it is a deeded right of way and the regulations include a special definition for that. Deputy City Manager Hayden also confirmed that they consulted with Bob Sullivan regarding this letter and he felt it was the correct terminology. Mr. Coker requested that the stipulation should read “deeded right of way’ instead of just right of way.

The motion to grant Site Review approval passed unanimously with the following stipulation:

Stipulation from the May 5, 2009 Technical Advisory Committee Meeting:

- 1) That the applicant shall prepare an easement for the deeded right-of-way as referenced in Agreement recorded in the Rockingham County Registry of Deeds at Book 3192, Page 0701, for review and approval as to content and form by the City Legal Department;

.....

G. The application of **The Edgewood Centre, Owner**, for property located at **928 South Street**, wherein Amended Site Review approval is requested to construct a new 10’ x 24’ vestibule with airlock entrance and concrete slabs with roof overhang on either side of the entrance, with related paving, utilities, lighting, landscaping, drainage and associated site improvements. Said property is shown on Assessor Plan 221 Lot 87 and lies within the Single Residence B District; *(The Board action in this matter has been deemed to be quasi judicial in nature. If any person*

believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived).

The Chair read the notice into the record.

SPEAKING TO THE APPLICATION:

Daryl Kent, of K&S Contracting, was present along with Pat Ramsey, owner of the Edgewood Center. They are proposing an entrance canopy with air lock. The intent is to create an airlock for energy efficiency with double doors and to build an overhang that will reach out to the parking lot supported by decorative columns. Outside of the airlock there will be concrete slabs pored for outdoor access for the residents as well. It will be a little bit wider access as this is the main entrance and there is ambulance activity. The doors would be electronic and the lighting would be better. It is quite a nice improvement and it will create a safer environment. They appeared before TAC and they received a recommendation for approval with the request to note underground utilities and they changed their key to describe the one area of construction.

Vice Chairman Roberts asked Mr. Kent to describe the lighting. Mr. Kent stated it would be recessed or pendant lighting inside the canopy overhang and recessed lighting inside the air lock. Pat Ramsey indicated there is only one exterior light now. Mr. Kent confirmed there will be no outside lighting as it will be under the canopy.

Councilor Dwyer asked him to describe how they drive in and drop someone off. What is the pattern? Pat Ramsey, owner of The Edgewood Center, stated they would be coming in from South Street and the overhang will extend out to cover someone in a wheelchair. Councilor Dwyer noted the parking spaces on either side of the roadway so would someone turn around or drop someone off on the left? Ms. Ramsey indicated they can park in any of the spaces. There are handicapped spaces they can use if they are dropping someone off.

Mr. Kent stated the canopy structure is simply the walkway.

Mr. Blenkinsop asked if there is a parking spot directly in front of the new parking canopy? Ms. Ramsey confirmed they are all to the side.

Mr. Coviello was surprised by the quality of the plans and that they allowed hand drawing on someone's stamped plans. Mr. Holden stated they are recommending a waiver of the regulations as they project does not often come before this committee and it was felt that this was a minor application but because it was ambulatory they felt it was beneficial to go through TAC and grant a waiver of plan requirement. Mr. Coviello was fine with the waiver but pointed out it is against State law to draw over an engineered plan and he has a concern with 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 Chair closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

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

Mr. Coker indicated he would like Mr. Coviello's concerns to be addressed. Mr. Holden asked the applicant to resubmit same plan without the stamp on it or the title block on it.

The motion to grant Site Review Approval passed unanimously with the following stipulations:

- 1) That underground utilities shall be shown on the Site Plan;
- 2) That the applicant shall X out on the Site Plan the areas that are not part of this approval;
- 3) That a waiver of Site Review Regulations (plan requirements) is granted;

II. CITY COUNCIL REFERRALS/REQUESTS

A. Request from Joe Hickey, of Blue Athletic, Inc. for property located at 67 Bow Street to install a projecting sign; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Holden advised the Board that a new round of projecting signs is being done under new City policy,. These will start with the Planning Board who will make their recommendation to the City Council. This saves some time for the applicant and shortens the process. This sign is going to replace an existing sign and will be slightly smaller. They are recommending exactly what they have recommended before, as outlined in their Memorandum.

Mr. Coker tipped his hat to Councilor Dwyer for getting this revised procedure done as it simplifies everything.

Mr. Coviello asked if the sign is slightly smaller than the current one? Mr. Holden confirmed that was correct and the building permit indicates the area is smaller. There was no action required by the HDC or BOA.

Deputy City Manager Hayden made a motion to approve per the Department Memorandum with the recommended conditions. Mr. Blenkinsop seconded the motion.

The motion to recommend a favorable approval of this license request to the City Council passed unanimously subject to the following conditions.

- 1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,
- 2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department

B. Request from Michael Labrie, of Riverhouse Restaurant Group, LLC, for property located at 53 Bow Street to install a projecting sign; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Coviello abstained from voting.

Mr. Holden stated that this sign is slightly smaller but it is a circle so they are measuring the diameter. No issue was posed by this application. They recommend the same stipulations.

Mr. Coker made a motion to approve per the Department Memorandum with the recommended conditions. Mr. Rice seconded the motion.

The motion to recommend a favorable approval of this license request to the City Council passed unanimously subject to the following conditions.

1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,
2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department

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C. Request from Jodie Curtis, of Re-Enhabit, LLC, for property locatd at 15 Daniel Street to install a projecting sign; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Holden stated that this application was not replacing an existing sign but is going on an existing bracket. It does not need any relief from the BOA or HDC. The Department recommends the two stipualations.

Mr. Coker asked, once these sign applications are approved, if the City has an inspection to make sure the applicant does what they say they will do. Mr. Holden confirmed that Jason Page will be working on the exhibits to the City Council and the Inspection Department will be issuing the permit and they will be inspected.

Mr. Covello made a motion to approve per the Department Memorandum with the recommended conditions. Mr. Rice seconded the motion.

The motion to recommend a favorable approval of this license request to the City Council passed unanimously subject to the following conditions.

1. That the request shall be subject to a municipal license and this license shall be approved by the Legal Department as to content and form, it should be revocable by the City and if an encroachment needs to be removed or relocated for any purpose, it will be done at no cost to the City; and,
2. That any resulting disturbance of a sidewalk, street or other public infrastructure shall require its restoration at no municipal cost and subject to review and acceptance by the Department

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D. Request from Mario Giberti requesting to purchase City-owned land located adjacent to 16 Barberry Lane; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mario Giberti addressed the Board. He purchased his house 5 years ago and the City land adjacent to their house was taken for back taxes years ago. He is interested in purchasing the property to have more room on his property.

Mr. Holden confirmed that what he represented is basically correct however this has come before the Board 3 times and there is a recommendation that the City retain it as open space and that it would not be built on. It was recommended by the City Attorney that they not act on this until they give the heirs a chance to take action. It is now before the Board again. Mr. Holden confirmed that the Department is still honoring the original finding that the City retain it for open space.

Councilor Dwyer stated that this is the first time since she has been on the Planning Board that the City has had a chance to sell City property. Under what criteria would they make that decision? The Housing Committee was looking to purchase small pockets of land and put the money towards the trust fund for affordable housing.

Mr. Coke r knows the policy of the City has historically been not to dispose of city property. He talked about open space and how this could be used. Mr. Holden stated it is a 5,000 s.f. lot and is adequately sized for a park and they are also taking recognition of the past findings and recommendation to the Board and there have been activity and they may want to come back again and report on it. This neighborhood is full of paper streets and non conforming lots. They should make sure this lot does not get developed as a house lot as it would be extremely small. Also, the Recreation Department is conducting studies so there may be some interest there.

Mr. Rice thought that Councilor Dwyer was on to something. He looked at the lot and he believes the applicant is using the lot now for personal storage. Mr. Giberti confirmed there may be a little bit of wood and branches stored on it. There might be an unused fire pit turned upside down. Mr. Rice thought that if Mr. Giberti is already using the lot, why not sell it to him and tax him for it. He understands selling a piece of land to an abutter is not as easy as it sounds and it should be available to everybody. To him, a garage would not sink the conservation value of the area.

Deputy City Manager Hayden asked if Mr. Gilberti hoped to put a small garage on the lot? Mr. Giberti confirmed they were hoping to put a small garage on the lot.

Mr. Coker thought that maybe a small portion of the lot could go to Mr. Giberti and the City could keep some of the lot. He agreed with Councilor Dwyer and Mr. Rice. Mr. Holden cautioned the Board that if the City Council decides to dispose of the property, it is by bid so there is no guarantee that the abutter will be the owner. It is a non conforming lot so it could only be developed by variance. However, Councilor Dwyer has raised the point and the Department has followed through with the recommendation from the previous times, and if they want to reaffirm or take another look at it, perhaps it would be appropriate to do that before any action is taken. Councilor Dwyer clarified that she wasn't talking about this lot for housing but rather she was talking about selling this lot and putting the proceeds towards housing.

Ms. Geffert felt that it was the job of the Planning Board to look at the lot and make a decision from a planning perspective whether this an appropriate idea to enable some potential development of the lot or do they have an obligation to keep it as municipal? Or, does it tie in somehow to another City parcel? She felt the concept of the City using the proceeds but as a Planning Board member they need to look at it for planning. She would be concerned if any other person, other than an abutter, would buy this and think it was developable as there are clear limitations. If they were to approve this for consideration for sale, she would want some restrictions.

Mr. Coviello was in agreement with his fellow board members. Additionally, they should have a guideline for how they will approach this in the future as they are opening up a Pandora's box as there area many lots like this throughout the City.

Chairman Ricci agreed with Mr. Coviello. He would like to see a checklist of City Departments reviewing it to determine whether they should sell it.

Mr. Blenkinsop added that the State does it that exact way. If they are going to surplus State property, they circulate through all State Departments before it is put out to the general public, so he thought it was a good idea.

Deputy City Manager Hayden felt the concern about setting precedence was an important one. The City has always erred on the side of holding on to its property. They should look at how many zero's they are generating by selling it. It did not sound like the Board wanted to take action on it tonight.

Mr. Holden recommended postponing with direction. If it were a new request, they would have gone around to the Departments but they tried to facilitate this as it had been reviewed. If there were additional time, they would go around to the Departments to see what might be appropriate and, if they are familiar with the re-zoning matrix, they can basically run that through to get an idea of what the issues may be. Given the value of land and to have a lot of record with frontage on a street, they would set creative juices flowing in terms of any developer.

Mr. Coker remembers a neighborhood around Islington Street where there were 2 lots and she wanted to sell one but the Board denied that because it was not in conformance with the current zoning. His point is that this is actually in conformance with most of the neighborhood. Mr. Holden reminded him that the role of the Planning Board is they propose the rules and regulations and, this may have conformed prior to 1967 but it has not conformed since 1975. The former owner is not to be found or deceased and the City has secured ownership for back taxes. They have an obligation to look at this in terms of their own rules and regulations and it does not conform. At the same time they will be looking at potentially new draft rules and regulations and it still probably won't comply because this is severely substantial in terms of area and frontage. Mr. Coker felt it may be that Mr. Giberti is the only person who may be interested in the land.

Mr. Coviello made a motion to postpone for further insight from the Department. Mr. Holden asked if they would like it for their next meeting on June 18. Mr. Coviello asked if it would be doable? Mr. Holden agreed that it would be. Mr. Holden proposed that they would contact each municipal Department to determine an interest and they would run through the re-zoning matrix to get a feel of what the issues are and try to determine any interest and report the same to the Board.

Ms. Geffert felt it would also be a good idea to look at how the State disposes of property and advise the Board.

Vice Chairman Roberts was wondering how this would fit into the larger objective or vision that Councilor Dwyer discussed. Over the longer haul, how would they handle these type of situations? Mr. Holden confirmed that as they go through the Zoning Matrix they will be looking at the new Master Plan in terms of what it is saying so they would present to the Board the goals and objectives from a variety of sources so that it may be that they have a decision to make. Councilor Dwyer felt this was very analogous to what they did with building reuse. They had a process for specific buildings that did go through the Departments and its not any different than that. Deputy City Manager Hayden added that it is not different than past parcels and they have been through this before. They know the routine.

Mr. Coviello asked if it was appropriate to report back to the Council on what they are doing? Mr. Holden felt they are still formulating their recommendation so he did not believe there was any need.

The motion to postpone to June 18, 2009 for a report back from the Planning Department was unanimously approved.

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E. Request from JASK Realty, for property between Bartlett Street and the U.S. Route One By-Pass, to rezone land; *(The Board action in this matter has been deemed to be legislative in nature. If any person believes any member of the Board has a conflict of interest, that issue should be raised at this point or it will be deemed waived.)*

Mr. Holden advised the Board that they had a Memorandum from Rick Taintor and he is recommending that they postpone this so that he can look at it. Mr. Coker felt that they typically they do a zoning matrix. Mr. Holden responded that staff has already looked at the zoning matrix but they are still formulating the response to it and feel there are more elements to it.

Mr. Taintor indicated that this proposal is just for the industrial district and this area is a much more complex area because it has the adjacent OR and Business district so they want to look beyond this limited area to consider the larger area as part of the overall re-zoning project.

Councilor Dwyer raised the question of the timing of when they might be looking at the whole zoning map. Mr. Taintor indicated they will be looking at a number of things. They are focusing on the Zoning Ordinance. They will then go back and look at the list of rezoning requests that have come in over the years and they will come back in the fall with a list of recommendations. Councilor Dwyer hoped they do it with a proactive planning perspective and not base it on requests. She would like the Board to look at it as a whole. Mr. Taintor thought they would probably be doing this in phases so there are some things that are very obvious to do right away but there are other issues where they could go a number of different ways so after they complete the Zoning Ordinance, they will go back and look at zoning map recommendations.

Deputy City Manager Hayden made a motion to ask the Planning Department to review land use and circulation issues in the area defined by Bartlett Street, Woodbury Avenue, Cottage Street, the Route One By-Pass, the railroad embankment and prepare a recommendation for the rezoning of this area as part of the overall revision of the Zoning Ordinance and Zoning Map and in the interim she felt they should do a brief report back to the City Council just reflecting that is what the board is going to do.

Mr. Coker seconded the motion.

Motion passed unanimously.

Deputy City Manager Hayden had one housekeeping item. On June 11th 7:00 pm they will have a work session rolling out the complete working draft of the Zoning Ordinance. The next step will then be public hearings

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III. ADJOURNMENT

A motion to adjourn at 9:15 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 June 18, 2009.