

**MINUTES**

**PLANNING BOARD  
PORTSMOUTH, NEW HAMPSHIRE**

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

**7:00 P.M.**

**JULY 18, 2013**

**MEMBERS PRESENT:** John Ricci, Chairman; Anthony Blenkinsop, Vice Chairman; Nancy Novelline Clayburgh, City Council Representative; Richard Hopley, Building Inspector; William Gladhill; Colby Gamester; Elizabeth Moreau, Alternate and Jay Leduc, Alternate

**MEMBERS EXCUSED:** David Allen, Deputy City Manager; John Rice; and Karina Quintans;

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

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**I. APPROVAL OF MINUTES**

1. Approval of Minutes from the March 21, 2013 Planning Board Meeting – Unanimously approved.
2. Approval of Minutes from the March 28, 2013 Planning Board Work Session – Unanimously approved.
3. Approval of Minutes from the April 18, 2013 Planning Board Meeting – Unanimously approved.
4. Approval of Minutes from the May 2, 2013 Joint Planning Board and HDC Work Session – Unanimously approved.

**II. PUBLIC HEARINGS – OLD BUSINESS**

Chairman Ricci requested a motion to take out of order the following items: Item A, Old Business, Item B, Old Business, Item D, Old Business, Item B, New Business and Item F, New Business, for the purposes of withdrawing and/or postponing. Mr. Gladhill seconded the motion, and the motion passed unanimously.

A. The application of **Jean R. Johnson, Owner, and Thomas Johnson, Applicant**, for property located at **50 Martine Cottage Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for a project which will work within an inland wetland and a wetland buffer, to construct a 850' ± pervious driveway and a 247 s.f. of impact to the inland wetland and 7,900 s.f. of impact to the wetland buffer. (This application was postponed at the June 20, 2013 Planning Board meeting.)

Chairman Ricci read the notice into the record.

Councilor Novelline Clayburgh made a motion to accept the Applicant’s **withdrawal** request and that the Conditional Use Permit application be **closed** with no further action by the Planning Board. Ms. Moreau seconded the motion, and it passed unanimously.

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B. The application of **Hillcrest of Portsmouth, LLC, Owner and Applicant, and The RLD Revocable Trust and The AMD Revocable Trust, Co-Applicants**, for property located at **3201 and 3203 Lafayette Road and abutting vacant lot located on Lang Road**, requesting Preliminary and Final Subdivision approval to subdivide one lot into four lots as follows:

- a. Proposed Lot 1 consisting of 6.02 acres and 561’ of continuous street frontage.
- b. Proposed Lot 2 consisting of 67.11 acres and 200’ of continuous street frontage.
- c. Proposed Lot 3 consisting of 11.38 acres and 1084’ of continuous street frontage.
- d. Proposed Lot 4 consisting of 16.9’ acres and 156.87’ of continuous street frontage on Lang Road.

Said properties are shown on Assessor Map 289 as Lot 1 and lie within the Gateway District where a minimum lot area of 43,560 s.f. and 200’ of continuous street frontage is required, the Rural (R) District where a minimum lot area of 5 acres and no continuous street frontage is required and the Garden Apartment/Mobile Home (GA/MH) district where a minimum lot area of 15,000 s.f. and no continuous street frontage is required. (This application was postponed at the June 20, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

Vice Chairman Blenkinsop made a motion to **postpone** preliminary and final subdivision approval to the August 15, 2013 Planning Board Meeting. Mr. Gladhill seconded the motion.

The motion to postpone Preliminary and Final Subdivision approval to the next regularly scheduled Planning Board meeting passed unanimously.

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C. The application of **Olde Port Development Group, LLC, Owner, and Tod O’Dowd, Applicant**, for property located at **141 Mill Pond Way**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a tidal wetland buffer, to construct a 794 s.f. patio behind the existing 4-unit residential building, with 1,450 s.f. of impact to the wetland buffer. Said property is shown on Assessor Map 140 as Lot 24 and lies within the General Residence A (GRA) District. (This application was postponed at the June 20, 2013 Planning Board meeting)

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Tod O’Dowd, applicant and the new property owner, presented. Peter Britz was present on behalf of the City.

Mr. O’Dowd said he bought the condominium in June and wanted to add a new deck. They received full approval from the State of New Hampshire for wetland permits and met with the Conservation Commission, who recommended approval but made it subject to a Planting Plan. He said they met again the previous week to select certain plants for the area and then revised the plan to include 39 new plants that were deemed appropriate by the Conservation Commission.

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

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Hopley made the motion to **approve** the Conditional Use Permit Application. Councilor Novelline Clayburgh seconded the motion, and it passed unanimously.

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D. The application of **Seacoast Trust, LLP, Owner**, for property located at **150 Route One Bypass**, requesting Site <sup>D</sup> Approval to place a 10' x 60' mobile diagnostic coach on a concrete pad in front of the existing building. The property includes existing utilities, landscaping, drainage and associated site improvements. Said property is located on <sup>1</sup> Lot 58 and lies within the Single Residence B (SRB) District. (This application was postponed at the June 20, 2013 Planning Board meeting)

Request to Postpone

Chairman Ricci read the notice into the record.

**DECISION OF THE BOARD:**

Mr. Blenkinsop made a motion to **postpone** this application to the August 15, 2013 Planning Board Meeting. Councilor Novelline Clayburgh seconded the motion, and it passed unanimously.

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**III. PUBLIC HEARINGS – NEW BUSINESS**

A. A public hearing to consider amending the Zoning Ordinance, Section 10.531 and 10.535, regarding Maximum Structure Height in the Central Business A District and Central Business B District to 45' or 3 stories, whichever is less.

Chairman Ricci read the notice into the record.

**DISCUSSION OF THE BOARD:**

Mr. Taintor said this was a straightforward referral from the City Council. There had been extensive discussion in preparing the Staff Memorandum. There was also a handout distributed with some proposed changes and recommendations. In the updated memorandum, they tried to clarify and simplify some issues. The City Council referred a proposal to the Planning Board to change the maximum height in the CBB and CBA Districts to 45' and 3 stories, whichever was less. There was still some concern with the Staff that this would lead toward flat roofed buildings, and one of the issues was to have more diversity and pitched roofs in the Downtown area. They used the idea of a half-story to encourage that. They could have gone to 2-1/2 or 3-1/2 stories, but they proposed increasing the number of stories to 3- 1/2, which was less restrictive than what was referred to them by the City Council, and 3-1/2 stories usually fit within 45'. It was proposed to add the half story and incorporate the idea of stories and building height by adding the definitions of story, half story and story above grade plane. The major change was simplifying the definition of half story. Mr. Taintor pointed out that Page 2 of the handout had the final text where all those changes were made.

Mr. Taintor said the proposed definition of a half story is a story immediately below the roof in which the floor area with a ceiling area of 7' or more is not greater than 50% of the total floor area of the story below. The exterior wall of the half story would be set back at least 15' from the building and the lower story facing the street and public way.

He said when the roof is pitched or the building has a penthouse with a flat roof, the half story is defined as long as the floor area that has a floor to ceiling height of 7' or more is less than half of the total floor area of the story below it. He said it was a little more complicated, but they did not want just a flat 3-story limit because that would result in every building having a 3-story limit. One would never get to the 45' height, or have the flexibility.

Councilor Novelline Clayburgh asked if the half story would have to be on the top. Mr. Taintor said no. She asked if it could be the first floor, then a half story, then a second story, and Mr. Taintor said yes, it could be under a roof.

Chairman Ricci said if they were to look at the samples of the buildings in the memorandum and they counted 1, 2, 3 and a half story, they could visualize what the buildings would look like and asked if it were that simple. Mr. Taintor said yes and gave examples. The 51 Islington Street building is a 4-1/2 story building, so they would lose a story. The 99 Hanover Street building is five stories, so they would lose a story; the State Street building was 4-1/2 stories, so they'd lose a story. That would make the three buildings conform to the other buildings in the area.

Chairman Ricci asked about the genesis of the "at least 15' requirement". Mr. Taintor said if the building had a half story with a flat wall on one side, it could appear to be a 4-story building but it would create a setback. The illustrations showed a pitched roof, and the buildings to the right and left have pitched roofs, so they would not be affected by it. The wall was not set back because of the roof. Chairman Ricci said Mr. Taintor was talking about roof versus wall. With some smaller lots, he did not know if they wanted to go with 50% of the floor below and omit the 15'. Mr. Taintor said it was meant to be a flat and vertical wall.

Vice Chairman Blenkinsop said relative to the 15' setback and looking at the 51 Islington Street building's triangular piece of the half-story, it would need to be set back 15' or be made into a pitched roof. Mr. Taintor said they would not be able to build that design or would have to design it differently, maybe with dormers instead of a flat wall facing the street.

Councilor Novelline Clayburgh asked if, because of the 51 Islington Street building design, it would be better to say 45' to 50' for the height instead of just 45', and did it make any sense to bring up some flexibility or was 45' more attainable. Mr. Taintor said the City Council wanted to get it below 50'. Their proposal was to go to 45' or 3 stories, whatever was less. If they went to 50', they would not be reducing that height. The CBB District has a 60' height limit. The CBA District has the 50' height limit.

Chairman Ricci asked if grade and height were defined the same. Mr. Taintor said yes, that the only definition changes were story, half story and story above grade level. Councilor Novelline Clayburgh said she did not vote for this at the City Council level because she felt it should go to the Planning Board level first. City Attorney Sullivan had also recommended that it go to the Planning Board first.

Mr. Leduc asked whether, out of the three pictures provided, only the Hanover Street building would be considered a flat roof and the other two buildings gabled. Mr. Taintor said yes. Mr. Leduc pointed

out that the majority of the buildings on the map had flat roofs. Mr. Taintor said the new buildings have flat roofs and the old buildings have pitched roofs, and said it was the result of obtaining the most space and it was simpler to build up to the 60' height. People want to go to the maximum height, and the maximum height allowed by the Ordinance is a half story. Of the three examples, two have existing sloped roofs.

Mr. Leduc asked if they would be reducing the building height by 15' in the CBB District because the City Council felt the 60' was too high. Mr. Taintor thought the main concern was that they were going through the Form Based Zoning and there was a proposal to do a moratorium and a height reduction, both of which did not pass. This was to be the third proposal and they wanted to do it as an interim zoning until the Form Based Zoning Ordinance passed.

Chairman Ricci said his concern was that CBA and CBB Districts have historically had different requirements and he understood why, but he asked if there was any consideration in the CBB District of 50' and 4 stories. He said that, in some areas, they could almost do 4-1/2 stories. He asked if they were still getting a reduction in building height if they went to 50' and four stories. He thought the two had always been separate, and now it seemed to be across the board. He said he would like to see a 50' and 4-story in the CBB District, which would still be a reduction. Councilor Novelline Clayburgh said that had not been considered.

Vice Chairman Blenkinsop asked if there was the ability for someone to get higher than 45', like the HDC. Mr. Taintor said they could get a Conditional Use Permit from the HDC. He said the HDC could require that a building be lower than the maximum height. They basically negotiated at 67 and 77 State Street site (the old Rosa's parking lot), where a portion of a story got taken off the proposed building because they were concerned that the building was too high, but that was a reactionary position. One aspect of this proposal is, rather than starting at 60' and going down, they were starting at 45', and if they could meet the standards or convince the HDC that it was beneficial to have a taller building, they could request a Conditional Use Permit and an increase.

Mr. Gamester said that the Conditional Use Permit being granted from the HDC seemed unorthodox and he felt it should trace the statutes a little if the Planning Board was referred from the HDC for the Conditional Use Permit. That might be an extra burden for the HDC to come to the next meeting. He said if they were going to task the HDC with that, maybe there should be some definite standards to see if there were definite benefits to the City. He thought that would seem like a Planning Board decision as well as an overall public benefit) and he felt that the Planning Board could come up with the standards that the HDC should apply.

Mr. Gladhill said the public benefit and public good seem to him to be more in terms of architecture, and he felt that it was a broad public benefit. The main issue was architecture and whether the height fit into the surrounding buildings. He felt that defining it too much would lock the HDC in.

Mr. Gamester said they did not have to be so specific and unique, that it could be read as narrow or broad. If someone went to the HDC for a Conditional Use Permit for height, they could probably make the case for public good. Mr. Gladhill said that, in their case, they could only look at architecture. As an example, a hospital downtown could say it was for the public good if they wanted to put in an extra floor because it would help more patients. They could not consider that because it would be outside of their purview.

Mr. Taintor said that, in drafting this, the Planning Board felt that significant and direct benefit to the City meant more than just architecture, that it was really important to the City, like a public park or public parking. They had gone back and forth on whether this Conditional Use Permit should come from the Planning Board or the HDC. They went with the HDC because they were already looking at building height, so it made more sense. They could not just make a subjective decision that the architecture is so good that it justified increasing building height.

Vice Chairman Blenkinsop asked whether the increased assessment value and resulting increased taxes would be a significant and direct benefit to the City. Mr. Taintor said it would be significant, but he was not sure about the direct benefit. He said every development has increased assessment value, so the development could qualify for increased building height. The idea was to get away from the flat 35' height limit that was initially recommended.

Chairman Ricci felt that they needed to provide examples. It was his opinion that if they could give an applicant a direction as to what to look for from the HDC, the HDC might not have a problem with it. He thought it was setting a precedent.

Mr. Taintor said there was a concern but they hoped this would be a short interim solution. If the City Council adopted Form Based Zoning in December, the issue would go away because it had been proposed as an interim step. He also mentioned that the Planning Department received nine emails that day in support of this amendment.

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

Zelita Morgan of 39 Richards Avenue spoke in support of the amendment but wanted to make it clear that her preference would be to have buildings with lower height. She had questions regarding the language used to describe waivers. She referred to Section 535, Item 1 that talked about building heights being no higher than any building on the abutting lot, and she said it sounded as if the Board was grandfathering the rights to have the same height as another building just because the building existed. She posed the question that, if someone were to come in and wanted the same height as the building next door because the building is an abutment, would the developer or owner have the right to do that height.

Mr. Taintor said were some areas in the City where there are prevalent low building heights and areas with some high building heights. For example, on Congress Street or similar streets where buildings on both sides are 50' high, it would not be good planning to erect a 45' building in the middle. From a Planning Board point of view, you'd want to have consistency in building height. He said a big concern of residents is that they do not want to change the character of the area.

Ms. Morgan said she was concerned because she has seen higher structures than the abutting ones. Also, she felt that the language was unclear in some sections and seemed subjective and open to litigation. She pointed out that the language in Item 2 stating that 'a waiver can be granted if the increased building height could significantly benefit the City as determined by the HDC' seemed vague. It was subjective from applicant to applicant and did not work in the best interests of the community. She questioned why the HDC would have the power to interpret what was best for the City and wondered if it should be the City Council or another forum. The Planning Board needed to be precise and not have any loopholes. The City's heritage has to be protected and they need

development that makes sense and fits in the neighborhoods and the City without destroying the character.

Ms. Morgan also asked about the increased building height being limited to 50' or 60' and if the developer could go higher than that with a waiver. She was told that they can get away with either 50' or 60' but no higher than what exists today. Ms. Morgan repeated that she would like the Planning Board to revisit the language issue and clear it up because she found it confusing.

Jerry Zelin of 70 Kensington Road handed out a letter to the Board with comments on the Draft adopted by the City Council. He said that one issue that emerged is whether it is sensible to impose a single 45' height limit across both the CBA and CBB Districts. He asked if Form Based Zoning would include the North End. Mr. Taintor said the Form Based Zoning did not go into the residential area. Mr. Zelin asked whether that was true of Portwalk and all of the CBB District, and he was told yes.

Mr. Zelin felt that, for a portion of Downtown, it was a stop-gap measure to tide them over until Form Based Zoning. For other areas Downtown, it was a long term measure that would be the only regulation other than the HDC review for portions of the CBB District that are outside of Form Based Zoning. He thought it was awkward how they have divided downtown into CBA and CBB Districts. When this went into effect in the 1990s, the theory was that there would be a newer Downtown along Congress Street and an older Downtown between Market Square and the river, with buildings older and lower than Congress Street.

Mr. Zelin said the CBA District was enacted to cover just the strip of land around the river and a portion north of the Portwalk. The CBB District is really diverse and a 45' height limit might not make sense along Congress Street where buildings are 60'. However, lower State Street, Daniel Street and Market Street were lower and it would make sense to have a 45' height. He was concerned about the story limitation and he applauded the suggestion that a half story is allowed above the 3-story, but generally buildings are 10' per story and the City Council proposal says 45' or three stories, so that means 45' or 30', whichever is lower. He said it didn't make sense.

Mr. Zelin asked about a sloping lot like the buildings along the river have that are many stories high on the river side but fewer stories high on the street. He said they needed to address that and emphasize how many stories it was. He liked the idea of encouraging developers to move away from the flat box building by giving them the incentive to add a half story. He also noted that when they made their 45' limit, it excluded appurtenances and elevator shafts so it was more than 45'. He felt that the Zoning Ordinance defines height in an unusual way, such as a sloped roof being measured from the midpoint, so most buildings would be more than 45' high.

Mr. Zelin's biggest concern was that the proposal was generated because the City was being developed very quickly with large buildings. If the Planning Board felt that the City was losing its diversity of architectural and pedestrian scale, then they should also limit building length and building width in addition to building height. He said when he walks by the Marriott, he is not just concerned about the height but with the endless stretch of unpunctuated building façade which is 190' on Deer Street and 214' on the other street. If the City was concerned that the Marriott is too big, he felt they should include a footprint limit or length and width limit smaller than the Marriott for other buildings. On the other hand, he said the City could take these dimensions as a maximum to be allowable subject to special exception provisions that they have already proposed for height.

Mr. Zelin said if the City has a concern about building mass and overdevelopment of the north end, they should add an open space requirement because the Zoning Ordinance for the CBA and CBB Districts had an open space requirement of zero percent of the lot. If they were concerned about the North End becoming quickly overdeveloped, they should put in a side lot setback requirement, which would be an effective open space requirement along the river because it would preserve some view corridors of the river. Regarding the debate about who should have the jurisdiction to grant the Conditional Use Permit, the alternative could be to give the BOA the power to grant a special exception which New Hampshire Statute recognizes, unlike a variance that requires hardship. A special exception could be granted by the BOA if a proposal met certain criteria. He felt there needed to be clear criteria and that they should remember the architectural details and think about allowing deviations from the height limit if there is an architectural punctuation, like a clock tower.

Paul McEachern of 70 Dennett Street said he had never seen such a proposal. When he first came to work in Downtown Portsmouth in 1966, he worked in the MacIntosh building. He could look out the window on Congress Street and he would not know anyone on Congress Street because there was nobody there. W. T. Grant's Woolworth and Newberry's were there. In 1992, when President Clinton came to town, he spoke in front of the boarded-up Newberry's as an example of the downtowns in this country.

Mr. McEachern said that, due to geography, good local government and the Arts, Portsmouth has built a thriving community that goes against the demographic model in New Hampshire. He said New Hampshire looked like him because it was 'aging', and Portsmouth was a little different because it is an attractive place to come to, and people want to move here from other parts of New Hampshire. For the City Council to bring forward such an ordinance would be akin to abandoning the Downtown, or would be a moratorium under a different guise. He felt, because of a parking problem, they decide to lower the building 'for aesthetic reasons'. For all he knew, there was no real demand for retail space, but there was a requirement that the building's first floor be retail. He said the upper floors subsidize the lower floors of a downtown building. There would be plenty of demand for office space if they had parking, and that demand is off so it falls to the condominiums to provide their own parking. He said if the Ordinance passes, there will not be buildings of any height downtown. Portsmouth has problems because it is a successful community. As an example, he said there is no talk in Berlin about height because no one is building anything, which also was the case for several western-border towns. Portsmouth has young start-up companies that want to be downtown, and the Ordinance will forego that. Condominiums will still be in demand, but they will not get built downtown and probably would not have school-age children residing in them. Condominiums do not demand a lot of services yet subsidize the citizens who pay enormous property taxes because of the values in Portsmouth. He felt that the City Council was surrendering downtown and suggested that the Planning Board look into it and see what the real problems are. If the problem was parking they should build it and make it pay. If businesses re-locate to the downtown area, their employees need a place to park and the businesses will pay the high rent and parking fees to do that, but it is still a problem. When he came here back in 1966, the building height was 60' and Mr. McEachern felt it was good enough then and should be good enough today.

Robert Shouse of 555 Dennett Street said he disagreed with Mr. McEachern. To pass this proposal, he felt that it is not a sign of surrender but rather a sign of citizen background. He was in strong favor of Councilor Dwyer's proposal to reduce the maximum building height limit from 50' to 45' and 3 stories and to reduce the height limit from 60' to 45' or 3-1/2 stores, whatever was less. He said it made good sense if their interest was in preserving the core of historic Portsmouth. He felt that builders, however, were not hamstrung. If their oversized project made architectural sense and they could qualify for



Conditional Use Permit, then they would be allowed to build taller. There were scenarios where it would be counterproductive and needless to limit building heights to the proposed changes. For example, if such limits had been in effect a few years ago and strictly opposed, the tasteful and appropriately-sized Popovers Building on Congress Street would not exist. However, if those limits had not been opposed a few years ago, they would not have Mr. Kelm's Islington Street mess. Mr. Shouse said height limits cut both ways. If the proposal were passed, it would return control of the City's architectural landscape to people who care about what Portsmouth looks like, and it would curb overzealous builders who are in it for nothing more than the 'almighty buck' and who could give a damn about aesthetics or show sensitivity to this jewel we call Portsmouth. It would be prudent and farsighted to recommend a positive vote on the proposal to the City Council. It may not remedy the sins of the past, but it would allow citizens to regain control of future development, development that made sense and did not hinder reasonable growth. He felt it put on notice those people who chose to ignore what the majority of citizens wanted, and that, to those people, good taste and respect for the City seemed to be against the norm. He hoped the Board would agree and do what was right.

Barbara Destefano of 99 Hanover Street said she lives in one of those big buildings that everyone hates and was speaking up for her neighborhood. She really likes it there, and she looks out at 51 Islington Street and sees that it matches very nicely with the Keefe house across the street. People malign her building, but she feels it has in interesting roof line and other aspects. She said that when Phase III of Portwalk is done, she will not be able to see anything, that the steel girders for the first and second floors are already blocking her view. However, she sees that there is walkable space between the buildings and the sunlight will still come into her place. She walks a lot in the Downtown area and said it never feels too tall because she does not walk looking up. There is too much confusion about putting in the new height level and the number of stories and they should just wait for the Form Based Zoning to take effect. If something were to come up before the HDC or Planning Board and they thought it was too tall or massive, they could deal with it the way they have always dealt with it. A big issue is the Northern Tier, and she attended the Charette meetings and saw that it was not included. She thought that, from Hanover Street over, it should be the newer, younger and bigger Portsmouth with more hotel rooms and apartments. She said there are 36 units where she lives and it is always full, people come and go. The new development will have 110 apartments and she was sure it would fill up. Another project for 111 Maplewood Avenue will have 70 apartments. She said it was important that nice apartments are available for people who do not want to purchase a condominium, and that was another reason to keep bigger buildings there. It used to be families and businesses until urban renewal took it all away, and it should be brought back as a different and larger neighborhood with apartments, retail space, offices, and whatever it takes to bring life to that end of the City. She strongly opposed changing the current height limit and felt they should just keep it the way it was and deal with buildings as they come up, keeping in mind the Form Based Zoning that a lot of people spent a lot of time working on.

Christine Davidson of 1275 Maplewood Avenue said that, in considering the plans for the Old Frank Jones Warehouse on Market Street and Ceres Street, they should look no further than Islington Street and the dominating ugliness of the new brown cinderblock building. Many citizens thought Islington Street was going to be improved into a beautiful gateway to the City. They already have ugly brick boxes at the Residence Inn area, which is another gateway to the City from Maplewood Avenue. At the HDC meeting, plans were again presented for a change to the old warehouse. A consultant from Portland, the owner and his team of developers presented plans for the outward and upward expansion of this venerable old warehouse. So again, she said, a fine old building in a historic area and part of another gateway to the City from Market Street will be redeveloped. She said there are many problems with these plans, not the least of which is the building bulge on Ceres Street and the height for this

building. The plan for this overbearing, over-45' building should not be allowed in her beloved City, and it will not be if they pass the 45' limit.

Tim Phoenix, Attorney from Hoefle, Phoenix, Gormley and Roberts, on behalf of Eport Properties, 173-175 Market Street, was present with Jeff Clifford, Engineer, Carla Goodknight, Architect, and the project principals. Attorney Phoenix said if this new ordinance were passed, it would affect the project they are working on. Several people said Form Based Zoning is around the corner and may happen in December and that this was possibly a stop-gap measure. He said he has heard lots of opinions, discussion and issues regarding the Zoning Amendment Change; for example, Councilor Novelline Clayburgh said the Planning Board should work on it before it went to the City Council, which he agreed with. He thought that they could still be here in December talking about the Ordinance. He recommended that the Planning Board drop the issue and wait for the Form Based Zoning to go forward so they did not collide.

Attorney Phoenix said they had a concern with the drafted document because their project is in the CBA District. They understood the 45' or 50' issue with exceptions under circumstances, but they did not understand the tie-in of a limit to the height of a number of stories. He considered a story typically 10' or 12', and to tie 3 stories to 45' did not make sense. He felt they should just have a height limit and let the number of stories depend upon the circumstances because in certain circumstances, the number of stories can be deceiving. Along the river where their building backs up to the river, the building has many stories but has fewer stories on the front. Provision #1 stated that the building height and number of stories be no greater than the height of any building on an abutting lot or on a lot located directly across the street.

Attorney Phoenix displayed a drawing showing a panoramic view of the city from the riverfront and said that every building along the front would not pass the Ordinance because they were all more than 3 stories, and to tie the height to the number of stories, especially with a sloping lot, would severely limit the ability to build something reasonable in those spaces. He felt the idea was to have consistency in height and that building height exception granted by the HDC should not be higher than any other building on the same block and should be consistent with the neighborhood. It had to blend, and the height regulation would make that difficult.

Attorney Phoenix did not understand the Conditional Use Permit requirement for the HDC in Section 1.2.3.1, which states that the increase in building height is supported by one or both of the conditions of the requirements in the previous section. He said if the requirements have been already met, it should not have to be reviewed again. The statement of 'building and site design minimizing the impact of increased height on neighboring properties' had been originally worded as 'litigate' and he commended the Planning Board for substituting the word 'minimize' instead. However, he did not know how you define minimizing impact on the height of a building and felt more work had to be done on defining what the criteria were for the granting special exceptions. He thought they should wait for Form Based Zoning and, pertaining to the CBA District, the provision for the number of stories should be removed and the contents of consideration by the HDC for a Conditional Use Permit should be made more generic and not tied to one lot or one building.

Carla Goodknight of CJ Architects said she knows the City is struggling with many of these issues and she is not sure what the answer is. She addressed Item 1 where it says the building height stories are no greater than the height of any building on an abutting lot and pointed out three examples of areas where that may have unintended consequences. The Northern Tier area had many 1-story buildings, and if there is was adjacent lot with one story, it would remove the HDC's right to grant the

Conditional Use Permit and they would be tied to that 1-story structure. The Connie Bean Building and the Granite Minerals Building were also 1-story structures.

Chris Erickson of 175 Market Street said he supported Attorney Phoenix's and Ms. Goodknight's comments. As the current CBA Zoning Change Amendment is written, he did not think it was the intention of the Board to have a Zoning Ordinance in place that would put the majority of the new and old buildings in the CBA District out of compliance. Everyone's comments in trying to keep and maintain the character of the CBA and CBB Districts would be almost impossible to implement with the Zoning Change. The sloping topography on the back end of the riverside, the Market Street side, Bow Street, and Ceres Street are very different elevations, and the Market Street buildings would have less number of stories than the Ceres Street side, especially Merchants Row. The majority of the buildings on Merchants Row are 5 stories tall and the area was very dear to the history and character of Portsmouth. This type of regulation would put all those merchants and buildings out of compliance. He said there needed to be very careful attention given to the wording of the number of stories regarding the CBA District. A height limit should be limited to amount of feet because the entire CBA District is hugging the river and there really was no consistent way to tie that in and achieve what they were trying to achieve by limiting the number of stories.

Chairman Ricci called for other first time speakers. Seeing no one rise, he called for second time speakers.

Jerry Zelin said he did not know if it was manifest destiny that they would have Form Based Zoning immediately, so the fact that they think it was imminent was not a good reason to turn this proposal down. He also felt the 45' height limit was fine, with the exception of Congress Street. Most of the buildings in Portsmouth were no more than 45' high in the CBA and CBB Districts, particularly taking into account how the Zoning Ordinance defines height. Most important, he heard that the 45' height limit was going to bar apartment buildings, young people and urban density and felt that was not true. He said 45' is 4-1/2 stories, and it is only 4 stories for a flat building. With the modification that allows half-stories, 45' allows 5 stories if you have a sloping roof. He felt there was plenty of room for people Downtown without having to maintain the status quo, which is a Zoning Ordinance that puts most of Downtown in the CBB District and subjects most of downtown to a 60' height limit, yet most of Downtown except for Congress Street is populated with buildings that are less than 60' high, with the exception of the Northern Tier development.

Zelita Morgan said that this was not about aesthetics but about the quality of life. Buildings are skyrocketing and blocking the sun. She said if people do not like what Maplewood Avenue is now, they should just wait because it would get worse. You cannot see the line of the buildings. Portsmouth is successful because as a community, they all came together and laid out the vision of the Master Plan. She said that everyone is welcome to come and live in Portsmouth and asked why the Planning Board would go against a vision that they all agreed upon. There are school-age children in their neighborhoods, and putting in a parking garage would impact the property values and not only infringe their quality of life but also be a safety concern. If parking is so important, Boston would be dead, as well as New York, Paris, or London. They have transportation systems there, yet people walk. She did not know where the myth came from that said you have to be only five minutes from walking to a specific place, and that it did not exist in any other successful city in the United States or abroad. She urged the Board to revisit some of the points that were made as far as the language on the waiver, but to please move forward. She said they could not wait for the Form Based Zoning in December. The height limit was about their quality of life.

Chairman Ricci called for additional second time speakers and third and final time speakers. There were none, so he closed the public hearing. Chairman Ricci thanked the public for coming out and said they often change the way he thinks about certain applications.

**DISCUSSION AND DECISION OF THE BOARD:**

Ms. Moreau said that after listening to everyone speak, her thought process had changed. She agreed that the idea of adding stories prohibits use of the 45' that are there, but without the half story, it does not reward people for having architectural details and setbacks that give the buildings more character than the flat roofs. She thought maybe the Planning Board should reconsider the language and reword it so developers would be encouraged to design better.

Mr. Gladhill said his comments had to do with the significant and direct benefits gleaned from the public's different interpretations. He felt that they would start a negotiation process with the HDC because the way it was written was too broad. If it were struck and a provision put in its place about a historic or architectural benefit, then that would be within their purview. With the current broad significance to direct benefits, he felt that he would be negotiating with applicants.

Mr. Gamester said that he was fundamentally opposed to any type of change, especially a drastic one. There were obviously progressive or reactionary changes, but over the past six months the changes had been very reactionary. The Form Based Zoning was ahead of them and they would have something that covers the entire Downtown. He said that smaller incremental changes are better, such as the one enacted in 2012 when there were changes to the setbacks versus height requirements. Considering that they were going to vote on this that night, he proposed that they change the language in #1, and instead of stating "any building specifically has an abutting property or a building directly across the street", they should say "the average of the heights of abutting properties and directly across the street". That way they would not be limited to a 1-story building like the one with the shark on it and could consider everything around it.

Vice Chairman Blenkinsop thought this was interesting but he did not see it as dramatically as Mr. Gamester did. He saw it more as an interim step towards Form Based Zoning. He liked that they were trying to get some variations in the roof lines like the 3-1/2 story and thought that 45' was reasonable, and he liked how it allowed for a Conditional Use Permit that could potentially go to the 50' or 60'. His problem was that when he read the wording of Items 131 and 132, the wording seemed awfully 'squishy'. He could not understand exactly what the HDC would have to do. They talked about the provision of significant and direct benefits to the City as determined, but he did not know what they really meant. He recognized that they could have very different interpretations than the HDC could, and he thought that was problematic. He referred the second factor in Item 132 that stated building and site design will minimize the impact of increased height on neighboring properties. He did not understand what factors they would consider in terms of how it minimized the impact. He thought the overall purpose behind the proposal was good, but he had concerns with how it would actually be implemented by the HDC. For that reason, he was hesitant to go forward with the proposal as written.

Mr. Hopley agreed there was a lot of 'squishy' in the proposal and that it could be massaged to have more of what the Council was looking for.

Chairman Ricci said that Item 131.1 should be stricken because it did not make sense to say a 3-1/2 story or 45' building was okay unless it was next to a single story building, in which case it could only be a 1-story building. He had a problem with the building height not being greater than any building

on any abutting line. Mr. Taintor said that was only if they wanted to go higher than 45' or 3 stories. If they were surrounded by 1-story buildings, then 45' and 3 stories would be their maximum height.

Chairman Ricci said he would like the CBB District to include 50' or 4-story buildings but believed it was intertwined and reactionary to several utility parking issues Downtown. He thought Form Based Zoning would never happen if they enacted it that way. The CBB District should be more than the CBA District because it has always been that way. His biggest concern was that the HDC would be doing negotiations with applicants and that he struggled with issues like lawsuits, and there were so many scenarios that they could not cover them all. There were variables and definitions that were indefinable direct benefits. He said he would like to see the CBB District as 50' and some language strengthened and would also like to slow it down so that they could support it if it was enacted.

Councilor Novelline Clayburgh said she was in favor of this and felt that Chairman Ricci's revision made sense and would solve the Congress Street issue. As a Councilor, and reflecting the thoughts of several councilors, she said she had been in discussions of Portwalk, the High Street/Hanover Street Garage, 51 Islington Street, and the Charettes in June where height and mass were major concerns to a great number of residents. She said this was an effort by the City Council to try to put a limit on height until a decision was made on Form Based Zoning. She did not vote for the Worth Lot as a parking lot because she felt that it would end up being a massive building, at least 5 stories of parking. Her concern and the concern of most citizens were that there would just be tall massive buildings in Downtown, which they had a lot of now. Some control needed to be placed on the building heights, and this proposal was an interim effort to do that until Form Based Zoning in December. She liked that night's discussion and thought 50' for the CBB District was a good idea. She wondered why they would limit the stories rather than just limit the height and said they should consider saying that 45' in the CBA District and 50' in the CBB District was the limit.

Chairman Ricci said the HDC's job was hard enough. He felt that one significant and direct benefit would be if you were to do a height and not a story, the HDC could decide that, if you wanted to go another half story, you would remove the flat roof and provide more detail. A negotiating tool could be the HDC saying instead to do a flat roof and set it back and do some dormers, and they would allow another half-story height. A half story that is done tastefully would look better than just a flat roof with not much to it. So, if they did a height without a story and the HDC said they would give it another 7-1/2' over the 45', then that would be the type of negotiation they would prefer.

Mr. Gladhill asked what a direct benefit was. Someone might think an equestrian statue is a direct benefit, someone else might think it's a park. They do not always agree on dormers on a building. He thought they were going to have many more discussions about what a direct benefit is. Chairman Ricci said that for the HDC, a dormer or setback roof was a benefit and that was in the purview. They needed to assume that it would be in place for a while.

Councilor Novelline Clayburgh wanted to compliment the HDC. In the last months, she has seen things like the Wright Avenue development that was massive and taller than what was eventually approved by the HDC. She had many Work Sessions and conversations with the HDC and the Planning Board about 111 Maplewood Avenue. Connie Bean's owner and developer went to the last Planning Board meeting and were coming back. She thought the HDC was working on the building height and mass issues and that the HCD got the height down. The Connie Bean Building was being reviewed and the 111 Maplewood Avenue site was being discussed.

Mr. Gladhill said the architecture of a building can definitely affect the building's height and mass. He referred to 55 Congress Street and the Odd Fellows Hall and asked which one seemed more massive or higher. They are the same height, but one appears larger and sticks out a little more.

Mr. Hopley heard some discussion about eliminating the number of stories and just going with height and wondered if that was a simpler or thing to do. They could say they were going to limit to 45' or 50', but they should take the number of stories out of it and let the design speak for itself.

Mr. Taintor said it came to them as 45' or 3 stories. His concern about 45' or 3 stories is that both support flat roofs, and that was why they recommended going from 3 stories to the 3-1/2 stories in order not to take out the flat roof. If a half story is taken out, then you just get a flat roof. The Planning Department is more concerned with aesthetics and character, and he was trying to do that by changing 3 stories to 3-1/2 stories.

Chairman Ricci said a story is 12' to 13' floor to floor, and if you're at 36' to 39' and you have 45', you try to do something to the top and not go to a flat roof. The HDC would say they would work with you. They are being forced to be creative. If they did a flat roof, they would not do 15'. By taking the stories out, he did not believe that people would magically go with flat roofs.

Mr. Hopley asked about the reason for choosing 3-1/2 stories in concert with the 45' versus 4-1/2 stories. Mr. Taintor explained that it was going up from 3'. It was coming from the City Council, so the Planning Board had to report back to them on their thoughts about 45' and three stories, and that was why he suggested increasing from 3 floors to 3-1/2 floors, to get more flexibility.

Mr. Gamester asked what would happen if he took out the wordage 'or whichever was less'. Chairman Ricci compared over 45' or 3-1/2 floors, saying you can't go over 45', or you can have 3-1/2 floors. He said that the HDC would have more to play with. To him, the term 'whichever is less' seemed negative. Mr. Taintor asked if it would change the meaning if 'whichever is less' were taken out. Mr. Hopley said you would still get the Conditional Use Permit option.

Chairman Ricci said he was thinking of the HDC and their plate being full, and that people may need to incentivize. He wanted to make sure they delivered something that the HDC could live with.

Mr. Gamester said he would be more inclined to vote for something along the lines of bumping up the CBB District to 50' or 4 1/2 stories because traditionally, the CBA and CBB Districts have been different heights, and as long as they were going to crack down on the Conditional Use Permit language and give some teeth to the HDC, he would be more inclined to do that.

Chairman Ricci felt that what they were discussing that night was not cast in stone and he was certain that different councils may want to take it where it was before, but as a Planning Board he thought they had a good handle on the implications with the HDC or BOA.

Mr. Leduc asked if it was worth mentioning flat roofs or if it was too restrictive. Chairman Ricci said that it would be too restrictive for architectural reasons. In certain areas in the back portion, flat roofs may be appropriate, and the HDC would be able to work with that, maybe with some incentives.

Mr. Leduc said he thought that the goal was to incentivize non-flat roofs, but it seemed that they could get away with flat roofs. Chairman Ricci said that it would go to the HDC with some incentives. If they wanted to build a penthouse with dormers or something funky, they would consider it, but not

with a flat roof. Mr. Leduc said maybe if it were mentioned here, the designer may realize early on in their design that flat roofs were discouraged. Chairman Ricci thought if they had a Design Review with the HDC, they would probably know that and he would prefer to keep it out.

Vice Chairman Blenkinsop asked about timing and said that it seemed like they were talking about changes to this and was not sure if were going to make edits that night and vote on it or postpone it for further study. He asked if they thought it needed more work consistent with their discussion and whether or not they wanted to bring it back in August.

Mr. Gladhill said that a joint Work Session was schedule on August 1st and asked if they wanted to add it to that session. Councilor Novelline Clayburgh stated that the public hearing for the City Council was on August 5th and asked if it would delay the meeting if they did not have a report from the Planning Board. Mr. Taintor said he was not sure if it would delay the Second Reading, but it would delay the Third and Final Reading. Mr. Hopley said the public hearing would be based on certain language, so they should be careful if they were making significant changes.

Mr. Leduc asked if they should vote to not recommend and go back to the drawing board with all the things they talked about, and then bring it back to the City Council. Mr. Taintor said that if they wanted to work on the language, they could vote to postpone their discussion and recommend to the City Council that they postpone their public hearing. Chairman Ricci said that would make sense.

Mr. Taintor said that their next meeting was on August 15 and the City Council meeting was on the 19th, so it would fit in. Chairman Ricci asked what changes they would talk about, assuming they did not postpone the meeting. Vice Chairman Blenkinsop said they would talk about the height provisions in the CBB District and the language of "whichever is less" in both the CCA and CBB Districts. He said there were concerns with Language on Items 131 and 132 with Conditional Use Permit and 50' or 60', and felt that the language was a little squishy and seemed to open the door for different interpretations of what could get them to a Conditional Use Permit. It seemed like they were talking about complete edits to everything on the first side of the page.

Chairman Ricci asked if it would make sense if, in their August 1st Work Session with the HDC, they discussed it and sent it back to the City Council to have some concensus, and whether the City Council could act on it on August 19th. They had to make sure they did not do a huge disservice to the HDC. He understood slowing it down and lowering the heights and things of that nature, but he didn't want to hamstring the HDC with an indefinable and unenforceable document.

Mr. Gladhill wanted to point out that he was speaking for himself and not the HDC, that his opinions were his and not theirs.

Chairman Ricci asked if they thought it would make sense. Mr. Gladhill said he thought it would make sense to touch base on this August 1st. It was already happening and they should just add it to the agenda. Chairman Ricci asked if that was the concensus of the board.

Mr. Taintor wanted to know for sure if the motion would be to postpone to August 15th and recommend to the City Council. Chairman Ricci said yes, he thought their goal was a joint Work Session with the HDC on August 1st, with edits, discussion and hopefully a concensus on at the August 15 Planning Board meeting, and then recommendation to the City Council on August 19th. That seemed the right course to him.

Councilor Novelline Clayburgh made the motion as stated by Chairman Ricci. Mr. Gladhill seconded it.

Chairman Ricci wanted to make sure it was clear that they were going to recommend that the City Council postpone their second reading to August 15th and have an August 1st Work Session. Ms. Moreau asked if it would open it back up to the public if they looked at again on August 15th, and Chairman Ricci said yes.

Mr. Hopley asked if the staff had a good idea on how they were going to work on the massaging. Chairman Ricci thought it would become clear on August 1st with the HDC as far as being a significant and direct benefit, and they would receive good input.

Mr. Gladhill said they would also get the architects on board who would talk about the height versus story issue and discuss their concerns.

The motion passed unanimously to **postpone** discussion and place on the Joint Planning Board/HDC Work Session Agenda on August 1, 2013 and also place on the Planning Board Agenda for August 15, 2013 to re-open the Public Hearing.

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B. The application of **KHP Properties, LLC, Owner**, for property located at **428 Pleasant Street**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland <sup>Request to Postpone</sup> ~~area~~ with 550 s.f. of impact to the tidal wetland buffer. Said property is shown on Assessor Map 225 as Lot 27 and lies within the General Residence B (GRB) District and the Historic District.

Chairman Ricci read the notice into the record.

Mr. Gladhill made the motion to **postpone** the application to the August 15 Planning Board Meeting. Ms. Moreau seconded the motion, and it passed unanimously.

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C. The application of **John Gens, Owner**, for property located at **8 Regina Road**, requesting Conditional Use Permit approval under Section 10.1017 of the Zoning Ordinance for work within a wetland buffer, for remediation to restore functional value to the wetlands where trees were removed, with 2,493 s.f. of impact to the inland wetland. Said property is shown on Assessor Map 225 as Lot 27 and lies within the Rural Residential District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Adele Fiorillo of Normandeau Associates presented on behalf of the Applicants. She displayed an aerial of the Regina Road lot showing an orange line delineating a no-cut buffer area, a green line delineating the wetland boundary, and a shaded green area showing the entire wetland area with just the perimeter around the property delineated. Within the wetland area, there were highlighted areas where the trees had been cut and color coded to show the species of tree. She said that this was an after-the-fact permit application, as the trees had already been cut. The Gens’ subdivision was established in the 1960s, and their house was built in 1972 before the Ordinance was in place. She



pointed out that, if you were to take the 25' no-cut buffer and put the 100' buffer that was currently in the Ordinance, most of the property would be within the buffer. She said that the Gens' pool is very close to the no-cut buffer and over the years they had significant storms and even a hurricane. Many trees in the wetlands are growing on mounds and are more shallow-rooted, so they tend to be less stable. These trees have fallen over and broken off due to the storms. There was a concern that some trees would fall in the direction of the pool or in the direction of specimen trees on their property, so they did selective cutting to remove some of the trees that they felt were threatening the property. They then had the forester who did the cutting come in and put tree trunks in piles. They did all the work on the upland edge. They were going to remove the trunks and use them for firewood and then burn the limbs and/or brush piles.

Ms. Fiorillo said the Fire Department Chief came out and alerted the City of the wetland violation, saying they could not bury the trunks or brush in the wetland. Mr. Britz came out to review the situation, and he advised the Gens that it was a violation to burn the brush in the wetlands and that they needed to remove them. The Gens did not knowingly break the Ordinance, they felt they were just doing work on their property and they wanted to make sure they were doing the removal correctly. They went out and located where the 21 cut trees of various species and sizes were. The white pine, American elm and oak were upland tree species and growing in high spots in the wetlands. The trunks and brush piles are still there. They are proposing that many trunks can remain in place because they're laying flat on the ground. The area is very well vegetated within the wetland, so the existing plants are responding well to the added light. They feel it would do more damage to pull the trunks out than to leave them there. The trunks at the very close edges that are piled would be easy to remove, so they are proposing that they do that and also that the brush piles be removed because they are close to the edge and also easy to take out.

The Conservation Commission wanted some mitigating measures besides just removing the material from the wetland, so the Gens discussed doing a buffer planting at that time and proposed buffer plantings of high-bush blueberries. The Gens met with the Conservation Commission, who recommended approval of the restoration plan and also incorporated a few other items such as invasive species control of a few plants. The Commission said it was fine to remove the material without a permit and they directed the Gens to do so. The City Council would like continued monitoring of the invasive species and monitoring of the buffer plantings that have 80% survivability.

Ms. Fiorillo said she was out at the site the previous day to look things over and thought the area would be a little tight, and she wanted some flexibility in maintaining 80% survivability so that the Gens could still plant the buffer but could take it around a corner and extend it to ensure that the shrubs they plant would survive. Otherwise, her exhibits and the package they put together were self explanatory. She said the Gens were happy to plant the shrubs, and also wanted the flexibility to plant in a more appropriate season, like September, as it had been very hot lately.

Vice Chairman Blenkinsop asked about the flexibility regarding plantings and whether or not it was something they wanted addressed through a stipulation or if they already had the flexibility. Ms. Fiorillo said that the plan showed a specific planting area when they first met with the Conservation Commission, and they would like the Commission to vote on stipulations relative to survivability and monitoring to be able to get an 80% survivability rate yet still have a dense enough buffer and be able to move plantings around the corner a bit.

Chairman Ricci asked what the best way the Board had to ensure the survivability and enforcement. Mr. Britz said the Commission would be comfortable with the proposal. They were okay with the size

of the 3' of center spacing but maybe they could alter the stipulation to adjust the spacing and allow the same number of plants as a 3' on center given the boundary that was given in the last plan. If they had a certain area of 3' on center spacing that would equal the same number of plants. If it were moved out, that would be okay.

Chairman Ricci asked if it was typical that the Conservation Commission would go out and work with the wetland scientists to do the relocation and follow-up or if it was left to the contractor. Mr. Britz said it was not typical but it could be worked out.

Mr. Taintor said that, because there were two items mentioned, he would suggest that stipulations be added to the revised planting plan to be approved by the Environmental Planner, and that the planting be done between September and October.

Chairman Ricci asked if anyone was present from the public wishing to speak to, for or against the application.

Russell Vanbilliard of 12 Regina Road said he lived next door to the Gens. He built his house in 1947 and watched the area develop from four houses to ten. He felt that the cut trees had a limited impact on the wetlands because there were acres and acres of wetlands, and the cut trees had no impact on surrounding properties either. He recommended that the Board approve the permit.

Chairman Ricci asked for second, third and final time speakers. Seeing no one rise, Chairman Ricci closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD:**

Mr. Blenkinsop made a motion to grant Conditional Use Approval with the four stipulations in the Planning Board Memorandum as well as two other stipulations: 1) that the spacing of the plantings be adjusted with the approval of the City Environmental Planner and 2) that the planting time occur between September 15<sup>th</sup> and October 15<sup>th</sup> of 2013. Mr. Hopley seconded the motion.

Ms. Novelline Clayburgh said he had been on the Planning Board for a year and half and that was the second time that something like that had come up, which made her feel sorry for the landowner. She said that a person has a home that they own and trees that have a weak base, so they want to protect their home and they cut the trees down. She recalled a case in her own neighborhood where a new neighbor moved into his house and had a problem with weak trees, so he cut them down. She asked how a homeowner is supposed to know that certain land cannot be touched. She said she would not know that she had to go to the City to get a permit to burn leftover debris, etc., and it did not seem fair. She knew that the wetlands have to be protected but asked whether there was a way to educate the public or homeowners about this issue. She also asked whether the landscaping companies should know this and if there was a way that they could help residents and landowner know what could be and could not be done.

Mr. Britz said that was an excellent point that they have been trying to address. They had a flier that was ready to go out, but they changed their website so that they had to redo the flier a bit, but he said it was ready to go and people who live in the wetland or wetland buffer would receive information on what they can and cannot do in the buffers. He said this was spurred on by a past violation they had. He said that landscapers also know these rules but the problem was that the enforcement went to the landowner instead of the landscaper, and that the landowner received the violation. As a result, the

landscaper was not encouraged to stop the behavior or look into the regulations of the particular town. He said there was a share of blame but that education was a big piece of it and the Conservation Commission was interested in doing more and would work harder at it.

Ms. Novelline Clayburgh asked whether the landowner could call the Conservation Commission directly. She mentioned a situation she had when she wanted to extend her driveway; she had called the Commission herself and gotten their permission. Mr. Britz said he would encourage anyone with questions who owns property in the wetlands to call him or the Planning Board and they could work with the landowner to see what they can or cannot do. Ms. Novelline Clayburgh said they all know that the Commission is very busy and that it would be appreciated.

Chairman Ricci thanked Mr. Britz for his comment. He said he had the same thought, that he knew that tree companies realize when they are doing work that is against the Conservation Commission and that it placed the homeowner in the position of dealing with the violation.

The motion to approve the Conditional Use Permit Application passed unanimously with the following stipulations:

1. The applicant shall provide a monitoring plan that is approved by the Environmental Planner which includes annual monitoring for at least three years to occur on or within one week of July 15 each year beginning in 2014.
2. The plan shall include provisions to monitor invasive species and provide specific actions for manual removal and follow-up if invasive species are found in subsequent years.
3. The plan shall include a measurement of survival of the wetland buffer plantings (blueberry bushes) and a replanting contingency should the plants not achieve 80% survival.
4. The plan shall include a provision for photographs taken each year to document removal of invasive species, survival of buffer plantings and overall site restoration.
5. The spacing of the plantings may be adjusted with the approval of the City Environmental Planner.
6. The planting time shall occur between September 15<sup>th</sup> and October 15<sup>th</sup> of 2013.

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Chairman Ricci asked the Board if they could make a motion to read Items D and E together, hear them as one application and then vote for them separately. Mr. Hopley made a motion, Ms. Novelline Clayburgh seconded the motion, and it passed unanimously

D. The application of **Eport Properties 1, LLC** and **The Aland Realty Group, Owners**, for property located at **173 & 175 Market Street**, requesting Design Review to construct a 5-story 3,981 s.f. (footprint) addition to an existing building which will include three new dwelling units, office and commercial space and 10 parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 118 as Lots 3 & 4 and lies within the Central Business A (CBA) District, the Historic District and the Downtown Overlay District (DOD).

E. The application of **Eport Properties 1, LLC** and **The Aland Realty Group, Owners**, for property located at **173 & 175 Market Street**, requesting Site Plan Approval to construct a 5-story 3,981 s.f. (footprint) addition to an existing building which will include three new dwelling units, office and commercial space and 10 parking spaces, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 118

as Lots 3 & 4 and lies within the Central Business A (CBA) District, the Historic District and the Downtown Overlay District (DOD).

Chairman Ricci read the notices into the record.

**SPEAKING TO THE APPLICATION:**

Tim Phoenix, Attorney for HPGR presented on behalf of the Applicants, with Carla Goodknight of CJ Architects, and Jeff Clifford of Altus Engineering. Attorney Phoenix said they had two separate applications for the same project. He said he would not go into all the details unless the Planning Board wanted him to, but their project had been ongoing for many months. The Design Review application had been filed as a result of the building height zoning amendment and they had been before the HDC on numerous occasions and also before TAC. They got caught in a state law requiring that certain things happen in order to avoid being subject to zoning changes that would negatively affect the project. So, they had invested tens of thousands of dollars into the project already and then suddenly, from his client's point of view, the City Council passed and posted the public notice of the hearing for the zoning change.

Attorney Phoenix said they needed the 45' height requirement but, because of the previous-stated reasons. They may or may not meet the number of stories requirement because their building is on the riverfront and the back of the building is more stories than the front. They filed a request for Design Review because it was the only way to protect them from the legal notice. In the last few days, Attorney Sullivan, on behalf of the City, took the position that their application did not meet the statutory requirements to proceed. Attorney Phoenix submitted a request for reconsideration and Attorney Sullivan preliminarily determined that Attorney Phoenix did not need it however because it was sudden, he has not given a final determination of his opinion.

Attorney Phoenix said the reason they had two applications is because they filed their Site Review Application in May, and when they discovered that the City Council was passing the proposed Ordinance to send it to public hearing, they tried to get the Design Review request in, and now it was in a state of flux. He thought it was a good idea for them to be read together because their Design Review is mute until they get a legal resolution on the height requirement. He said they were there with the project as it had been proposed and debated on numerous occasions before TAC and the HDC. Attorney Phoenix wanted to find out if they were vested, in which case the City would agree with his analysis, or if not, they would be applying for the Conditional Use Permit before the HDC. They were here tonight to proceed and address their concerns and had already applied for a Conditional Use Permit before the HDC. Unless the Planning Board had any questions or wanted to elaborate on the part of the City's position, Attorney Phoenix said he was prepared to proceed with the project as presented.

Chairman Ricci said Attorney Phoenix could proceed. Attorney Phoenix turned the presentation over to Jeff Clifford, of Altus Engineering.

Mr. Clifford reviewed the drawings with the Planning Board. He said that their Existing Conditions Plan was very busy. Two properties comprise the Applicant's land holdings, and he showed the Oar House area, the Moffatt Ladd House, the 'Shark' Building and the riverfront. The existing site shows the existing building on 173 and 175 Market Street and the rear of the building on Ceres Street. There was a 15' wide private right of way behind the building. He said that it was not a public way, so it was the responsibility of the owners to take care of that section of Ceres Street. He showed the demolition

plan and the part of the tower with voltage lines that was coming out, and he said several trees will be removed because the building will occupy that space. A lot of the discussion that he had with TAC was about utilities. An existing overhead power line goes through the site. The poles have a number of unattractive utilities on it and they interfere with the proposed building's view. They wanted to move the utilities line and bury it underground, but the owners of the adjacent property will not grant them permission to do so. He said they had tried many times to discuss it. On the other side, the Moffatt Ladd owners were cooperating and working with them to put the utilities underground and were also putting in a drain line. He said there was an overhead line on Ceres Street that they wanted to bury as well and it was a benefit to the City to have those lines buried as a part of the project.

The site plan of the proposed project showed the existing building and a basement with 6 parking spaces and a garage door. Mr. Clifford said the site will have a lower-level entry, and other aspects include a 4' flush sidewalk along the rear of building with curbing to maximize space for emergency or other vehicles to get through. He said there was a 15' easement defining Ceres Street, and there was 18' from that point to the face of their building. Even though they're only obligated to have 15', they're providing 18' flush to make it more attractive and easier for vehicles to get through.

Mr. Clifford said there has been a lot of discussion regarding the Utility Plan and the existing overhead utility line that goes through the building. The existing pole will move to another location. One line will be moved to above ground. There is a 14" force main that was built in the 1880s which DPW did not want them to build over. Mr. Clifford said it caused an impact to how they designed the building and that the client was burdened by the utilities issue. He also pointed out an abandoned sewer line, saying there was a sewer service that came up from the Moffatt property through a manhole, and the service became a City sewer when it got to Market Street. The existing sewer line goes directly underneath the proposed building, so they will drop it down and it will go through the garage and tie into the existing service connection into the sewer. They did not want to just relocate it because it would be a burden to someone else. He said there are special considerations on how that will be constructed, and that there are details on the drawing along with TAC comments on that line. They are amenable to working with TAC on it. He showed where a new pole would be located to accept the underground line and said they would have to tie into the overhead line, and that pole is aligned exactly where the existing line goes. He reiterated that they are not changing anything on the abutting property but are in fact improving it. They will add a special 3-phase power line to power some of the ships that come in. They will take out the overhead line and bring it underground to the Shark Building. The two overhead lines will come out, and they will put in a new pole on Market Street and eliminate the existing wooden pole. There was also a steel pole left over from the coal power plant that they will not be removing per the utility company's request.

Mr. Clifford said there were existing drainage lines on the street and they would tie some of the roof drains into them. There was no place for the drainage to go in the back of the building. He said existing catch basins were located nearby but did not benefit them. They talked to the owners of an abutter and they were agreeable to putting in a new drain line to pick up their roof drains. There is an existing structure that is cobbled up but has a 12" pipe that discharges to the river and is not a very good connection, so they will put in a new structure and connections that will be a benefit to everyone. They will take water that comes off the building and send it to the new line as well. He said the sewer will tie into the existing sewer connections available to them. He mentioned that there would also be a bike rack.

Mr. Clifford said the property was within the 100' setback from the river buffer zone, so they would need a State Wetland Permit from NHDES for any excavation they need to do. They discussed it with

NHDES and permits would be filed soon. Part of the permit will be the excavation associated with the utility lines. Some of that work is also within the 250' shoreland zone buffer. It is a highly-developed area that they do not see problems with, but they still have to go through the process to get permits. Mr. Clifford also showed the landscape plan, the bike rack, the new planting areas, and the sidewalk extension.

He then reviewed the TAC stipulations and their results:

1. He agreed with the stipulation that the brick sidewalk along the building should be a minimum of 4', with granite curbing and built to city standards.
2. As to drainage improvements and modifications, he said easements will be created for a drain line, and they will produce and finalize these prior to a building permit.
3. The stipulation states that 'the Applicant shall use best effort to widen Ceres Street further to provide safe access for emergency and delivery vehicles along the private access of Ceres Street, and the Applicant shall communicate and coordinate with the Fire Department to determine their recommendations'. Mr. Clifford said they had numerous discussions with the Fire Department about this access, and the Fire Department's comments have never been negative because the access to the area was limited at both ends to begin with. They will provide the 15' access, and the Fire Department was comfortable with that. There was not a Fire Department representative at the TAC meeting, so they were unable to resolve the Fire Department wording relative to this issue, but they are trying to receive final word from the Fire Department. They have provided the full 18' access.
4. All hardware on the sewer trench will be stainless steel as requested. There is a section of sewer underneath the building that is the City's responsibility because they take jurisdiction at that point. Mr. Clifford said they talked to the Legal Department about it and thought they could go forward with the line going through the building.
5. They met the provision that the sump be in the sewer trench, so that if they need to get in there, it can get pumped down.
6. They met the stipulation about the Applicant being encouraged to research a better support system for the sewer line running through the building to avoid deflection and issues associated with chemicals. He said there was a similar situation on another property that they worked on and the details emulate that design, but DPW wanted to take it to the next level, and they had no issues with that.
7. The requirement to clean out and label the sewer was met.
8. The bike rack detail stipulation was met. (Shown on L1).
9. The Building Height provision stated 'the Applicant shall continue to work with the Planning Department to determine if the building height calculations are consistent with the Zoning Ordinance requirements'. Mr. Clifford said that was pending.

Carla Goodknight, of C.J Architects, talked about the existing building and revisited the official agenda restriction that said the building is a 5-story building containing 10 parking spaces. She wanted to correct this. She saw the story above grade plane referencing the IBC 2009 description for a floor that qualifies to be above grade plane, and on the building, both existing and proposed, is considered a

story below grade or basement. Also, they only have 6 parking spaces, not 10. She displayed pictures of the existing building, the rear face of the existing building, the basement level, and floors 1 through 4. The front is a ¾-floor as well as the side. The building's current condition requires repair, and they had extensive meetings with the HDC and brought in a building development specialist to find the best way of restoring the brick façade and re-stabilizing anything else. She showed a restored proposal presented to the HDC of the Market Street front elevation and the proposed addition. She did not want to belabor the details too much but wanted to focus on one of the design ideas that came through the process. One was to establish this as looking like two separate buildings; the other was to carry that theme through to the water side so that they would still have the appearance of two separate buildings. She said pitched roofs do satisfy the 45' height requirement, which was the basement, 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> floors. She showed different sides of the building, the extension of the building, the side facing the Moffatt house, the existing façade and the restored version of it, using all pre-existing openings with an additional recessed opening at the top. She showed the new addition portion that kept the same design concept as the pitch roof system. They started out with a flag roof system, but with the current rules in place, they moved toward the current design. She showed the water side elevation facing Ceres Street, maintaining the two-building concept and the pitching roof.

Mr. Taintor said that the Fire Department sent them an email that day stating that under the fire code, Fire Department access shall be not less than 20'. The Fire Department recommended that the plan be revised to provide at least 20' of clear passage behind the building. Mr. Taintor said that provided an answer for the #3 Stipulation. Attorney Phoenix had said that the easements had not been provided to the Planning Department and had not been voted on by the Planning Board. On the issue of Design Review, they had a meeting with Attorney Phoenix and Mr. Erickson the week of June 10<sup>th</sup> before the City Council vote, and Mr. Taintor had advised them that they would be unable to make the vesting before the terms of that, but they went forward and filed anyway.

Ms. Goodknight said they were not aware of the Fire Department's memorandum until then. At several earlier meetings with TAC, the right-of-way was discussed with the Fire Department, and the Fire Department's opinion was that they did not have access to the Ceres Street right-of-way but later revised their opinion. The Fire Department Inspector requested 3' at the time and they gave him 3'. If he had requested 5', they would have given them 5', but now, they had just found out that they had to provide an additional 24". They would have given it had it been requested in a timely manner, but at this stage of their approval project, it would require redoing everything.

Mr. Erickson said he knew nothing of the Fire Department's stance and their email. He said the purpose of the TAC Work Sessions was to work out these details prior to getting to this stage and to have a design they could rely on. They had done that, and now they learn, after a year in this process, that the Fire Department is asking them to possibly change the design another 24". He said it was difficult to digest, considering the time, effort and money that were spent on the project. They relied on the actions and discussions of TAC. He said that further changing the design at this stage, after all of their good faith efforts and taking in all of the City's input at every phase, would be disconcerting.

Mr. Taintor said it was still at the stipulation stage and that he understood their issues, but there was a stipulation that said the Applicant had to determine the Fire Department's recommendation to work this out. Mr. Erickson said that he was speaking with him on the phone throughout the entire week and had no indication of this happening.

Mr. Hopley said that it appeared to be two lots and asked if they were consolidating lots. Mr. Clifford said they were doing a lot line merger and that he had not told the Planning Board as yet. Mr. Hopley

also noted that they were utilizing the existing water off of Market Street and asked how many water services were coming into the building at that time. Mr. Clifford said that he did not know and the mechanical engineer would be involved soon.

Mr. Hopley said the Site Plan showed a single line, and his concern was that, even though the building was going to have fire sprinklers, they would need a line for the fire service and a line for the domestic, so he said they might want to plan for that.

Mr. Hopley hoped that they were taking into consideration the building code requirements for exterior walls and their proximity to lot lines and the number of window openings allowed. On the south side, it looked like they had a lot of new windows with maybe a zero lot line. Ms. Goodknight said they were 18' from the property line on the south side. She stated that it was not a public right-of-way, it was a private one. She said that was the piece that was under consideration by the Fire Department. She said Ceres Street is private property. Mr. Hopley said that he did not mean that location, that he was going by the elevation labeling and asked if the south elevation was the one at the top. Ms. Goodknight said those were pre-existing openings and that the one at the top was set back from the property line at the appropriate distance.

Vice Chairman Blenkinsop asked if it was Design Review or Site Plan Review. Chairman Ricci replied that both applications were being reviewed.

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

**DISCUSSION AND DECISION OF THE BOARD:**

Chairman Ricci said they would act on Item D first, the Design Review, and Item E would be second.

**Design Review, Item D**

Mr. Taintor said that the Design Review was in terms of the Planning Board responsibility and it was not about architectural design. It was about the design issue, the placement of the building on the site, setbacks, and site issues rather than issues that might fall under the HDC jurisdiction. He set forth some choices in his Memorandum. He said normally they would not have an application like this one for Design Review. Normally the application would be a true Design Review application where they were looking for the Planning Board's input on the placement of the building, etc. He said they did not want that here, that they were just doing it as a legal maneuver to vest them in the Zoning Amendment. The Planning Board had the option to take that approach and simply vote to close Design Review and vote to determine that the Design Review process for the application had ended. Another option was to vote to do more discussion on it and do the Work Session first on August 1st and postpone the Design Review consideration until the August 15th meeting.

In terms of the Site Plan Review, the recommendation was to postpone to the August 15th meeting because of the height issue and request that the Applicant continue to work on stipulations and on the Fire Department's recommendation.

Chairman Ricci asked for a motion on Design Review.



Vice Chairman Blenkinsop had a question first. He said that if they postpone anything to the August 15th meeting, they would not pick up the Zoning Amendment at the August 15th meeting, and asked if it made sense to postpone to September so that it was after the Zoning Amendment.

Mr. Taintor said that did not meet the Zoning Amendment as posted by the City Council, which is 45' or 3 stories. In order to go ahead, they would need to apply to the HDC for a Conditional Use Permit. They had the option of applying even before the City Council enacted an ordinance because there needed to be some way for them to proceed forward. They would move forward under the Ordinance presented to the Planning Board by the City Council, which is 45' or 3 stories. As to postponing to August or September, he thought it might be better to postpone to August because the City Council would possibly hold a public hearing in August and decide not to move the Ordinance forward.

Vice Chairman Blenkinsop made a motion to determine that the design review process on this application has ended. Mr. Hopley seconded, and the motion passed unanimously.

**Site Plan Approval, Item E**

Mr. Gamester asked if they could remove Stipulation #2 about the Fire Department. He said he was just referring to what happened that day and what the applicant said about the 20' and he was not sure if they had the power to remove that stipulation. He asked if the vote would be to make a motion to postpone consideration of the application and to have the Applicant work on the items. He said he would like to change that motion to NOT include the continued discussion of the widening. Mr. Taintor said he could certainly do that. The motion could be to just include those two stipulations.

Vice Chairman Blenkinsop said the Fire Department had just made a recommendation and the Applicant had just received it and had concerns about it. He asked whether or not there should be a process that would encourage them to work together to resolve this. The Fire Department email said the department "suggested" that the design change be 'considered' and they 'recommend', and so on. He would expect that they would have a discussion with the Fire Department to resolve this issue and said to leave it in. Mr. Gamester said he was right, that maybe he was a little too hasty and would like to look at the TAC notes.

Chairman Ricci said that the memorandum said they should provide the report they have and coordinate with the Fire Department. Vice Chairman Blenkinsop said he thought the discussion was to remove that stipulation so that it wouldn't be there. Chairman Ricci asked if they needed it there. Vice Chairman Blenkinsop said yes because the Applicant had to coordinate with the Fire Department. Chairman Ricci asked if it implied that they could not coordinate by eliminating it. Vice Chairman Blenkinsop said no, but it would be his hope that they would coordinate and have a discussion about it so that in August, they could come back and tell the Planning Board that they resolved the issue and 18' was perfect, or some other resolution. Chairman Ricci agreed that it was okay to leave it in.

Councilor Novelline Clayburgh asked if the Planning Board had the power to overstep the Fire Department. If the Fire Department said 20', she asked if they could overrule that. Chairman Ricci did not know. He recommended leaving Stipulation #2 in and asked for a motion.

Vice Chairman Blenkinsop made a motion to **postpone** consideration of the application to the August 15<sup>th</sup> Planning Board meeting with three stipulations. Ms. Novelline Clayburgh seconded the motion.

Mr. Gladhill asked if the National Fire Protection Code was something they had to follow and whether it was a legality or a recommendation. Mr. Hopley said that would be left to the Fire Department to decide.

The motion passed unanimously, with the following stipulations:

1. Provide copies of easements to the Planning Department (TAC stipulation #2).
2. Provide a report on the potential for widening the Ceres Street driveway, and coordinate with the Fire Department to determine their recommendation (TAC stipulation #3).
3. Specify a revised support system for the sewer line running through the building to avoid deflection and issues associated with potential separation of chemicals with the joints of the SCH 80 PVC pipe (TAC stipulation #6).

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F. The application of **Portsmouth Ford Lincoln Mercury and SLF Realty Group, LLC, Owners**, for property located at **400 & 450 Spaulding Turnpike**, requesting Amended Site Plan Approval to construct a **400 s.f.** addition to an existing sales & service building and vehicles display areas along the Spaulding Turnpike, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 238 as Lots 1A and 2 and lie within the General Business (GB) District.

Request to Postpone

Chairman Ricci read the notice into the record.

Mr. Taintor made the motion to **postpone** this application to the August 15, 2013 Planning Board Meeting. Councilor Novelline Clayburgh seconded the motion, and it passed unanimously.

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G. The application of **Parade Residence Hotel, LLC, Owner**, for property located at **100 Deer Street, Portwalk Residential, LLC, Owner**, for property located at **99 Hanover Street**, and **Parade Office, LLC, Owner**, for property located at **195 Hanover Street** (aka Portwalk I, II & III), requesting Amended Site Plan Approval for streetscape improvements along Portwalk Place, with related paving, lighting, utilities, landscaping, drainage and associated site improvements. Said property is shown on Assessor Map 125 as Lots 1, 22 & 23 and lie within the Central Business B (CBB) District, the Downtown Overlay District (DOD) and the Historic District.

Chairman Ricci read the notice into the record.

**SPEAKING TO THE APPLICATION:**

Patrick Crimmins of Tighe and Bond presented on behalf of the Applicant, along with Tim Levine, of Old Harbor, LLC, representing the Owner. They presented the Site Plan Amendments for streetscape improvements to Portwalk Place. This project was constructed in three separate phases and approved in three different plans. Mr. Crimmins submitted each of the different amended plans for the various approvals. They condensed it with their exhibit to make it easier to follow. The goal of the streetscape improvements was to further enhance the street and make it feel more like a City street than it currently did. He said he would briefly go over the improvements and go over each item if necessary.

He submitted one revised plan but not the full package in the interest of trying to save a tree. He said it would need to be reflected in all the plans and he would be happy to have a stipulation if they received

approval that all the plans be amended to show such. He said these changes were a result of a meeting with the Liquor Commission that past week on the location of the seating areas, which he would touch on.

Mr. Crimmins said they were proposing four additional seating areas along Portwalk Place, which was really the one change in the amended plan that he was submitting that day, so he showed it in blue on the layout. The largest seating area would be outside the British Beer Company. They were amending one previously-approved seating area to allow for an additional tree, and then two smaller seating areas further up Portwalk Place along the hotel and the proposed retail section. As a result, what they had previously proposed and what had been approved by TAC was that the seating areas were out along the curb line. In meeting with the Liquor Commission earlier that week, it was recommended that those seating areas get pushed back against the building to make it consistent with other outdoor seating in the City. That was the one change to the Site Plan that he was submitting.

In addition to the seating areas, they proposed to add eight more trees along Portwalk Place. Four trees would be added in front of the Conference Center that would be flush planters with tree grates and guards. Two trees would be added at the bump-out to mirror the improved condition for Lot 3 on the other side of the street. One tree would be added at the intersection of Hanover Street and Portwalk along Lot 2, and another tree would be added along Lot 3, which would also be flush with a grate and guard.

Mr. Crimmins said they were proposing adding a decorative concrete stamped entrance to the hotel. The entry was previously striped, but they wanted to enhance an inviting feeling entering the hotel. They were adding another brick paver crosswalk upon entering Portwalk Place and were changing it from striped thermoplastic to a brick paver, which they previously had approved. They were changing the internal crosswalk because the previous design forced pedestrians to walk into the planters, so they were narrowing it so that it lined up with the ramps. Lastly, they were proposing to change all of the lighting that was previously approved. They would replace all fixtures on Lots 1 and 2, and when Lot 3 was completed, with a standard City historic fixture. One small change would be that the lights would have shields on them and would be dark sky-compliant, and would also have LED energy efficient light bulbs in them.

Mr. Taintor said he was supportive of the previous seating plan but not supportive of the revised plan because, in front of the British Beer Company, the Applicant was forcing pedestrians out to the curb and then making them line in under the trees. He said it seemed circuitous and was in opposition to their previous idea of the wide sidewalk in the area. Mr. Taintor said that was the worst change, but the other two changes were pretty bad as well. He said they were not keeping a straight pedestrian path, and they had discussed that issue at the Liquor Commission meeting to ensure that they did not have a big jog in the path, that there needed to be a continuous straight path. Mr. Taintor did not think the amended plan worked the way it was drawn and that it was important to have a decent sidewalk, not push pedestrians to the curb and then have them go under the trees. He asked Mr. Crimmins what his rationale had been for it. Mr. Crimmins said that they wanted to regain seating areas to activate the street, but that the Liquor Commission directed them to pull them out of the curb line and put them up against the building.

Mr. Taintor asked if the seating areas had to be that big. Mr. Crimmins said they did because of the location of the raised planters. It had to be a long area because they were not going to have the width to have multiple tables, which was why they would need the length along the building. He emphasized

that he was trying to reserve the areas because the tenants may do something differently with them in the future.

Mr. Taintor asked whether the Applicant saw the effect of approving this Site Plan Amendment as allowing them to fence off the blue area. Mr. Crimmins said if they fenced off the area, they would need the Liquor Commission’s approval. They were not asking that for the three areas immediately, rather, they were just reserving them. Ultimately, they would go back to the Liquor Commission with the design and show it fenced in.

Mr. Taintor said that, from the Site Plan point of view, if this were subject to change and to discussion with the Liquor Commission, perhaps they should remove all those blue lines because it was not a good pedestrian design.

Mr. Levine said he shared Mr. Taintor’s sentiments about the design and felt that the plan was a very good one otherwise, and that perhaps there be a stipulation pertaining to the layout and configuration of the outdoor seating areas. He said it would be subject to discussion between the Planning Board and the Liquor Commission and they would like to participate in it and come up with something that was mutually agreeable. The seating areas were strictly a temporary summertime item. The rest of the construction was fixed construction, and they were open to discussion about the location of the seating areas.

Vice Chairman Blenkinsop said he was uncomfortable making it a stipulation and asked whether or not they thought it should be addressed. Mr. Levine said that he would be happy to address it and that they wanted to be flexible on that point. He supported the Planning Director’s view and wanted to see if they could work with him.

Mr. Taintor said his preference was to not show the seating areas on the Site Plan because they were temporary seating areas that would be approved through the normal Liquor License process and because it implied that the Planning Board approved them, and he was definitely opposed to their layout.

Vice Chairman Blenkinsop said that they did not need to be on the Site Plan because it was not the Planning Board’s purview. Mr. Taintor felt that the previous design was great and that he would prefer to have seating where they originally had it and that it be shown on the plan with a dotted line.

Chairman Ricci opened the public hearing and asked if anyone present from the public wished to speak to, for or against the petition. Seeing no one rise, Chairman Ricci closed the public hearing.

**DISCUSSION AND DECISION OF THE BOARD:**

Vice Chairman Blenkinsop made a motion to **grant** Amended Site Plan approval. Mr. Hopley seconded the motion, and it passed unanimously with the following stipulations:

1. The final construction details for the proposed crosswalk to the Vaughan Mall shall be determined by DPW.
2. Any lines on the Site Plan delineating outdoor seating areas shall be removed.

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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. Request to re-zone property located at 1900 Lafayette Road.

Mr. Taintor said that, as noted in the memorandum, they understood the owner was presently negotiating with a potential buyer of the site and the Zoning Amendment may not be required, so he recommended postponing to a future date so that the proposal could be brought back by the Planning Department.

Ms. Novelline Clayburgh made the motion to **postpone** the request to re-zone property located at 1900 Lafayette Road to a future date. Mr. Gladhill seconded the motion, and it passed unanimously.

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**VI. PLANNING DIRECTOR'S REPORT**

None.

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**VII. ADJOURNMENT**

A motion to adjourn at 10:20 pm was made and seconded and passed unanimously.

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Respectfully submitted,

Joanne Breault  
Temporary Secretary for the Planning Board

These minutes were approved by the Planning Board on February 20, 2014.