

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

**CITY HALL, MUNICIPAL COMPLEX, 1 JUNKINS AVENUE**

**7:00 P.M.**

**JULY 19, 2012**

**MEMBERS PRESENT:** John Ricci, Chairman; Paige Roberts, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; John Rice; Cindy Hayden, Deputy City Manager; Richard Hopley, Building Inspector; William Gladhill;

**MEMBERS EXCUSED:** Anthony Blenkinsop; MaryLiz Geffert; and Brian Groth, Alternate

**ALSO PRESENT:** Rick Taintor, Planning Director

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the June 21, 2012 Planning Board Meeting – No minutes were available for approval. Postponed to the August 16, 2012 Planning Board meeting.

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Deputy City Manager Hayden made a motion to take four public hearings out of order. Mr. Hopley seconded the motion. The motion passed unanimously.

C. The application of **Michaels Realty Trust, Owner**, for property located at **1390 Lafayette Road, ESUM Realty Trust, Owner**, for property located at **1400 Lafayette Road**, and **MacLeod Enterprises, Inc., Owner**, for property located at **1190 Lafayette Road**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision & Lot Consolidation) is requested between three lots as follows:

1. Lot 7 on Assessor Map 252 consisting of 14,358 s.f. being consolidated with Lot 9 on Assessor Map 252 for a total lot area of 237,001 s.f.;

2. Lot 8 as shown on Assessor Map 252 increasing in area from 111,924 s.f. to 126,989 s.f. with 248.72' of continuous street frontage on Lafayette Road and consolidated Lots 9 and 7 as shown on Assessor Map 252 decreasing in area from 237,001 s.f. to 221,936 s.f. with 529.51' of continuous street frontage on Lafayette Road.

Said properties are located in the Gateway District where the minimum lot size is 43,560 s.f. and the minimum continuous street frontage is 200'. (This application was postponed from the June 21, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

Mr. Hopley made a motion to postpone to the August 16, 2012 Planning Board meeting. Councilor Novelline-Clayburgh seconded the motion.

The motion to postpone to the August 16, 2012 Planning Board meeting passed unanimously

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D. The application of **Michaels Realty Trust and ESUM Realty Trust, Owners, and 4 Amigos, LLC, Applicant**, for property located at **1390 and 1400 Lafayette Road** requesting Site Plan Approval to construct a 2,500 s.f. one-story bank building with two drive through lanes, a 4,500 s.f. retail building and a 11,944 s.f. Rite Aid Pharmacy store with two drive through lanes, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said properties are shown on Assessor Map 252 as Lots 7 and 9 and lie within the Gateway (GW) District. (This application was postponed from the June 21, 2012 Planning Board Meeting.)

The Chair read the notice into the record.

Deputy City Manager Hayden made a motion to postpone to the August 16, 2012 Planning Board meeting. Mr. Hopley seconded the motion.

The motion to postpone to the August 16, 2012 Planning Board meeting passed unanimously

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C. The application of **Richard P. Fecteau, Owner**, for property located at **120 Spaulding Turnpike, Two Way Realty, LLC, Owner**, for property located at **100 Spaulding Turnpike**, and **Five Way Realty, LLC, Owner**, for property located at **80 Spaulding Turnpike**, (to be consolidated into one lot), requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, involving demolition and construction, driveways, septic systems and construction of a stormwater management system, with 42,331 s.f. of impact to the wetland buffer. Said properties are shown on Assessor Map 236 as Lots 33, 37, and 38 and lie within the General Business (GB) and Single Residence B (SRB) District.

The Chair read the notice into the record.

Mr. Rice made a motion to postpone to the August 16, 2012 Planning Board Meeting. Mr. Hopley seconded the motion.

The motion to postpone to the August 16, 2012 Planning Board meeting passed unanimously

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City Council Referral:

B. Letter from Stephen Kelm requesting an easement from the City to access his property at 80 Wright Avenue. (This matter was postponed at the June 21, 2012 Planning Board Meeting).

Deputy City Manager Hayden made a motion to postpone to the August 16, 2012 Planning Board meeting. Councilor Novelline-Clayburgh seconded the motion.

The motion to postpone to the August 16, 2012 Planning Board meeting passed unanimously

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**II. PUBLIC HEARINGS – OLD BUSINESS**

*The Board's action in these matters 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.*

Mr. Hopley made a motion to read in Items A & B together and vote on separately. Mr. Gladhill seconded the motion. The motion passed unanimously.

A. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **on Spinney Road and Middle Road**, requesting Preliminary and Final Subdivision Approval to subdivide two lots into nine lots, including a public right-of-way, with the following: Lot 5 on Assessor Plan 167 having 316,165 s.f. (7.258 acres) and Lot 24 on Assessor Plan 170 having 238,601 s.f. (5.478 acres), to be consolidated and subdivided into nine separate lots, ranging in size from 5,000 s.f. to 329,641 s.f. and all with a minimum of 100' of continuous street frontage on Spinney Road or the new proposed public right-of-way. Said properties lie in a Single Residence B (SRB) District which requires a minimum lot size of 15,000 s.f. and 100' of continuous street frontage. (This application was postponed from the June 21, 2012 Planning Board Meeting)

B. The application of **Lynn J. & Frances T. Sanderson Revocable Trusts, Paul J. Sanderson, Trustee, Owners**, and various other property owners, for property located **off Spinney, Middle, Thaxter, Sewell and Kensington Roads**, wherein Preliminary and Final Subdivision Approval (Lot Line Revision) is requested between lots as shown on Assessor Map 167 as Lot 5 and Assessor Map 168 as Lot 17, and abutting lots as listed below. Said properties are located in the Single Residence B (SRB) District where the minimum lot size is 15,000 s.f. and minimum street frontage requirement is 100'. (This application was postponed from the June 21, 2012 Planning Board Meeting.)

1. Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson Trustee, Owner  
Property located off Spinney, Middle, Thaxter, Sewell and Kensington Roads (Assessor Map 167 as Lot 5 and Assessor Map 170 as Lot 24)  
Lot area decreasing in size from 12.74 acres to 11.92 acres
2. Craig S. and Christine Almond Hodgson, Owners  
Property located at 165 Middle Road (Assessor Map 168 as Lot 17)  
Lot area increasing from .18 acres to .30 acres  
Street frontage increasing from 75' to 125' off Middle Road
3. Neal L. and Darlene L. Ouellett Revocable Trust, Neal L and Darlene L. Ouellett, Trustees, Owners  
Property located at 124 Kensington Road (Assessor Map 152 as Lot 20)  
Lot area increasing from .22 acres to .43 acres  
Street frontage remaining at 100'
4. Jeremy D. Martin, Owner  
Property located at 199 Middle Road (Assessor Map 168 as Lot 14)  
Lot area increasing from .28 acres to .51 acres  
Street frontage remaining at 100'
5. Patrick B. and Karen A. Lyons, Owners  
Property located at 185 Middle Street (Assessor Map 168 as Lot 15)  
Lot area increasing from .13 acres to .80 acres

- Street frontage remaining at 50'
6. David and Patricia Gress, Owners  
Property located at 14 Sewall Road (Assessor Map 170 as Lot 20)  
Lot area remaining at .31 acres to .31 acres  
Street frontage decreasing from 135' to 125'
  7. Michael Jacques, Patricia Newman and Caroline A. Newman Revocable Trust, Caroline A. Newman, Trustee, Owner  
Property located at 342 Spinney Road (Assessor Map 169 as Lot 5)  
Lot area increasing from .51 acres to .54 acres  
Street frontage decreasing on Spinney Road from 171.3' to 162.59'
  8. Joseph G. and Carol S. McGinty, Owners  
Property located at 300 Spinney Road (Assessor Map 169 as Lot 6)  
Lot area increasing from .69 acres to .70 acres  
Street frontage decreasing from 150' to 141.26'
  9. Patricia O. Sanderson Revocable Trust, David Sanderson, Trustee, Owner  
Property located at 248 Spinney Road (Assessor Map 169 as Lot 4)  
Lot area increasing in size from 1.31 acres to 1.46 acres

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Paul Sanderson, Trustee of the trusts, gave a short introductory statement. They are talking about parcels on Spinney Road. One part of the proposal is on the side of Spinney Road with the City water tank which is a 3 area field. They plan to subdivide it into four frontage lots and add remaining land to 1046 Islington Street to make it a legal lot. Along the other side of Spinney Road they are proposing to subdivide three new lots and make the remainder of the land into a 10.1 acre parcel. They also have lot line adjustments with some of the abutters. This proposal has changed many times over the past 3 years they have been working with the City and staff to figure out the right thing to do with these parcels. They are

Mr. Sanderson explained why they are proceeding in this fashion. This property has been in their family since 1841. They are doing this to be sensitive to the needs of their neighbors as they could have put as many as 45 units on the property under the terms of the ordinance but they felt that was the wrong thing to do. They also looked at a proposal with the creation of a City Street however they found it would cost \$539 per linear foot to install a road so it was not an economic solution.

The next issue that they found when they looked at the PUD alternative which would have allowed approximately 16 units, is that the bank underwriting standards which have been imposed after the mortgage crisis for a condominium form of ownership, they would have to have 70% of pre-sales and only 15% of those units could ever have been rented. That was not something that was going to be viable in the market. When they went to the OS PUD with single family detached structures, they found that the secondary market document review fees would be approximately \$65,000 before the first unit could even be sold. Again, this was not an economic solution. Therefore, that is why they are proceeding with 7 single family house lots. They have reviewed the staff memo and they have no objections to any of the staff suggestions.

Eric Weinrieb, of Altus Engineering, indicated that they were last before the Planning Board in February with the subdivision road proposal. On the larger parcel, all they have really done it backed

out the subdivision aspect of it and kept the 3 lot subdivision on the frontage streets and that design element is the same as previous plans. Mr. Weinrieb pointed out where they are constructing a small rain garden and a swale to collect the rainwater. The Sanderson family is building a culvert to connect to the municipal drainage system on Sewell Road. This is to correct a pre-existing condition where the run off comes off of the field to the back property line stone wall where everything has built up and created a dam. The houses in the area have a wet backyard. They will mitigate the post development increases and correct the pre development condition. The easement will be in favor of the City and the abutters.

Mr. Weinrieb explained they will tap into individual water services for the individual houses and there will be no new water infrastructure. The sewer today ends at the end of Sewell Road. Alan Sanderson's house is still on septic system and David Sanderson's house was on septic until 5-6 years ago when he built a sewer across Spinney Road which connects to the interceptor on the Route 1 Bypass. They intend to extend the sewer out and run along the shoulder of the roadway and put the construction outside of the pavement so they are not digging up the road to do that. The right-of-way in that area is very narrow so they will widen it to 15' to allow the sewer to be constructed entirely in the City right-of-pay. He also understands there is a Master Plan to extend the sidewalks in the area and Spinney Road has a limited right-of-way. Therefore, by providing this area it will allow the city to construct sidewalks in the future.

Mr. Weinrieb stated that they had discussions early on with DPW and recognized through the Staff Memorandum that it needs to be looked at one last time. He explained that the sewer comes across with individual services to connect to the other lots on the opposite side of the road. The lots will be served with the same sewer interceptor on both sides. They were given a great opportunity for the Islington Street lot to make that into a conforming lot for frontage and lot area.

The other aspect of this project is the several lot lines with abutters. This was an opportunity for other to help create conforming lots or to gain a little extra space around their property. All of the individual lots line adjustments are listed in the Legal Notice which was read into the record. This project will not impact wetland buffers.

Chairman Ricci referred to the notes on Sheet C-9 regarding the contractor avoiding the cutting of any trees or shrubs along the property line and they should coordinate with the engineer to adjust grades. He assumes Mr. Weinrieb will walk the property line prior to construction and mark any large trees. Mr. Weinrieb assured him that he will do so.

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

David Gress, 14 Sewell Road. Originally Mr. Gress was very concerned about this project as it is very wet around his property. Subsurface water is a very important issue for him. He talked to the applicants and felt this design is environmentally superior and state of the art. This will greatly alleviate his water problem. He is a P.E. Engineer and is totally impressed and totally supports the project.

Donald Green, an abutter, was wondering what effect these changes will have on the water going into the Sanderson wetlands.

Chairman Ricci had the applicant respond.

Mr. Weinrieb displayed the Existing Conditions Plan and he pointed out a ridge along David Sanderson's house and Dr. Gress' house and all of the development will occur in that area with no more water running into the wetland systems. There will be no change associated with this project in that area.

David Gress added that he was so impressed that to make it happen that he gave them 10' of his sewer right-of-way in exchange for 10' in the rear of his property.

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**

### **Agenda Item A, Old Business:**

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval for Item A of Old Business and to postpone consideration of the final subdivision approval to the August meeting with one stipulation, that the applicant shall provide a drainage easement to the City, acceptable to the Department of Public Works and the Legal Department, over a portion of Lot 167-5 and the areas proposed to be conveyed to Lots 168-17 and 168-15.

Mr. Rice seconded the motion.

Mr. Hopley was curious if the description in A, which still describes the former project with a proposed public right-of-way, will confuse what they are looking at in terms of the new plan. He would think at some point they would have to clarify that Item A doesn't include a new proposed public right-of-way. Chairman Ricci felt that Mr. Hopley just took care of that for the record.

Councilor Novelline Clayburgh thanked the Sanderson family for going over and over this to make it work and do what is best for the community.

The motion to grant Preliminary Subdivision approval and postpone final consideration to the August 16, 2012 Planning Board Meeting passed unanimously with the following stipulation:

- 1) This application is referred to the Technical Advisory Committee for review of the proposed sewer design, as well as any other technical issues that TAC may deem appropriate.

### **Agenda Item B, Old Business:**

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval and postpone consideration of the final subdivision approval to the August meeting. Mr. Hopley seconded.

Ms. Roberts wanted to make a note that the reason why they are postponing is to refer it to TAC regarding the sewer issue.

The motion to grant to Preliminary Subdivision approval and postpone final consideration to the August 16, 2012 Planning Board Meeting passed unanimously.

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E. Proposed amendments to the Site Plan Review Regulations, Section 3.6. – Drive-Through Facilities, to address screening of drive-through lanes and any other design and performance standards that may appear appropriate. (This hearing was postponed from the June 21, 2012 Planning Board Meeting)

Nick Cracknell, Principal Planner, indicated that the last time they reviewed these amendments there were some concerns about screening drive-through facilities from a right-of-way or a view from a public street. Mr. Taintor was asked to look at some different performance standards to provide some relief or exemptions for drive-through facilities that are a certain distance from the street. Mr. Taintor inserted a third paragraph to the draft amendment to refine the language to provide an exemption for drive through facilities that meet one or two standards or both. They have to be more than 100’ away from a public right-of-way in terms of lateral distance to be exempt from the screening requirements listed and the Planning Board should also look at the topography, existing grading and landscaping, that may be in that space to determine whether the waiver should be granted.

Therefore, Mr. Taintor recommended that the Planning Board vote to amend the Site Plan Review Regulations for the drive through facilities and include all three paragraphs as drafted and contained in the Memorandum.

Ricci opened up the public hearing.

David Choate, of Grubb & Ellis, felt that this addresses what was discussed at the last meeting and gives them some leeway. He does not have any problem with it and feels it is better than a hard set of rules. He assumes the first two proposals are the same as written before. Mr. Cracknell confirmed that was correct.

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.

Mr. Rice made a motion to amend the Site Review Regulations per the Staff Memorandum. Councilor Novelline Clayburgh seconded the motion.

The motion to amend the Site Plan Review Regulations, Section 3.6 – Drive-Through Facilities, by inserting a new Section 3.6.5 – Screening, as follows, passed unanimously.

3.6.5 Screening

1. Drive-through lanes, stacking spaces and bypass lanes that would be visible from a public right-of-way or from land in a Residential or Mixed Residential zoning district shall be screened from view to at least three feet above grade.
2. Screening shall be with brick or stone walls, berms, or equivalent structures approved by the Planning Board. Walls, berms and other screening structures shall be supplemented by plantings such as shrubs and trees.
3. Notwithstanding the above, drive-through facilities need not be screened from a public right-of-way if (a) the right-of-way is more than 100 feet

from the drive-through facility and (b) the Planning Board determines that existing or proposed topography or landscaping will provide adequate visual relief and prevention of glare.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

Deputy City Manager Hayden made a motion to read Items A & B in together and vote separately. Mr. Hopley seconded the motion. The motion passed unanimously.

A. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located at 1046 Islington Street and property on Spinney Road, requesting Preliminary and Final Subdivision approval for a Lot Line Revision between two existing lots having the following: Lot 12 as shown on Assessor Map 171 increasing in area from 4,246 ± s.f. to 15,001 ± s.f. and Lot 13 as shown on Assessor Map 171 decreasing in area from 2.88 ± acres to 114,723 ± s.f. Said lots lie within the Single Residence B (SRB) district where a minimum lot area of 15,000 s.f. is required.

B. The application of **Lynn J. Sanderson & Frances T. Sanderson Revocable Trusts, Paul G. Sanderson, Trustee, Owner**, for property located **on Spinney Road**, requesting Preliminary and Final Subdivision approval to subdivide one lot into four lots as follows:

- a. Proposed Lot 1 consisting of 28,315 ± s.f. and 109.03’ of street frontage.
- b. Proposed Lot 2 consisting of 33,107 ± s.f. and 110.72’ of street frontage.
- c. Proposed Lot 3 consisting of 36,028 ± s.f. and 100.66’ of street frontage.
- d. Proposed Lot 4 consisting of 17,404 ± sf. and 100.00’ of street frontage.

Said lot lies within the Single Residence B (SRB) district where a minimum lot area of 15,000 s.f. and 100’ of continuous street frontage is required.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Eric Weinrieb, of Altus Engineering, addressed the second half of their proposal which consists of a 4 lot subdivision on the west side of Spinney Road, next to the water tank. They are also doing a lot line revision with a second lot owned by the Sanderson family to make it a more conforming lot. There is a small wetland system between lots 3 and 4 under the City jurisdictional size of 10,000 s.f. so the inland wetland buffer does not apply. The sewer will be served off of Spinney Road through the extension of the sewer for the three lots on the east side of Spinney Road. The water service will be individual taps off the main line off Spinney Road. Regarding drainage, some of the water flows to the back of the site towards the Route 1 By-Pass and the swale that exists there. There is a catch basin opposite the Sewell Road intersection that collects the water from the field. The drainage system will continue to flow into a closed drainage system within the City.

Another thing to note is that the Route 1 By-pass and the Islington Street Bridge will be reconstructed in the near future. As noted on the plan set, there are two easements as part of the project. One is a slope easement and the other is a small drainage easement. Those are not finalized yet and are part of an on-going negotiation with the Sanderson property but they wanted to depict that on the plan now so that everyone is aware it is coming.



Chairman Ricci asked if they were required or offering to do the slope easement with DOT. Mr. Weinrieb confirmed it is required and is eminent domain. The Sanderson's are getting some sort of financial payment for 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 Chair closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD**

**Item A – 1046 Islington Street**

Deputy City Manager Hayden made a motion to grant preliminary subdivision approval for the Lot Line Revision and postpone final consideration of subdivision approval to the August Planning Board meeting. Mr. Rice seconded the motion.

The motion to grant Preliminary Subdivision approval and postpone final consideration to the August 16, 2012 Planning Board Meeting passed unanimously.

**Item B – Subdivision of 4 lots**

Mr. Hopley made a motion to grant Preliminary Subdivision approval and postpone final consideration to the August 16, 2012 Planning Board Meeting with the stipulation that this application is referred to the Technical Advisory Committee for review of the proposed sewer design, as well as any other technical issues that TAC may deem appropriate.

Councilor Novelline Clayburgh seconded the motion.

The motion to grant Preliminary Subdivision approval and postpone final consideration to the August 16, 2012 Planning Board Meeting passed unanimously, with the following stipulation:

- 1) This application is referred to the Technical Advisory Committee for review of the proposed sewer design, as well as any other technical issues that TAC may deem appropriate.

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D. The application of **Public Service Company of New Hampshire, Owner**, for property located at **435 Route 1 Bypass**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, for the demolition and reconstruction of a distribution substation to update equipment, with 4,974 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 234 as Lot 2A and lies within the Office Research District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Sherry Trefry, from GZA GeoEnvironmental, on behalf of PSNH. Also present were several representatives of PSNH who were available for questions. Mr. Trefry explained that the proposed project is west of the Route 1 By-pass after Borthwick Avenue and before the Islington Street overpass. PSNH refers to this as the Islington Street Substation. The property extends from the Route

1 By-pass to Barberry Lane but the proposal only involves the portion of the property that is adjacent to the Route 1 By-pass and the existing substation. The substation is currently surrounded by a fence and associated electric poles. There is a gated gravel drive that provided access to the right-of-way. Additionally there is sewer and water supply easements that cross the property which create constraints regarding their design. The project is required to handle increased energy demand in the area that cannot be supported by the existing aged equipment. The distribution substation will be replaced with a new substation that will have a more visually appealing layout. They have overhead wires currently but the new station will come up the right-of-way on overhead poles and then go underground to the distribution station. As a result of that design, they do not need a fence around the proposed substation. Due to the need to maintain continuous electric supply in the area the substation must be constructed across from the existing substation. The schedule of transfer of power to the new substation will be delayed due to other changes in the circuit that must be in place prior to the transfer. Therefore there will be a period of several months where both substations will be present and eventually the old substation, the fence and the old equipment will be removed.

Ms. Trefry indicated that the whole project is within the 100' wetland buffer. This project could not be constructed outside the wetland buffer. The impacts are minimal as the majority of the wetland buffer has already been impacted by the existing substation. There is a gravel area that extends within the existing substation fence area and out the back so that the permanent impact area outside the area that is already disturbed is 12 s.f. and is for the installation of the poles. There are some temporary poles which will be put in and removed when the existing substation is removed. They are only so that they can bring power over the proposed structures they are putting in.

The calculation of temporary impact for construction access out of the disturbed area is 4,974 s.f.. When they met with the Conservation Commission they asked them to seed those areas with a wetland conservation wildlife mix which they agreed to. The new transformer will more conformed as it has a smaller footprint and will be further away the wetland. The public interest has been met as this is a necessary project to supply power. Appropriate Best Management Practices will be used and the area will be restored in accordance with the Conservation Commission recommendations. There is no feasible alternative as the whole site is within the wetland buffer. Currently the area with in the wetland buffer has been maintained.

Chairman Ricci stated he is not a big fan of silt fence and he is familiar with the area. He asked them to consider using silt sock. The silt fence does not allow frogs to go through and this is a particularly wet area. Also, silt fence typically doesn't get removed. With wildlife not being able to get through the silt fence it felt is would be an impediment. He asked Peter Britz for comments.

Mr. Trefry indicated they would be willing to use whatever erosion control they prefer. In terms of silt socks, it would just have to be a small mesh so that critters don't get stuck in it. They could also use stump grindings. Chairman Ricci indicated that would be his first choice.

Peter Britz, Environmental Planner, felt that was a good comment. The stump grindings would be better because it is a flat area. The silt fence does often get left in place.

Deputy City Manager Hayden asked Mr. Britz to explain the difference for the benefit of the Board.

Mr. Britz indicated that a silt fence is a woven plastic mesh that slows the water down enough that the silt settles out and the water filters through but the silt stays on that side of it and it is tall enough that some amphibians won't cross it. A silt sock is like a sausage filled with compost or wood chips which

allows water to move through it and it is organic. Stump grindings are just wood chips to slow down the water and filter out the sediment so they don't move into the wetland and they decompose quicker and create no barrier for wildlife. Mr. Britz stated he would prefer the stump grindings.

Mr. Hopley noted that the client in this case has an overabundance of stump grindings.

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 grant Conditional Use Permit approval with two stipulations. One that the applicant plant a wetlands conservation seed mix in the area shown on the plan and that anywhere shown on the plan as silt fence will instead use stump grindings.

Mr. Hopley seconded the motion.

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

1. The applicant shall plant a wetland conservation seed mix in the areas shown on the plan as "temporary buffer impact for construction."
2. The silt fence shall be replaced with stump grindings on the plan.

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E. The application of **Michelle White and Walter Ziebarth, Owners**, for property located at **3 Marsh Lane**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, for the demolition of a one bay garage and the construction of a two bay garage, with 650 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 123 as Lot 6 and lies within the General Residence A (GRA) District and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, appeared with the applicants. Mr. Chagnon explained the proposal is to replace a one bay garage with a two bay garage. There is approximately 650 feet of buffer impact. The existing driveway is a width which will line up perfectly with a 2 car garage. The project has received approvals from the Board of Adjustment, the HDC and a unanimous recommendation from the Conservation Commission. The Board's packet included a summary of the five criteria and he would review them if the Board so desired.

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 grant Conditional Use Permit approval. Mr. Hopley seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously.

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F. The application of **Robert R. and Mary E. Threton, Owners**, for property located at **476 Ocean Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, for the demolition of a rear deck and stairs and the construction of a replacement deck with stairs and landing, with 344 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 294 as Lot 7 and lies within the Single Residence A (SRA) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Robert Threton, the property owner, presented to the Board. Mr. Threton stated that he was advised by the Planning Department that lot is entirely in the wetland buffer and he would have to move into his mailbox to be out of the buffer. He appeared before the Conservation Commission last week and Mr. Britz indicated that the map was out of proportion as they were shown as being 20’ from the impact area but it was actually about 70’ because the area is all mowed grass. He has changed his mowing pattern and now leaves 1,200 s.f. to 1,500 s.f. of vegetation to better enhance the wetland portion.

Mr. Threton is asked to increase his rear deck by 344 s.f. so that he can increase the width of the deck from 12’ to 14’ and add a landing on the steps so they are not as steep. His lot coverage will be 11.6% where 10% is the max and he received a variance from the Board of Adjustment for that. There is no impact on the wetlands in terms of vegetation and the impact is all next to the house where the deck is already impacted. He is asking for approval so that he can continue to enjoy the outdoors.

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 grant Conditional Use Permit approval with the recommended stipulation. Deputy City Manager Hayden seconded the motion.

The motion to grant Conditional Use Permit approval passed unanimously with the following stipulation:

1. The applicant shall not mow the area between the lines identified as “proposed mowing” and “current mowing border” in the plan on page 9 of the Conditional Use Permit application.

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G. The application of **Margaret T. Coate, Owner**, for property located at **110 Clinton Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within an inland wetland buffer, for the demolition and construction of a single family home with detached garage, with 4,176 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 158 as Lot 4 and lies within the General Residence A (GRA) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Christopher Albert, Wetland Scientist from Jones & Beach was present with the owner, Maggie Coate. Mr. Albert stated that Ms. Coate recently purchased the parcel with a 1960's house which is about 24' 30". They are trying to keep three of the block walls and come back 8' farther in the rear. The 100' wetland buffer encompasses just about the entire parcel. They have proposed some porous pavement and gravel at the top with some pervious pavers. As a result of the Conservation Commission meeting they created Sheet A-2 showing a breakdown of the impervious area and their calculations. The existing building within the 100' buffer is 732 s.f. with the parking and walks totaling about 600 s.f. The total impervious existing was 1,332 s.f. They are proposing a 976 s.f. building with a breezeway of 76.5 s.f. and a 528 s.f. garage of 528 and the screened in porch of 140 s.f. for a total new impact of 1,720 s.f., or 6.6% impervious which is up from 5.2% existing.

They are also proposing a vegetated buffer to help with the lawn which is right up against the wetlands. They are proposing a 672 s.f. planting buffer. They took it one step further and did a drainage analysis to look at the pre and post run-off calculations. They analyzed for the 2, 10, 25 and 50 year storms. With infiltration they end up with a net decrease in stormwater run off. They are proposing silt fence which he would want to keep as it is a higher visual buffer. It is a nice lawn so they will remove it as soon as the project is done.

Chairman Ricci asked if Mr. Albert did the drainage analysis himself. Mr. Albert confirmed that he did and he works under the direction of a licensed engineer. Chairman Ricci was suspect of their results but he will not debate them. He asked if any consideration was given to downspouts going into a drywell to help mitigate run-off. Mr. Albert responded that with the pavers and infiltration they didn't think a rain garden was required. Chairman Ricci was not talking about a rain garden. He was simply talking about downspouts and a drywell. They don't see a lot of these applications and these developments have a lot of impact. He used to work in Massachusetts where every new project was required to have drywalls for all of the roof run-off to recharge the groundwater.

Mr. Albert felt that the only issue with that is it is a group sea soil and a lot of parent soils that were there when the road was constructed in the 1800's were used part of the Portsmouth Brewery. These are all de-soils and they are digging down quite a bit for the pervious pavers to get some infiltration. Chairman Ricci understood that and he was only making a statement. For the record, he would hope people would start considering drywalls. They are low cost and really work. Pervious pavers don't work that great in New England. He felt it was important that urban communities like Portsmouth look at drywalls.

Mr. Albert was glad that the drainage analysis showed more of a positive result. If it was negative they would have done more.

Deputy City Manager Hayden asked if the garage would be built later and is more of a second phase. Mr. Albert confirmed that was true. The house will be completed this year and for financial reasons the garage will come later. The future garage area will be lawn. Deputy City Manager Hayden asked about the gravel paved two system, which is for the driveway, and the note which says the owner has the option to remove the top layer of material and install porous pavement. Is that in the exact same area where the gravel pavers are now. Mr. Albert confirmed that was the same area and that they set up the profile so that the top 3” of gravel can be removed and the porous pavers added. It is a flow through system so they had a little fudge factor which is a little more conservative but it has the same infiltration.

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 grant Conditional Use Permit approval as shown on the revised plan dated 7/12/12. Deputy City Manager Hayden seconded the motion

Ms. Roberts stated that she very much respects the opinion of the Conservation Commission but will be voting against this application as it is 100% in the wetland buffer.

The motion to grant Conditional Use Permit approval passed with Ms. Roberts voting in the negative.

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H. The application of **Olde Parish Townhouses Condominium Association, Owner**, for property located at **66 Madison Street**, requesting Amended Site Plan approval to revise a condition of previous Site Plan approval granted on January 22, 2004 by the Planning Board which requires cross-easements for all utilities for recording at the Registry of Deeds. Said property is shown on Assessor Map 147 as Lots 1-1, 1-2 and 1-3 and lie within the General Residence C (GRC) District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Christopher Keenan, Esq., representing King Weinstein, principal of Madison Townhouses LLC and the developer of this property. The current owner is Old Parish Townhouses Condominium Association. This project is located at 66 Madison Street and consists of 11 condominium units on three separate lots. Attorney Keenan’s first question was why there are three lots and the answer is because the City ordinance prohibited more than 4 dwelling units on one lot. They divided it into three lots with multiple units on each lot to total 11 units. The Site Plan approval required separate water and sewer to each of the three lots. This project was originally before the Board in 2003 and was approved in 2004. It was another developer, engineer and legal team at that time. As a condition of approval, the Planning Board added Note 10 to Sheet C-3, the Utility Plan. Attorney Keenan felt you needed to read Note 9 first which read: On site sewer, water and drainage utilities shall be owned and maintained by the condominium association. Note 10 goes on to read: Cross easements for all utilities shall be recorded at the Rockingham County Registry of Deeds

The City Legal Department has told him that you cannot give easements to yourself and that creates a problem. The condominium association owns all three lots and would be giving cross easements to itself. He developed a cross easement document for review by the City Legal Department in February of 2012 and was told the cross easement would not work but wasn't given any guidance on how to make it work. Attorney Keenan initially suggested amending note to say cross easements will be needed only if the three lots are not held in common ownership. The Planning Department suggested a new deed with restrictions however that would require a vote of the condominium association but his client does not control the association as all units have been sold. The Planning Department also suggested going to the BOA to obtain a variance to allow 11 units on one lot however he cannot think of a basis to request a variance.

The reason this issue has come up after all these year is that all 11 units are sold and occupied and the developer, King Weinstein, requested a release of his bond. He understands the Planning Departments concern with enforcing the proposed amended condition and he agrees with them. However, since the three lots will always be owned in common with the Condominium Association and the condominium documents declare all 11 owners to have a 1/11<sup>th</sup> ownership interest in the entire project and common area, it doesn't make sense to leave Note 10 on Sheet 3-C at all. The description of the land now describes only the perimeter lot line and not the subdivision lines. The condominium declaration declares that the condominium association owns all of the condominium land and therefore all three lots and each individual owner has a 1/11<sup>th</sup> interest in all three lots. He felt the only reasonable solution seems to be to eliminate or waive Note 10 on Sheet C-3 which is what they are asking tonight.

Deputy City Manager Hayden asked Attorney Keenan was aware of what is in the Planning Director's Memorandum to the Board which was to remove Stipulation #1, which read: That all utility easements be reviewed and approved by the City Attorney for content and form; and to remove Stipulation #10, which read: That a recordable easement plan be provided to the City prior to the issuance of any Certificate of Occupancy; and insert in place of those stipulations, one that would read: The applicant shall execute deed restrictions requiring that the three lots permanently be held in common ownership, said restrictions to be reviewed and approved by the City Attorney and recorded by the Planning Department or as deemed appropriate by the City

Attorney Keenan has concerns with that recommendation as his client has no control over the condominium association and it would require a vote from them to record a deed.

Mr. Gladhill asked why the Certificates of Occupancy were issued if they weren't supposed to be. Mr. Hopley explained that there was no cross checking between the Planning Board's action and what is happening in the field with construction. They have recognized that shortcoming and have corrected that.

Attorney Keenan felt that if they had know prior to the CO's were issued, his client would have been the owner of all of the land, and they would have been able to do the deed restrictions but he did not feel it was feasible at this time.

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 postpone this matter to the August meeting and refer the matter back to the Legal Department. She felt that the City has been trying to solve this internally for quite some time and they are not going to solve it tonight. Mr. Rice seconded the motion.

The motion to postpone this matter to the August Planning Board meeting passed unanimously.

Attorney Keenan asked about the Site Review Bond which is still being held by the City. Deputy City Manager Hayden understood that the bond had not been released because the stipulations from the original approval have not been met and that is typical protocol. However, that would not be the prevue of this Board and she would refer him to the City Attorney and the Planning Director.

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I. The application of **Parade Office, LLC, Owner**, for property located at **195 Hanover Street** (Portwalk, Phase III), requesting Amended Site Plan approval to expand the total retail space from 7,210 s.f. to 10,050 s.f. along Maplewood Avenue and from 2,650 s.f. to 6,210 s.f. on Portwalk Place; expand the residential lobby area on Portwalk Place from 1,670 s.f. to 2,860 s.f.; reduce the total restaurant area from 8,375 s.f. to 3,070 s.f.; revise the areas of the hotel building and the upper floors of the residential building; replace a brick wall in front of the parking deck with a metal screen; add an easement under Deer Street, Maplewood Avenue and Hanover Street for subsurface earth retention tie backs; revise total vehicle parking spaces from 268 to 240; and reduce bicycle parking spaces from 28 to 20; with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 1 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD), and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Gregg Mikolaities, of Tighe and Bond, was present with Jeff Johnston and Tim Levine. Mr. Mikolaities indicated they were present for a number of changes to the Portwalk Phase 3 approval. They provided a sheet with the approved plan on one side and proposed amendments on the other side. Also included was other documentation showing how they have addressed their stipulations.

Mr. Mikolaities and the owners had a meeting yesterday with DPW about the earth retention tie backs. That is still in discussion with DPW and they would request that be removed from tonight's discussion.

Bike racks have been placed in various locations on Hanover Street, Deer Street, the hotel entrance and the residential entrance

Ms. Roberts asked for a review of the DPW meeting.

Tim Levine, of Old Harbor, representing the project ownership, reported that as requested by TAC they met for preliminary discussions at DPW on the tie backs and how that would work. That is a construction option that they may work on further. It was a very positive meeting and the outcome was that staff felt the concept was viable but they needed more details before nailing it down. They



will provide a detailed plan showing how those fit with the utilities in the street and they need more information from DPW to finalize that. They have opted instead, as the Planning Department's recommendation, to take that out of this approval tonight and will deal with that later. Therefore, they are not asking for that tonight.

Deputy City Manager Hayden asked if the only place the tie backs are mentioned is on Sheet C-A. Mr. Mikolaities confirmed the Easement Plan is the only place they are mentioned. Deputy City Manager Hayden asked that Note 26 on the Overview Plan mentions them so that reference should also be removed.

Deputy City Manager Hayden asked they would come back for amended approval if the intent is to continue to consider the tie backs going out to City property. Mr. Mikolaities confirmed they would have to go back to TAC, the Planning Board and City Council.

Deputy City Manager Hayden assumed the same would be true if the HDC approves any amendments that require site changes then they would have to bring it back to the Planning Board for amended site plan approval. Mr. Mikolaities confirmed that was correct.

Councilor Novelline Clayburgh asked if all parking requirements are based on the current parking requirements and not the proposed. She asked what would happen if the City Council passed a parking amendment while this was being discussed. Deputy City Manager Hayden confirmed it would not apply to 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 noted that Dave Allen was present and he didn't know if he had anything to add regarding the tie backs.

Dave Allen, Deputy Director of DPW, stated Mr. Levine gave an accurate representation of that meeting. More information is needed for anyone to feel comfortable going forward with the recommendation and given there are other options that may not require the tie backs, that would be a separate issue and would have to go through TAC, Planning Board and City Council.

Deputy City Manager Hayden made a motion to approve the amended site plan with the following stipulations:

- 1) On Sheet C-3A, Easement and License Plan, the "Proposed Earth Retention Tie-Backs Easement in City of Portsmouth Right of Way ..." shall be deleted.
- 2) Note 26 shall be deleted on the Site Plan Amendments Exhibit dated July 11, 2012 provided by Tighe and Bond.
- 3) Should the HDC approved plan result in any changes to the Site Plan, the applicant must come back for Amended Site Plan Approval.

Mr. Hopley seconded the motion.

Councilor Novelline Clayburgh wondered if there was a reason why the hotel was going from 124 to 110 rooms and the dwelling units going from 92 to 112. Chairman Ricci assumed it was because of changes in the market.

Councillor Novelline Clayburgh asked if they were going to replace a brick wall in front of the parking deck with a metal screen and wondered if that is going to look as nice as a brick wall. Chairman Ricci confirmed that will be addressed by the HDC and there has been no decision yet.

The motion to grant amended Site Plan approval passed unanimously with the following stipulations:

- 1) On Sheet C-3A, Easement and License Plan, the “Proposed Earth Retention Tie-Backs Easement in City of Portsmouth Right of Way ...” shall be deleted.
- 2) On the Site Plan Amendments Exhibit dated July 11, 2012 provided by Tighe and Bond, Note 26 shall be deleted.
- 3) Should the HDC approved plan result in any changes to the Site Plan, the applicant must come back for Amended Site Plan Approval.

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J. The application of **30 Maplewood Avenue, LLC, Owner**, for property located at **30 Maplewood Avenue**, requesting Amended Site Plan approval to add a full basement to the building, add a patio on the Bridge Street side, relocate entrances and add an additional grease trap, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lot 2 and lies within the Central Business B (CBB) District, the Downtown Overlay District (DOD), and the Historic District.

The Chair read the notice into the record.

**SPEAKING TO THE APPLICATION:**

John Chagnon, of Ambit Engineering, was asking for amendments to the Site Plan approved in August 2011. There was a comparison exhibit in their packet which highlighted the changes. The additions were in green and the subtractions were in red.

Mr. Chagnon began at the northwest corner of the building where there is a slight increase on the proposed patio at corner. There is a PSNH manhole that they will not be reusing and PSNH has indicated they would like to leave it in and use it as a switch handhold. They will just leave it in the ground. Going down Maplewood Avenue to the south there is a change to the patio size. At the southeast corner of the building at Maplewood/Hanover there was an entrance into the building which was taken out and in its place will be a bicycle rack. There will be an entrance added that goes up towards the patio on the south side of the building on Hanover Street with entrance and exit relocation. There will now be two means of egress and access to the patio. Going down Hanover Street on the southwest corner of the building, the patio needed to have a ramp for access/egress which is a change to the code since last year. Around the corner on the Bridge Street side, at the southwest corner, a patio has been added. An area which was going to be outside of the building has been made smaller for condensers. Access on Bridge Street will now go south down some steps and access Bridge Street all at same elevation which raises it up and requires the relocation to a stairway. The residential entranceway in the middle of the building on the Bridge Street side has been eliminated. A grease trap has been added on the west side of Bridge Street. They worked with PSNH to tap the manhole in

Hanover Street and run a primary service. There will be some switching gear equipments owned by PSNH placed in an easement on the property. Their transformer for the site will be next to that, which is going to the HDC for approval along with the building changes. The only other change is another walkway change on the north side of the building to the west side. As a result of a TAC recommendation they have added a bike rack to the north side of the building.

Mr. Hopley referred to Sheet C-1-B which is the only sheet at the corner of Bridge/Hanover that talks about a stand by generator. Is there a stand-by generator or not. Mr. Chagnon indicated that was a good questions and they must have missed that.

Mr. Hopley noted that he interpreted the legal notice to indicate that there would be a full basement for the existing building where the plan shows that the basement is only for the proposed addition. Mr. Chagnon confirmed that was correct that the existing building only has a slab.

Deputy City Manager Hayden asked what changed about the patio access ramp. Mr. Chagnon stated it was a building code which came from the architectural side. If you have a patio, you have to have an exterior ADA entrance now. Mr. Hopley added that it will need a railing.

Deputy City Manager Hayden asked Mr. Cracknell about some additional minor concerns that were discussed. Mr. Cracknell confirmed that there are some conditional conditions that the Public Works Department would like to add to their approval. One is that prior to sidewalk construction, the applicant shall meet with DPW to determine curbing to be reset along the reconstruction route during construction. There was another condition about the timing of sidewalk construction and it was felt that should be addressed in the CMMP process. The third is in relation to a proposed lighting controller. Street lights are gong to be re-done and the City wishes to own them and have a controller which is shown on the south side of the proposed patio at southwest point of the building. It was previously free standing but probably more appropriately it would be better to have it on City property. Right now the sidewalk does not go to property line and there is 3' between the edge of the sidewalk and the property line. This project envisions redoing the sidewalks and taking it right up to the property line and not have an unmanageable green space. It is quite possible that controller could be put in the City right-of-way, still have the 6' width of sidewalk, and not need the easement. The stipulation would be they would work with DPW to do that and, if it goes on private property there should be an easement.

Ms. Roberts asked about the fence shown on the Maplewood Avenue side and if it had been reviewed by the HDC. Mr. Chagnon stated the fence in front of the chillers was added as a result of the Fire Department pointing out the main entrance and outside seating. If you are going to fence off the outdoor seating, you have to not fence the access door. Mr. Chagnon agreed it would have to go to the HDC. The fence is to make sure the applicant knows they can't put a fence in front of the primary building access.

Mr. Gladhill confirmed that the HDC has not seen any of these changes yet.

Ms. Roberts also asked about the fence around the air conditioning units. Mr. Chagnon confirmed they added air conditioning units to the north side of the addition and the HDC will look at the whole utility area. They may have one general fence or individual fences.

Deputy City Manager Hayden thanked Mr. Chagnon for the red and green plan and indicated it was very helpful.

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 grant amended Site Plan approval with the stipulation that prior to sidewalk construction the applicant shall meet with DPW to determine the curbing to be reset by the applicant during construction, the schedule for all sidewalk disturbance or closure shall be determined by the DPW through the CMMP, unless relocated to City property the applicant shall provide the City with an easement for the lighting controller on the southerly corner of the property, with the easement to be reviewed and approved by the City Attorney and submitted by the applicant to the City Council for approval.

Councilor Novelline Clayburgh seconded the motion.

Mr. Gladhill asked if they should add a stipulation similar to the last application that any changes made at the HDC that would affect the site plan would have to come back for amended site plan approval. Deputy City Manager agreed.

Councilor Novelline Clayburgh stated that the City Council has been having a lot of discussion about bicycle racks so she is happy to see two racks on this site. Mr. Chagnon stated that was a suggestion of the Planning Director.

The motion to grant amended Site Plan approval passed unanimously with the following stipulations:

- 1) Prior to sidewalk construction the applicant shall meet with DPW to determine the curbing to be reset by the applicant during construction.
- 2) The schedule for all sidewalk disturbance and/or closure shall be determined by the DPW through the Construction Management & Mitigation Plan (CMMP).
- 3) Unless relocated to City property the applicant shall provide the City with an easement for the lighting controller on the southerly corner of the property, with the easement to be reviewed and approved by the City Attorney and submitted by the applicant to the City Council for approval.
- 4) Should the HDC approved plan result in any changes to the Site Plan, the applicant must come back for Amended Site Plan Approval.

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K. Proposed amendments to the Site Plan Review Regulations, Section 1.2.3 – Developments of Regional Impact and Article 2 – Application and Review Process.

Mr. Cracknell reviewed the Planning Director’s recommendations. The first item was regarding Developments of Regional Impact. The second item was the composition of TAC and its need for some minor changes in its membership. The third item in the staff report was the reimbursement for the use of outside consultants and changes to the Site Plan Review regulations. The final section was in reference to referrals to other City departments.

Deputy City Manager Hayden added that regional impact projects do not come before this Board very often. The State statute oddly written and Mr. Taintor was trying to clean it up to make it clear on how they trigger the regional impact review and what process they would follow.

She stated that what they are doing with TAC is codifying in the regulations what they are doing in practice anyways. They have also added to TAC the ability to refer things to the Health Department as they are very involved with restaurants and grease traps.

The third item regarding outside consultants is very simple. Currently, the Planning Board or TAC can require an applicant to hire an oversite engineer or wetland scientist for additional review but only the Planning Board can tell the applicant that they have to pay for that. This allows TAC to also require the applicant to pay for the outside professional.

Mr. Hopley asked, under Regional Impact where it says “or any person” open up a huge potential for anybody in the world. Deputy City Manager Hayden felt that was a good question and they can postpone that for Mr. Taintor’s input.

Chairman Ricci opened up the public hearing. Seeing no speakers, he closed the public hearing.

Deputy City Manager Hayden made a motion to postpone the Site Plan Review regulation changes regarding the Development of Regional Impact to the August Planning Board meeting. Ms. Roberts seconded that motion.

The motion passed unanimously.

Mr. Hopley made a motion to approve the amendments regarding the TAC Committee composition and the reimbursement for independent consultants and referrals to City Department. Section 2.2.1 and Section 2.3 and Section 2.5.

Councilor Novelline Clayburgh seconded the motion. She asked if there was a project or issue that concerned the School Department, would they be included. Deputy City Manager Hayden confirmed they would be notified and included in the meetings.

The motion passed unanimously.

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**IV. CITY COUNCIL REFERRALS/REQUESTS**

*The Board’s action in these matters 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.*

A. Letter from Attorney James Noucas, Jr., representing a property owner of the General Porter Condominiums requesting to construct a garage along the rear boundary line of property located at 32 Livermore Street abutting a cemetery. (This matter was postponed at the June 21, 2012 Planning Board Meeting).

Deputy City Manager Hayden stated that the Board has a new letter in front of them dated July 18<sup>th</sup> where Attorney Noucas is proposing a slightly different scenario and asked to be postponed to the September meeting to allow him to speak to the State archaeologist.

The Board could report back to the City Council, it could do what Attorney Noucas has asked with stipulations or without stipulations or it could recommend something completely different to the City Council. Chairman Ricci felt they should postpone this to the September meeting.

Deputy City Manager Hayden made a motion to postpone to September with the condition that whenever this is referred back to the City Council it should include a letter from the State Archaeologist as this is a very serious issue. This statute was put in place because they have had problems and this is not a small request.

Mr. Hopley seconded the motion and for the record he read in a paragraph from the Noucas letter about constructing a garage with 8” x 8” pressure treated beams for a sill that would lie upon the ground and the structure above it would be post and beam and very secure. Mr. Hopley was unsure exactly what they were proposing but wanted to state that the building codes may weigh in on the non combustibility of the garage floor.

Mr. Gladhill stated he will support the motion to hear back from the State Archeologist but he is still against supporting anything suggested in Attorney Noucas’ letter.

The motion to postone to the September meeting passed unanimously with the condition that any final report back to the City Council will include a letter from the State Archaeologist.

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**V. PLANNING DIRECTOR’S REPORT**

Chairman Ricci advised the Board that Deputy City Manager Hayden’s last meeting will be next month. Dave Allen will be joining the Board in her place.

Also, Planning Board member Anthony Blenkinsop and his wife will be having a baby tomorrow so they all wish him the best.

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**VI. ADJOURNMENT**

A motion to adjourn at 9:07 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 November 15, 2012.